

December 2, 2021

Dear Wasco County Planning Commissioners,

RE: File #921-18-000086-PLNG. Land Use Board of Appeals Remand (LUBA No. 2019-065)
Comprehensive Plan Amendment; Exception to Statewide Planning Goal 4; and Zone Change from
Forest, F-2 (80) to Forest-Farm F-F (10) by David Wilson

The Table of Contents to the Supplemental Record states that beginning on page 587 “Remaining Board of County Commissioner’s June 5, 2019 Regular Session Agenda Not Related to Wilson Appeal #921-18-000085-PLNG.” This is not correct, as there is additional testimony related to the appeal beginning on page 783 from Jill Barker and Sheila Dooley as well as a letter from Department of Land Conservation and Development and Oregon Department of Forestry.

This letter relates to statements in the current staff report regarding the BPA Line right of way and other issues related to the proposed rezone.

PC 1-76 (3) “There is a history of public examination and consideration that the BPA Line right-of-way/ easement area physically separates, and therefore, mitigates the potential fire impacts associated with low-density residential uses in the Sevenmile Hill area.”

This claim was refuted by both Department of Land Conservation and Development (DLCD) and the Oregon Department of Forestry (ODF) in their letter to Wasco County dated January 22, 2014. At that time there was a previous application to rezone this property and several adjacent parcels (the majority owned by Ken Thomas and David Wilson) from F-2 (80) to F-F (10). The application was denied by Wasco County. According to DLCD and ODF, “The position that the BPA corridor would provide a buffer from fire is specious at best, a fast moving fire can easily burn through and spot over right of way areas.”

DLCD and ODF also rejected the arguments for a rezone which are included in their attached letter. “As our comments indicate, we do not believe the subject property is either physically developed or irrevocably committed. Furthermore, we are concerned that the applicant’s contentions regarding wildfire are misplaced and could lead to a dangerous precedent. We recommend that the existing plan and zone designations be retained.”

Sincerely,

Sheila Dooley
3300 Vensel Rd.
Mosier, Oregon 97040



Oregon

John A. Kitzhaber, MD, Governor

Department of Land Conservation and Development

Bend RSC, Millpoint Building
650 SW Columbia St, Ste 7100
(541) 322-2032
www.lcd.state.or.us

January 22, 2014

John Roberts, Director
Wasco County Planning Department
2705 E 2nd Street
The Dalles, OR 97058

RE: Local File PLALEG-13-08-0002
DLCD File: 001-13

Mr. Roberts:

This letter includes the joint comments of the Oregon Department of Forestry (ODF) and the Oregon Department of Land Conservation and Development (DLCD). Both departments would like to thank Wasco County for the opportunity to review and comment on the land use proposal referenced above. The subject proposal seeks to take a “physically developed” and “irrevocably committed” exception pursuant to OAR 660-004-0025 & 0028 to statewide planning goal 4 (Forest Lands). If successful, the proposal would convert about 287 acres from a Forest Plan designation and F2 (80) Zoning district to a Farm-Forest Plan designation and F-F(10) district.

It is our understanding that the subject property is composed of eight tax lots and five legal parcels. Two of the five legal parcels in common ownership are a portion of a much larger contiguous forest tract. Five homes are present. It is not clear to us whether the existing homes have been approved under state and local provisions implementing Goal 4 or whether they pre-exist modern planning and zoning programs.

Our initial observation is that the subject property appears capable to be managed as forest land and is not an obvious candidate for redesignation to provide for rural residential development. Our comments and concerns are as follows.

Physically Developed Exception – OAR 660-004-0025

A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. OAR 660-004-0025(1). Longstanding case law from the Land Use Board of Appeals (LUBA) provides additional guidance:



Oregon Department of Forestry

Salem Headquarters
2600 State Street
Salem Oregon 97310
(503) 945-7200



- “ The standards for approving a physically developed exception to Statewide Planning Goals 3 and 4 are demanding. The county must find that the property has been physically developed to such an extent that all Goal 3 or 4 resource uses are precluded. Uses established in accordance with the goals cannot be used to justify such an exception.” *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995).
- “ A local government may not assume that the entire parcel or ownership occupied by an existing dwelling or road is physically developed so that it is not available for uses allowed under the goals”. *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508 (1994).

Based on our understanding, the subject property does not qualify as being “physically developed” because only a handful of homes and some minimum road and spring improvements exist, all of which may have been approved under forestland requirements implementing Goal 4.

Irrevocably Committed Exception – OAR 660-004-0028

A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. OAR 660-004-0028(1).

Our review of the materials submitted by the applicant shows that proximity to existing rural residential areas is the principle argument offered to explain why the subject property is deserving of an irrevocably committed exception. According to the Land Use Board of Appeals:

- “ OAR 660-004-0028(6)(c) prohibits impacts from rural residential uses approved pursuant to the statewide land use goals from being used to justify a committed exception for nearby property. Where a county decision relies in part on impacts from nearby residential uses to conclude that the resource lands are irrevocably committed to nonresource use, the findings must establish that those conflicts do not arise from residential areas that were approved pursuant to statewide planning goal exceptions.” *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62 (2006)

It is our understanding that the nearby residential development relied upon by the applicant is located in approved exception areas. Therefore, this development is not available to consider and can not be used to determine the subject property is irrevocably committed to other uses.

Wildfire

The applicant's material includes detailed discussions on wildfire and suggests that allowing the property to convert to a rural residential scenario would help to better manage fire risks. The notion of guarding against wildfire by introducing additional development does not seem reasonable to us. As the applicant's material points out, fire often originates from residential areas and fire events that threaten homes and property routinely receive fire fighting resources that would otherwise be devoted to protecting productive forest land. Furthermore, the position that the BPA corridor would provide a buffer from fire is specious at best, a fast moving fire can easily burn through or spot over right-of-way areas. Taken together, introducing additional development just pushes the urban-wildland fire interface more deeply into private forests to the detriment of commercial forest management while increasing risk and costs of fire. We strongly encourage the county to reject this argument.

Conclusion

As our comments indicate we do not believe the subject property is either physically developed or irrevocably committed. Furthermore, we are concerned that the applicant's contentions regarding wildfire are misplaced and could lead to a dangerous precedent. We recommend that the existing plan and zone designations be retained.

Again, thank you for this opportunity to comment. We request that this letter be entered into the record of these proceedings and that we receive a copy of the decision. If additional information is provided at the hearing, we ask that the hearing be continued, pursuant to ORS 197.763(4)(b), to allow us time to review the new information and respond if necessary.

Respectfully,



Jon Jinings
Community Services Specialist
Community Services Division
Dept of Land Conservation & Development



John Tokarczyk
Policy Analyst
Forest Resources Planning
Oregon Dept of Forestry

Cc: Katherine Daniels, DLCD
Scott Edelman, DLCD