



MEMORANDUM

DATE: July 31, 2023

TO: Board of County Commissioners

FROM: Public Works / Land Management Division
Shawna Adams, Senior Planner

RE: 2nd Distribution Memorandum for August 1, 2023 Public Hearing
Information Received for Planning Action File No. 509-PA20-05634
(Perkins Plan Amendment & Zone Change)

Attached is additional information received on August 31, 2023 added to the record for this matter.

Enclosed:

- Email communication between Mike Reeder and Bill Spencer, Received 4:06 PM 7/30/2023
- Email from Mike Reeder with attachments, Received 4:07 PM 7/30/2023
 - July 31, 2023 12:47 PM email from Bill Spencer to Mike Reeder
 - Bowers Written Testimony, dated July 27, 2027

From: [Micheal Reeder](#)
To: [ADAMS Shawna L](#)
Subject: FW: Perkins, Chuck & Wendy Plan/Zone Change Application Testimony for Lane County No. 509-PA20-05634 (Bill Spencer Testimony)
Date: Monday, July 31, 2023 4:06:15 PM
Attachments: [image001.png](#)

[EXTERNAL]

Good afternoon Shawna:

Please see the email string below between me and Bill Spencer, a neighbor of the Perkins who has farmed in the area for many years. There are two other documents that I will send to you in a separate email, one of which is from Bill Spencer, who answers my questions below in detail. Please include this email into the record.

Best,

Mike



Law Office of Mike Reeder
Oregon Land Use Law

Office: (541) 225-8777 | oregonlanduse.com
375 W. 4th Ave., Suite 205, Eugene, OR 97401

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From: Bill Spencer <billspencer@pointstire.com>
Sent: Monday, July 31, 2023 12:16 PM
To: Micheal Reeder <mreeder@oregonlanduse.com>
Subject: Re: Perkins, Chuck & Wendy Plan/Zone Change Application Testimony for Lane County No. 509-PA20-05634

The only question is how much he or she would lose!!!

Bill

I will work on your questions now. Just got caught up with meetings, etc.

From: Micheal Reeder <mreeder@oregonlanduse.com>
Sent: Monday, July 31, 2023 11:03 AM
To: Bill Spencer <billspencer@pointstire.com>
Subject: RE: Perkins, Chuck & Wendy Plan/Zone Change Application Testimony for Lane County No. 509-PA20-05634

Bill:

In short, would a farmer lose money by attempting to farm the Perkins property?

Many thanks!

Best,

Mike



Law Office of Mike Reeder
Oregon Land Use Law

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From: Micheal Reeder

Sent: Monday, July 31, 2023 10:50 AM

To: billspencer@pointstire.com

Subject: Perkins, Chuck & Wendy Plan/Zone Change Application Testimony for Lane County No. 509-PA20-05634

Dear Bill:

Thank you for speaking with me this morning. As we discussed, I am interested in learning more from you about your experience with the Perkins property that is subject to the Lane County Plan/Zone Change Application No. 509-PA20-05634 and the reasons that you would not consider farming it. I understand that you serve on the City of Creswell Planning Commission as a nonresident at-large commissioner and that you live on DeBerry Road very close to the Perkins property.

This email is meant to supplement your earlier written testimony dated July 17, 2023.

1. In that letter to Lane County planner Shawna Adams you stated that the Perkins property has “very little agricultural value” and that in the last 40 years that you “recall only 2 or 3 years when someone tried to hay this property.” Could you please elaborate on this?
2. Is it your opinion that the property cannot produce hay in the quality sufficient to sell or use for raising livestock?
3. You own and farm a significant amount of acreage in the area, including very near the Perkins property. How many acres do you farm?
4. Have you, or would you ever consider, purchasing or leasing the Perkins property for your commercial farm operations?

- a. If not, can you explain specifically why not?
5. In your opinion, based on your experience, are there any crops or livestock that could be raised for a profit? If so, under what conditions?
6. I understand that you raise beef cattle, hay and grass. Do you grow any other crops or raise any other livestock?
7. I understand that you have been living in the Camas Swale/DeBerry neighborhood for forty years. Can you please clarify how long you have been farming in this area?
8. I understand that you may have observed tractors and other implements stuck in the mud on the Perkins (formerly "Coop") property. Is that true?

I appreciate very much your willingness to elaborate on your earlier written testimony on this matter, and with your consent I will submit your emailed responses to this email to the record for this application, similar to the fashion in which I provided Fred Stauffer's testimony into the record (see attached).

Please feel free to call me if you have any questions, concerns or comments.

All my best,

Mike
541-225-8777



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ADAMS Shawna L

From: Micheal Reeder <mreeder@oregonlanduse.com>
Sent: Monday, July 31, 2023 4:07 PM
To: ADAMS Shawna L
Subject: RE: Perkins testimony distribution memo et. al. - Perkins: 509-PA20-2023
Attachments: Ron Bowers Testimony 7-27-2023.pdf; Bill Spencer Testimony 7-31-2023.pdf

[EXTERNAL △]

Good afternoon Shawna:

Please see the attached testimony from Ron Bowers who lives at 83028 N. Bradford Rd, Creswell.

Please also see the attached testimony from Bill Spencer, who lives at 32718 DeBerry Road, Creswell, who also serves as an at-large, no-resident commissioner of the City of Creswell Planning Commission.

Please include the attached into the record on this matter.

Respectfully,

Mike



Office: (541) 225-8777 | oregonlanduse.com
375 W. 4th Ave., Suite 205, Eugene, OR 97401

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From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Monday, July 31, 2023 2:23 PM
To: Micheal Reeder <mreeder@oregonlanduse.com>
Subject: Perkins testimony distribution memo et. al.

Hello Mike, FYI the attached has been posted to the online agenda for tomorrow. It includes written testimony sent by email yesterday.

Best,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

Micheal Reeder

From: Bill Spencer <billspencer@pointstire.com>
Sent: Monday, July 31, 2023 12:47 PM
To: Micheal Reeder
Subject: Ag value of Perkins property

Follow Up Flag: Follow up
Flag Status: Flagged

The property was mowed to keep down fire danger for years. I do not remember any animals on it. Teresa Bichel, a neighbor to the south on Howe Lane, tried to make hay for 2 or 3 years approx 10 years ago. It was a waste of time. The quality and quantity were not adequate. It is not property that I would ever try to hay.

My family has owned and farmed approximately 48 acres of mixed woodlot and pasture land since 1995 that borders Howe Lane and DeBerry Road. We keep 5 brood cows and have had averaged 3 horses as we had a brood mare and her foals. The soil on our farm is in need of heavy fertilizer and lime if we want a good stand of grass. It needs constant renewing as it is very thin and poor top soil. Clay is incredibly dense and cuts off drainage except by surface run off. Because we have a substantial number of acres, we can raise a few animals, but we have to buy hay as it does not produce well enough to be worth haying.

I would have never and would never consider leasing the Perkins property. It is not worth using for hay or animals because it would be a waste of time and money. I do not know of any crop that would do well there. For instance, fir trees do not grow to maturity because of the clay.

The Perkins property includes a substantial amount of land that does not have good drainage due to the lack of enough slope to the nearest drainage and the clay so near the surface.

Bill Spencer
32718 DeBerry Road
Creswell

Date: 7-27-2023

From: RON BOWERS

83028 N. Bradford Rd

Regarding Department File: 509-PA20-05634

Applicant: CHARLES & WENDY PERKINS

Staff: Shawna Adams

Comments:

I have lived in the GRESWELL AREA my whole life, I am now 75 years old, the piece of property in question has had a couple attempts to farm in the past. Neither attempt worked out. The ground is not suitable for farming because too much of it stays too wet to get farm equipment on.

Ron Bowers

Return to: Shawna Adams, Planner
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

Sean T. Malone

Attorney at Law

PO Box 1499 ,
Suite 200-C
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

August 1, 2023

Via Email

Lane County Board of Commissioners
c/o Shawna Adams, Senior Planner
Land Management Division
3050 North Delta Highway
Eugene OR 97408
shawna.adams@lanecountyor.gov

Re: LandWatch Lane County Comments for File No. 509-PA20-05634 (Perkins),
Request for Comprehensive Plan Amendment, Rezone, and Irrevocably
Committed Exception to Statewide Planning Goal 3.

On behalf of LandWatch Lane County, please accept this comment letter for application 509-PA20-05634 (Perkins). LandWatch incorporates by reference its prior comment letter dated February 21, 2023, before the Planning Commission (attached hereto). Simply put, The subject property is not irrevocably committed to non-farm uses. LandWatch also adopts the comment letter submitted by the Department of Land Conservation and Development. Because the applicant cannot satisfy the criteria and consistent with the Planning Commission's recommendation and staff's recommendation, the application should be denied.

The subject property is approximately 10 acres in size, and the soils on the property are entirely comprised of agricultural soils, including soils that are either high-value farmland or have the potential to qualify as high-value farmland. Approximately 88 percent of the site is comprised of Pengra soils considered prime high-value farmland when drained. The remaining 12 percent is comprised of high-value Natroy soils. The record indicates that the subject property has been hayed in the past and was previously managed for farm use together with the property to the south. Baling hay for money is a 'farm use' under ORS 215.203. Comments submitted in the record indicate that there

have been no perceived conflicts between historical farm use of the subject property and surrounding residential development. The subject property is, therefore, well-suited for agricultural uses.

The subject property is surrounded by a mix of rural residential, agriculture, and forestry zoning. It abuts rural residential properties with dwellings to the north and east. The abutting properties and development to the north generally predates statewide planning goals and were designated and zoned for rural residential use at the time of RCP acknowledgement with Developed and Committed (D&C) exceptions to Goal 3 and Goal 4 (D&C Area 385-4). The property abutting the east site boundary, together with the property immediately south of it, is located in an irrevocably committed exception area approved under Ordinance PA 1148 in 2001 (i.e., the Stauffer exception area) and were created by partition and developed with dwellings after 2001. To the south, the subject property abuts a 9.87-acre EFU zoned parcel with a dwelling, which was in common ownership with the subject property prior to 2019. Across Howe Lane to the west, is a larger EFU zoned property with a dwelling that appears to be actively farmed. Beyond the adjacent parcels described, the surrounding area is best characterized as agricultural to the north, a mix of agricultural and forestry to the west, and rural residential to the east, south, and southwest.

For an irrevocably committed exception, the focus of the inquiry is on the relationship between the proposed exception area and the surrounding area, including whether and how that relationship renders resource use of the property impracticable. See OAR 660-004-0028(2)(c) (applicant must address “[t]he relationship between the exception area and the lands adjacent to it.”); OAR 660-004-0028(6)(a) (applicant must address the “[e]xisting adjacent uses.”); OAR 660-004-0028(6)(b) (applicant must address “[p]arcel size and ownership patterns of the exception area.”); *Friends of Yamhill County v. DLCD*, __ Or LUBA __ (LUBA No. 99-122, May 18, 2000).

According to the staff report, the applicant views the property as irrevocably committed and impracticable for farm use because of (1) its size, (2) unsuitability for farm use, (3) and proximity to nearby dwellings on rural residential land. The first two of the applicant’s reasons are plainly in error because the focus of the application is on the relationship between the subject property and adjacent uses, not the subject property itself.

Regardless of the applicant’s erroneous focus on the subject property, the applicant is incorrect as to the ability of the property to be put to farm use. Contrary to the applicant’s contention, the record contains testimony from neighboring property

owners regarding farm uses on the subject property. For example, an abutting neighbor had indicated that the subject property has been farmed, and aerial photographs also confirm that the subject property and surrounding properties are also farmed. The size of the property was not a hindrance at that time, and nothing prevents the property from being farmed in conjunction with other EFU properties (and even Rural Residential properties where farming is occurring).

The adjacent lands contain large farm and forest parcels to the west and large farm parcels to the north, just beyond the row of rural residential parcels. “Adjacent does not merely mean “abutting.” Instead, it is imperative that the applicant demonstrate how the parcel size and ownership patterns make farm uses on the subject property impracticable. Given the large parcel sizes on adjacent lands, the applicant has an uphill climb ahead. More specifically, the property to the south is EFU land and is currently engaged in farm uses. As noted by staff:

“To the south, the property abuts EFU zoned property that the applicant acknowledges not to contribute to the subject property’s irrevocable commitment. While evidence in the record is lacking and contested concerning historic farm use of the subject property and adjacent properties to the north, east, and south, evidence in the record shows that this property has been hayed and baled in combination with the subject property periodically. To the west, across Howe Lane, is a larger EFU zoned property that the proposed findings do not properly recognize as adjacent or nearby and fail to consider. That property is adjacent to other large EFU zoned properties that appear to be farmed.”

The subject property could be farmed in conjunction with this property, as well as properties to the west. Howe Lane provides access to the subject property, as well as other EFU parcels. Howe Lane is not an “adjacent” land as contemplated and it does not work to preclude consideration of the EFU zoned property to the west. With these EFU lands adjacent to the subject property, there is simply no basis for an irrevocably committed exception, and the applicant cannot avoid its consideration.

The applicant relies on the 1989 Developed & Committed Lands Working Paper Addendum¹, but that document is not a legal authority for this application. The applicant alleges that the subject application has similarities to the impacts identified in the Working Paper. Again, the working paper is simply not an authority that the applicant

¹ This document is more than 30 years old and it is widely accepted by DLCD, staff, and LandWatch that it has no legal bearing on the exception criteria.

can rely upon to bolster its case. The irrevocably committed exception criteria are a matter of state law, and the County's interpretation of a Working Paper does not and cannot alter the criteria contained in state law. Indeed, DLCD has already stated as much:

As stated in the August 2, 2022 Staff Report, the 1989 Addendum to the Lane County Developed and Committed Lands Working Paper (Lane County Board Order 89-10-25-4) which the applicant relies on in their findings was intended by the County to provide general guidance. The referenced paper has not been acknowledged by LCDC and the Lane County Developed and Committed Lands Working Paper does not establish a new legal standard for irrevocably committed exceptions. The courts have held on several occasions that the mere presence of dwellings on neighboring properties is insufficient to demonstrate that farm and forest uses are impracticable on the subject property. Referencing a document that provides general guidance as to how the relationship between residential uses and small resource parcels may result in possible impacts does not sufficiently address the circumstances specific to the application at hand nor fully address the criteria in OAR 660-004-0028(6)."

See DLCD Letter, February 17, 2023 at 8 of 25; *Jackson County Citizens League v. Jackson County*, __ Or LUBA __ (LUBA No. 99-147, July 7, 2000), slip op at 9 ("[t]he mere *existence* of residential uses near property proposed for an irrevocably committed exception does not demonstrate that such property is irrevocably committed to nonfarm uses"). LandWatch believes that reliance on the *Addendum* is plain legal error and is contrary to factors contained in OAR 660-004-0028.

The notion that there are "standards" in the Working Paper that are determinative of or override the administrative rules is misplaced. For example, the Working Paper states that "[p]arcel[s] of 20 acres or less with dwellings on three or more adjoining sides are committed to non-resource uses that make it impracticable to conduct farm or forest management." This hard-and-fast rule plainly conflicts with the standards and criteria in the administrative rule, and it is plainly contrary to caselaw stating that adjacent residential development is not, in and of itself, a reason to find that a property is irrevocably committed. Even assuming the guidelines in the Working Paper had carried some legal weight, which they do not, the applicant does not even satisfy them. For example, as noted by staff, under Board Order 96-11-12-1, the Board determined that Working Paper guidelines refer to dwellings in non-resource zones and not dwellings in resource zones. This makes sense because a farm dwelling should not and could not be basis for making farming impracticable on adjacent land. Even applying the 15-acre

benchmark from the Working Paper is problematic – aside from the fact that it is not legal authority – because it is contrary to the administrative rules. LandWatch agrees with staff that even if the applicant could rely on the Working Paper, the applicant does not even satisfy it because the applicant can only rely on a single dwelling to the north. See Staff Report at 8 of 11 (“At 10 acres in size and with rural residential dwellings only on the north side that may be relied on to justify an exception under OAR 660-004-0028, the subject property does not qualify as irrevocably committed under the Addendum guidelines.”). Moreover, Petitioner’s reading of *Johnson v. Lane County*, 31 Or LUBA 454 (1996), is in error. There, the findings did not contain any reference to the parcel size and ownership patterns analysis i.e., information about the adjacent lands. Here, the applicant is attempting to incorporate a document that would replace the state law criteria, and would be inconsistent with state law criteria. *Johnson* is inapposite.

The applicant also relies on other Developed and Committed Areas to justify the irrevocably committed exception. Specifically, the applicant relies on the Stauffer exception area to the east. The Stauffer exception area was created by partition and developed after this Board redesignated and rezoned the parent parcel for rural residential use in 2001. Such an approach is plainly legal error. An irrevocably committed exception is not meant to create a cascading number of exceptions² and, in fact, that possibility is specifically prohibited under OAR 660-004-0028(2)(b)(B) (“The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028”); *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62 (2006) (“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.”) *Gordon v. Polk County*, 55 Or LUBA 57 (2007); *Friends of Linn County v. Linn County*, 53 Or LUBA 420 (2007); *Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 (2004) (where a county

² The applicant runs afoul of this basic proposition when it argues that its application should be granted for the same reasons as the Stauffer exception. If this type of reasoning were allowed, then there would be no end to the number of exceptions because one exception would be used as evidence to allow another exception and so on. This is exactly what the administrative rule is intended to prevent.

concludes that conflicts with adjoining rural residential development commit a property to nonresource uses, the county's findings addressing OAR 660-004-0018(2)(b)(B) must explain why residential development of the subject property will not present the same risk of committing other adjacent resource lands to nonresource uses). Even if the Stauffer exception area could be considered as justification for an irrevocably committed area, the Stauffer exception area analysis differs significantly from this application, as noted by staff. Indeed, the Stauffer exception area was premised upon a finding that it would not contribute to other irrevocably committed exception areas.

Under OAR 660-004-0028(3)(a), the applicant has not demonstrated that farm uses as defined by ORS 215.203 are impracticable. Importantly, “[a] Goal 3 committed exception cannot be justified based on a finding that ‘commercial farming’ is impracticable on the subject property. Protection under goal 3 is not limited to commercial farms.” *Lovinger v. Lane County*, 36 Or LUBA 1 (1999); *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999) (“A property need not be capable of supporting a commercial farm by itself to be capable of being put to ‘farm use’ as that term is defined in OS 215.203.”). The applicant has not considered a host of options that would make farm uses on the property practicable. These include draining the soils, farming at a non-commercial scale, hobby farming, leasing farmland to adjacent farm operations to the west, and so forth. “The ultimate legal standard is whether farm use of the subject property is impracticable,” *Jackson* slip op at 14, but the applicant has entirely failed to satisfy such a standard.

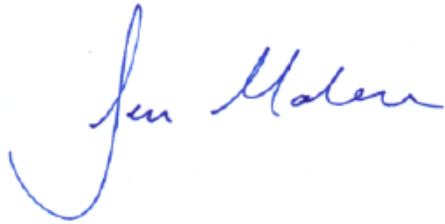
Under OAR 660-004-0028(6)(c)(A), the applicant has not demonstrated how the parcel size and ownership patterns make farm uses on the subject property impracticable. As noted by staff, the record is generally lacking with respect to parcel size and ownership patterns on adjacent lands that are outside the exception property. Moreover, the submissions do not establish the current ownership info for the adjacent exception properties. It also appears that some of the properties are in common ownership.

Comments have also raised concerns about groundwater because groundwater supply has declined. RCP groundwater policies apply but the evidence submitted is nothing more than that used more than 20 years away for the Stauffer exception. RCP Goal 5 Water Resources Policy 3 and 5 require that land use designations and implementing zoning be commensurate with groundwater aquifer capacities and that the adequacy of water supply, particularly when relying on groundwater sources, shall be a major concern in reviewing land use applications reviewed by the Planning Commission. See *Cattoche v. Lane County*, __ Or LUBA __ (LUBA No. 2018-109) (noting that the applicant must demonstrate that “uses requiring ground waer should be allowed if a

showing is made that the water will be available for the foreseeable future” and that “additional withdrawal will not negatively impact surrounding water users.” Slip at 25. The applicant must demonstrate that “water will be available for a foreseeable period in the future and that the additional withdrawal will not negatively impact surrounding users. The record contains well reports of deep wells yielding no water, and there is a general lack of information to substantiate compliance with the groundwater policy, including the failure to address aquifer capacity or impacts to surrounding users or current conditions.

For the reasons above and those set forth in the DLCD letter and staff report, LandWatch respectfully requests that the application be denied.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean T. Malone". The signature is fluid and cursive, with a large initial "S" and "M".

Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
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Eugene, OR 97401

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February 21, 2023

Via Email

Lane County Planning Commission
c/o Amber Bell
Land Management Division
3050 North Delta Highway
Eugene OR 97408

Re: LandWatch Lane County Letter in Opposition to File No. 509-PA20-05634, a request for a Type IV Minor Plan Amendment to the Rural Comprehensive Plan to re-designate the subject property from Exclusive Farm Use (E-25) to Rural Residential (RR-10) and adoption of an “irrevocably committed” exception to Statewide Planning Goals 3 and 4.

Dear Members of the Planning Commission,

On behalf of LandWatch Lane County, please accept this letter in opposition to the above-identified application. The application proposes to convert a vacant, roughly 10-acre parcel from resource to residential use, which would enable development of the parcel with uses allowable in her rural Residential Zone.

The subject property is entirely comprised of soils that qualify the property as Agricultural land that are protected under Statewide Planning goal 3. The subject property contains high-value soils. The record contains contradictory testimony regarding the history of farming on the subject property. The applicant alleges that the subject property has not been farmed since 1950, but evidence in the record contradicts this allegation. County GIS aerial imagery photo layers from 2000 shows that the western portion of the subject property and the property to the south has been managed and used for hay production in a manner similar to the larger EFU parcels on the west side of Howe Lane and north side of Camas Swale Road. Moreover, 2008 and 2009 aerial

photos show cut and bailed grass or other hay crops on the western portion of the property.

The surrounding area contains a mix of rural residential, agriculture, and forestry zoning. The property abuts rural residential lands developed with residential dwellings to the north¹ and east². To the south, the subject property abuts a 9.87-acre, E-25/RCP zoned parcel developed with a dwelling. Across Howe Lane to the west, are larger Exclusive Farm Use (EFU) zoned properties that appear to be actively farmed. Beyond the abutting and adjacent parcels described, the surrounding area is best characterized as agricultural to the north, a mix of agricultural and forestry to the west, and rural residential to the east, south, and southwest.

For an irrevocably committed exception, the focus of the inquiry is on the relationship between the proposed exception area and the surrounding area, including the whether and how that relationship renders resource use of the property impracticable. See OAR 660-004-0028(2)(c) (applicant must address “[t]he relationship between the exception area and the lands adjacent to it.”); OAR 660-004-0028(6)(a) (applicant must address the “[e]xisting adjacent uses.”); OAR 660-004-0028(6)(b) (applicant must address “[p]arcel size and ownership patterns of the exception area.”); *Friends of Yamhill County v. DLCD*, __ Or LUBA __ (LUBA No. 99-122, May 18, 2000).

As noted, the characteristics of the exception area are necessary in determining how they relate to adjacent uses that allegedly make the property impracticable for farm uses. The applicant appears to rely on the exception area’s characteristics to demonstrate that farming is impracticable but that misconstrues the administrative rule. The applicant includes a decades-old letter from a soil professional that appears to be irrelevant to the issues here and the approval criteria. The applicant also included allegations from residents that recall no farming on the subject property. First, this is contradicted by the aerial photos and Hearings Official’s determinations of “serious” agricultural use of the

¹ The abutting rural residential lands to the north of the subject property are within Developed & Committed (D&C) Area 385-2.

² The abutting rural residential properties to the east were designated and zoned for rural residential use with adoption of an “irrevocably committed” exception to Statewide Planning Goals 3 and 4 under Ordinance PA 1148, and are contiguous with D&C exception area 400-1. Rural Residential properties to the east and properties to the north are engaged in commercial farm activities.

property³; and, second, focusing on the subject property – in the absence of its relationship with surrounding properties – is insufficient to justify an exception.

As noted above, the characteristics of the adjacent lands are an important component of the irrevocably committed exception inquiry. To the south, the property is bordered by a roughly 10-acre property zoned E-25 parcel and to the west the property is bordered by a 28.5-acre commercial farm operation to the west (tax lot 1800), across Howe Lane. The farmland and commercial farm operation appear to be insufficiently addressed by the applicant, contrary to *Friends of Linn County v. Linn County*, 53 Or LUBA 420 (2007). As noted by staff, a road is not generally considered to be an “adjacent lands” and LandWatch believes that attempting to define a road as an “adjacent land” while ignoring other lands across the road would be legal error. The County’s interpretation of “adjacent” would have to be consistent with the rule, and, therefore, it would not receive deference.

OAR 660-004-0028(2)(c) requires findings about “[t]he relationship between the exception area and the lands adjacent to it,” and how that relationship makes agricultural uses impracticable on the subject property. Here, the showing is insufficient to justify an exception, especially given the insufficient information provided with under (2)(a) and (2)(b). LandWatch believes that (2)(c) is the crux of an irrevocably committed exception, and, at this time, the applicant has not satisfied the (2)(c).

For other relevant factors, pursuant to (6)(a), the applicant alleges that cutting grass/hay and selling it is not a farm use. Such a practice is, in fact, consistent with the definition of “farm use,” and it demonstrates – unequivocally – that the subject property is agricultural land. Regardless, this provision and the analysis more broadly is not focused on the subject property. There is also a basic failure to assess the adjacent commercially farmed property to the west of Howe Lane. There is also no showing of how the “existing adjacent uses” make farm uses impracticable on the subject property.

With regard to “[e]xisting public facilities and services (water and sewer lines, etc.),” the applicant alleges that the Subject Property can provide its own potable water (well) but there is testimony in the record from Cliff Bellew that existing water demand exceed aquifer capacity, which has impacted well function for him and others.

³ As noted by staff, the applicant’s allegations are also undermined by the fact that 100 percent of the subject property is comprised of soils considered suitable for farm use, and possibly constituting prime and high-value farmland.

The applicant also relies upon the following from the *1989 Addendum to the Developed and Committed Lands Working Paper*:

Both the agriculture and forest experts agreed that the presence of dwellings on neighboring land and the attitudes the inhabitants hold toward standard management practices would have a definite bearing on a decision to buy or lease resource land; the more houses the more likely the potential for conflicts. Residences adjacent on two or more sides are not acceptable. Recreational uses are just as much of a problem to resource managers, however commercial, industrial and institutional uses are compatible because they have a greater tolerance towards resource management practices.

The types of conflicts alleged in the addendum are not conflicts that can justify an irrevocably committed exception. For example, externalities from farm or forest operations such as dust, spray, smoke⁴ and noise are inherent aspects of rural life in agricultural or forest zones, and absent evidence that such externalities have or are likely to cause actual conflicts with resource operations, evidence of the possibility of such conflicts with rural residential uses is insufficient to demonstrate that resource uses are impracticable. *Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 (2004). Even if some adjoining residential owners find farming practices objectionable, that is not enough to demonstrate a committed exception. *Friends of Linn County v. Linn County*, 53 Or LUBA 420 (2007). Regardless, the *Addendum* relied upon by the applicant is not controlling because they conflict with administrative rules and caselaw interpreting those rules. See February 16, 2023 at 8 of 25 (“This policy interpretation -- which is not LCDC-acknowledged Plan policy or a criterion for the subject request -- establishes guidelines, or benchmarks, for determining whether land is or is not rendered infeasible for resource production by virtue of the size of the subject property and adjoining residential development, which would conflict with such uses. Per the *Addendum*, facts derived from individual exception areas may dictate conclusions different than the thresholds. That the *Addendum* itself was adopted for the purpose of providing additional justification on remand for 341 exception areas that the Supreme Court found to be inadequately justified, gives rise to the question of its adequacy and relevance for establishing compliance with OAR 660-004-0028 and underscores the need for clarifying findings of fact.”). LandWatch believes that reliance on the *Addendum* is precarious at best and likely contrary to relevant factors contained in OAR 660-004-0028.

⁴ At the hearing, one of the applicants alleged that he could no longer grow grass seed because he were halted by DEQ due to smoke. Not only is there no evidence of this in the record, but the applicant has not attempted any of the alternative methods that are employed on thousands of acres of grass seed farms in the Willamette Valley.

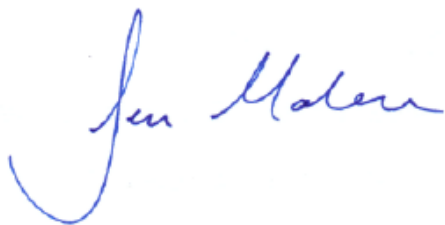
The applicant also appears to rely on existing Developed and Committed Areas to justify the irrevocably committed exception. However, an irrevocably committed exception is not meant to create a cascading number of exceptions and, in fact, that possibility is specifically prohibited under OAR 660-004-0028(2)(b)(B) (“The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028”). To approve the application, the County would have to determine why the same residential uses will not result in committing the many other resource lands in the area to non-resource use. *Gordon v. Polk County*, 55 Or LUBA 57 (2007); *Friends of Linn County v. Linn County*, 53 Or LUBA 420 (2007); *Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 (2004) (where a county concludes that conflicts with adjoining rural residential development commit a property to nonresource uses, the county’s findings addressing OAR 660-004-0018(2)(b)(B) must explain why residential development of the subject property will not present the same risk of committing other adjacent resource lands to nonresource uses).

Under OAR 660-004-0028(3)(a), the applicant has not demonstrated that farm uses as defined by ORS 215.203 are impracticable. Importantly, “[a] Goal 3 committed exception cannot be justified based on a finding that ‘commercial farming’ is impracticable on the subject property. Protection under goal 3 is not limited to commercial farms.” *Lovinger v. Lane County*, 36 Or LUBA 1 (1999); *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999) (“A property need not be capable of supporting a commercial farm by itself to be capable of being put to ‘farm use’ as that term is defined in OS 215.203.”).

Under OAR 660-004-0028(6)(c)(A), the applicant has not demonstrated how the parcel size and ownership patterns make farm uses on the subject property impracticable. As noted by staff, the record is generally lacking with regard respect to parcel size and ownership patterns on adjacent lands that are outside the exception property. Moreover, the submissions do not establish the current ownership info for all of the adjacent exception properties. It also appears that some of the properties are in common.

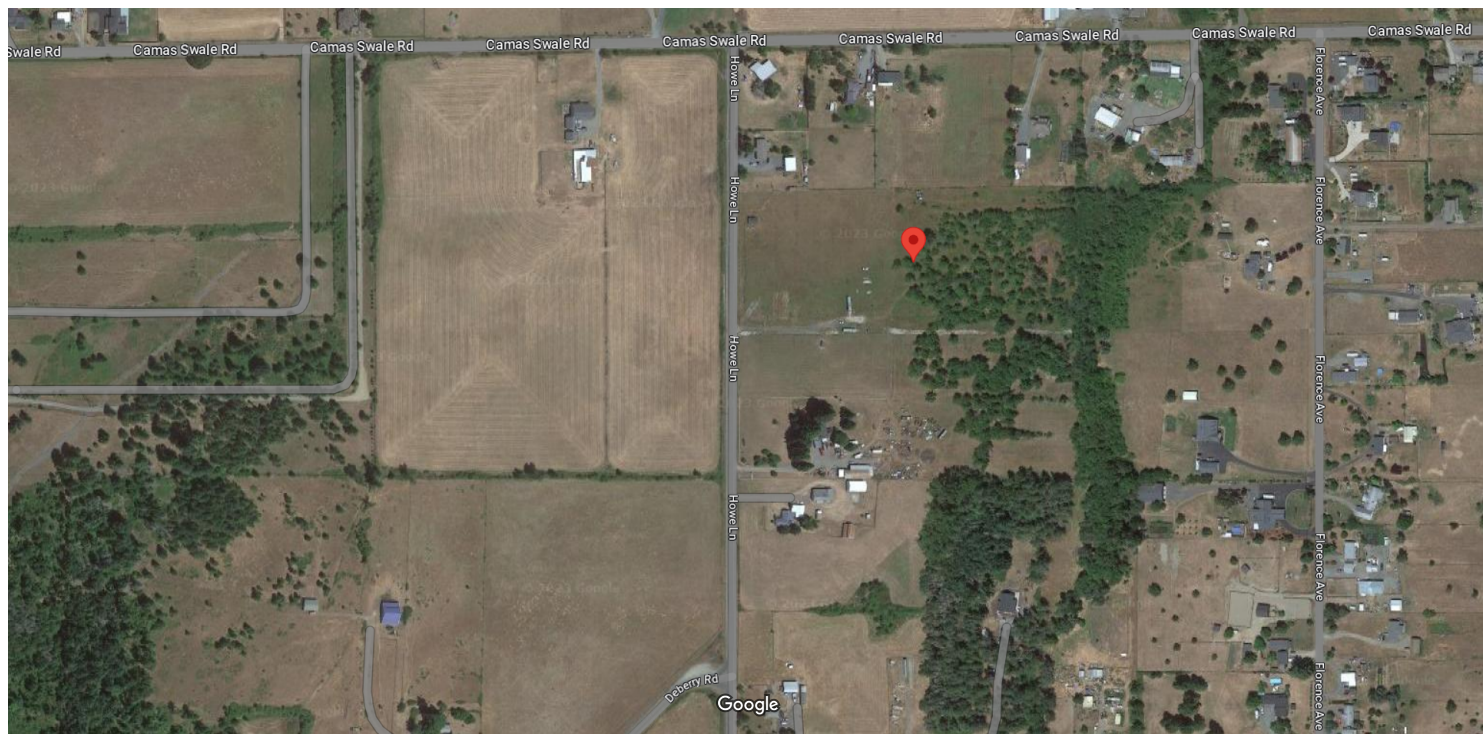
In light of the failure to submit sufficient information, LandWatch believes that the only possible outcome is to recommend denial of the application at this time.

Sincerely,

A handwritten signature in blue ink, reading "Sean T. Malone". The signature is fluid and cursive, with the first name "Sean" and last name "Malone" clearly distinguishable.

Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client



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