

Attachment B

October 12, 2021, Hearings Officer's

Notice of Decision



Clatsop County
Community Development – Planning

800 Exchange St., Suite 100
Astoria, OR 97103
(503) 325-8611 phone
(503) 338-3606 fax
www.co.clatsop.or.us

NOTICE OF DECISION AND RIGHTS OF APPEAL

**Conditional Use Permit Application #186-21-000002-PLNG
Appeal #186-21-000563-PLNG**

Date: October 12, 2021

Applicants/Owners: Joy Brotherton and Janice McConahay

Appellant: Same as Owners

Property Description: T8N, R07W, Sec. 18, Tax Lot 700

Request: Appeal of a Notice of Decision, issued August 13, 2021, denying Conditional Use Application #186-21-000002-PLNG, to establish a single-family dwelling in the Exclusive Farm Use (EFU) Zone on "high value farmland" pursuant to LWDUO 3.563(22).

Dear Ms. Brotherton and Ms. McConahay,

The Clatsop County Hearings Officer has completed review of the request cited above. The Notice of Decision is attached for review. The Hearings Officer's decision may be appealed to the Board of Commissioners by a person with standing by filing a completed Notice of Appeal application and the associated filing fee up to the date and time that appears at the bottom of this letter. The appeal must comply with Section 2.2190 of LAWDUC #20-03 (procedure for an appeal).

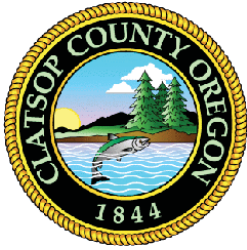
If you have any questions regarding this decision or the appeal procedure please do not hesitate to contact me at (503) 325-8611.

Sincerely,

Gail Henrikson, AICP, CFM
Community Development Director

Attachments: Hearings Officer's Decision

LAST DAY TO APPEAL: 4:00 P.M. on October 25, 2021



Clatsop County

Community Development

800 Exchange St., Suite 100

Astoria, Oregon 97103

www.co.clatsop.or.us

Phone (503) 325-8611

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HEARINGS OFFICER'S DECISION

APPEAL #186-21-000563-PLNG

Appeal of Decision to Deny Conditional Use Application #186-21-000002-PLNG

DECISION DATE: October 12, 2021

SUMMARY OF DECISION: **APPEAL DENIED; NOTICE OF DECISION
DENYING CONDITIONAL USE APPLICATION
AFFIRMED**

HEARING DATE: September 17, 2021

REQUEST: Appeal of a Notice of Decision, issued August 13, 2021, denying Conditional Use Application #186-21-000002-PLNG, to establish a single-family dwelling in the Exclusive Farm Use (EFU) Zone on "high value farmland" pursuant to LWDUO 3.563(22).

OWNERS: Joy Brotherton and Janice McConahay

APPELLANT: Same as Owners

PROPERTY DESCRIPTION: T8N, R07W, Sec. 18, Tax Lot 700 (+/- 4.0 acres)

ZONING: Exclusive Farm Use (EFU)
Overlays/Layers: Flood Hazard Overlay District (FHO; FEMA AE Floodway – an approx. 20-foot strip along the western property line); Big Game Habitat (Peripheral); Statewide Wetlands Inventory (SWI; regulated by the Oregon Department of State Lands)

EXHIBITS

1. Notice of Decision for CUP #186-21-000002, issued August 13, 2021

FINDINGS AND CONCLUSIONS:

A. Background, Notice, and Hearing

This matter is an appeal of a denial of a Conditional Use permit (“CUP”) to establish a single-family dwelling on the Subject Property. Joy Brotherton and Janice McConahay (together, “Appellant”), own the Subject Property. Appellant’s representative (“Applicant”) filed the Application for the CUP on their behalf. The Application was initially filed on January 5, 2021 and deemed complete on April 16, 2021. The Applicant waived the 150-day deadline for a period of time that extends that deadline to December 12, 2021.

The Application requested conditional use approval to develop the Subject Property with a dwelling, pursuant to LWDUO Section 3.563(22), which provides for the establishment of one single-family dwelling on a lawfully created lot or parcel. The County processes such applications through a Type II procedure and applies Standards Document sections S3.508(2) and S3.512. Using that procedure, the County’s Community Development Department reviewed the Application and issued a Notice of Decision on August 13, 2021 denying the request in the Application (“Notice of Decision”). The Notice of Decision was based on a Staff Report also dated August 13, 2021 (“Staff Report”). The Notice of Decision, including the Staff Report, is attached to this Decision.

Appellant appealed the Notice of Decision on August 24, 2021. The County issued a Notice of Public Hearing for the appeal on August 28, 2021, setting the Hearing for September 17, 2021 at 10:00 a.m. As the Hearings Officer, I opened the Hearing at the designated time.

The Hearing on September 17, 2021 was held in an electronic format, with all participants appearing by video from various remote locations. I went on the record at approximately 10:00 a.m. to begin the Hearing. I provided participants with the statements required by statute related to quasi-judicial proceedings, and I noted the approval criteria applicable to this proceeding. I noted for the record that I did not have any *ex parte* contacts to disclose and that I had not visited the Subject Property. I explained my role as Hearings Officer and my obligation to apply the facts in the record to the applicable criteria. No participant objected to the County’s jurisdiction over the Application or to me serving as the Hearings Officer, and no other procedural or jurisdictional objections were made.

Staff provided an oral summary of the basis for the County’s initial decision and its response to the issues raised in the appeal. The Applicant and Ms. Brotherton appeared on behalf of the Appellant. No other participant appeared in support of the Application or in opposition to the Application. As a result, there was no rebuttal required.

I closed the hearing and went off the record at approximately 11:19 a.m., taking this decision under advisement.

B. Decision on the Application

As presented to the Hearings Officer, this matter is being reviewed *de novo*. I find that the Notice of Decision, sets forth the applicable criteria relating to the CUP for a single-family dwelling in the EFU. I also find that the findings in the Notice of Decision are accurate and appropriately apply the facts in the record to those criteria. Based on the materials in the Application, the Notice of Decision, and the information presented at the Hearing, including the Staff Cover Memo dated

September 10, 2021 (“Staff Appeal Memo”), I hereby adopt the Notice of Decision as my Findings on the Application, including all conclusions in the Notice of Decision, which includes the Staff Report, as supplemented by the Staff Appeal Memo. As a result, the appeal is denied, and the County’s initial decision in the Notice of Decision denying the CUP is affirmed.

C. Issues on Appeal

Appellant’s Notice of Appeal stated the following as the specific grounds relied upon for review:

A lot of record determination shall not be restricted from the legal right and intent to build. The soil survey the county is relying on is out of date does not reflect current soil conditions. Smaller lots considered as high valued farmland have been approved for residential construction

In support of these grounds for review, the Appellant included four “articles” on which the appeal was based.

The first article of appeal addresses Clatsop County Land and Water Development and Use Ordinance (“LWDUO” or “Code”) section 3.512 relating to lot of record dwellings. Under that Code provision, a dwelling may be permitted if, among other requirements, “[t]he lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.”

Appellant appears to assert that the application of LWDUO section 3.512 improperly restricts its legal right and intent to build on the Subject Property. Appellant, however, does not provide any evidence or argument explaining why this Code provision cannot apply. Instead, Appellant argues that extraordinary circumstances exist that preclude the subject property from being put to farm use without undue hardship. In support of this argument, Appellant primarily asserts the Subject Property: (1) contains features such as slopes, ravines, and streams unique to this area that make the land unsuitable for farm use; and (2) is isolated, prohibiting it from being used in conjunction with other parcels for farming.

In response, Staff notes that, while some areas of the Subject Property would be “difficult” to farm because of the physical features of the site, there remain approximately 2 acres of farmable land on the property, which the Appellant does not dispute. The record reveals that if that portion of the Subject Property were planted with Christmas trees, gross annual revenue from that farm use could exceed \$10,000. I agree with Staff that such an option demonstrates the Subject Property can practicably be managed for farm use.

Staff’s position is based, in part, on guidance from the Land Use Board of Appeals (“LUBA”) as set forth in *Friends of Linn County v. Linn County*, 39 Or LUBA 627 (2001). In that case, LUBA acknowledged that “[f]arm use is not ‘impracticable’ simply because it is not easy to manage the subject property for farm use and obstacles must be overcome to do so.” To the contrary, LUBA held that, as used in the context of dwellings and other farm use rules and regulations, “the impracticability standard is a demanding one.” Ultimately, LUBA’s decision in that case held that, in the absence of some other monetary limit a county establishes for determining practicability, “the minimum gross income levels the legislature established at ORS 308A.071(2)(a) for non-EFU-zoned

parcels to qualify for special assessment are the best available indication of the level of gross income that the legislature believes is indicative of practicable farm use.” Using that metric, Staff determined that, for a property less than six acres in size, the requirement for annual gross income from farming under ORS 308A.071(2)(a) is \$650. Appellant does not dispute that amount. I find that, based on this record, Staff’s analysis is the correct one and that the Appellant has not met its burden of showing the subject property cannot practicably be managed for farm use.

The second article of appeal appears to challenge the EFU designation of the Subject Property. In support of that argument, the Appellant asserts that the purpose of EFU land is to provide for continued “commercial agriculture” and states that the Subject Property “is not connected to any other EFU land.” During the Hearing, the Appellant expounded on this argument by citing to various options the County has for rezoning the Subject Property or taking an exception to Statewide Planning Goal 3.

It is undisputed that the Subject Property is zoned EFU. The Application does not request a rezoning, nor does it seek a Goal 3 exception. The EFU standards therefore apply, and I find no basis to approve the Application on Appellant’s theory that the Subject Property should not be zoned EFU.

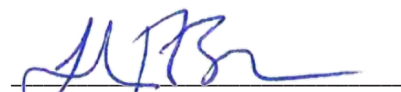
The third article of appeal is similar to the second article of appeal and questions the EFU designation of the Subject Property. For the same reasons I reject the arguments in the second article of appeal, I find no basis to approve the Application on Appellant’s theory that the Subject Property should not be zoned EFU.

The fourth article of appeal is similar to the second and third articles of appeal and questions the EFU designation of the Subject Property. In this argument, the Appellant specifically challenges whether the Subject Property should be considered High Value Farmland. In doing so, the Appellant “questions” the soil survey that the Notice of Decision relies on, which the Appellant says is “outdated.” The Appellant, however, has not conducted a soil survey or otherwise submitted evidence to the record demonstrating what the appropriate soil classification should be. The soil survey data from the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), which the Notice of Decision relied on, is therefore the only evidence in the record regarding soil classifications. Based on that evidence, the Notice of Decision correctly concludes the Subject Property is High Value Farmland.

Based on the undisputed facts the Notice of Decision relies on, I find that Appellant’s grounds relied upon for review and the materials Appellant presented during the appeal do not provide a basis for altering the County’s initial decision and the appeal is denied.

D. Conclusion

Based on the foregoing findings, the appeal is DENIED and the Notice of Decision, issued August 13, 2021, denying Conditional Use Application #186-21-000002-PLNG, to establish a single-family dwelling in the Exclusive Farm Use (EFU) Zone on “high value farmland” pursuant to LWDUO 3.563(22) is AFFIRMED.



Tommy A. Brooks
Clatsop County Hearings Officer

Exhibit A

To Hearings Officer's Decision

Notice of Decision



Clatsop County

Community Development – Planning

800 Exchange St., Suite 100
Astoria, OR 97103
(503) 325-8611 phone
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NOTICE OF DECISION

Date: August 13, 2021
Owners: Joy Brotherton and Janice McConahay
Applicant: Kathren Rusinovich
Property Description: T8N, R07W, Sec. 18, Tax Lot 700
Request: Conditional use approval for a single-family dwelling pursuant to
LWDUO Section 3.563(22)
Action: **DENIAL**

Dear Ms. Brotherton, Ms. McConahay, and Ms. Rusinovich,

The Community Development Department has completed review of the request cited above. This decision includes a staff report with findings, attached. Based on the findings presented in the report, the proposal does or can satisfy most of the applicable criteria; however, the evidence in the record does not support a determination that the subject property cannot practicably be managed for farm use. Because the subject property is identified as high-value farmland, this is a requirement (Standards Document S3.512(3)); failure to meet this requirement is the basis for the denial.

If you, or a party with standing, wish to appeal this decision, you may do so, up to the date and time appearing at the bottom of this letter. The appeal must comply with Section 2.230 of the Clatsop County Land and Water Development and Use Ordinance #80-14 (procedure for an appeal).

If you have any questions regarding this decision, appeal procedures or any of the conditions of approval, please contact me at (503) 325-8611.

Sincerely,

Gail Henrikson, Director
Community Development Department

Attachments: Staff Report and Exhibits

LAST DAY TO APPEAL: August 25, 2021



Clatsop County

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STAFF REPORT

Conditional Use Application #186-21-000002-PLNG

STAFF REPORT DATE: August 13, 2021

REQUEST: Conditional use approval to establish a single-family "lot of record dwelling" per LWDUO Section 5.363(22) and Standards Document S3.512.

APPLICANT: Kathren Rusinovich, Windermere Community Realty
175 14th Street, Suite 120
Astoria, OR 97103

OWNERS: Joy Brotherton Janice McConahay
42045 Logger Lane 92186 Crest Drive
Astoria, OR 97103 Astoria, OR 97103

PROPERTY DESCRIPTION: T8N, R07W, Sec. 18, Tax Lot 700 (+/- 4.0 acres)

Zoning Designation: Exclusive Farm Use (EFU)

Comprehensive Plan Designation: Rural Agricultural Lands

Soils: 45A - Mues Medial Silt Loam (+/- 68% of subject property)
66 - Tropofluvents (+/- 23% of subject property)
27 - Humitropepts (+/- 9% of subject property)

Overlays and Layers: Flood Hazard Overlay District (FHO; FEMA AE Floodway – an approx. 20-foot strip along the western property line);
Big Game Habitat (Peripheral);
Statewide Wetlands Inventory (SWI; regulated by the Oregon Department of State Lands)

PROPERTY LOCATION: At the northwest corner of the Waterhouse Road & Old Highway 30 intersection.

COUNTY STAFF REVIEWER: Ian Sisson, Senior Planner

TYPE II DECISION MAKER: Gail Henrikson, Community Development Director

DEEMED COMPLETE: April 16, 2021 (150 days: September 13, 2021)

EXHIBITS

1. Application Materials
2. Public Notice and Comments
3. Staff Correspondence
4. Maps & Tables prepared by Staff
5. *Friends of Linn County v. Linn County*, 39 Or LUBA 627 (2001)

PUBLIC COMMENTS: Howard Kem, 92878 Waterhouse Road

AGENCY COMMENTS:

Clatsop County Onsite Septic Program
Oregon Department of Fish and Wildlife

RECOMMENDATION:

DENIAL, based on lack of evidence to support a determination the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land pursuant to Standards Document S3.512(3).

SUMMARY

On January 5, 2021, Kathren Rusinovich of Windermere Community Realty, on behalf of property owners Joy Brotherton and Janice McConahay, submitted an application to establish a single-family dwelling on property in the Exclusive Farm Use Zone (EFU) near the unincorporated rural community of Knappa. The application was deemed incomplete on January 26, 2021. After receiving additional information from the applicant, staff deemed the application complete on April 16, 2021.



The subject property is identified as Township 8 North, Range 7 West, Section 18, Tax Lot approximately 4.0 acres in size, located at the northwest corner of the Waterhouse Road / Old Highway 30 intersection.

According to soil survey data from the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), the subject property is predominately composed of Mues Medial Silt Loam (45A), 0 to 3 percent slopes, which is rated as a Class II soil for agricultural capability. Pursuant to Clatsop County Land and Water Development and Use Ordinance 80-14 (LWDUO), Section 1.030, property composed predominately of Class II soils constitutes "high value farmland." According to

County Assessor records, the property has historically been managed for timber production and is under a special tax assessment.

The applicant has requested conditional use approval pursuant to LWDUO Section 3.563(22), which provides for the establishment of one single-family dwelling on a lawfully created lot or parcel, subject to a Type II procedure and Standards Document sections S3.508(2) and S3.512.

This staff report will evaluate the proposal against applicable County policies found in the Comprehensive Plan, Land and Water Development and Use Ordinance, and Standards Document. **The findings and conclusions of this report will demonstrate that the proposal meets most, but not all of the review criteria. Most importantly, due to a lack of substantial evidence in the record, there is no support for a determination that the subject property cannot practicably be**

managed for farm use, by itself or in conjunction with other land. As a result, staff has recommended denial of the application.

PROPERTY STATUS

According to Lot of Record Determination #20-000510, issued by Clatsop County Community Development on August 13, 2020, the subject TL 700 is a discrete land use parcel created by the recording of a warranty deed with the Clatsop County Clerk on July 17, 1958 (Book 236, Pages 476-478, Clatsop County Records). The subject property meets the County's definition of a "lot of record", Section 1.030, LWDUO, and can be developed in accordance with applicable criteria and standards.

2018 AERIAL PHOTO



I. APPLICABLE REVIEW CRITERIA

The applicable criteria for this land use application are contained in LWDUO – Ordinance 80-14, the Clatsop County Standards Document, and the Clatsop County Comprehensive Plan:

A. Clatsop County Land and Water Development and Use Ordinance 80-14

Section 1.000 Article I Introductory Provisions
Section 2.020 Type II Procedure
Section 2.115 Mailed Notice for a Type II Procedure
Section 3.560 Exclusive Farm Use Zone (EFU)
Section 4.000 Flood Hazard Overlay District (FHO)
Section 5.000 Conditional Development and Use

B. Clatsop County Standards Document 80-14

Chapter 2 – Site Oriented Improvements
Chapter 3 – Structure Siting and Development
Chapter 4 - Environmental Protection

C. Clatsop County Comprehensive Plan

Goal 1 - Citizen Involvement

Goal 2 - Land Use Planning
Goal 3 – Agricultural Lands
Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources
Goal 6 - Air, Water, and Land Quality
Goal 7 - Areas Subject to Natural Disasters and Hazards
Goal 11 – Public Facilities and Services
Northeast Area Community Plan

II. ASSESSMENT OF APPLICATION VERSUS APPLICABLE CRITERIA

A. LAND AND WATER DEVELOPMENT AND USE ORDINANCE 80-14

ARTICLE 1. INTRODUCTORY PROVISIONS.

Section 1.030. Definitions.

ACCEPTED FARMING PRACTICES -- A mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use. As applied to composting operations on high-value farmland, “accepted farming practice” includes composting operations that either 1) compost only materials produced on the subject tract, or 2) compost materials brought from off-site and processed alone or in conjunction with materials generated on the subject tract, and use all on-site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract. [Ord. 18-02]

AGRICULTURAL LAND --

- 1)(A)Lands classified by the U.S. Soil Conservation Service (SCS) or Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils;
(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and
(C)Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.
- 2) Land in capability classes other than I-IV that is adjacent to or intermingled with lands in capability classes I-IV within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;
- 3) “Agricultural Land” does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

CONDITIONAL USE -- A type of development which requires special consideration prior to being permitted in a particular zone because of its possible impact on adjacent developments, land and water resources and the growth and development of the County. The characteristics of designated conditional developments shall be reviewed to determine whether or not the development is appropriate and compatible in the particular location proposed and what, if any, conditions are necessary to ensure compatibility. A conditional development may be permitted or denied at the discretion of the Community Development Director or hearings body based on findings of fact.

CULTURED CHRISTMAS TREES -- Means trees:

- 1) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
- 2) Of a marketable species;

- 3) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the U.S. Department of Agriculture; and
- 4) Evidencing periodic maintenance practices of shearing for Douglas Fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

FARM USE -- The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. It does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas subsection ORS 215.203(3) or land described in ORS 321.267(1)(e) or 321.415(5). "Current Employment", as used in this definition, includes:

- 1) Farmland, the operation or use of which is subject to any farm-related government program;
- 2) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
- 3) Land planted in orchards or other perennials, other than land specified in sub-paragraph (4) of this paragraph, prior to maturity;
- 4) Land not in an Exclusive Farm Use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;
- 5) Wasteland, in an Exclusive Farm Use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for an economic farm use;
- 6) Land under buildings supporting accepted farm practices;
- 7) Water impoundments lying in or adjacent to and in common ownership with farm use land;
- 8) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;
- 9) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of the paragraph, illness includes injury or infirmity whether or not such illness results in death;
- 10) Any land described under ORS 321.267(1)(e) or 321.415(5); and
- 11) Any land in an Exclusive Farm Use zone used for the storage of agricultural products that would otherwise be disposed of through open field burning or propane flaming.

HIGH VALUE FARM LAND -- Is described as:

(1) High Value Farmland: Land in a tract composed predominantly of soils that are:

- a) Irrigated and classified prime, unique, Class I or II; or
- b) Not irrigated and classified prime, unique, Class I or II.

(2) In addition to that land described in Subsection (1), high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa;

(3) In addition to that land described in Subsection (1), high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in Subsection (1) and the following soils:

- a) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;
- b) Subclassification IIIw, specifically, Brenner and Chitwood;
- c) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and
- d) Subclassification IVw, specifically, Coquille.

[Ord. 18-02]

IRRIGATED -- Agricultural land watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. An area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract. [Ord. 18-02]

LOT OF RECORD -- Any lot or parcel lawfully created by a subdivision or partition plat of record in the County Clerk's Office, or lawfully created by deed or land sales contract prior to land use partitioning requirements, and of record in the Deed Records of Clatsop County. Development of a "lot of record" must meet all other applicable development standards, except for the minimum lot size or lot dimensions of the zone. Development standards include all applicable requirements of the zone, overlay district, the Land and Water Development and Use Ordinance and the Standards Document, and state and federal statutes and administrative rules. Lot of record status does not authorize development of a lot or parcel without compliance with the requirements in Clatsop County Standards Document, Section S1.030.

RIPARIAN -- Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

STAFF FINDING: The definitions listed above are included for information purposes as the terms apply to the proposal and will be used throughout this report.

ARTICLE 2. PROCEDURES FOR LAND USE APPLICATIONS

Section 2.020 Type II Procedure.

1) Type II land use actions generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with conditions of approval to minimize those impacts or ensure compliance with this code.

- 2) Those actions identified in this code as a conditional development and use, development permitted with review, subdivisions containing six lots or less, partitions, and applications related to non-conforming uses/structures under the Type II procedure are Type II actions.
- 3) Except as provided in subsection (5), under the Type II procedure an application for a development permit shall be processed without a need for public hearing. The Community Development Director shall determine whether or not the proposed development meets the required development standards. The Director may obtain technical assistance from a review committee or local or state agencies.
- 4) If the Director finds that the development appears to satisfy the required standards, the Director shall mail a notice of intent to issue a development permit to the applicant and to other persons pursuant to Sections 2.115 to 2.120.
- 5) If the Community Development Director believes that persons other than the applicant can be expected to question the application's compliance with the Ordinance, the Director may treat the application as a Type IIa procedure.
- 6) The Community Development Director shall review any information received under subsection (4) and make a finding for each of the points in dispute. The Director shall make a decision on the application by approving, conditionally approving, or denying the application.
- 7) A decision by the Community Development Director may be appealed to the Hearings Officer by the applicant or by a person who responded to the notice, pursuant to Section 2.230.

STAFF FINDINGS: Pursuant to Section 3.563(22), one single-family dwelling on a lawfully created lot or parcel may be permitted in the EFU Zone subject to S3.508(2) and S3.512. This staff report demonstrates the requirements for a Type II procedure have been followed to review and process the applicant's request. A Notice of Decision will be provided to the applicant based on the findings and conclusions contained in this report. The applicant or other parties with standing may appeal the decision to the Hearings Officer pursuant to Section 2.230.

Section 2.045 Pre-application Conference.

- 1) An applicant or the applicant's authorized representative shall request the Director to arrange a pre-application conference. Unless the applicant and Director agree that a conference is not needed, the conference shall be held within 15 days of the request. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Ordinance, provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements, arrange such technical and design assistance as will aid the applicant, and to otherwise identify policies and proposed development. The Director, if requested by the applicant, shall provide the applicant with a written summary of the conference within 5 days of the conference. The summary shall include confirmation of the procedures to be used to process the application, a list of materials to be submitted and the criteria and standards which may apply to the approval of the application.

STAFF FINDINGS: Community Development staff held a pre-application conference with the applicant on November 30, 2020. A summary of the meeting was also provided to the applicant on November 30, 2020 and is attached to this report as Exhibit 3.

Section 2.115 Mailed Notice for a Type II Procedure.

STAFF FINDINGS and CONCLUSION: Notice of the application was provided in accordance with the requirements for a Type II procedure, including mailed notice to affected property owners, interested parties, and government agencies (see Exhibit 2). **The mailed notice criteria for a Type II Procedure have been met.**

Section 2.180 Burden and Nature of Proof.

- 1) Except as otherwise provided, the applicant shall bear the burden of proof that the proposal is in compliance with the applicable standards. In addition, evidence of mistake of adoption of the plan designation or development regulations or subsequent change in the affected area are relevant considerations.
- 2) Unless specifically identified as jurisdictional, failure to comply with a provision of this Article shall invalidate an action only if it prejudices the substantial rights of the person alleging the error. Persons alleging procedural error shall have the burden of proof as to whether the error occurred and whether the error has prejudiced the person's substantial rights.

STAFF FINDING: This section is included for information purposes. Applicants for a conditional use permit bear the burden of proof that the proposal meets the applicable review criteria. Information provided by the applicant is referenced throughout this report and attached as Exhibit 2.

SECTION 3.560. EXCLUSIVE FARM USE ZONE (EFU).

Section 3.561. Purpose. [Ord. 18-02]

The purpose of the Exclusive Farm Use (EFU) Zone is to protect and maintain agricultural lands for farm use, consistent with existing and future needs for agricultural products. The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county. It is also the purpose of the EFU zone to qualify farms for farm use valuation under the provisions of ORS Chapter 308.

The provisions of the EFU zone reflect the agricultural policies of the Comprehensive Plan as well as the requirements of ORS Chapter 215 and OAR 660-033. The minimum parcel size and other standards established by this zone are intended to promote commercial agricultural operations.

Section 3.563. Conditional Development and Use. [Ord. 18-02]

The following developments and their accessory uses may be permitted under a Type II procedure and subject to applicable criteria and development standards and site plan review.

- 22) One single-family dwelling on a lawfully created lot or parcel subject to S3.508(2) and S3.512.

STAFF FINDINGS and CONCLUSIONS: The subject property is located in the EFU Zone. As stated in Section 3.561, above, the purpose of the EFU Zone is to protect and maintain agricultural lands for farm use, consistent with existing and future needs for agricultural products. Certain other uses can be permitted if it can be demonstrated those uses meet applicable review criteria and will not interfere with accepted farming practices. **The applicant has requested approval to establish a single-family dwelling pursuant to Section 3.563(22), which is subject to a Type II conditional use procedure and Standards Document S3.508(2) and S3.512. This staff report will evaluate the applicable review criteria.**

Section 3.566. Development Standards. [Ord. 18-02]

All dwellings and structures approved pursuant to Section 3.560 shall be sited in accordance with this Section.

(2) Setbacks.

(A) Front Yard: All buildings or structures with the exception of fences shall be setback a minimum of thirty (30) feet from the property line.

(B) Rear Yard:

1) Dwellings: Twenty (20) feet.

(C) Side Yard:

1) Dwellings: Thirty (30) feet, except twenty (20) feet on a corner lot.

(3) Height.

(A) Dwellings or accessory farm dwellings shall not exceed a height of forty-five (45) feet.

STAFF FINDING and CONCLUSION: The applicant's proposed site plan (Exhibit 1) depicts building footprints for a dwelling (approximately 3,800 sq. ft) and an accessory structure (approximately 2,400 sq. ft). According to the site plan, both structures would be located at least one hundred feet from all property lines, meeting the setback requirements listed in Section 3.566. The proposed building heights are unknown. If the conditional use request is approved, a condition of approval will require the applicant to obtain a development permit prior to construction. As part of the development permit submittal, a final site plan and building height information would be required. **This criterion can be satisfied with a condition of approval (Condition #1).**

Section 3.567 State and Federal Permits.

If any state or federal permit is required for a development or use, an applicant, prior to issuance of a development permit or action, shall submit to the Planning Department a copy of the state or federal permit.

STAFF FINDING and CONCLUSION: If any state and/or federal permits are required for the proposed development, copies shall be provided to the Planning Division prior to issuance of a development permit. **This criterion can be satisfied with a condition of approval (Condition #2).**

ARTICLE 4. SPECIAL DISTRICTS.

SECTION 4.000. FLOOD HAZARD OVERLAY DISTRICT (/FHO). (Ord. 18-03)

Section 4.010. Purpose

The purpose of the flood hazard overlay district is to identify those areas of the County subject to the hazards of periodic flooding and establish standards and regulations to reduce flood damage or loss of life in those areas. This district shall apply to all areas of special flood hazards within the unincorporated areas of Clatsop County as identified on Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps. In advancing these principles and the general purposes of the Clatsop County Comprehensive Plan, the specific objectives are:

- (1) To promote the general health, welfare and safety of the County;
- (2) To prevent the establishment of certain structures and land uses unsuitable for human habitation because of the danger of flooding, unsanitary conditions or other hazards;
- (3) To minimize the need for rescue and relief efforts associated with flooding;
- (4) To help maintain a stable tax base by providing for sound use and development in flood-prone areas and to minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities located in flood hazard areas;
- (6) To insure that potential home and business buyers are notified that property is in a flood area.

STAFF FINDINGS and CONCLUSION: Clatsop County Webmaps indicates a small portion of the subject property, along the bank of Big Creek, is located in the FHO (FEMA AE Floodway). While the applicant's site plan does not indicate any development within this area, the applicant is advised that development activity within the FHO area is subject to this section and requires a floodplain development permit. **This section can be satisfied with a condition of approval (Condition #3).**

SECTION 5.000. CONDITIONAL DEVELOPMENT AND USE.

Section 5.015. Authorization of a Conditional Development and Use.

- (3) In addition to the other applicable standards of this ordinance, the hearing body must determine that the development will comply with the following criteria to approve a conditional development and use.

- (A) The proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan.
- (B) The proposed use meets the requirements and standards of the Clatsop County Land and Water Development and Use Ordinance (Ordinance 80-14).

APPLICANT RESPONSE: (A) The proposed use does not conflict with any provision, goal, or policy of the Comprehensive Plan. In regard to preserving farm production in Clatsop County under goal 3 it is noted that farm production has declined over the last 15-30 years based on increasing costs, terrain and the extensive wet climate in Clatsop County. In fact records historically Clatsop County has not been successful with agricultural food production regardless of soil quality. Grazing and dairy farming are the main source of farming income. However smaller parcels are not suitable for year round grazing use. Soil compaction is prevents grass from re-seeding. Hay production is limited by the weather. If there is excessive during hay season they value of hay as a feed product for livestock is diminished. The economic importance of such a small parcel as the subject is of no economic significance to the economic stability of Clatsop County. Irrigation is not necessary however no water right use of Big Creek exist for the subject property.

(B) The proposed use meets the requirements and standards of the Clatsop County Land and Water Development and Use Ordinance (Ordinance 20-03). Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber. However some income can be derived from the onsite maintenance of a Christmas tree farm which would encompass approximately one acre of the property. The lot is a legally created tax lot. A copy of the lot of record verification has submitted with the original CUP application. The lot has been preserved by the family with intent of rebuilding a home on the site at some point in the future.

STAFF FINDINGS and CONCLUSION:

(A) The applicable goals and policies of the Comprehensive Plan are addressed in Section IIC of this report. The findings in that section demonstrate the proposal does or can satisfy Goal 1, Goal 5, Goal 6, Goal 7, and Goal 11. However, the proposal does not satisfy Goal 2, Goal 3, or the Northeast Area Community Plan because the proposal does not satisfy the review criteria which implement those goals and the related policies. Most importantly, because the subject property is identified as high-value farmland, pursuant to Standards Document S3.512(3), approval of a single-family dwelling requires a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. The record does not contain sufficient evidence to support such a determination. In fact, the evidence in the record (for example, the applicant's written testimony that the subject property is already an "established Christmas tree farm") suggests that the property can reasonably be put to farm use. **This criterion is not satisfied.**

(B) Sections IIA and IIB of this report demonstrate that the proposal satisfies, most, but not all applicable review criteria found in the LWDUO and Standards Document. The criteria that have not been satisfied are related to the overall requirement that, in order to establish a single-family dwelling on high-value farmland under LWDUO Section 3.563(22), it must be determined that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. Because there is not sufficient evidence to support such a determination, the proposal fails to meet applicable review criteria. **This criterion is not satisfied.**

(C) The site under consideration is suitable for the proposed use considering:

- 1) The size, design, and operating characteristics of the use, including but not limited to off-street parking, fencing/buffering, lighting, signage, and building location.

APPLICANT RESPONSE: Development plan has been submitted with the CUP application. The single family residence will be located in the SE corner of the property. Any replanted tree impacted will be relocated on site to an area with better growth potential. Standard development requirements and recommendations including erosion protection, hours of operation limited preserve the quiet enjoyment of the neighboring properties during construction will be followed. There will be no need for special lighting or signage.

- 2) The adequacy of transportation access to the site, including street capacity and ingress and egress to adjoining streets.

APPLICANT RESPONSE: Transportation access is improved for ingress and egress for a single family dwelling and fire suppression equipment. The county roads are paved two lane roads. The county roads are maintained through Clatsop County. The improved access to the site is located in an approved location that would not impede access to Old Highway 30 or Water House Rd., or create a traffic hazard. The density use of a single family dwelling will have less impact on traffic and road wear and tear in comparison to the neighboring park and Big Creek Lodge, which has a potentially higher density of traffic due to public activities.

- 3) The adequacy of public facilities and services necessary to serve the use.

APPLICANT RESPONSE: The subject property is located with a fire suppression district. Onsite access and county road access is sufficient room for fire suppression units from the Knappa/Svensen fire Dept. The power available for the subject property is through Pacific Power and Light, water service is provided by Knappa Water District. Approval of onsite septic service will be verified prior to occupancy certification. Water, garbage, power, fire suppression, are all services available for a habitable property.

- 4) The natural and physical features of the site such as topography, natural hazards, natural resource values, and other features.

APPLICANT RESPONSE: The subject property sits below grade with a slope adjacent to county roads likely exceeds a 3 percent slope which reduces the usable acreage for farming. Fencing, buildings, waters features and parking requirements prevent any shared farming practices on adjacent property zoned EFU. The natural and physical features of the site such as topography, natural hazards, natural resource values, and other features. Minimizing the farming impact is important to preserve the riparian integrity along Big Creek. As a farming resource the subject property could provide is minimal.

STAFF FINDINGS and CONCLUSION:

(1) and (2) The applicant's proposed site plan (Exhibit 1) demonstrates that the size and shape of the subject property are adequate to support the proposed development, exceeding all setback requirements and providing adequate space for an onsite sewage disposal system, vehicular ingress, egress and off-street parking. No fencing/buffering, lighting, or signage are required or proposed. According to the site plan, the property would be accessed from an existing road approach on Waterhouse Road, a County road classified as a Rural Local street. If the conditional use request is approved, the applicant will be required to demonstrate road approach approval for the residential use from Clatsop County Public Works (Condition #9). Condition #1 would require the applicant to obtain a development permit from the Planning Division prior to construction, which is required to be accompanied by a final site plan and outdoor lighting plan (Condition #1). **This section can be satisfied with conditions of approval (Conditions #1 and #9).**

(3) According to the applicant, the property is served by the Knappa Water Association, the Knappa-Svensen-Burnside Rural Fire Protection District, and Pacific Power; sewage would be disposed in an onsite septic system; and waste collection services are available. For all new dwellings in Clatsop County, a Development Permit is required and must be accompanied by a completed Agency Review and Approval Form. This form is the tool the Planning Division uses to verify adequate water supply, sewage disposal, and fire protection services are available to serve new dwellings. Condition #1 would require the applicant to submit a Development Permit application, with a completed Agency Review and Approval Form, to the Planning Division prior to construction of the proposed dwelling. **This criterion can be satisfied with a condition of approval (Condition#1).**

(4) The property contains gentle to moderate slopes which are not anticipated to present any challenges for the proposed scope or location of development. Natural features include Big Creek, along the western boundary of the property, and Peripheral Big Game Habitat. According to the applicant's proposed site plan, all development would be over 100 feet from the creek. According to correspondence with ODFW staff (Exhibit X), the proposed use and site plan are not anticipated to have a significant impact on big game habitat. Based on these factors, the subject property is suitable for the proposed use. **This criterion is satisfied.**

(D) The proposed use is compatible with existing and projected uses on surrounding lands, considering the factors in (C) above.

STAFF FINDINGS and CONCLUSION: Based on the factors in Subsection (C), the subject property itself is suitable for the proposed use, with appropriate conditions of approval. The proposed single-family dwelling can be assumed to be compatible with existing single-family dwellings in the vicinity, as well as undeveloped land zoned for residential use. Compatibility with resource land uses is addressed in much greater detail in Section IIB of this report. The findings in that section support a conclusion that the proposed dwelling will not have a significant impact on surrounding resource uses, which implies it is compatible with those uses. **This criterion is satisfied.**

(G) The use is consistent with the maintenance of peripheral and major big game habitat on lands identified in the Comprehensive Plan as Agricultural Lands or Conservation Forest Lands. In making this determination, consideration shall be given to the cumulative effects of the proposed action and other development in the area on big game habitat.

APPLICANT RESPONSE: Protecting the natural riparian habitat along Big Creek is important to the property owner. As with other local area development within the big game habitat we have experienced little impact. Elk, whitetail and blacktail populations have been increasing. Some of it is due to moderate winters of 2019 and 2020 reducing mortality. Most big game residents and human residents have become accustomed to living amongst each other successfully. A single family dwelling has proved to be less of an impact than commercial development, which presents more human activity and traffic.

STAFF FINDINGS and CONCLUSION: According to the Clatsop County Comprehensive Plan, the subject property is designated Rural Agricultural Lands and is located within an area identified as Peripheral Big Game Habitat. According to Oregon Department of Fish and Wildlife (ODFW) staff (via email, Exhibit 2), the applicant can likely expect elk to use the open grassy areas of the subject property during the winter and early spring months; however, given the proximity of large, open pastures nearby, ODFW does not anticipate a substantial impact to elk herds from siting a dwelling and accessory building on the subject property as proposed. The Comprehensive Plan does not contain specific siting requirements or density limits for dwellings in Peripheral Big Game Habitat areas. Based

on the correspondence from ODFW, the proposed use is not expected to have a significant impact. **This criterion is satisfied.**

B. STANDARDS DOCUMENT

CHAPTER 2. SITE ORIENTED IMPROVEMENTS.

S2.500 Erosion Control Development Standards

S2.501 Purpose.

The objective of this section is to manage development activities including clearing, grading, excavation and filling of the land, which can lead to soil erosion and the sedimentation of watercourses, wetlands, riparian areas, public and private roadways. The intent of this section is to protect the water quality of surface water, improve fish habitat, and preserve top soil by developing and implementing standards to help reduce soil erosion related to land disturbing activities. In addition, these standards are to serve as guidelines to educate the public on steps to take to reduce soil erosion.

S2.503 Erosion Control Plan

- (1) An Erosion Control Plan shall be required for land disturbing activities, in conjunction with a development permit.

STAFF FINDINGS and CONCLUSION: If the conditional use request is approved, prior to construction and in conjunction with the development permit application, the applicant will be required to submit an erosion control plan commensurate with Standards Document S2.500. **This section can be satisfied with a condition of approval (Condition #1).**

SECTION S3.500. FARM ZONE STANDARDS. [Ord. 18-02]

Section 3.508. General Standards.

- (2) Single-family dwelling deeds. The landowner shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

STAFF FINDING and CONCLUSION: The document described in this section is required by LWDUO Section 3.563(22). **This section can be satisfied with a condition of approval (Condition #4).**

Section 3.509. Conditional Use Review Criteria.

- (1) These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands. The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (2) The use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (3) The proposed use will be compatible with vicinity uses, and satisfies all relevant requirements of this ordinance and the following general criteria:
 - (A) The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;
 - (B) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features;
 - (C) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;

- (D) The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use; and
- (E) The use is or can be made compatible with existing uses and other allowable uses in the area.

STAFF FINDINGS and CONCLUSION:

(1) and (2): The broad types of farm use in the study area include crop production (predominately non-irrigated forage crops), holly trees, and livestock raising (pasture/grazing land for horses and cattle; and one mink farm). Farming practices associated with field crops and holly trees can be expected to include soil preparation, sowing seeds, spreading manure and/or fertilizing, weeding and/or pruning, harvesting, storing harvested crops, and storing and maintaining farm equipment. Farming practices associated with raising livestock can be expected to include providing animals with food, water, and healthcare; storage of food, water, and supplies; storing and recycling or disposing of animal waste; building and maintaining structures for sheltering animals; building and maintaining fences; and herding animals between various locations.

The subject property is a corner lot, 4.0 acres in size, which is far smaller than the 80-acre minimum lot size of 80 acres in the EFU Zone; with road frontage on its eastern and southern boundaries; Big Creek along the western boundary; and a fence, driveway and large accessory building just across the northern boundary. These conditions result in the property being physically isolated from farm uses on surrounding lands, so the addition of a dwelling structure and accessory building is not expected to impact the associated farming practices on those lands. The typical use characteristics of a single-family residential property, such as recreation, maintenance, gardening, small gatherings, and trips to and from work and/or school, are low intensity, normally not generating a significant number of vehicle trips (approximately 10/day on average), noise, dust, odor, vibration, glare, or other nuisances that would affect surrounding farm operations. Several other dwellings are in close proximity to the subject property, and the proposed dwelling would be expected to blend in with the surrounding land use pattern and use characteristics. Considering the physical characteristics of the subject property, the characteristics of typical single-family residential uses, and the proximity to multiple existing single-family residences, the proposed use is not expected to force a significant change or significantly increase the cost of accepted farming practices on surrounding lands. Additionally, pursuant to Standards Document S3.508(2) and Condition #4, the property owner would be required to record a document prohibiting the owner or their successors from pursuing a claim of relief or cause of action alleging injury from nearby farming or forest practices, a requirement which helps to ensure the siting of a dwelling on agricultural/forest land will not significantly increase the cost or difficulty of farming or forest practices. **Subsections (1) and (2) are satisfied.**

(3) Because the proposed use would not force a significant change or significantly increase the cost of accepted farming practices on surrounding lands, and considering the presence of multiple other dwellings within close proximity, the addition of a single-family dwelling and accessory building to the subject property is anticipated to be compatible with the uses on surrounding land. Findings for Subsections (A) – (E) are listed below:

(A) The applicable goals and policies of the Comprehensive Plan are addressed in Section IIC of this report. The findings in that section demonstrate the proposal does or can satisfy Goal 1, Goal 5, Goal 6, Goal 7, and Goal 11. However, the proposal does not satisfy Goal 2, Goal 3, or the Northeast Area Community Plan because the proposal does not satisfy the review criteria which implement those goals and the related policies. Most importantly, because the subject property is identified as high-value farmland, approval of a single-family dwelling requires a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land.

The record does not contain sufficient evidence to support such a determination. In fact, the evidence in the record (for example, the applicant's written testimony that the subject property is already an "established Christmas tree farm") demonstrates that the property can reasonably be put to farm use. **This subsection is not satisfied.**

(B) The applicant's proposed site plan (Exhibit 1) demonstrates that the size and shape of the subject property are adequate to support the proposed development, exceeding all setback requirements and providing adequate space for an onsite sewage disposal system, vehicular ingress, egress and off-street parking. The property contains gentle to moderate slopes which are not anticipated to present any challenges for the proposed scope or location of development. Natural features include Big Creek, along the western boundary of the property, and Peripheral Big Game Habitat. According to the applicant's proposed site plan, all development would be over 100 feet from the creek. According to correspondence with ODFW staff (Exhibit 2), the proposed use and site plan are not anticipated to have a significant impact on big game habitat. Based on these factors, the subject property is suitable for the proposed use. **This subsection is satisfied.**

(C) Based on the factors cited under Subsections (1) and (2), above, the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning districts. **This subsection is satisfied.**

(D) The subject property is served by the Knappa Water Association and Knappa-Svensen-Burnside Rural Fire Protection District. Sewage would be disposed of in an onsite septic system. If the proposed use can be approved, Condition #1 would require the applicant to submit a completed Agency Review and Approval Form to the Planning Division, which would confirm the appropriate public facilities and services are available to support the proposed use. **This subsection can be satisfied with a condition of approval (Condition #1).**

(E) The surrounding zoning designations are Exclusive Farm Use (EFU) to the north; Residential-Agriculture-2 (RA-2) to the west; Agriculture-Forestry (AF) to the south; and Knappa-Svensen-Rural Community Residential (KS-RCR) to the east. The factors cited under Subsections (1) and (2), above, demonstrate the proposed use would not interfere with uses permitted in the EFU and AF Zones. The proposed single-family residential use is consistent, and therefore assumed to be compatible with the single-family residential uses predominantly found in the RA-2 and KS-RCR Zones. **This subsection is satisfied.**

While the proposed use does or can meet the majority of the conditional use criteria listed under Section S3.509, the criteria are written such that all sections must be satisfied. Because the proposal does not satisfy Section S3.509(3)(A), Section S3.509 is not satisfied.

Section 3.512. Lot of Record Dwellings.

(1) A lot of record dwelling may be approved on a pre-existing lot or parcel if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in Subsection (5):

1) Prior to January 1, 1985; or

2) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in Subsections (3) and (4); and

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in the comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

APPLICANT RESPONSE:

(A) Confirmed lot of record documents included with the application including the chain of title submitted with this document. The property has been owned by the same family prior to 1985 and was a legally created tax lot. Lot of record application number is identified as #20-000510.

(B) The tract that is identified as Tax Lot 870180000701 is bare land with no current dwellings or other structures on site. Historically there was a home located on the property.

(C) Structures on the property no longer exist have not been sited on any part of the subject tract as of 1993 and after.

(D) The development plan will meet Section 3.509. Conditional Use Review Criteria. The use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and (2) The use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use lot of record Dwelling plans submitted will meet setbacks, and any proposed C(A) The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use; (B) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features; (C) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district; (D) The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use; and (E) The use is or can be made compatible with existing uses and other allowable uses in the area. Clatsop County Development standards and subject to the planning department recommendations. Lot of Record Dwellings. ORS 215.705(l)(c) does not allow a county to deny a "lot of record" dwelling because it fails to comply with code provisions previously adopted to implement ORS 215.283(3) (1991) or with comprehensive plan provisions generally requiring protection of agricultural land. *Blondeau v. Clackamas County*, 29 Or LUBA 115 (1995)(attached as exhibit A).

(E) High valued farmland is not determined by the soil survey alone. Suitability for Farm Use In addition to NRCS soil capability classes, OAR 660-033-0020(1) further defines agricultural land as land in other soil classes that is suitable for farm use, taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, and accepted farming practices. Land may also be suitable for farm use if it is necessary to allow farm practices to occur on nearby lands or if it is intermingled with lands in capability classes IIV/I-VI within a farm unit. A property specific evaluation is most likely necessary to definitively ascertain whether or not a specific parcel meets the agricultural lands definition by these additional criteria, if the definition is not met by NRCS soil capability class. The subject property has not been used in conjunction with dairy farming at any time in the history of the tax lots creation. The subject property is not contiguously owned with other high valued farmland adjacent to the subject property. The constitutional bundle of rights that come with property ownership contradicts the enacted zoning changes of 1993, (The right of possession, The right of control, The right of

exclusion, The right of enjoyment, The right of disposition.)

- (F) There will be little or no impact on big game habitat with the construction of a single family home/lot of record dwelling. Grazing and dairy farming pose a greater impact on big game habitat. A single family dwelling is consistent with the neighborhood density standards within a 1-2 mile radius. The building site will meet setback requirements to the fish bearing stream habitat providing the appropriate riparian habitat for the minimal big game in the area. Big game in the area are accustomed to residential living and are undaunted by regular neighborhood activity, cars, kids and pets. The big game habitat extends into residential areas within 2 miles from the subject featuring new and newer construction after 1993 with little or no impact on Big Game or development requirements for big game. (See Attached MLS Data)

STAFF FINDINGS and CONCLUSION:

- (A) According to Lot of Record Determination #20-000510, issued by Clatsop County Community Development on August 13, 2020, the subject TL 700 is a discrete land use parcel created by the recording of a warranty deed with the Clatsop County Clerk on July 17, 1958 (Book 236, Pages 476-478, Clatsop County Records). The referenced deed conveyed the subject property to Clarence J. and Carol D. Barendse, husband and wife. On May 5, 1993, the property was conveyed to the Barendse Family Trust, with Clarence J. and Carol D. Barendse as trustees (Book 810, Page 848). On October 28, 2003, the property was conveyed back to Clarence J. and Carol D. Barendse (Recording Instrument #200316323). Clarence J. Barendse passed away in 2004 (Certificate of Death, Instrument #200413822), leaving Carol D. Barendse as the sole owner. Carol D. Barendse passed away in 2017 (Certificate of Death, Instrument #201706457) and on August 9, 2017, Joy Brotherton and Janice McConahay, the current property owners and daughters of Clarence J. and Carol D. Barendse, inherited the subject property by intestate succession (Affiant's Bargain and Sale Deed, Instrument #201706456). Pursuant to Section 3.512(5), for the purposes of this subsection, "owner" includes the daughter(s) of the owner. **Based on these findings, the subject property qualifies for a lot of record dwelling because it was lawfully created and owned continuously by the present owner as defined in Subsection (5) by intestate succession from a person who acquired and had owned the property continuously prior to January 1, 1985, per Section 3.512(1)(A)(2). Subsection (A) is satisfied.**
- (B) and (C): TL 700 does not contain a dwelling. The property is a discrete land use parcel and, since its creation in 1958, has not been part of a tract with any contiguous lots or parcels (see Lot of Record Determination #20-000510). **Subsections (B) and (C) are satisfied.**
- (D) This staff report examines the applicable provisions and policies of the Clatsop County Comprehensive Plan, Land and Water Development and Use Ordinance, and Standards Document. The findings contained in this report demonstrate the proposal is able to satisfy most, but not all, applicable requirements. As demonstrated under Subsection (A), the subject property qualifies for a Lot of Record Dwelling based on ownership history and the fact that no other dwellings exist on the property. However, as will be addressed in greater detail in the following sections of this report, substantial evidence has not been produced by the applicant, or discovered by staff, to support the necessary findings of fact to confirm compliance with all applicable criteria. **Due to a lack of substantial evidence in the record to demonste all applicable criteria are or can be met, Subsection (D) has not been satisfied.**
- (E) According to the USDA Natural Resources Conservation Service (NRCS) Web Soil Survey (WSS), the subject property is composed of the following soil types, with the percentage of the subject property containing each soil type listed in parentheses: 45A - Mues Medial Silt Loam, 0 to 3 percent slopes (68%); 66 - Tropofluvents, 0 to 3 percent slopes (23%); 27 - Humitropepts, 25 to

60 percent slopes (9%). See Exhibit 4 for the WSS map and summary table. The predominant soil type, 45A, is rated in the WSS as a Class II soil with regard to agricultural capability. Pursuant to the County's definition of "high value farmland", which is consistent with the definition found in ORS 215.710, land which is composed predominantly of Class II soils (irrigated or non-irrigated) constitutes high-value farmland. **Staff finds the subject property is high-value farmland; therefore, the proposed dwelling cannot be approved unless it complies with Subsections (3) and (4). These sections will be evaluated below.**

(F) According to the Clatsop County Comprehensive Plan, Goal 5, the subject property is within an area identified as Peripheral Big Game Habitat. According to Oregon Department of Fish and Wildlife (ODFW) staff (via email, Exhibit 2), the applicant can likely expect elk to use the open grassy areas of the subject property during the winter and early spring months; however, given the proximity of large, open pastures nearby, ODFW does not anticipate a substantial impact to elk herds from siting a dwelling and accessory building on the subject property as proposed. The Comprehensive Plan does not contain specific siting requirements or density limits for dwellings in Peripheral Big Game Habitat areas. Pursuant to LWDUO Section 5.015(3)(G), uses on designated Agricultural Lands are required to be consistent with maintenance of big game habitat. Based on the correspondence from ODFW, the proposed use is not expected to have a significant impact. **Subsection (F) satisfied.**

(3) Notwithstanding the requirements of Subsection S3.501(1)(E), a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of Subsections (1) and (2);

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);

(C) The county determines that:

1) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.

a) For the purposes of this Section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot or parcel cannot be practicably managed for farm use.

b) Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms.

c) A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

2) The dwelling will comply with the provisions of 3.509; and

3) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in Subsection 3.513(2).

APPLICANT RESPONSES:

(A) It provides a property owner the ability to properly manage the established Christmas tree farm. Christmas tree farms need constant onsite management to have the best chance of being productive. High valued farmland in Clatsop County does not have the same value as other county's due the weather conditions, no agricultural manufacturing facilities and the high cost to improve

food crop success. Property West of the Willamette Valley as described in goal three is considered high value farmland if used in conjunction with dairy farming as well as irrigated farm land.

(B) The Land is not suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; it is not practicable to use adjoining land because the property owners do not own any adjoining parcels and have not used the property in conjunction with a dairy farm on or before 1993. The subject property does not contribute in a substantial way to the area's existing agricultural economy or help maintain agricultural processors and established farm markets for any location within Clatsop County. The property is also not irrigated and does not impact the agricultural economy of the state. The main income from the neighboring property is from an established conditional use not related to farming. Once you combine all conditions including size, lack of potential profitability, neighboring use, close proximity to residential properties, setbacks, 3.5 acres of high valued soil substantially reduced by the improved onsite access road, stream culvert, pond, and setbacks, it is clear that the extraordinary circumstances verify practicability is minimal. The County has also required the neighboring property owner to dedicate parking spaces on high valued farmland that will no longer be used for farming. All of these conditions create the assertion a lot of dwelling should be approved without consideration of how the state may interpret the counties decision.

(C) (1) The Western border, approximately 600 feet +/-, is adjacent to a significant fish bearing habitat with an important hatchery upstream that is all located within the Nicolai-Wickiup Watershed. Across Big Creek the property there is approximately 10-20 zoned RA-2.(survey attached) The Northern border is fenced lined with trees and a very large shop, pond, trees, and wetlands. The adjacent acreage does not have contiguous ownership with the subject property. Another condition mandated by Clatsop county requires the neighbor to dedicate a portion of his high valued farmland to 60 parking spaces. It is also noted there is no record of an impact study required for the conditional use permit for the Big Creek Lodge. The southern border is adjacent to Old Highway 30 highway and across the highway is a park and a residential property. The Southeastern border is adjacent to Waterhouse Road and two residential dwellings. Maps, and photos have been included with the application to verify this information. Clatsop county planning department has indicated they are familiar with the location.

- a. When you combine size, profitability and considerable expense to physically farm such a small parcel it would create an unnecessary financial burden which is far from the intent and purpose of the EFU zone as we have interpreted. In addition grazing would destabilize the sloped ground and impact the protected stream and creek within the acreage. Changing the use to year round grazing would be harmful to the natural habitat, compacting the soil, creating significant runoff. Many climate advocates believe grazing animals contribute to an inordinate amount of greenhouse gasses. The property is not set up to be used in conjunction with a dairy farm. The property has approximately 1 acre established for a tree farm and should be managed on site for the best results.
- b. The parcel is not entirely made up of high valued soil. The terraced parcel would cause drainage issues that would have severe impact on the Big Creek habitat.
- c. The parcel has never been put to farm use, it has been a forested property since the 1950's. The property owners had a responsible expectation in 1993 they would have the right to build a home on the subject property. As a replanted parcel Christmas trees need extensive maintenance to thrive. At this time the trees are not thriving.

(C) (2) The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use; and (E) The use is or can be made compatible

with existing uses and other allowable uses in the area. The subject property is located within a water district and a fire suppression district, power is also available.

(C) (3) There would be little or no impact to the land use patterns. The prominent use in the area is rural residential with the exception of the Big Creek Lodge. Development of a single family dwelling will not impact traffic as all construction equipment would be on site and not blocking any roads or access to neighboring properties. There are no wetlands identified or geological hazards that affect the building site. Development standards require contractor's take precautions to protect the stability site in order to protect surrounding property. For the county to sign on off on the occupancy certificate the standards would have to be met. A lot of record dwelling will not interfere with the neighboring land use. The intent of a lot of record is to protect the property owner's legal right to build a dwelling on their property. ORS 215.705 precisely states comprehensive criteria that govern one of the most important criteria is the legal precedents of previously approved conditional use permits throughout the state of Oregon. Jackson County approved two lot of record dwellings on high valued farm land between 2016 and 2017 as described in the 2016-2017 Clatsop County's Oregon Farm and Forest Report. The report also lists a total of 67 approved lot of record dwellings and 221 non-farm dwellings in Oregon between 2016-2017 when lot-of-record dwelling may be allowed. Under ORS 183.400 and ORS 215.304(3), OAR 660-33-020(4) cannot be interpreted to prohibit what that statute otherwise allows. *DeBates v. Yamhill County*, 32 OR LUBA 276(1997).

STAFF FINDINGS and CONCLUSION: The section reference in the first sentence of Subsection (3), above, contains a typographical error and should be S3.512(1)(E), which relates to siting a lot-of-record dwelling on high-value farmland. As discussed above, the subject property is considered high-value farmland based on the fact that it is composed predominately of Class II soils. Because the property is high-value farmland, compliance with the standards of S3.512(3) is required.

(A) As demonstrated under Section S3.512(1), above, the proposal meets the requirements of Subsection (1)(A), (B), (C), and (F). The proposal does not satisfy Subsection (D). Whether the proposal satisfies Subsection (E) will be determined by the evaluation of this section, Subsection (3). Subsection (2) does not apply.

(B) The subject property is considered high-value farmland based on the fact that it is predominately composed of Class II soils (LWDUO Section 1.030 and OAR 660-033-020(8)(A)). The zoning designation of the property, EFU, was established to protect and maintain agricultural land in Clatsop County for farm use, which is generally achieved by limiting non-farm uses, including non-farm dwellings.

(C) (1) This subsection requires a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.

According to the applicant, the following characteristics cause farm use to be impracticable on the subject property, by itself and in conjunction with other land: the small size of the parcel; its proximity to a fish-bearing stream and hatchery; and natural and physical barriers including roads, trees, wetlands, and structures. The applicant states these factors would result in high expenses and difficulty associated with farming the property. However, the applicant does not describe why the cited factors would result in high farming-related expenses or difficulty; how the cited factors constitute extraordinary circumstances; or how the same factors do not apply generally to other land in the vicinity. Furthermore, according to the applicant, the subject property is an "established Christmas tree farm." Growing cultured Christmas trees is specifically listed as a farm

use in the definitions found in LWDUO Section 1.030 and ORS 215.203. Pursuant to S3.512(3)(C)(1)(c), “a lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.”

Notwithstanding the applicant’s written testimony regarding the current use of the property as an “established Christmas tree farm,” the applicant has not demonstrated why or how the property cannot practicably be managed for any other farm uses, with the exception of grazing, which the applicant argues is undesirable because it would degrade the soil, water, air, and fish and wildlife habitat. While grazing may be undesirable for those reasons, this criterion requires a determination that farm uses are impracticable; and in order to reach that conclusion, it is necessary to demonstrate, with supporting evidence, how the range of possible farm uses that would be common and appropriate for the area are impracticable. The information presented by the applicant and discovered by staff through research does not support such a determination; in fact, the applicant’s testimony supports a finding that the property can be practicably managed for farm use.

According to County Assessor Data compiled by County GIS staff, within a two-mile radius of the subject property, there are twelve properties under special assessment for farm use and eight properties under special assessment for mixed farm/forest uses. Of the twelve properties under special assessment for farm use only, the median size is 11.97 acres; four of the properties are five acres or smaller. According to ORS 308A.071(2)(a), a property under six acres in size must generate at least \$650 in annual revenue from farming to qualify for the special assessment.

The Oregon Land Use Board of Appeals (LUBA) has established that “...the impracticability standard is a demanding one. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357, 365 (2000); *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508, 519 (1994). Farm use is not ‘impracticable’ simply because it is not easy to manage the subject property for farm use and obstacles must be overcome to do so.” *Friends of Linn County v. Linn County*, 39 Or LUBA 627 (Exhibit 5). In the same case, LUBA also established that the minimum gross income levels established by the legislature in ORS 308A.071(2)(a) for non-EFU-zoned parcels to qualify for a special assessment are the best available indication of the level of gross income that the legislature believes demonstrates practicable farm use. The fact that at least four properties located within two miles, which are similar in size or smaller than the subject property, qualify for a special assessment for farm use demonstrates it is not necessarily impracticable to manage a small plot of land in this area for farm use.

Considering the lack of substantial evidence in the record to confirm the subject property is encumbered by extraordinary circumstances inherent in the land or its physical setting which make farm use impracticable and which do not apply generally to other land in the vicinity; the applicant’s written testimony that the subject property is already “an established Christmas tree farm;” the lack of substantial evidence in the record that any other possible farm uses are impracticable; and the fact that at least four other plots of land in the vicinity, similar in size or smaller than the subject property, are actively farmed, staff is unable to support a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. This criterion is not satisfied.

(C) (2) Section S3.509 is addressed above. The findings and conclusions for this section demonstrate the dwelling can comply with the provisions of S3.509 with conditions of approval as appropriate.

(C) (3) Section S3.513(2) is addressed below. The findings and conclusions for this section demonstrate the dwelling will not materially alter the stability of the overall land use pattern, with conditions of approval as appropriate.

Based on the above findings and conclusions, the proposal would satisfy most, but not all, of the siting criteria for a dwelling on high-value farmland. Most importantly, there is not sufficient evidence in the record to support a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. As a result, this section is not satisfied.

(5) For purposes of Subsection (1), “owner” includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

STAFF FINDING: According to the applicant, the current owners of the subject property are the daughters of the original owners.

(6) The county assessor shall be notified that the governing body intends to allow the dwelling.

STAFF FINDING and CONCLUSION: If the proposed dwelling can be permitted, a condition of approval will require the applicant to notify the County Assessor. **This subsection can be satisfied with a condition of approval (Condition #5).**

(7) An approved single-family dwelling under this Section may be transferred by a person who has qualified under this Section to any other person after the effective date of the land use decision.

STAFF FINDING: This subsection is provided for the applicant’s information.

(8) The county shall provide notice of all applications for lot of record dwellings on high value farmland to the State Department of Agriculture. Notice shall be provided in accordance with land use regulations and shall be mailed at least 20 calendar days prior to the public hearing.

STAFF FINDINGS and CONCLUSION: Notice of the application was provided to the Oregon Department of Agriculture in accordance with the requirements for a Type II procedure. No response has been received as of the date of this report. **This subsection has been satisfied.**

Section 3.513. Dwellings Not in Conjunction with Farm Use.

(2) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in (A) through (C) below. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in (A) through (C) below;

(A) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area,

why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(B) Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under Subsection 3.512(1) and 3.513, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this Subsection; and

(C) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

STAFF FINDINGS and CONCLUSION:

(A) In creating a study area for the stability analysis, to capture at least 2,000 acres of resource land in the vicinity of the subject property, staff applied a two-mile buffer to the property boundaries. The subject property is located at the center of the study area. A map of the study area, its boundaries, and the location of the subject parcel is attached as Exhibit 4.

Within the study area are 1,158 taxlots, the vast majority of which are zoned rural-community-residential or residential-agriculture. A large portion of the land within the study area boundary is the designated rural community of Knappa. Approximately 39% of the land in the study area is zoned for nonresource uses. As for the resource land, there are approximately 380 acres zoned EFU; 1,306 acres zoned AF (Agriculture-Forestry); and 4,247 acres zoned F-80 (Forest-80), for a total of approximately 5,933 acres.

While the study area contains nearly three times more resource land than the minimum acreage required, the purpose of the stability analysis is to evaluate the impact of the proposed dwelling on farm uses and accepted farming practices, and most of the resource land present is zoned for forest uses (4,247 acres in the F-80 Zone). The two-mile buffer is appropriate because, of the 5,933 acres of resource land within the buffer, only 380 acres are zoned EFU; a total of 1,686 acres are zoned for EFU or AF. The two-mile buffer was also determined to be appropriate because it captures the broad land use pattern of the area, which is farm- and forest land on the fringe of relatively dense residential development. The relatively large scale of the study area is necessary to capture this pattern and to adequately evaluate the impact siting new dwellings on resource land would have on the stability of the land use pattern in the area.

(B) Farm uses: The broad types of farm uses in the study area include crop production (predominately non-irrigated forage crops), holly trees, and livestock raising (pasture/grazing land for horses and cattle; and one mink farm).

Number, location and type of existing dwellings; dwelling development trends:

According to County Assessor and GIS data, the total number of existing dwellings within the study area is 585; of those, 39 are located on resource land: two in the EFU Zone, four in the F-80 Zone, and 34 in the AF Zone. The location of existing dwellings in the study area is shown on the study area maps (Exhibit 4).

Of the 39 dwellings sited on resource land within the study area, 22 were built prior to 1993 and 17 were built 1993-present. Of the two dwellings sited in the EFU Zone, one was built in 1974 and one was built in 1978. Both dwellings are on land that is actively farmed; one is used as a primary farm dwelling and the other as a short-term rental. Of the dwellings in the F-80 Zone, one is on land in forest use, one is on land in mixed farm/forest use, and two are on land not in resource use. Of the dwellings in the AF Zone, eight are on land in farm use, six are on land in mixed farm/forest use, ten are on land in forest use, and nine are on land not in resource use.

The total number of dwellings on resource-zoned land in farm use is nine (9); the total on land in mixed farm/forest use is seven (7); the total on land in forest use is eleven (11); and the total on land in nonresource use is twelve (12).

Existing land use pattern: The subject property is situated at the edge of Knappa, which is a designated rural community and consists predominately of single-family residential homesites on relatively small parcels (0.5 – 1 acre); and small-scale commercial and light industrial uses are located along Highway 30. The rural community occupies approximately 8% of the study area.

Resource lands, predominately zoned AF or EFU, surround the rural community boundary. These areas are generally used for forage crop production, pasture/grazing land, and small-tract forestry; many (approximately 35) are developed with dwellings. Land in the AF and EFU Zones occupies approximately 17% of the study area.

The southwest and eastern portions of the study area consist of low-density rural residential land (zoned RA-2 and RA-5), generally one to five-acre parcels, most of which are developed with single-family dwellings. Rural residential land occupies approximately 14% of the study area.

The northern portion of the study area contains the Columbia River and islands, zoned Aquatic Natural (AN), Natural Shorelands (NS), and Aquatic Conservation-2 (AC-2), occupying approximately 16% of the study area. The remaining land, approximately 44% of the study area, is generally industrial forestland, zoned F-80.

Immediately surrounding the subject property, to the north, is a single-family dwelling and accessory structures on approximately 80 acres in the EFU Zone; to the northeast is an approximately 34-acre parcel in the AF Zone used for grazing/pasture; to the east and southeast are several dwellings on two- to five-acre parcels in the KS-RCR Zone; to the south is a 14-acre forested parcel in the Open Space, Parks, and Recreation Zone (OPR) owned by ODFW; to the southwest is a 24.7-acre parcel in the AF Zone used for forage crop production; and to the west is approximately 24 acres zoned RA-2 (two-acre minimum lot size), currently undeveloped, used for forage crop production.

Potential number of nonfarm / lot of record dwellings: Standards Document Sections S3.512 and S3.513 apply only to land in the EFU Zone. Other than the subject property, there are 11 taxlots zoned EFU within the study area. Two of those lots are already developed with dwellings; three are part of a property already authorized for up to three homesites under Measure 49 Final Order and Home Site Authorization E133338A; and three are part of another property also already authorized for up to three homesites under a different Measure 49 Final Order and Home Site

Authorization (E133338B). Two additional nonfarm dwellings could potentially be established, subject to applicable review criteria, on the remaining properties under S3.513, for a possible total of eight new dwellings on land in the EFU Zone within the study area. See table below for reference:

Map/Taxlot	Size (Acres)	Date Created	Predominant Soils	High-Value Farmland?	Dwellings?	Notes
807180000600	132.15	1962	51A	Yes	(1) c. 1974	
807190000701	3.04	1978	59D	No	-	Formerly had a dwelling until 2019
807190000800	6.75	1957	59D	No	-	Measure 49 Claim for up to three homesites
807190000600	51.75	1957	59D	No	-	Part of above claim
808240000100	38.91	1957	59D	No	-	Part of above claim
808140000100	43.16	1957	12A	Yes	(1) c. 1978	
807210000701	45.4	1958	35B	Yes	-	Measure 49 Claim for up to three homesites
807200000100	10	1957	20B	Yes	-	Part of above claim
807200000200	78.11	1956	21D	Yes	-	Part of above claim
807090000700	39.25	1929	12A	Yes	-	
807090000780	0.75	1989	59E	No	-	Part of a tract with parcel above

Potential land use pattern resulting from approval of nonfarm dwellings: Within the study area, on land in the AF and EFU Zones, there currently are 35 dwellings across approximately 1,700 acres, or one dwelling for every 48.6 acres. The addition of the proposed dwelling on the subject property, plus the eight potential dwellings discussed above, would result in 44 dwellings across the same acreage, or one dwelling for every 39.5 acres. The new dwellings would be located in close proximity to existing development; and the location and distribution of the new dwellings would be consistent with the current pattern of resource-zone dwelling development in the study area. Because the addition of the potential new dwellings would be located within close proximity to existing development and consistent with the current location and distribution of resource-zone dwellings within the study area, the buildout of the potential dwellings would not be expected to have a significant effect on the overall land use pattern.

(C) This subsection requires a determination of whether approval of the proposed dwelling on the subject property, in addition to the eight potential nonfarm dwellings discussed above, will materially alter the stability of the land use pattern in the area based on the ability of the existing types of farm uses in the area to continue operation. The findings in Subsection (B), above, demonstrate that the new dwellings are not expected to have a substantial effect on the overall land use pattern in the area, based on the consistency in location and distribution of the potential new dwellings with the existing development pattern, and the proximity of the new dwellings to existing development.

With regard to impacting the ability of farms to continue, it is noted that, of the existing 39 resource-zone dwellings in the study area, 28 are on land engaged in resource uses and 17 have been developed since 1993. This suggests that the area has historically supported the comingling of residential uses with farm and forest uses and that the addition of new dwellings over time has not significantly affected the ability of farmers to continue farming. Based on the consistency of the potential development pattern with the existing and historical development patterns, and the apparent ability of farms to continue operating in the area over the years, approval of the proposed dwelling on the subject property together with existing and potential nonfarm dwellings is not expected to materially alter the stability of the land use pattern in the area.

Based on the findings for Subsections (A), (B), and (C), above, the proposed dwelling is not expected to materially alter the stability of the overall land use pattern in the area. This section is satisfied.

S4.500. PROTECTION OF RIPARIAN VEGETATION

S4.501. Purpose and Areas Included.

Riparian vegetation is important for maintaining water temperature and quality, providing bank stabilization, thus minimizing erosion, providing habitat for the feeding, breeding, and nesting of aquatic and terrestrial wildlife species, and protecting and buffering the aquatic ecosystem from human disturbances. This section establishes standards to protect riparian vegetation on lands not subject to the requirements of the Oregon Forest Practices Act.

Areas of riparian vegetation are identified as follows:

(2) Lakes, reservoirs, and river segments outside of Estuarine or Coastal Shoreland areas: a riparian vegetation zone 50 feet wide shall be maintained. Where emergent wetland vegetation exists adjacent to a lake, reservoir, or river, the 50 feet shall be measured from the landward extent of the emergent wetland area. If a shrub or forested wetland area exists adjacent to the lake, reservoir or river, the zone of riparian vegetation shall be the entire area of the shrub or forested wetland.

Measurements are taken horizontally and perpendicular from the line of non-aquatic vegetation. Where no aquatic vegetation is present, the measurement shall occur in estuarine and coastal shoreland areas from the mean higher high-water line and from the ordinary high-water line in non-estuarine areas.

S4.504. Development Standards.

(1) All development, as defined by LWDUO section 1.030, shall be located outside of the zone of riparian vegetation areas defined in S4.500 above, unless direct water access is required in conjunction with a water dependent or water-related use or as otherwise provided by this Ordinance.

STAFF FINDINGS and CONCLUSION: The western edge of the subject property is defined by Big Creek. While the proposed site plan does not appear to involve land-disturbing activities near Big Creek, the applicant is advised all development shall be located outside the zone of riparian vegetation as defined in this section. **This section can be satisfied with a condition of approval (Condition #6).**

S5.033 Access Control Standards.

(3) Access Options. When vehicle access is required for development (i.e., for off-street parking, delivery, service, drive-through facilities, etc.), access shall be provided by one of the following methods (a minimum of 10 feet per lane is required). These methods are “options” to the developer/subdivider.

(C) Option 3. Access is from a public street adjacent to the development parcel. If practicable, the owner/developer may be required to close or consolidate an existing access point as a condition of approving a new access. Street accesses shall comply with the access spacing standards in Subsection (6) below.

STAFF FINDINGS and CONCLUSION: According to the applicant’s proposed site plan, the property would be accessed from an existing road approach on Waterhouse Road. If the conditional use request is approved, the applicant will be required to demonstrate road approach approval for the residential use from Clatsop County Public Works. **This section can be satisfied with a condition of approval (Condition #7).**

C. COMPREHENSIVE PLAN POLICIES AND GOALS

Goal 1 – Citizen Involvement

Policies

7. Clatsop County shall use the news media, mailings, meetings, and other locally available means to communicate planning information to citizens and governmental agencies. Prior to public hearings regarding major plan revisions, notices shall be publicized.
8. Clatsop County shall establish and maintain effective means of communication between decision-makers and those citizens involved in the planning process. The County shall ensure that ideas and recommendations submitted during the planning process will be evaluated, synthesized, quantified, and utilized as appropriate.
9. Public notices will also be sent to affected residents concerning zone and comprehensive plan changes, conditional uses, subdivisions and planned developments.

STAFF FINDINGS and CONCLUSION: A public notice was sent to all property owners within 750 feet of the subject property and to public agencies per Section 2.115, LWDUO, on May 24, 2021 (Exhibit 2). Public notice was also posted on the County’s website (www.co.clatsop.or.us/projects). Copies of the application materials were made available to the public via the Oregon ePermitting System (aca-oregon.accela.com/oregon/). Appropriate measures have been taken to assure that the Type II conditional use application has been processed in accordance with the applicable Citizen Involvement (Goal 1) policies of the County Comprehensive Plan (7-9) listed above.

The Type II conditional use procedure used to process this application satisfies Goal 1.

Goal 2 – Land Use Planning

The County's land and water have been placed in one of six (6) Plan designations. They are:

2. Rural Agricultural Lands

Agricultural lands are those lands that are to be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space.

STAFF FINDINGS and CONCLUSION: Land in the EFU Zone is designated “Rural Agricultural Lands” in the Comprehensive Plan. Goal 2 states that these areas are to be preserved and maintained for farm use. A single-family dwelling can be approved on Rural Agricultural Lands pursuant to LWDUO Section 3.563(22). Uses permitted, or permitted with conditions, in any zone have been reviewed in general terms for consistency with the Comprehensive Plan, implying the uses do not conflict with Goal 2 if it can be demonstrated a proposal satisfies applicable review criteria and development standards. This staff report demonstrates the proposal satisfies most, but not all, applicable review criteria. As discussed in Section IIB of this report, there is a lack of substantial evidence in the record to support a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. Based on the applicant’s written testimony, the property is “an established Christmas tree farm”, which demonstrates the property can and has been managed for farm use. Because the proposal does not satisfy the applicable review criteria for the proposed use, which were developed to implement Goal 2 for Rural Agricultural Lands, approval of the proposal would be inconsistent with Goal 2.

Without a determination the property cannot practicably be managed for farm use, by itself or in conjunction with other land, neither the applicant nor staff can demonstrate the proposal is consistent with Goal 2.

Goal 3 – Agricultural Lands

Statewide Planning Goal: To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.

STAFF FINDINGS and CONCLUSION: Clatsop County’s Comprehensive Plan Goal 3 element contains background information on agriculture in Clatsop County, as of 1980 when it was adopted, but does not contain any specific policies. While there are no specific policies listed under Goal 3, the Exclusive Farm Use Zone implements the statewide planning goal and related statutes. As discussed throughout this report, a single-family dwelling can be permitted in the EFU Zone pursuant to LWDUO Section 3.563(22), subject to applicable review criteria which were established to ensure the overall goal of preserving and maintaining agricultural lands for farm use is upheld.

The primary criteria for a single-family dwelling under Section 3.563(22) are found in Standards Document Section S3.512, which was addressed in Section IIB of this report, above. The review criteria were developed to implement Goal 3 and the related statutes. This section requires a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. The findings and conclusions for that section demonstrate that there is a lack of substantial evidence in the record to support such a determination. **Research conducted by staff suggests the property can be managed for farm use without substantial hardship, based on the distribution and size of farm uses in the vicinity. Additionally, according to the applicant, the subject property is already an “established Christmas tree farm.” Cultivation of cultured Christmas trees is considered a farm use under the definitions found in LWDUO Section 1.030. Pursuant to Section S3.512(3)(C)(1)(C), “a lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.”**

Because it has not been established that the property cannot practicably be managed for farm use, by itself or in conjunction with other land, and the applicant’s written testimony demonstrates the property can and has been managed for farm use (cultivated Christmas trees), the proposal does not satisfy the requirements for a single-family dwelling under LWDUO Section 3.563(22) and Standards Document S3.512; thus, it cannot be demonstrated the proposal is consistent with Goal 3.

Without support for a determination the property cannot practicably be managed for farm use, by itself or in conjunction with other land, it cannot be demonstrated the proposal is consistent with Goal 3.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

The overall goal of the Statewide Planning Goal 5, Open Space, Scenic and Historic Areas, and Natural Resources, is: “To conserve open space and protect natural and scenic resources.”

To achieve this goal, Clatsop County is required to undertake an inventory of the following twelve types of resources:

- a) Fish and wildlife areas and habitats;
- b) Water areas, wetlands, watersheds and groundwater resources;
- c) Historic areas, sites, structures and objects;

Fish and Wildlife Areas and Habitats Policies

Policy 2: To ensure that future development does not unduly conflict with Peripheral Big Game Range, the County shall: (C) Submit proposed review and conditional use applications to the Oregon

Department of Fish and Wildlife for their comments on consistency with Peripheral Big Game Range and recommendations on appropriate siting criteria to minimize any conflict;

Policy 4: To protect riparian vegetation along streams and lakes not covered by the Forest Practices Act, the County shall require a setback for non-water dependent uses.

STAFF FINDINGS and CONCLUSION: The subject property contains resources inventoried under Goal 5, including a portion of the Big Creek watershed, and the riparian zone along Big Creek. The property is also identified as Peripheral Big Game Range. The applicable Goal 5 policies are listed above. With regard to Fish and Wildlife Habitat Policy 2, staff notified ODFW of the proposed use and received a response from ODFW staff (Exhibit 2) which indicated the proposal is not expected to have any significant impacts on big game habitat. Policy 4 is implemented by Standards Document Section S4.500 Protection of Riparian Vegetation, which is addressed by Condition #6.

With a condition of approval, the proposal will not conflict with Goal 5 (Condition #6).

Goal 6 – Air, Water, and Land Quality

The Statewide planning goal pertaining to air, water and land resources quality is as follows: “To maintain and improve the quality of the air, water and land resources of the state.”

Policies

3. The cumulative effect of development on the County's environment should be monitored and, where appropriate, regulated. When evaluating proposals that would affect the quality of the air, water or land in the County, consideration should be given to the impact on other resources important to the County's economy such as marine resource habitat and recreational and aesthetic resources important to the tourist industry.

STAFF FINDINGS and CONCLUSION: As discussed throughout this report, the subject property includes a portion of Big Creek, which is identified as a watershed protected under Goal 5. Protection of the watershed and land and water quality is achieved through compliance with Standards Document Sections S2.500 and S4.500. Condition #1 would require compliance with S2.500 and Condition #6 would require compliance with S4.500. There are no concerns related to air quality from construction of a single-family dwelling.

With conditions of approval, the proposal will not conflict with Goal 6 (Conditions #1 and 6).

Goal 7 – Areas Subject to Natural Disasters and Hazards

To protect life and property from natural disasters and hazards.

STAFF FINDINGS and CONCLUSION: Clatsop County Webmaps indicates a small portion of the subject property, along the bank of Big Creek, is located in the FHO (FEMA AE Floodway). While the applicant's site plan does not indicate any development within this area, the applicant is advised that development activity within the FHO area is subject to this section and requires a floodplain development permit and compliance with the criteria found in LWDUO Section 4.000. **Goal 7 can be satisfied with a condition of approval (Condition #3).**

Goal 11 – Public Facilities and Services

OVERALL POLICY REGARDING APPROPRIATE LEVELS OF PUBLIC FACILITIES IN THE COUNTY

Six different Plan designations exist for lands in the County. Differing levels of public facilities and services are appropriate for the different types of development planned for the County. Certain

facilities and services are available to all County residents, such as County health services, Sheriff's protection and many other local services.

3. **Rural Agricultural Lands** – These are lands preserved for agricultural use. Generally, residences are allowed only in conjunction with farm use. Some parcels in this Plan designation are served by community water systems but generally water supply is on an individual basis. Since parcel size and use are controlled by the Exclusive Farm Use (EFU) zoning district, it is not appropriate to extend community water to parcels in this Plan designation since it would not lead to pressure to further develop land for residences. The primary function of Rural Agricultural Lands is for agricultural use. Any extension of public water will only be to support a development in conjunction with resource use and will not be the basis for future conversion to non-resource use.

As with the Rural Lands Plan designation, public fire protection may be present here, and is appropriate, but is not necessary for development.

Community sewage systems are not appropriate in this Plan designation.

GENERAL PUBLIC FACILITIES POLICIES

1. Clatsop County recognizes the level of public facilities and services described in the section "Overall Policy Regarding Appropriate Levels of Public Facilities in the County" above, as that which is reasonable and appropriate for development in different Plan designations in the County. Development of facilities and services in excess of those levels and types shall not be approved by the County.

STAFF FINDINGS and CONCLUSION: The subject property is in the EFU Zone, which is under the "Rural Agricultural Lands" designation in the Comprehensive Plan. According to the applicant, the property is served by the Knappa Water Association, the Knappa-Svensen-Burnside Rural Fire Protection District, and Pacific Power; sewage would be disposed in an onsite septic system; and waste collection services are available. For all new dwellings in Clatsop County, a Development Permit is required and must be accompanied by a completed Agency Review and Approval Form. This form is the tool the Planning Division uses to verify adequate water supply, sewage disposal, and fire protection services are available to serve new dwellings. Condition #1 would require the applicant to submit a Development Permit application, with a completed Agency Review and Approval Form, to the Planning Division prior to construction of the proposed dwelling.

With a condition of approval, the proposal will not conflict with Goal 11 (Condition #1).

Northeast Area Community Plan

Alluvial Lowlands Policies

Policy 1: Low density activities, such as agriculture, shall be preferred uses in the alluvial lowlands.

STAFF FINDINGS and CONCLUSION: The subject property is in an area identified as "alluvial lowlands" according to the Northeast Area Community Plan. Alluvial Lowlands Policy 1 states that low-density activities, such as agriculture, shall be the preferred uses in those areas. The subject property is zoned EFU, a zoning district which was established for the purpose of preserving and protecting land for agricultural uses. The predominant soil type on the subject property, 45A – Mues medial silt loam, is identified by the USDA as a Class II soil type. According to LWDUO Section 1.030, a property composed predominately of Class II soils is considered "high-value farmland." The review criteria for new dwellings in the EFU Zone on high-value farmland require a determination that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land. As

discussed throughout this report, there is a lack of substantial evidence in the record to make such a determination. As a result, the proposal cannot be found to satisfy Alluvial Lowland Policy 1.

Because it has not been demonstrated that the subject property cannot practicably be managed for farm use, by itself or in conjunction with other land, the proposal cannot be found to be consistent with the Northeast Area Community Plan.

COMMENTS RECEIVED

Howard Kem, 92878 Waterhouse Road: Mr. Kem noted that the address for the subject property listed in the public notice appeared to be an error, because it was the address for his property.

STAFF RESPONSE: County Assessor records indicate the address for the subject property is 92878 Waterhouse Road, which was included in the public notice to identify the property. However, this is the same address listed for Mr. Kem's property, which is developed with a single-family dwelling. It appears the address listed by the Assessor for the subject property in error and that there actually is no address for the subject property. The legal description for the subject property was also included in the public notice, so the property could still be properly identified. The property owner is advised to contact Clatsop County Public Works to resolve addressing issues.

Annette Brodigan, Clatsop County Public Health: Ms. Brodigan said the property owners will be required to obtain a site evaluation report for an onsite septic system, as well as a construction/installation permit for the septic system to serve the proposed dwelling.

STAFF RESPONSE: If the conditional use request for a single-family dwelling is approved, a condition of approval would require the applicant to provide the Planning Division a completed Agency Review and Approval Form, which will demonstrate site approval for a septic system. The applicant is advised to coordinate with Clatsop County Public Health to understand permitting requirements for onsite septic systems.

David Nuzum, Oregon Department of Fish and Wildlife (ODFW): Mr. Nuzum said the applicant can likely expect elk to use the open grassy areas of the subject property during the winter and early spring, which he said is common in Peripheral Big Game Habitat. He said, given the proximity of large, open pastures nearby that the proposed dwelling and accessory building are not expected to have a significant impact to elk herds.

STAFF RESPONSE: The review criteria for this application require an evaluation of the impact to big game habitat and notification of the proposal to ODFW. According to ODFW staff, the proposed dwelling and accessory building are not expected to have a significant impact on big game (elk) habitat.

OVERALL CONCLUSION & RECOMMENDATION

Based on the findings presented in this report, staff recommends DENIAL of the conditional use request. While the proposal does or can satisfy most of the applicable criteria, the evidence in the record does not support a determination that the subject property cannot practicably be managed for farm use. Because the subject property is identified as high-value farmland, this is a requirement (Standards Document S3.512(3)); failure to meet this requirement is the basis for staff's recommendation.

If the final decision-maker finds that the request is able to be approved, staff recommends the following conditions of approval and regulations:

1. Prior to construction of the proposed dwelling and accessory building, the applicant shall obtain a Development Permit from the Land Use Planning Division. The Development Permit application shall include a final site plan; an erosion control and stormwater drainage plan commensurate with Standards Document S2.500; an outdoor lighting plan commensurate with Ordinance 20-02; and a completed Agency Review and Approval Form.
2. If any state and/or federal permits are required for the proposed use, copies shall be provided to the Land Use Planning Division prior to issuance of the Development Permit.
3. Development within the Flood Hazard Overlay shall be subject to LWDUO Section 4.000 and will require a Floodplain Development Permit.
4. The landowner shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
5. The landowner shall notify the County Assessor that the subject property has been approved for a single-family dwelling in accordance with this Conditional Use Permit.
6. All development shall be located outside the zone of riparian vegetation as defined in Standards Document Section S4.500.
7. The applicant shall demonstrate road approach approval for the proposed single-family dwelling from Clatsop County Public Works.

Other regulations, including, but not limited to, the following also apply:

- (1) This approval is valid for a period of two (2) years from the date of approval. The Community Development Director can authorize one extension of up to 12 months.
- (2) Development shall comply with all applicable state, federal and local laws and regulations.

Per Clatsop County Land and Water Development and Use Ordinance #80-14, Section 5.030, authorization of this conditional use shall be void after two years unless substantial construction or action pursuant thereto has taken place (as per Section S2.011). The Community Development Director may extend authorization an additional year upon request, provided the request is submitted in writing at least 10 days and not more than 30 days prior to the expiration of the permit.