

**MINUTES OF THE MEETING
BENTON COUNTY BOARD OF COMMISSIONERS**

Zoom link:

<https://us06web.zoom.us/j/88412127621?pwd=S0lhUXY0cVhKQk9SMnZoWDY1SXZJdz09%3A0>

Livestream: <http://facebook.com/BentonCoGov>

Tuesday, March 7, 2023

9:00 a.m.

Present: **Pat Malone**, Chair; **Xanthippe Augerot**, Commissioner; **Nancy Wyse**, Commissioner; **Vance Croney**, County Counsel; **Joe Kerby**, County Administrator

Staff: **Rick Crager**, Finance; **Cory Grogan**, Public Information Officer; **April Holland**, Health; **Nick Kurth**, JSIP Manager; **Amanda Makepeace**, BOC Staff; **Erika Milo**, BOC Recorder; **Darren Nichols**, **Daniel Redick**, **Inga Williams**, Community Development; **Sarah Siddiqui**, Equity, Diversity, & Inclusion; **Jef Van Arsdall**, Sheriff

Guests: **Cynthia Crosby**, **Ken Eklund**, **Claire Fulsher**, **Kevin Fulsher**, **Joel Geier**, **Kate Harris**, **Connie Jordan**, **Debbie Palmer**, **Nancy Whitcombe**, **Edward Wienhoff**, **Mark Yeager**, residents; **John Harris**, Horsepower Productions; **Tom Hewes**, Northwest Energy Works; **Sam Imperati**, ICM Resolutions; **Becky Merja**, City of Corvallis; **Alex Powers**, Mid-Valley Media

1. Opening:

1. Call to Order

Chair Malone called the meeting to order at 9:00 a.m.

2. Introductions

3. Announcements

No announcements were made.

2. Review and Approve Agenda

No changes were made to the agenda.

3. Comments from the Public

Mark Yeager, resident: Yeager stated that the current 20-year Coffin Butte Landfill (CBL) franchise agreement between Benton County and Valley Landfills, Incorporated, has several concerning sections. Yeager could find no record of public involvement in this process, except a virtual Public Hearing on December 15, 2020 prior to the Board's adoption, where no testimony was given. Agreement sections 4c and 5b state that Valley Landfills plans to apply to expand CBL by 2024. Franchise fees paid to the County in 2024 jump by over \$1.4 million per year, and the host fee jumps by \$1 per ton. CBL receives more than a million tons of garbage per year. The agreement says that if the County does not approve expansion by 2025, the franchise fee revenue is reduced by \$1 million per year and the host fee is reduced by \$.56 per ton. Yeager expressed concern that the Board and Planning Commission would make unbiased decisions about expansion given these financial incentives. Agreement section 6 requires a \$10 million pollution liability insurance policy to defend Valley Landfills and the County from environmental lawsuits, but the requirement has a 30-day notice escape clause: if the insurance is not available, or is not available at a reasonable cost, the franchisee will notify the County and will not be in default of this agreement. This does not seem like enough financial protection for the County and

residents from environmental lawsuits. These topics have not been discussed by the Benton County Talks Trash (BCTT) Work Group (WG), and deserve meaningful discussion.

Paul Nietfeld, resident: Nietfeld, a member of a BCTT WG subcommittee, called attention to CBL revenue in the County budget, especially for the 2023-25 biennium. The economics benefit cost charge topic is not being directly addressed by the WG; instead, the Sustainable Materials Management Plan (SMMP) subcommittee is outlining benefit cost topics for suggested inclusion in the proposed future SMMP. It seems unlikely that the BCTT final report will offer guidance on landfill surcharge revenue (LSR). Accurate guidance for expected LSR in the 2023-25 biennium could be generated from the 2020 landfill franchise agreement fee schedule, using intake tonnage projections. The current landfill franchise agreement contains financial incentives for expansion approval, but at the projected intake tonnage levels, the County will meet or exceed its expected landfill surcharge revenue for 2023-25 without any expansion. Using projected intake of 1.5 million tons per year, the LSR would be about \$7.5 million, exceeding the budgeted amount of \$6.7 million. County LSR goals can be achieved without CBL expansion.

Debbie Palmer, resident: Palmer urged the Board not to authorize any more County funds for Imperati and to insist that Imperati complete facilitation of the BCTT WG within the current budget. Palmer detailed the number of meetings held by various WG subcommittees, which include County staff. For instance, the Past Land Use subcommittee has had 21 meetings so far. The number of meetings also places an unfair time burden on volunteers.

Kate Harris, resident: Harris, an Adair Village rental property owner and manager, expressed concerns about an oppressive stench from CBL which affects residents and schoolchildren, causing headaches, eye irritation, and throat burning. With the Disposal Site Advisory Committee (DSAC) shut down during the BCTT process, Harris has lost the primary source of addressing concerns about the safety and livability of CBL. Other complaint processes such as the DEQ odor complaint website have proven ineffective. Harris urged the Board to bring the BCTT process to a timely close, without paying Imperati more, and to resume DSAC meetings.

4. Work Session

4.1 COVID-19 Update from Department Operation Center – April Holland, Health Services

Holland reported that 232 individuals were hospitalized with COVID-19 statewide as of March 1, 2023, a slight decrease from 250 cases two weeks ago. Hospitalizations have not gone below 200 since May 2022. As of yesterday, 194 people were boarding (waiting for a bed) in hospitals statewide, a 25% increase from 153 people two weeks ago, but down from a peak of 355 at the end of 2022. Reported COVID-19 case counts are low in Benton County and most of the state. With people mainly using rapid antigen tests at home, it is estimated that only 5% of cases are reported. During the week of February 19, 2023, the County had 64 reported cases, down from 77 cases two weeks ago. County COVID-19 hospital admissions are 4.5 per 100,000 residents, with 2.9% of staffed beds in use by COVID-19 patients. Last week, testing positivity remained elevated at 14.5%, but down from 16% two weeks ago. Linn, Benton, and Lincoln Counties are seeing sustained increases in wastewater signals, but City of Corvallis monitoring has plateaued since a rise in mid-February 2023. Holland urged everyone to get the bivalent booster. About 30% of County residents have received the bivalent booster, including 83% of residents aged 65 and older. There are no recommendations at this time for more than one booster dose.

On March 3, 2023, Oregon Health Authority (OHA) announced that workers, patients, and visitors in healthcare settings will no longer be required to wear masks starting April 3, 2023.

This includes medical clinics, behavioral health, physical therapy, occupational therapy, hospitals, long-term care facilities, emergency departments, nursing, and pharmacies. OHA cited falling rates for influenza, COVID-19, and respiratory syncytial virus. Oregon Executive Order 2224, which offered hospitals flexibility in patient care, expired yesterday. Some healthcare settings may continue to require masks even after the OHA requirement is lifted. Masks are still recommended for individuals who are high-risk, sick, or in crowded indoor settings. The Federal COVID-19 Emergency Declaration will end May 11, 2023. OHA and Oregon Department of Human Services are working to preserve benefits for as many people as possible. Benton County Health has been sharing resources with partners.

4.2 Update from Benton County Talks Trash (BCTT) Solid Waste Process Workgroup (WG)– *Darren Nichols, Community Development Director*

Nichols shared the updated BCTT WG calendar (exhibit 1):

- This week: WG presents the outline for the Sustainable Materials Management Plan at the Sustainability Coalition town hall.
- Next week: subcommittees finish findings and recommendations draft five. The County will start a multi-channel communications blitz through the end of March 2023. Nichols thanked Grogan, JonnaVe Stokes, and Siddiqui for this effort.
- March 17, 2023: public survey about draft five opens; resulting data to go into draft six.
- March 23, 2023: last full WG meeting. Any members of the WG or subcommittees can submit a personal statement for the final report, due April 1, 2023.
- April 3, 2023: final contents-only report delivered to the Board and the public.
- April 4, 2023: open house on the report, beginning a public comment period through April 18, 2023.
- April 18, 2023: polished report will be formally presented to the Board.

Staff have tried to compress the process while allowing time for public comment. The entire process could be completed by April 18, 2023, but this does not allow much time to absorb the report. The Board could use the open house to thank WG members, hear report contents, and begin an extended period of public comment before deliberating.

Wyse supported extending the public input time.

Augerot expressed concern about added staff workload to compile public comments, and asked if comments would be included in the report.

Nichols replied that written comments on the final draft would be bundled separately for the Board when the report is presented. If the Board wishes, a public hearing could be held.

Augerot favored staff bundling the comments and providing a summary. A final public hearing would provide closure for the community. Augerot suggested a 45-day comment period.

Nichols noted that staff workload will drop in early April 2023 due to fewer WG meetings.

Augerot asked if the final version of the report would be compiled by staff, or a consultant.

Nichols replied that staff, the communications team, a consultant, and a publisher will assemble the polished version of the report, to be available within a week after final contents are delivered. However, the review period could begin as soon as the contents are delivered.

Augerot recommended only having one version of the report available to the public to avoid confusion.

Nichols replied in that case, the public comment period could open on April 11, 2023.

Wyse asked about the merits of a 45- or 60-day comment period.

Malone felt that the original 10-day period was much too short; many people have not heard about the project. Malone suggested 60 days starting April 4, 2023.

Augerot was concerned about public interest waning, and favored 45 days starting April 11, 2023.

Grogan commented this should work from a communications standpoint.

The Board deliberated and decided to begin the main public comment period on April 11, 2023 after the final report is released, and to accept written comments for 47 days, through May 26, 2023. Staff to compile comments and schedule a Board hearing in early- to mid-June 2023.

[Click to see Exhibit 1](#) {**Exhibit 1: BCTT Updated Schedule**} (filed)

4.3 Benton County Talks Trash Work Group: Project Budget Update –

[Click here to see materials](#) *Darren Nichols, Community Development; Sam Imperati, ICM Resolutions*

Nichols addressed public comments about the BCTT WG budget and process: most of the schedule has been driven by WG members; staff have tried to accommodate the members' interest in reaching agreement. Nichols praised ICM Consulting's facilitation and staff's support. Some continued resistance has slowed the process. As a result, staff anticipate making a final funding request. Some members of the public feel the process has taken too long, others that it has been too short; the County has tried to provide the opportunity to get into the details, which has mainly been successful.

Imperati added now that there is a good outline of final steps, a final cost estimate can be provided. This was a budget-based agreement, not bid-based, subject to negotiation and Board approval. The process has created numerous common understandings and recommendations that did not exist before, providing value for time and money spent.

Wyse commented that the Board was unfazed about extending the timeline; initial estimates were optimistic. It is better to take the time to do something right. Wyse shared a chat message from a community member asking what public information the County could share, such as a copy of the BCTT WG budget.

Nichols offered to share that information on the BCTT website and at the next Board Meeting. In September-December 2022, BCTT spending averaged about \$15-20,000 per month; that amount doubled in January 2023 and has continued at that level through February 2023. Much of the increase is due to shuttle diplomacy and active mediation inherent in the process. The County is spending about 2-3% of annual landfill revenue on this process. Nichols to bring a revised budget to the Board no later than March 21, 2023.

[Click here to see materials](#) **5. Consent Calendar**

5.1 Ratification of the February 28, 2023 Letter of Support to Senators Wyden and Merkley and Congresswoman Hoyle for Congressional Directed Spending Requests

5.2 Approval of the February 21, 2023 Board Meeting Minutes

MOTION: Augerot moved to approve the Consent Calendar of March 7, 2023. Wyse seconded the motion, which **carried 3-0.**

Chair Malone recessed the meeting at 10:09 a.m. and reconvened at 10:21 a.m.

The Board heard items from **7. New Business** and **8. Other**.

Chair Malone recessed the meeting at 10:52 a.m. and reconvened at 11:00 a.m.

6. Public Hearings

PH 1 In the Matter of a Continuation of a Public Hearing and Potential First Reading of Ordinance #2023-0318 Revising Benton County Code (BCC), Chapters 4, 5, and 6 –Vance Croney, County Counsel

[Click here to see materials](#)

Chair Malone opened the Public Hearing at 11:00 a.m.

Staff Report

Counsel explained that at the initial Public Hearing, Augerot asked about adding gender to the list of topics that would trigger rejection of a voter’s pamphlet statement based on bias or discrimination. After reviewing related laws, Counsel and Morales added that item to Chapter 5. During review, Morales noted passages in Chapters 5 and 6 that were redundant or unnecessary. Morales and Counsel decided it would be preferable to return with a more accurate and thoughtful solution for those items. Thus staff request that the Board let this Ordinance die and close the Public Hearing with no action. Morales and Counsel will bring back the changes in no more than a month for a new Public Hearing.

Chair Malone closed the Public Hearing at 11:04 a.m.

Ordinance #2023-0318 died without action.

PH 2 In the Matter of a Continuation of a Public Hearing Regarding an Appeal of Planning Commission Land Use Decision Regarding LU-22-023; Jordan – Inga Williams, Community Development

[Click here to see materials](#)

Chair Malone opened the Public Hearing at 11:05 a.m. for deliberations only; the record was closed at the initial Public Hearing on February 21, 2023.

Wyse stated that as regards dwellings being built, the Board must consider clear and objective standards (C&OS), which now are applied both inside and outside the Urban Growth Boundary. Because Benton County Code (BCC) does not contain a clear and objective definition of commercial farming, Wyse stated that the Board should accept the appeal and overturn the Planning Commission’s denial.

Augerot concurred. The County does not have C&OS; Augerot would like staff to develop C&OS, but at this time, Augerot supported granting the application and overturning the decision of the Planning Commission (PC).

Malone favored supporting the decision of the PC and staff, and did not feel this farm qualified as a commercial farming operation. The appellants' Tax Schedule F showed \$3,300 of annual gross income, the only year mentioned; Malone would like to have seen several Schedule Fs to show the trend. The farm plan was well developed but included no consequences if not followed through on. Malone expressed concern about building houses in Exclusive Farm Use (EFU). The farm is less than 80 acres and makes considerably less than \$80,000 of gross income, therefore it does not qualify as a commercial farming operation.

Augerot felt that the State's safe harbor criteria are not acknowledged in BCC, and the County has been inconsistent in applying its own code. In one case, the County accepted a hazelnut orchard on a less than 80-acre parcel with no current income stream and some off-farm income, without asking any questions about that income, yet in this case, the County did question the income and nitpicked income sources. Augerot was uncomfortable with BCC pushing all farms to be 80 acres or larger and to be large mainstream commercial farms, rather than sustainable farms. Augerot strongly favored the farming approach being taken in this case, though that is not part of the criteria; using rotational grazing and active pasture management should be encouraged. However, Augerot's reason to uphold the appeal is the lack of C&OS. As the County works on changing code, the Board also needs to discuss what types of agriculture to encourage, and how to do so within the statewide land use framework.

Wyse agreed with Augerot. Wyse generally wants to protect rural character and keep density in cities, but in this case, the County does not have C&OS. That needs to change.

MOTION: Based on the evidence in the record, and upon hearing testimony on the issue, Wyse moved to approve the applicant's appeal, thereby overturning the original notice of decision on file number LU-22-023. Augerot seconded the motion, which **carried 2-1** (Malone opposed).

Wyse recommended that staff look at other places in BCC that are missing C&OS.

Chair Malone closed the Public Hearing at 11:14 a.m.

Malone agreed there is a need for clarity in BCC.

Nichols agreed that the County has not been consistent in its application of code, and the law has changed recently to require C&OS for the siting of housing in resource zones. The Board requested C&OS for farm-help dwellings in resource zones, and clarity in development code across BCC. Nichols strongly supported both, but was not sure where to find staff capacity. Nichols requested time to evaluate and return with a proposal to address the first request. Lack of C&OS in BCC in general creates challenges for the public and staff. Community Development may have some funding resources to seek outside help revising BCC; Nichols requested time to investigate that. There are many pressures on finding a place to live in Benton County, so wanting to live on resource land is understandable. At the same time, there is a finite supply of agricultural and forest land and a future of climate uncertainty.

The Board supported Nichols returning with a staff recommendation as soon as practical.

Counsel noted Williams and Nichols will need to bring back an Order to memorialize the approval of the application on March 21, 2023. This will return as a regular agenda item, not a Public Hearing.

7. New Business

7.1 Resolution #R2023-003 Authorizing a Financing of Real and Personal Property in a Principal Amount Not to Exceed \$36,000,000 and Related Matters – Rick Crager, Financial Services

[Click here to see materials](#)

Crager requested authorization to obtain financing for the new Courthouse and District Attorney's Office. The County fund balance has generally stayed stable since the last reporting in summer 2022. The County can borrow up to \$36 million and still maintain a positive threshold of fund balance to operating expenses. JSIP projections show a \$34 million borrowing cost, but details still need to be negotiated with the Oregon Judicial Department, so staff were conservative in asking for up to \$36 million. The Resolution authorizes Crager and the County Administrator to negotiate and execute a financing agreement, providing discretion on details. The agreement will likely consist of tax-exempt bonds, but another tool could be used if it offered a better payout and interest rate. The Resolution also authorizes use of bond counsel Hawkins Delafield & Wood. Staff are considering investment banking companies D. A. Davidson regarding pricing and Piper Sandler as lead underwriter. Interest rates have remained fairly stable, even slightly down; Crager added a hundred basis point cushion. The County could have less debt service than forecast.

Wyse asked Crager to keep the Board informed if borrowing needed to exceed \$34 million.

Crager affirmed. The goal is to acquire the financing before June 30, 2023, or possibly in August 2023.

Augerot asked if a local sale was still being considered.

Crager replied that tax-exempt bonds usually offer better pricing, but Crager has already asked the financial advisor about exploring local investors. Private entities are sometimes less willing to have such a long-term bond. Best price is the bottom line.

MOTION: Augerot moved to approve Resolution #R2023-003 authorizing a financing of Real and Personal Property in a Principal Amount Not to Exceed \$36,000,000. Wyse seconded the motion, which **carried 3-0.**

7.2 Letter of Support for Corvallis Housing First (CHF) Grant Application to Oregon Housing and Community Services – Joe Kerby, County Administrator

[Click here to see materials](#)

Kerby explained that CHF is applying for funding for 46 affordable housing units at Third Street Commons, next to the County's Avery Complex. CHF requested a letter of support from the Board. CHF and staff have worked through the issue of proximity to the County's fuel tank.

Malone noted that CHF has a good track record. This project will triple the size of the operation.

MOTION: Augerot moved to approve issuing the letter of support for Corvallis Housing First's grant application to the Oregon Housing and Community Services Department to permanently fund 46 safe and affordable housing units at Third Street Commons. Wyse seconded the motion, which **carried 3-0.**

8. Other

Augerot asked if another Commissioner could attend tonight's Alsea Town Hall.

Malone and Wyse were not able to attend.

Augerot mentioned there is a Commissioners' Corner event in the Community of Alsea on April 17, 2023. Augerot shared there has been considerable staff discussion of whether to make a County Emergency Declaration on Homelessness to qualify for part of the Governor's funds for homelessness emergency. The deadline to submit projects is March 10, 2023. After contacting others around the state, Benton County staff recommend that the County not pursue a declaration. It would be cumbersome due to the timeline for using funds and allowable uses, plus the requirement to participate in a regional Emergency Operations Center. The County will have access to the remainder of State funds through Oregon Housing & Community Services and the Rural Oregon Continuum of Care (ROCC), working with Community Services Consortium (CSC) to access those funds and do some Linn-Benton-Lincoln County coordination. The legislature added \$27 million to cover the 26 counties outside the declaration, including Benton.

Wyse asked if staff asked Augerot to bring that message forward, rather than staff presenting. Wyse recalled that the Board asked staff for more information at a previous meeting.

Augerot replied that the Board asked for a cost-benefit analysis. Yesterday Augerot received Rebecca Taylor's email regarding what staff learned on March 3, 2023. Due to the timeline, the Board would have had to consider the matter today. The consensus of Emergency Manager Bryan Lee, CSC, and other County and City of Corvallis staff is that it is not worthwhile to pursue an emergency declaration at this time.

Wyse respected that conclusion. Wyse requested that staff share such information with all three Commissioners in future.

Malone noted that the year's first Legislative Breakfast event was held on April 4, 2023.

Wyse suggested offering a virtual option for future Legislative Breakfasts.

The Board deliberated and decided to schedule virtual options for the remaining events, technology permitting. Kerby to follow up with staff.

Wyse asked if the Board wished to invite the Sheriff and District Attorney to the County's table at the Celebrate Corvallis event.

The Board confirmed. Board's staff to issue invitations.

9. Adjournment

Chair Malone adjourned the meeting at 11:20 a.m.

DocuSigned by:

05666320C1A2400
Pat Malone, Chair

DocuSigned by:

736EA4FEEB0B0496...
Erika Milo, Recorder

* NOTE: Items denoted with an asterisk do NOT have accompanying written materials in the meeting packet.



Board of Commissioners

Office: (541) 766-6800

Fax: (541) 766-6893

4500 SW Research Way

Corvallis, OR 97330

co.benton.or.us

AGENDA REV 1

(Chair May Alter the Agenda)

BENTON COUNTY BOARD OF COMMISSIONERS

Tuesday, March 7, 2023, 9 AM

How to Participate in the Board of Commissioners Meeting			
In-Person	Zoom Video	Zoom Phone Audio	Facebook LiveStream
Kalapuya Building 4500 Research Way Corvallis, OR	Click for Zoom link	Dial 1(253) 215-8782	Click for Facebook LiveStream link
	Zoom Meeting ID: 884 1212 7621		
	Zoom Passcode: 747705		

1. Opening

- 1.1 Call to Order
- 1.2 Introductions
- 1.3 Announcements

2. Review and Approve Agenda

3. Comments from the Public

Time restrictions may be imposed on public comment, dependent on the business before the Board of Commissioners. Individual comment may be limited to three minutes

4. Work Session

- 4.1 15 minutes – COVID Update from Department Operation Center – *April Holland, Health Services*
- 4.2 15 minutes – Update from Benton County Talks Trash Solid Waste Process Workgroup – *Darren Nichols, Community Development*
- 4.3 15 minutes - Benton County Talks Trash Work Group: Project Budget Update – *Darren Nichols, Community Development; Sam Imperati, ICM Resolutions*

The Board will take a brief recess between the Work Session and Business Meeting

The Board of Commissioners may call an executive session when necessary pursuant to ORS 192.660. The Board is not required to provide advance notice of an executive session. However, every effort will be made to give notice of an executive session. If an executive session is the only item on the agenda for the Board meeting, notice shall be given as for all public meetings (ORS 192.640(2)) and the notice shall state the specific reason for the executive session as required by ORS 192.660.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the Board of Commissioners Office, (541) 766-6800.

BUSINESS MEETING

5. Consent Calendar

- 5.1 Ratification of the February 28, 2023 Letter of Support to Senators Wyden and Merkley and Congresswoman Hoyle for Congressional Directed Spending Requests
- 5.2 Approval of the February 21, 2023 Board Meeting Minutes

Public Hearings

(Hearings are heard at 11:00 a.m., time certain or as soon thereafter as the matter may be heard)

Those wishing to speak should sign the "Public Comment" sign-in sheet – Thank you.

- PH 1 In the Matter of a Continuation of a Public Hearing and Potential First Reading of Ordinance 2023- 0318 Revising Benton County Code (BCC), Chapters 4, 5, and 6 – *James V. Morales, Records & Elections*
- PH 2 In the Matter of a Continuation of a Public Hearing Regarding an Appeal of Planning Commission Land Use Decision Regarding LU-22-023; Jordan – *Inga Williams, Community Development*

7. New Business

- 7.1 Resolution R2023-003 Authorizing a Financing of Real and Personal Property in a Principal Amount Not to Exceed \$36,000,000 and Related Matters – *Rick Crager, Financial Services*
- 7.2 Letter of Support for Corvallis Housing First's Grant Application to Oregon Housing and Community Services – *Joe Kerby, County Administrator*

8. Other

ORS 192.640(1)" . . . notice shall include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects."

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WORK SESSIONS

BOC Agenda Checklist Master

Agenda Placement and Contacts

Suggested Agenda Date 02/21/23

View [Agenda Tracker](#)

Suggested Placement * BOC Tuesday Meeting

Department * Board of Commissioners

Contact Name * Joe Kerby

Phone Extension * 5417666394

Meeting Attendee Name * Darren Nichols, Sam Imperati

Agenda Item Details

Item Title * Benton County Talks Trash Work Group: Detailed project budget update

Item Involves * Check all that apply

- Appointments
- Budget
- Contract/Agreement
- Discussion and Action
- Discussion Only
- Document Recording
- Employment
- Notice of Intent
- Order/Resolution
- Ordinance/Public Hearing 1st Reading
- Ordinance/Public Hearing 2nd Reading
- Proclamation
- Project/Committee Update
- Public Comment
- Special Report
- Other

Estimated Time * 15 minutes

Board/Committee Involvement * Yes
 No

**Name of
Board/Committee**

Benton County Talks Trash Work Group

Advertisement*

Yes

No

Issues and Fiscal Impact

Item Issues and Description

**Identified Salient
Issues***

The County's process facilitator will provide the Board with a detailed project and budget update, as well a detailed estimate of resources needed to complete work under the Board's adopted Charter.

Options*

Provide direction and approval for remaining work tasks and budget.

Fiscal Impact*

- Yes
- No

**Fiscal Impact
Description***

The process facilitator will prepare and present a detailed overview of resources expenditures to date and a detailed estimate of required resources remaining to complete work under the Charter.

2040 Thriving Communities Initiative

Mandated Service?* Yes No

2040 Thriving Communities Initiative

Describe how this agenda checklist advances the core values or focus areas of 2040, or supports a strategy of a departmental goal.

To review the initiative, visit the website [HERE](#).

Values and Focus Areas

Check boxes that reflect each applicable value or focus area and explain how they will be advanced.

Core Values*

Select all that apply.

- Vibrant, Livable Communities
- Supportive People Resources
- High Quality Environment and Access
- Diverse Economy that Fits
- Community Resilience
- Equity for Everyone
- Health in All Actions
- N/A

Explain Core Values Selections*

Solid Waste and Disposal impact nearly every aspect of Benton County - from environmental to economic to social - including the Core Values of the 2040 Healthy Communities initiative.

Focus Areas and Vision*

Select all that apply.

- Community Safety
- Emergency Preparedness
- Outdoor Recreation
- Prosperous Economy
- Environment and Natural Resources
- Mobility and Transportation
- Housing and Growth
- Arts, Entertainment, Culture, and History
- Food and Agriculture
- Lifelong Learning and Education
- N/A

Explain Focus Areas and Vision Selection*

While solid waste and disposal are not directly listed in the Focus Areas, those issues are part of the County's adopted Comprehensive Plan and are a critically important factor in the County's sustainable future.

Recommendations and Motions

Item Recommendations and Motions

Staff

Recommendations*

Staff recommends that the Board receive an update from the County's third-party process facilitator, then provide feedback and support appropriate to complete the work under the Board's adopted Charter.

Meeting Motions*

I move to ...

Based on information presented by the County's process facilitator, and in support of the Board's commitment to complete work outlined in the adopted Charter, I move to

Attachments, Comments, and Submission

Item Comments and Attachments

Attachments

Upload any attachments to be included in the agenda, preferably as PDF files. If more than one attachment / exhibit, please indicate "1", "2", "3" or "A", "B", "C" on the documents.

Comments (optional) Sam Imperati, the process facilitator will prepare and present detailed project and budget updates through the completion of the work group's February 17, 2023, Draft #4 Findings and Recommendations Report.

If you have any questions, please call ext.6800

**Department
Approver**

JOE KERBY

<p>1.</p> <p><u>Department Approval</u></p> <p>Comments</p> <p>Signature </p>	<p>4.</p> <p><u>County Administrator Approval</u></p> <p>Comments</p> <p>Signature </p>
<p>2.</p> <p><u>Counsel Approval</u></p> <p>Comments</p> <p>Signature </p>	<p>5.</p> <p><u>BOC Final Approval</u></p> <p>Comments</p> <p>Signature </p>
<p>3.</p> <p><u>Finance Approval</u></p> <p>Comments</p> <p>Signature </p>	<p>6.</p>

CONSENT CALENDAR

BOC Agenda Checklist Master

Agenda Placement and Contacts

Suggested Agenda Date 03/07/23

View [Agenda Tracker](#)

Suggested Placement * BOC Tuesday Meeting

Department * Finance

Contact Name * Rick Crager

Phone Extension * 6246

Meeting Attendee Name * Rick Crager

Agenda Item Details

Item Title * February 28, 2023 Letter of Support to Senators Wyden and Merkley and Congresswoman Hoyle for Congressional Directed Spending Requests

Item Involves * Check all that apply

- Appointments
- Budget
- Contract/Agreement
- Discussion and Action
- Discussion Only
- Document Recording
- Employment
- Notice of Intent
- Order/Resolution
- Ordinance/Public Hearing 1st Reading
- Ordinance/Public Hearing 2nd Reading
- Proclamation
- Project/Committee Update
- Public Comment
- Special Report
- Other

Estimated Time * 5 minutes

Board/Committee Involvement * Yes
 No

Advertisement*

Yes

No

Issues and Fiscal Impact

Item Issues and Description

Identified Salient Issues *

Extending support for the following Fiscal Year 2024 Congressional Directed Spending Requests:

1. Rural Water and Sewer Infrastructure Improvements
2. Monroe Health Center
3. Regional Public Safety Radio Infrastructure
4. Jackson-Frazier Wetland Boardwalk
5. Fairgrounds Exhibit Hall
6. SW 53rd Overcrossing

Options *

Ratify the letter of support as written.

Fiscal Impact *

- Yes
- No

2040 Thriving Communities Initiative

Mandated Service?* Yes No

2040 Thriving Communities Initiative

Describe how this agenda checklist advances the core values or focus areas of 2040, or supports a strategy of a departmental goal.

To review the initiative, visit the website [HERE](#).

Values and Focus Areas

Check boxes that reflect each applicable value or focus area and explain how they will be advanced.

Core Values* Select all that apply.

- Vibrant, Livable Communities
- Supportive People Resources
- High Quality Environment and Access
- Diverse Economy that Fits
- Community Resilience
- Equity for Everyone
- Health in All Actions
- N/A

Explain Core Values Selections* N/A

Focus Areas and Vision* Select all that apply.

- Community Safety
- Emergency Preparedness
- Outdoor Recreation
- Prosperous Economy
- Environment and Natural Resources
- Mobility and Transportation
- Housing and Growth
- Arts, Entertainment, Culture, and History
- Food and Agriculture
- Lifelong Learning and Education
- N/A

Explain Focus Areas and Vision Selection* N/A

Recommendations and Motions

Item Recommendations and Motions

Staff Recommendations* Staff recommends ratifying the letter of support for the Congressional Directed Spending requests.

Meeting Motions* I move to ...
... ratify the letter of support for the Congressional Directed Spending requests.

Attachments, Comments, and Submission

Item Comments and Attachments

Attachments

Upload any attachments to be included in the agenda, preferably as PDF files. If more than one attachment / exhibit, please indicate "1", "2", "3" or "A", "B", "C" on the documents.

BOC CDS LOS.pdf

152.08KB

Comments (optional)

The attached letter does not contain the Commissioners signatures; we are currently waiting for them to sign via DocuSign (2/28). I can provide an updated copy of the signed letter once I have received it.

If you have any questions, please call ext.6800

**Department
Approver**

RICHARD CRAGER

1.

Department Approval

Comments

Signature

Rick Crager

2.

Counsel Approval

Comments

Signature

Vance H. Croney

3.

County Administrator Approval

Comments

Signature

Hanna Kwiatkowski

4.

BOC Final Approval

Comments

Signature

Amanda Makepeace



Board of Commissioners

Office: (541) 766-6800

Fax: (541) 766-6893

4500 SW Research Way.
Corvallis, OR 97333

co.benton.or.us

February 28, 2023

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Merkley
United States Senate
531 Hart Senate Office Building
Washington, DC 20510

The Honorable Val Hoyle
United States House of Representatives
1620 Longworth House Office Building
Washington, DC 20515

Dear Senator Wyden, Senator Merkley, and Congresswoman Hoyle:

On behalf of Benton County, we are pleased to extend our support for the following FY 2024 Congressionally Directed Spending (CDS) requests: Rural Water and Sewer Infrastructure Improvements, Monroe Health Center, Regional Public Safety Radio Infrastructure, Jackson-Frazier Wetland Boardwalk, Fairgrounds Exhibit Hall, and the SW 53rd Overcrossing. If selected, the County is prepared to provide local match required for each project submission and deliver the projects within required timelines. Each of these requests are shovel ready and can be initiated quickly upon receipt of funding.

Rural Water and Sewer Infrastructure Improvements: Benton County is requesting funding to replace aging water and sewer infrastructure in rural communities to ensure their basic needs are being met in a safe, clean, and efficient manner. Benton County oversees five utility districts, the infrastructure of each of which is aging and at varying levels of deteriorating condition. A 2023 preliminary design report identified critical system component improvements needed in four districts: Alpine Sewer, Alsea Sewer, Alsea Water, and Hidden Valley water. These districts are located in rural, low-income, unincorporated cities with very strained resources. Federal investment, combined with over \$500,000 in County matching funds, will ensure these communities have safe and resilient infrastructure for decades to come.

Monroe Health Center: In 2004, Benton County opened the Community Health Centers of Benton and Linn Counties, joining a national network of community health centers providing high quality accessible care to people in need. Our health centers focus on reaching vulnerable populations by addressing financial, geographic, language, and

cultural barriers to care. A crucial component of achieving these goals is ensuring each community has access to adequate healthcare facilities.

The City of Monroe is a small but diverse rural community located approximately 17 miles south of Corvallis with a population just over 600. The Monroe Health Center is a School-Based Health Center adjacent to Monroe Grade School. It's a small, outdated modular building that can no longer accommodate the growing healthcare needs of the community. Benton County is requesting funding to build a new Health Center on the existing site, dramatically increasing the available square footage to facilitate more equipment and staff and allow more healthcare services to be provided onsite.

Regional Public Safety Radio Infrastructure: Benton County is requesting funding to install antennas and purchase radios necessary to improve public safety and emergency response. A significant challenge with Benton County's radio communications is the lack of interoperability and situational awareness caused by law enforcement and Fire/EMS utilizing different radio systems. Law enforcement and public works use 700 Megahertz (MHz) frequencies while all Fire/EMS agencies utilize very high frequency (VHF) systems. Furthermore, many parts of the rural county have "dead-zones" in which no radio communications are available. Federal funding would support the installation of three 700MHz antennas and purchase of new radios to eliminate "dead-zones" and achieve interoperability between law enforcement and Fire/EMS.

Jackson-Frazier Wetland Boardwalk: Jackson-Frazier Wetland (JFW) is a 144-acre natural area in NE Corvallis that is owned and managed by Benton County. Prior to Benton County's acquisition in 1993, the land was used for agriculture which altered the natural features substantially. Over the past 30 years, Benton County and community partners and volunteers have worked tirelessly to restore the wetland to its natural splendor. The award-winning site is valued for its biodiversity and used for education, research, and public use.

A critical component of public access is a 2/3-mile-long wooden boardwalk which winds through the wetland, allowing visitors to see many plant communities and habitats. This boardwalk, constructed in 1997, was funded and built through efforts of dedicated volunteers. Sadly, it has now deteriorated to the extent that it is no longer safely accessible for some users and is a constant drain on County maintenance resources. Recognizing this, Benton County, its partners, and volunteers are undertaking an effort to replace the boardwalk. Together they have already raised over \$1.2 million in state funding and private donations and are requesting \$800,000 in federal funding to complete the project. The new boardwalk will follow roughly the same footprint as the existing structure and all environmental and permitting work has been completed.

Fairgrounds Exhibit Hall: Benton County is requesting federal funding to transform the Benton County fairgrounds into a regional Exhibit Hall to support increased tourism and generate economic benefits for the community. An independent market research study confirmed the area lacks both large exhibition space and quality meeting and banquet spaces. The existing Fairgrounds has strong competition from horse event facilities in the market area and the dirt floor of the current Benton Arena is unappealing for exhibitions, non-horse sporting events, concerts, trade shows, and banquets.

A new exhibit hall is expected to generate a total annual economic impact between \$1.2 million and \$2.2 million while supporting 10-17 full-time jobs for hotels, restaurants, shops, and other businesses that serve out-of-area-visitors. Converting the arena into a regional exhibition Hall will ensure the County Fairgrounds continues to be an essential community meeting and event space by adapting to the changing needs of the community.

SW 53rd Overcrossing: Benton County is requesting funding to complete engineering and design of a railroad overcrossing over SW 53rd Street. SW 53rd currently goes under the railroad and the trestle supporting the railroad bridge is located between the two travel lanes causing a safety hazard. Also, the undercrossing frequently floods and ices over in the winter, causing additional safety hazards to the driving public and the railroad operators. In addition, the undercrossing has a vertical clearance limit of 13'6", limiting freight ravel. The requested funding would produce a shovel ready project consisting of a realignment and overcrossing of 53rd Street, east of the existing alignment.

Thank you for your consideration of these important requests.

Sincerely,

BENTON COUNTY BOARD OF COMMISSIONERS

DocuSigned by:
Pat Malone 03/01/2023
05696330C1A2400
Pat Malone, Chair

DocuSigned by:
Xanthippe Augerot 03/01/2023
829B24BF3C13426...
Xanthippe Augerot, Vice Chair

DocuSigned by:
Nancy Wyse 03/01/2023
85593F4F843F4FD...
Nancy Wyse, Commissioner

**MINUTES OF THE MEETING
BENTON COUNTY BOARD OF COMMISSIONERS**

Zoom link: <https://us06web.zoom.us/j/88934077467?pwd=ZmhVWC9DejVaSlFLQ0FpdFlZdk5qUT09>

Livestream: <http://facebook.com/BentonCoGov>

Tuesday, February 21, 2023

9:00 a.m.

Present: **Pat Malone**, Chair; **Xanthippe Augerot**, Commissioner; **Nancy Wyse**, Commissioner; **Vance Croney**, County Counsel; **Joe Kerby**, County Administrator

Staff: **Laurel Byer**, **Darren Nichols**, **Greg Verret**, **Inga Williams**, Community Development; **Cory Grogan**, Public Information Officer; **Suzanne Hoffman**, **April Holland**, **Jasper Smith**, Health; **Nick Kurth**, JSIP; **Gordon Kurtz**, Public Works; **Adam Loerts**, Information Technology; **Amanda Makepeace**, BOC Staff; **Erika Milo**, BOC Recorder; **James V. Morales**, Records & Elections; **Jef Van Arsdall**, Sheriff; **Matt Wetherell**, Juvenile Department

Guests: **Brittany Beyer**, **Colin Bussell**, **Dawn Gallagher**, Solarity; **Cynthia Crosby**, **Ken Eklund**, **Claire Fulsher**, **Kevin Fulsher**, **Bill Gellatly**, **Connie Jordan**, **Bob Larkin**, **Debbie Palmer**, residents; **John Harris**, Horsepower Productions; **Raymond Hill**, **Dan Oleson**, LS Networks, **Sam Imperati**, ICM Resolutions; **Tracy Lang**, **James Thom**, HP Corvallis; **Hyatt Lytle**, Corvallis City Councilor; **Andree Phelps**, Attorney; **Mike Reeder**, Attorney; **James Rennard**, Pioneer Connect; **Alex Powers**, Mid-Valley Media; **Jennifer Williams**, Corvallis Advocate

1. Opening:

1. Call to Order

Chair Malone called the meeting to order at 9:01 a.m.

2. Introductions

3. Announcements

2. Comments from the Public

**Bill Gellatly, Corvallis resident:* Gellatly, a retired mechanical engineer, asked the Board to consider these questions regarding Coffin Butte Landfill (CBL):

- Has there been a supplier analysis of Republic Services as if evaluating a new operation? How does RS compare with other suppliers in quality, technology, or environmental compliance issues?
- Has the Board asked RS to provide plans to address long-term problems of water treatment or ways to drive recycling issues back to the suppliers?
- Is there a plan to ensure that the substantial franchise fee increases will assure continuous improvement of operations at CBL? Might some of the franchise fee increases be tied to RS meeting improved rates of returning recycled plastic materials to the supply stream?

{Exhibit 1: Gellatly Letter on Coffin Butte Landfill}

Debbie Palmer, resident: Palmer stated it was her understanding that the County would hire an independent third party to help create a request for proposals for the Sustainable Materials

Management Plan. If so, Palmer asked that the County solicit information from the community on who the consultant should be.

3. Review and Approve Agenda

The following item was removed from the agenda:

4.4 Benton County Talks Trash Budget Review and Request – Darren Nichols, Community Development; Sam Imperati, ICM Resolutions

The agenda number for **Broadband 101** was corrected from 4.5 to 4.6.

4. Work Session

4.1 *Letter of Support Regarding CHIPS (Creating Helpful Incentives to Produce Semiconductors) Act Application – James Thom, Director of Operations, HP Corvallis

Thom described the 2022 CHIPS Act, which offers \$52 billion to incentivize domestic manufacturing capacity. The CHIPS Act request for proposals is expected this week; HP intends to apply by May 2023 and would like to include letters of support from the Board and others. The HP Corvallis campus is the only HP semiconductor processing and assembly facility in the United States and is the most advanced microfluidics facility in the world. HP will seek funding for new advancements in printing technology and possibly other projects depending on funding requirements. HP will also apply for an enterprise zone in Benton County in March 2023, working with Jerry Sorte, Corvallis-Benton County Economic Development Office. Thom can provide information on HP utility usage and wastewater. Thom invited the Board to tour the facility and asked what other topics the Board would like addressed.

Augerot noted that if HP Corvallis brings in additional employees, housing will be a challenge, and asked how HP could help forge solutions for housing issues.

Wyse noted that an enterprise zone includes tax incentives for HP, and asked how that would impact the government.

Thom replied the Federal government is evaluating CHIPS applications based on community, city, county, and state support, and wants to see state financial commitment, which Thom is working on through Business Oregon. HP Corvallis is also part of an e-commerce zone.

Augerot asked if an enterprise zone is usually limited duration.

Thom confirmed a zone usually lasts three to five years. HP will probably request five years. There is potential for renewal based on job and wage criteria.

Malone asked what it would look like if HP succeeds in this initiative.

Wyse shared a community member chat question asking how much land HP has and whether HP will need more.

Thom replied that all work will be done within HP's existing buildings.

Augerot shared that Linn-Benton Community College (LBCC) is considering what programs to provide to support the local economy; Augerot mentioned to LBCC that HP was interested in this expansion.

Thom replied that HP helped design and provides instructors for the LBCC electronics program; HP hires interns from the program every year and actively recruits from it.

Responding to a question from Wyse, Thom shared that HP is requesting the letter of support in March or April 2023, before the early May 2023 application.

{Exhibit 2: CHIPS Presentation}

**4.2 COVID Update from Department Operation Center – April Holland,
Health Services**

Holland reported that 250 people were hospitalized with COVID-19 statewide as of February 13, 2023, an increase from 219 two weeks ago, after a low of 203 on February 4, 2023. The last peak was 370 hospitalizations statewide in November 2022. As of yesterday, 153 people were boarding (waiting for a bed) in hospitals statewide, down from a peak of 355 at the end of 2022. About 5% of occupied Intensive Care Unit beds are filled with COVID-19 patients statewide; available beds have returned to levels seen before the end of 2022 surge. Variant XBB1.5 is advancing and estimated to make up over half of new infections in the Pacific Northwest. XBB1.5 does not seem to cause more severe disease than the original Omicron strain, but is more contagious. Reported COVID-19 cases are low in BC, as people are mainly using rapid antigen tests at home; it is estimated that about 5% of cases are reported. The week of February 5, 2023, Benton County had 77 reported cases, for a seven-day rate of 83 cases per 100,000 residents. Last week's testing positivity rate was 16%, which is high and indicates more cases are likely present, up from 11.7% two weeks ago. Wastewater signals continue to be elevated. Holland encouraged all to get the bivalent booster. About 28% of BC residents have received the booster, including 83% of residents ages 65 and up. Staff have been distributing the figures from the previous report about bivalent booster immunity through social media and partner emails. Tests are still widely available. If you test positive, consider getting assessed for treatments, especially if you are at high risk.

The Federal COVID-19 Emergency Declaration ends May 11, 2023. During the emergency, the Federal government extended health coverage, long-term services and support, and food benefits. Some of these temporary programs end soon. Oregon Health Authority and Oregon Department of Human Services are working to preserve benefits for as many people as possible and ensure coordination of additional resources. Staff should soon learn more about specific funding for vaccines, personal protective equipment, and tests for local Public Health, such as whether these can be purchased with remaining COVID-19 funds, or if additional funding may be coming.

Augerot noted that cold weather is expected again this week and staff are preparing inclement weather sheltering.

Malone asked about vaccination options for people who have not had the full series or the bivalent booster.

Holland replied that providers, pharmacies, and SamCare Express locations offer the primary series and bivalent boosters. The County COVID-19 information line is still available.

4.3 *Update from Benton County Talks Trash (BCTT) Solid Waste Process Work Group (WG) – Darren Nichols, Community Development

Regarding Palmer’s comment, Nichols noted that a Sustainable Materials Management Plan (SMMP) consultant is needed, but candidates have not been discussed yet. The BCTT WG will help advise on the scope of the SMMP and consultant criteria. Nichols did not expect to use a third party to help make the selection.

Imperati shared an updated WG schedule (exhibit 3):

- March 1, 2023: Subcommittees will create report draft five, to be issued March 3, 2023.
- March 4-5, 2023: public survey opens, focusing on the public’s reactions to the subcommittee recommendations.
- March 9, 2023: public virtual open house.
- March 13, 2023: final draft six to be published with survey results.
- March 17, 2023 staff and Imperati start assembling final report.
- March 24, 2023: final report to Board, to be published the week of March 26, 2023.
- April 18, 2023: WG to present at Board initial work session on this topic.

Imperati and Malone expressed appreciation for the significant time commitment that WG members have put in.

Nichols concurred. Members contributed well over 2,000 hours of volunteer time. Nichols also thanked staff including Grogan, JonnaVe Stokes (Communications), and Sarah Siddiqui (Equity, Diversity, & Inclusion) for helping prepare the open house. The communications team plans to translate materials into Spanish and American Sign Language.

{Exhibit 3: Updated BCTT Schedule}

4.4 Benton County Talks Trash Budget Review and Request – Darren Nichols, Community Development; Sam Imperati, ICM Resolutions

This item was postponed.

4.5 *Update from Justice System Improvement Program – Nick Kurth, Justice System Improvement Program Manager

Kurth reviewed recent JSIP milestones. January 2023: final Community Advisory Committee meeting, Board’s bond package decision. February 2023: staff submitted the bond measure title, which is under review and should be accepted shortly. The final JSIP Executive Committee meeting was last week, followed by an open house. Counsel to submit the bond measure/explanatory statement to the Board today (item 8.2). Remaining milestones: February/March 2023: submit materials for safe harbor review, community informational events. April 2023: mailer sent to residents. May 16, 2023: bond measure vote.

Kurth shared feedback on the open house; venue and format were well received, with considerable community interest and demand. This was the sixth large JSIP community event since mid-2021. Staff have held more than 50 small group presentations/meetings, which are ongoing. The open house had at least 200 community participants plus electeds and staff, with strong media coverage; 82 questionnaires were filled out. Kurth thanked Lindsey Goodman (JSIP), Grogan, Brenda Downum (Communications), Stokes, and Marriah De La Vega (Board’s Office).

Grogan described media coverage of the open house, including television, radio, and newspapers. The County advertised in local media and sent a mailer to all County residents as well as email lists and e-newsletters. Social media coverage was in the thousands.

Malone praised the event format and asked if this was the last large format JSIP presentation.

Kurth confirmed, but public engagement will continue. Kurth showed a video of the open house event. Staff and the Board thanked Harris for help with the video.

Augerot praised the event and the thoughtful questions from community members. Augerot felt there was a lot of community support and felt very optimistic.

Van Arsdall echoed feeling very optimistic.

Van Arsdall, Kerby, and the Board thanked staff.

{Exhibit 4: JSIP Open House Video}

Chair Malone recessed the meeting at 10:16 a.m. and reconvened at 10:22 a.m.

4.6 Broadband 101 – Adam Loerts, Information Technology Services; Brittany Beyer, Dawn Gallagher, Solarity Representatives

Loerts explained that in 2021, a consortium of counties convened a Broadband Action Team (BAT), partnering with Oregon Cascades West Council of Governments (COG), which commissioned Solarity to study broadband access in the mid-Willamette Valley.

Beyer introduced Solarity, which provides broadband planning, mapping, outreach, and grant application assistance. Broadband means an always-on high-speed internet connection with specific technical specifications. Schools, libraries, hospitals, and municipality buildings need to be wired to 1 gigabyte capacity. Broadband providers depend on subscriptions, so suburban and especially rural areas are usually underserved. Beyer emphasized adoption, affordability, and access. Adoption: even if the infrastructure is there, people may need assistance to use or afford the service. Affordability: there is some Federal low-income assistance to reduce internet cost. Affordability is a bigger priority in urban areas, while access is a bigger priority in rural areas.

Broadband is an equity issue. Since the pandemic, everyone needs access to remote education and telemedicine. Emergency services and businesses are now highly tech-dependent. Many jobs and social services are only accessible online. Areas that provide return-on-investment have already been served; the remainder need public-private partnerships or provider incentives to close the gap. Many grants require matching funds. Beyer recommended reading the Oregon Broadband Strategic Plan from the Oregon Broadband Office (OBO).

COG tasked Solarity to create a Broadband Strategic Plan by the end of 2023. Solarity began with outreach in 2022 about the statewide program Faster Internet Oregon (FIO), which allows users to do home speed tests. Beyer showed a map of internet speed variation in the County, based on FIO data. Best speeds are in the City of Corvallis. A United States Department of Agriculture (USDA) \$25 million grant was just awarded to Pioneer Telephone to improve service in the area between northwest Benton and northeast Lincoln County. Monroe Telephone

Company is a protected area under USDA. Long-term strategy needs to focus on areas that do not have those solutions.

The Infrastructure Investment and Jobs Act (IIJA) passed in 2021, including \$42 billion for broadband nationwide. Oregon has already received \$5 million for planning and will receive \$550 million for infrastructure and related grants and \$782,193 for digital equity work. Grants will most likely be issued mid-2024. OBO will oversee about \$120 million in US Treasury Capital Projects Funds for Technical Assistance Grants to be awarded spring 2023, and Broadband Infrastructure Grants available fall 2023. Other sources: USDA ReConnect (November 2023 deadline), Economic Development Authority (Federal grants for smaller projects), and American Rescue Plan Act (ARPA).

The Broadband Equity, Access & Deployment (BEAD) five-year plan and Economic Development Authority five-year plan will probably be approved in fall 2023; then each state must submit a plan to allocate its IIJA grant. Municipalities can prepare for potential broadband infrastructure builds by studying current coverage, considering a County-level point of contact, and working on matching funds. Counties can also form a county-level BAT or other structure, and consider applying for a Broadband Technical Assistance Program level one project.

In March 2023, Solarity will deliver a near-term broadband funding matrix to COG. Outreach, surveys, and speed tests will continue. Rapid Design Studies will show the cost to close the gap in areas of concern. Solarity recommends that County leaders support the FIO speed test initiative, align interested parties, and consider funding options.

Loerts to send more information, including talking points to share with other electeds.

Augerot expressed concern about uneven coverage in Corvallis, in addition to gap areas, and asked how much Corvallis had engaged with the contract.

Loerts replied that Corvallis is not part of the BAT, but had been involved in some community efforts.

Augerot noted Corvallis is a critical partner, with the majority of Benton's population. Service is also a matter of economic competitiveness, such as being able to support the HP buildout.

Loerts stated that this study will examine options as well as availability. This data is focused on rural broadband availability, but will provide information that also helps urban areas.

Beyer added that each County asked Solarity to work on a business-specific survey. If there are areas of concern in Corvallis, make sure internet users are taking speed tests, which allow Solarity to analyze the information and take that to providers. The overall strategy will be about closing gaps between urban areas, but city hubs will not be forgotten.

Malone asked if IIJA funding goes to states, after which counties compete for grants.

Beyer confirmed.

Loerts explained the OBO has expanded to help address this issue and has a larger committee working on how to divide funding among counties. The mapping will be a living document of broadband as a utility, and will give the County a new information tracking resource.

Malone asked about the relationship between the Benton County Information Technology (IT) Department and COG regarding grant applications.

Loerts is a member of the regional BAT and provides information to the IT team. COG is taking the lead on working with Solarity, but BAT will work with Solarity's plan, develop strategies, and return to the Board about match funding.

Augerot asked if Loerts had done external networking with local internet providers.

Loerts replied that many providers are involved in BAT, and BAT keeps providers up to date.

Malone emphasized telling the public about the speed tests. More participants means better information, which improves the County's chance of getting grants.

Loerts shared that Grogan and Stokes have been spreading the word on all County channels.

5. Consent Calendar

5.1 In the Matter of Appointment to the Benton County Planning Commission: Ed Fulford

5.2 In the Matter of Reappointments to the Community Services Consortium Community Action Advisory Council: Cookie Johnson, Mark Edwards, Jerry Groesz

5.3 In the Matter of Approving the Minutes of the February 7, 2023 Tuesday Board Meeting

5.4 In the Matter of Approving the Minutes of the March 22, 2022 Information Sharing Meeting

5.5 In the Matter of Approving the Minutes of the February 22, 2022 Information Sharing Meeting

5.6 In the Matter of Approving the Minutes of the January 25, 2022 Information Sharing Meeting

MOTION: Augerot moved to approve the Consent Calendar of February 21, 2023. Wyse seconded the motion, which **carried 3-0.**

6. Public Hearing

PH1 In the Matter of a Public Hearing and Potential First Reading of Ordinance 2023-0318 Revising Benton County Code (BCC), Chapters 4, 5, and 6 – James V. Morales, Records & Elections

Chair Malone opened the Public Hearing at 11:15 a.m.

Staff Report

Morales explained the revision was mainly clean-up after staff identified areas of concern for the process. Chapter 4: the filing deadline for a commissioner candidate was updated to align with Oregon Revised Statutes (ORS). Chapter 5: an update on advisory measures, which Morales

proposed because there was an instance of an advisory measure that went out to the community, but staff did not have any guidance. There is no State guidance. Morales' concern was the space that an RCV contest or advisory measure takes on a ballot. The change clarifies that three dates in the two-year election cycle (besides primary, general, and special district elections) are available for advisory measures. Chapter 6: makes code on voters pamphlet distribution more clear and less restrictive, allowing options such as placing the pamphlet in the ballot envelope. A redundant section was removed.

Augerot noted that in chapter 6, clauses 6.305(2)(b)(ii) and 6.405(2)(b)(ii) state: "The Elections Office shall reject any argument which: incites, promotes, or advocates hatred, abuse, violence, or hostility toward or which tends to cast ridicule or shame upon any person or group by reason of race, color, religion, or manner of worship." Augerot opined that this should include gender, or refer to State anti-discrimination statutes.

Counsel was fairly certain that the proposed language mirrored ORS or Oregon Administrative Rules, and that the phrase 'which tends to cast ridicule or shame upon any person' might be broad enough to capture Augerot's concern.

Augerot requested that staff investigate a more specific approach.

Morales asked if it would be possible to pass the Ordinance saying staff will add gender to those sections.

Counsel preferred to research the item first.

Public Comment

No comment was offered.

Because the Ordinance as written included all three chapters, Counsel recommended that the Board postpone the vote on this item until the March 7, 2023 board meeting.

Chair Malone continued the Public Hearing to March 7, 2023 at 11:00 a.m., time certain or as soon thereafter as the matter may be heard.

PH2 *In the Matter of a Public Hearing Regarding an Appeal of Planning Commission Land Use Decision Regarding LU-22-023; Jordan – Inga Williams, Community Development

Chair Malone opened the Public Hearing at 11:30 a.m. Malone explained that the applicable substantive criteria on which this case shall be decided are found in Benton County Code (BCC) 55.120, 55.405, 99.810, and 99.705. Applicants have the burden of proving that all of the relevant approval criteria have been met.

The Board had no bias, conflict of interest, or ex parte contacts to declare.

Staff Report

Williams explained that Community Development (CD) received this application for an accessory farm help dwelling for a relative of the farm operator on March 21, 2022. CD denied the application. The decision was appealed to the Planning Commission (PC), which denied the appeal. The applicants appealed the PC decision to the Board. March 21, 2023 is the final state-mandated deadline for all County-based appeals. The property contains 64 acres zoned Exclusive

Farm Use (EFU). Cynthia Crosby is the farm operator and Connie Jordan is the farm owner. Claire and Kevin Fulsher are relatives who provide help to Jordan and Crosby.

Staff concluded the application meets all criteria except BCC section 55.120(1)(b): “the relative’s assistance in the management and farm use of the existing commercial farming operation is required by the farm operator.” The decision rested on two issues: when is farming a commercial farm operation (CFO), and how does the word ‘require’ apply to the applicant’s stated need. Staff used the objective criteria established by the Land Use Board of Appeals (LUBA) to determine that the appellants’ operations do not rise to level of a commercial farming operation, based on a minimum parcel size of 80 acres, a minimum \$80,000 gross income for primary or accessory farm dwelling, and the definition of a commercial agricultural enterprise in Oregon Administrative Rules (OARs). Staff concluded that live-on farm help is not required. Claire and Kevin Fulsher already provide supplemental help within a 15-minute drive from the property. Appellants also rely on help from neighbors, a part-time employee, and others. The appellants have retirement savings and thus do not rely on this farm for their living.

Williams noted that the appellants and their attorneys have submitted supporting documentation. While appellants and attorneys do not agree with the staff assessment, those parties may not substitute their own definition of a CFO or the term ‘required.’ Staff recommended that the Board uphold the PC’s denial of the appeal.

Appellants

Mike Reeder explained that he and Andree Phelps are attorneys jointly representing the appellants. Reeder provided a memo to the Board (exhibit 5) detailing the appellants’ case against the denial. Reeder cited ORS 196.307(4), which states that a local government may adopt only clear and objective standards (C&OS) for housing development. LUBA and courts have held that any standard that is not clear and objective must be waived. Reeder argued the following standards in BCC are not clear and objective and thus should be waived:

1. Does the farming operation rise to the level of a CFO?
2. When is the relative’s assistance with the management and farm use of the existing CFO required?

1. Commercial Farming Operation

Reeder stated that staff’s determination of what activities would constitute a CFO was inconsistent with prior interpretations. Staff stated that only two of the appellants’ farming operations create a profit: breeding cattle and raising hay. Reeder maintained the appellants’ apple orchard and agricultural equipment maintenance and use should also be included.

Staff stated the land was not used primarily to obtain a profit, whereas the submitted business and marketing plan shows that the primary use is for CFOs. Staff’s determination was a judgment call. Staff suggest the appellants do not rely on the farm for the majority of their income, which is inaccurate and not a criteria in code.

LUBA has dealt with questions from other counties about how to determine if a farm operation rises to the level of a CFO to merit a relative farm-help dwelling (RFHD). LUBA allows RFHDs that meet the criteria to fit in one of three safe harbors. But in the 2009 *Richards* case, LUBA held that despite those safe harbors, the County can approve an RFHD when the scale and intensity of farm use rises to the level of a CFO. Staff recognized this option in the original staff report, but that analysis was later omitted.

2. Need for Assistance; Definition of ‘Required’

Reeder addressed whether the farm operator requires assistance. The term ‘requires’ is not defined in BCC or ORS, and thus is not clear and objective. In prior decisions, staff have defined ‘requires’ as ‘less than absolutely necessary.’ Staff have shifted the definition of ‘required’ in the appellants’ case. Reeder discussed different dictionary definitions of ‘requires’ and cited cases relating to the interpretation of ‘required’ assistance and standards for a CFO:

- *Roberts Application*: County Counsel cited this case to argue that C&OS were used in the appellants’ case; however, Reeder argued that *Roberts* supports the appellants.
- *Lane County versus R. A. Heintz*, a 1961 Oregon Supreme Court case, found that the language of an ordinance must be interpreted, where doubt exists as to the intention of the legislative body, in favor of the property owner and against any implied extension of the restriction.
- *Fortier Application*: Benton County approved an RFHD on a 48-acre hazelnut farm with zero income, based on the owner’s statement that the help was required.
- *Bricker Application*: the County defined ‘required’ as ‘needed for a specific purpose,’ not ‘absolutely necessary.’ The County stated that an \$80,000 annual income is a subjective standard and a farm could be a CFO even if it does not meet that threshold, saying that the closest definition of a CFO is from the OAR definition of commercial agricultural enterprise.
- This non-specific definition was further developed by the *Richards* case, where the County admits that this is not a C&OS.
- Staff stated that ‘necessary’ as used in *Louks versus Jackson County* is different from the term ‘required’ in BCC. Staff provided no explanation of why that analysis was not applied in the appellants’ case.

Expert Testimony

Reeder provided two expert testimonials (see packet) to evidence the farmers’ production levels and need for assistance, and stated that this information was not addressed by staff. The appellants also submitted a business plan which described their desire to increase yields and productivity. The plan projects 2024 cattle and hay yields which would earn over \$80,000 per year. Reeder concluded this farm is a CFO for the purpose of obtaining a profit.

Responding to questions from Wyse, Reeder replied that the farm is not located in any UGB or incorporated area, is not currently making \$80,000 per year in profit, and is not over 80 acres in size.

No other testimony or staff response was offered.

Augerot asked whether C&OS did not prevail in this instance because those standards apply within the Urban Growth Boundary (UGB), and are pertinent to housing decisions and expansion of housing, rather than any additional housing on EFU land (which is governed by Oregon planning goal three).

Counsel replied that the courts have applied C&OS for housing both inside and outside the UGB.

Malone asked if Community Development had anything to add, since some of the appellants’ information was provided after PC deliberations.

Nichols replied that staff reviewed the additional evidence and determined it does not change staff’s original decision.

Wyse asked about the Board's options for deliberating and making a decision at a future meeting, to allow time to read the new material.

Nichols replied that the County must make its decision no later than the extended deadline of March 21, 2023, otherwise the appellants can file a mandamus.

Counsel noted it has not been unusual to continue these hearings in the past, particularly when new information was received.

The Board decided to continue the public hearing at the March 7, 2023 meeting.

Wyse asked if the prohibition on ex parte contact was still in effect.

Counsel replied that the prohibition on ex parte contact, bias, and conflict of interest still applies until the Board makes its final decision.

Chair Malone closed the record for this hearing at 12:23 p.m.

Chair Malone continued the Public Hearing to March 7, 2023 at 11:00 a.m., time certain or as soon thereafter as the matter may be heard.

{Exhibit 5: LU-22-023 Appeal Hearing Memorandum}

Chair Malone recessed the meeting at 12:25 p.m. and reconvened at 12:33 p.m.

7. Old Business

**7.1 Approval of the 2023-2028 Community Wildfire Protection Plan (CWPP) –
*Inga Williams, Community Development***

Malone noted that the County delayed completing the CWPP due to waiting for the State to complete the Wildfire Risk Map (WRM); however, the WRM is on hold, so the County is proceeding. Malone asked how much the CWPP had changed since spring 2022.

Williams replied the WRM is now expected to be complete at the end of 2024 and will be incorporated into the CWPP at that time. The existing WRM is an appendix of this document. Few differences are expected. Benton County is designated as low to moderate risk. The Oregon Department of Forestry (ODF) and the Fire Defense Board Chair requested a few revisions to the CWPP; staff made those changes, and those agencies approved the document.

Augerot asked if "Appendix G: Strategic Planning Areas and Projects" was a living document, to be updated with priorities and additional information.

Williams confirmed. The document will probably be updated soon if staff receive funding, because project priorities must be determined. An update involves convening all the Fire Chiefs, OSU, a steering committee, ODF, and the full advisory body with FireWise chairs and interested members of the public.

MOTION: Wyse moved to accept the 2023-2028 Community Wildfire Protection Plan as presented by staff and as approved by the Fire Defense Board and the Department of Forestry. Augerot seconded the motion, which **carried 3-0.**

7.2 In the Matter of a Second Reading of Ordinance No. 2023-0316, Development Code Amendments Regarding Stormwater – Greg Verret, Community Development; Gordon Kurtz, Public Works

Verret explained that on February 7, 2023, the Board held a Public Hearing and first reading on these code amendments. The amendments are necessary to comply with State requirements. The Ordinance is unchanged since the first reading.

MOTION: Augerot moved to enact Ordinance No. 2023-0316, amending the stormwater provisions of the Development Code, and conduct the second reading of the Ordinance. Wyse seconded the motion, which **carried 3-0.**

Counsel read the ordinance aloud (short title). Effective 3/23/2023.

7.3 In the Matter of a Second Reading of Ordinance No. 2023-0317, Benton County Code Amendment Regarding the Adair Village Urban Growth Boundary (UGB) – Greg Verret, Community Development

Verret explained that on February 7, 2023 the Board held a Public Hearing and first reading of the Ordinance. A joint Public Hearing with the Adair Village City Council was held. The Ordinance amends the UGB by adding two properties, to be rezoned from Exclusive Farm Use to Urban Residential. This is a holding zone until the area is annexed into Adair Village, at which time it will be rezoned, supplied with city services, and developed.

MOTION: Wyse moved to enact Ordinance No. 2022-0317, amending the Adair Village Urban Growth Boundary, and conduct the second reading of the ordinance. Augerot seconded the motion, which **carried 3-0.**

Counsel read the ordinance aloud (short title), to be effective March 23, 2023.

8. New Business

8.1 Revised Ranked Choice Voting (RCV) Rules – James V. Morales, Records & Elections

Morales presented revised rules for implementation for RCV. If approved by the Board, Morales will request that the City of Corvallis adopt the same rules or tie to the County rules so both jurisdictions remain aligned. The amendments are additions which capture some of the functionality in the current system and clarify the process, including:

- Defining continuing ballots.
- Clarifying on RCV returns that the County will only release first-choice rankings, and will wait until all ballots are cast before running the RCV process.
- Defining batch elimination as a process utilized when more than one candidate is mathematically eliminated from having the opportunity to win, and defining the winning threshold that comes from those continuing ballots.
- Applying automatic recount for a RCV contest to ensure consistency with the plurality voting method, where the top two candidates' number of votes is used to determine when the threshold for an automatic recount is reached.
- Clarifying that RCV would be applied in the event of a tie vote if there were two or more remaining candidates.

Counsel noted that these changes reflect the experience that Records & Elections office has gained since the original rules were created.

Malone asked if the Oregon legislature is considering applying RCV statewide.

Morales confirmed, primarily through House Bill 2004, which Speaker Dan Rayfield drafted. Morales will meet with Rayfield to discuss further. Morales has received requests to participate in many groups to provide feedback on RCV.

MOTION: Augerot moved to accept staff recommended revisions to the Ranked Choice Voting Rules for Implementation. Wyse seconded the motion, which **carried 3-0.**

8.2 Justice System Improvement Program (JSIP) Ballot Measure and Explanatory Statement for SEL 801 – Vance Croney, County Counsel; Nick Kurth, Justice System Improvement Program (JSIP) Manager

Counsel explained this is the last step in submitting the JSIP measure to the Elections Office for publication and vote. SEL 801 is the notice of the ballot measure for the election, which is submitted after the publication period. Provided there are no challenges or changes, the language on this form is the same that the Board approved two weeks ago.

Morales noted there were no challenges as of this morning.

Counsel added that the explanatory statement went through extensive edits and reflects a truly collaborative effort. If approved, Counsel will file the items on February 24, 2023.

Responding to a question from Augerot, Counsel confirmed the inclusion of the sentence, “If the bonds are approved, they will be payable from taxes on property ownership that are not subject to limits of sections 11 and 11b, Article XI of the Oregon Constitution.”

Kerby and the Board acknowledged staff for participating in this milestone.

MOTION: Augerot moved to adopt/approve SEL 801 and the explanatory statement as presented. Wyse seconded the motion, which **carried 3-0.**

9. Departmental Reports & Requests

9.1 Establish Quality Assurance Coordinator (QAC) Position in Developmental Diversity Program – Jasper Smith, Suzanne Hoffman, Health Services

Smith explained the State Office of Developmental Disability Services passed ARPA funding to Benton County for the QAC position. The position was approved by the Position Review Committee, but the Committee can only approve the position as limited duration. Staff would like this to be a full-time permanent position and expect to have long-term funding.

Responding to questions from Augerot, Smith explained that instead of providing direct services, the QAC works on administrative aspects such as foster care licensing, billing, payments, and/or protective service investigations. The County will receive State funding every two years. The County bills for services with the State, receives reimbursements through the local match program, and uses the local match to fund these positions. Funds were already received from the State and must be spent before March 2025.

Hoffman added that this position will be included in forthcoming budget information; Chief Financial Officer Rick Crager has reviewed and approved the funding plan.

MOTION: Augerot moved to approve the creation of a permanent Quality Assurance Coordinator position in the Developmental Diversity program, and begin recruitment for a potential hire date in April 2023. Wyse seconded the motion, which **carried 3-0.**

Smith shared that the Developmental Diversity Program will be in its new location at the Sunset Building on February 27, 2023.

10. Other

Wyse volunteered to serve on the Inter-Governmental Council for the Coordinated Homeless Response Office.

MOTION: Augerot moved to appoint Commissioner Wyse to serve on the Inter-Governmental Council for the Coordinated Homeless Response Office under House Bill 4123. Wyse seconded the motion, which **passed 3-0.**

Wyse shared that Branden Pursinger, Association of Oregon Counties, is seeking county data on well needs and water insecurity for the 2023 Legislative draft package. Although Benton County has not been in a formal drought, Wyse asked if staff want to be involved.

Kerby recommended that Hoffman and Kerby discuss who best to address that.

Wyse expressed interest in the project. Wyse to reply to Pursinger and forward to Kerby and Hoffman.

Augerot asked if another Commissioner could attend the ODF meeting and tour on March 8-9, 2023.

Malone could probably attend on March 9. Malone noted the Board will finish Information Sharing from the February 16, 2023 meeting at a later date.

11. Adjournment

Chair Malone adjourned the meeting at 1:14 p.m.

Pat Malone, Chair

Erika Milo, Recorder

** NOTE: Items denoted with an asterisk do NOT have accompanying written materials in the meeting packet.*

PUBLIC HEARINGS

BOC Agenda Checklist Master

Agenda Placement and Contacts

Suggested Agenda Date 03/07/23

View [Agenda Tracker](#)

Suggested Placement * BOC Tuesday Meeting

Department * Records & Elections

Contact Name * James V. Morales

Phone Extension * 5417666832

Meeting Attendee Name * James V. Morales

Agenda Item Details

Item Title * Revise BCC Chapters 4, 5 & 6

Item Involves * Check all that apply

- Appointments
- Budget
- Contract/Agreement
- Discussion and Action
- Discussion Only
- Document Recording
- Employment
- Notice of Intent
- Order/Resolution
- Ordinance/Public Hearing 1st Reading
- Ordinance/Public Hearing 2nd Reading
- Proclamation
- Project/Committee Update
- Public Comment
- Special Report
- Other

Estimated Time * 10

Board/Committee Involvement * Yes
 No

Advertisement*

Yes

No

Issues and Fiscal Impact

Item Issues and Description

Identified Salient Issues*

BCC Chapter 4 proposed revision corrects the filing deadline inadvertently omitted from previous revisions in 4.215 to 70th day.

BCC Chapter 5 proposed revision makes clear the election dates available to place Advisory Measures on the ballot.

BCC Chapter 6 proposed revision provides flexibility in the manner in which voters' pamphlets may be distributed and adds gender to subsections 305 and 405.

Options*

1. Enact an ordinance adopting revisions to BCC Chapters 4,5, and 6.
2. Amend and enact an ordinance for revisions to BCC Chapters 4,5, and 6.
3. Take no action on revisions to BCC Chapters 4,5, and 6.

Fiscal Impact*

- Yes
 No

2040 Thriving Communities Initiative

Mandated Service? * Yes No

2040 Thriving Communities Initiative

Describe how this agenda checklist advances the core values or focus areas of 2040, or supports a strategy of a departmental goal.

To review the initiative, visit the website [HERE](#).

Mandated Service Description * If this agenda checklist describes a mandated service or other function, please describe here.

Elections are mandated services for all eligible Benton County voters. Voters' pamphlets and Advisory Measures are optional services that can be expanded or eliminated via Ordinance or due to lack of funding for the voters' pamphlet production and distribution.

Values and Focus Areas

Check boxes that reflect each applicable value or focus area and explain how they will be advanced.

Core Values * Select all that apply.

- Vibrant, Livable Communities
- Supportive People Resources
- High Quality Environment and Access
- Diverse Economy that Fits
- Community Resilience
- Equity for Everyone
- Health in All Actions
- NA

Explain Core Values Selections * These election related topics are key to preserving the voting rights of eligible Benton County voters and help to keep the electorate fully engaged in the democratic process.

Focus Areas and Vision * Select all that apply.

- Community Safety
- Emergency Preparedness
- Outdoor Recreation
- Prosperous Economy
- Environment and Natural Resources
- Mobility and Transportation
- Housing and Growth
- Arts, Entertainment, Culture, and History
- Food and Agriculture
- Lifelong Learning and Education
- NA

Explain Focus Areas and Vision Selection * The election materials and supporting processes are vital part of the fabric of this nation and our communities. The impacts of elections can be traced to every focus area within the county's vision, particularly history, culture, and the economy. Seeking to educate the electorate in Benton County through the voters' pamphlet and alternate media remain a primary focus to the election process in this county.

Recommendations and Motions

Item Recommendations and Motions

Staff Recommendations* Staff recommends enacting an ordinance adopting proposed changes to Benton County Code Chapters 4, 5 and 6.

Meeting Motions* I move to ...
to enact Ordinance number 2023-0318 and to conduct a first reading.

Attachments, Comments, and Submission

Item Comments and Attachments

Attachments

Upload any attachments to be included in the agenda, preferably as PDF files. If more than one attachment / exhibit, please indicate "1", "2", "3" or "A", "B", "C" on the documents.

Chap 4 County Elections and Candidates_Proposed2023.docx	29.01KB
Chap 5 Ballot Measures_Proposed2023.docx	31.45KB
Chap 6 Voters Pamphlet_Proposed2023.docx	31.36KB
Ordinance Amending BCC Ch 4,5,6 02032003.docx	15.42KB

Comments (optional) If you have any questions, please call R&E Director, James Morales, at extension 6832 or County Counsel, Vance Croney, at 6661.

Thank you

If you have any questions, please call ext.6800

**Department
Approver**

JAMES MORALES

1.

Department Approval

Comments

Signature

James V. Morales

2.

Counsel Approval

Comments

Signature

Vance H. Crokey

3.

County Administrator Approval

Comments

Signature

Joseph Kerby

4.

BOC Final Approval

Comments

Signature

Amarda Makepeace

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE STATE OF OREGON, FOR THE COUNTY OF BENTON**

**In the Matter of Amending Chapters 4,)
5 and 6 of the Benton County Code) Ordinance No. 2023-0318**

THE BENTON COUNTY BOARD OF COMMISSIONERS HEREBY ORDAIN AS FOLLOWS:

WHEREAS, following review of the Benton County’s election-related code sections, it was determined that chapters 4, 5 and 6 require minor revisions and clarifications; and

WHEREAS, chapter 4 is revised to specify election dates for local government advisory measures, chapter 5 is revised to correct a filing deadline, and chapter 6 is revised to clarify voter pamphlet requirements; and

NOW, THEREFORE, the Board of Commissioners of Benton County ordain as follows:

I. Short Title.

- 1. This ordinance shall be known as “Amendment to Benton County Code Chapters 4, 5 and 6.”

II. Text Amendment.

- 2. Benton County Code Chapters 4, 5 and 6 are hereby amended as noted in the attachment marked Exhibit A.

This Ordinance shall become effective on the 20th day of May, 2023.

1st Reading: February 21, 2023
2nd Reading: March 7, 2023
Effective Date: April 6, 2023

BENTON COUNTY BOARD OF COMMISSIONERS

Pat Malone, Chair

Xanthippe Augerot, Vice Chair

Nancy Wyse, Commissioner

Approved as to Form:

County Counsel

CHAPTER 4

ELECTIONS AND CANDIDATES

ADMINISTRATION

4.001 Purpose.

The purpose of this chapter is to provide clear guidance to county offices and other interested parties in the conduct of elections held in Benton County. [Ord. 99-0153; Ord. 2019-0291]

4.002 Definitions.

(1) “**Electoral District**” means the physical boundaries within Benton County of any elected position. [Ord. 99-0153; Ord. 2019-0291]

SPECIAL ELECTIONS

4.101 Special Elections.

The Board of Commissioners may call a special election by order. The order shall state the purpose for calling the special election, the propositions to be voted upon, and the date on which the election shall be held. [Ord. 11, adopted May 6, 1986; Ord. 85-0002; Ord. 90-0062; Ord. 2019-0291]

4.102 Filing Deadlines. Special district nominations shall be filed not later than the 70th day before the election and in compliance with existing election law. [Ord. 2019-0291]

ELECTIONS GENERALLY

4.201 Election to Fill a Vacancy.

If an election is required to fill a vacancy in an elected County office pursuant to Benton County Charter Chapter V Section 22(4)(a)(A), the election shall be conducted pursuant to Benton County Charter Chapter VII Section 25(1). [Ord. 90-0062; Ord. 2019-0291]

4.205 Ballot Specifications for Partisan Offices.

If an election is held to fill a vacancy in a partisan county office, the candidate's party affiliation as listed in the candidate's petition or declaration of candidacy or certificate of nomination shall appear first following the name of the candidate on the ballot, followed by up to two minor party nominations received by that candidate, if applicable. Abbreviated party names as established by the Secretary of State can be used. [Ord. 90-0062; Ord. 2019-0291]

4.210 Filing of Candidate's Petition or Declaration of Candidacy.

(1) A person eligible pursuant to the Benton County Charter may become a candidate to fill partisan or non-partisan elected County office, or to fill a vacancy in a partisan or non-partisan elected County office, by filing either a petition or a declaration of candidacy.

(2) At the time of filing, a declaration of candidacy shall be accompanied by a filing fee set by order of the Board of Commissioners. The Board shall set the amount of the filing fee based on the filing fee provided in state law for a declaration of candidacy for an elected County office.

(3) In lieu of filing a declaration of candidacy and paying a fee, a person may become a candidate for an elected County office by filing a petition of candidacy as follows:

(a) If the person is filing a petition of candidacy to fill a nonpartisan elected County office, at the time of filing, the petition shall contain at least 500 signatures of electors in the electoral district, or a number of signatures of electors equal to at least one percent of the votes cast in the electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term, whichever is less. In addition, these signatures shall include those of electors registered in each of at least one-fifth of the precincts in the electoral district.

(b) If the person is filing a petition of candidacy as a candidate of a major political party to fill a partisan elected County office, the petition shall contain the signatures of electors who are members of the same major political party as the candidate. The petition shall contain at least 500 signatures or the number of signatures at least equal to two percent of the vote in the County for the candidates of that major political party for presidential electors at the last presidential election, whichever is less. In addition, the signatures shall include those of electors registered in at least one-fifth of the precincts in the electoral district. [Ord. 90-0062]

4.215 Filing Deadlines.

(1) A petition for candidacy or declaration of candidacy shall be filed not later than the 70th day prior to a primary or general election or any other special election.

(2) The certificate of nomination of a candidate for public office shall be filed in accordance with ORS 249.722. [Ord. 90-0062; Ord. 2019-0291]

4.220 Contents of Petition or Declaration.

(1) A petition or declaration of candidacy shall contain the information required in ORS 249.031.

(2) A declaration of candidacy shall also include a statement that the required fee is included with the declaration.

Commented [MJV1]: Yes, it was an oversight last time around we corrected it in 4.102 but missed it here.

Commented [CVM2]: Is this the only change?

(3) A petition of candidacy shall also include the required signatures as provided by BCC 4.205(3). [Ord. 90-0062; Ord. 2019-0291]

4.225 Certification of Signatures.

The Benton County Elections Office shall certify the signatures on a petition of candidacy for genuineness, while ensuring that the signer meets all of the necessary requirements for signing and that the signer has signed no other petitions regarding the same contest. [Ord. 90-0062; Ord. 2019-0291]

4.230 Precinct Committeepersons.

The election of precinct committeepersons will take place in accordance with the applicable provisions of ORS Chapter 248 [Ord. 99-0153; Ord. 2019-0291]

4.235 Certificate of Nomination.

A minor political party, assembly of electors or individual electors may nominate one candidate for a vacancy in a partisan county office by preparing and filing a certificate of nomination. [Ord. 90-0062; Ord. 2019-0291]

4.240 Contents of Certificate of Nomination.

(1) A certificate of nomination shall state:

- (a) The name by which the candidate is commonly known. A candidate may use a nickname in parenthesis in connection with the full name.
- (b) The mailing address and residence of the candidate.
- (c) The office, and department or position number, if any, for which the candidate is nominated.
- (d) The name of the minor political party, if any, which nominated the candidate.
- (e) If the candidate is nominated for a partisan office by an assembly of electors or individual electors, the word "Nonaffiliated" and a statement that the candidate has not been a member of a major or minor political party during at least 180 days before the date the certificate of nomination is filed, shall be included.

(2) A certificate of nomination made by a minor political party or assembly of electors shall be signed by the presiding officer and secretary of the nominating convention of the party or assembly. An affidavit shall be made on the certificate by the presiding officer and the secretary and sworn to or affirmed by them before one of the following: a judge, justice of the peace, County Clerk, or notary public. The affidavit shall state that the statements in the certificate are true. With

respect to an assembly of electors, the affidavit shall state that the assembly satisfied the requirements of BCC 4.255.

- (2) The nominee must accept the nomination by either signing the certificate of nomination, or filing a signed acceptance of the nomination prior to or at the same time as the filing of certificate of nomination. [Ord. 90-0062; Ord. 2019-0291]

4.245 Entries in Register of Nominations Upon Filing Certificates.

(1) Immediately after each certificate of nomination is filed, the Benton County Elections Office shall enter in the register of nominations:

- (a) The date the certificate was filed.
- (b) The name of each candidate.
- (c) The office for which the candidate is nominated.
- (d) When applicable, the name of the minor political party or identification of the assembly of electors making the nomination, and the names of the chairperson and secretary certifying it.
- (e) If the certificate of nomination is made by individual electors, the total number of certified signatures contained in the certificate.

(2) As soon as an acceptance or withdrawal of a candidate is filed with a filing officer, it shall be entered in the register of nominations. [Ord. 90-0062; Ord. 2019-0291]

4.250 Nomination by Minor Political Party.

An affiliation of electors qualified as a minor political party pursuant to state law may nominate a candidate to fill a vacancy in a partisan county office. [Ord. 90-0062; Ord. 2019-0291]

4.255 Nomination by Assembly of Electors.

(1) An assembly of electors is an organized body of not fewer than 250 electors in the County.

(2) An assembly of electors shall nominate candidates at a nominating convention. The convention shall be held in one day and last not longer than 12 hours. The signature, printed name, residence and mailing address of each member of the assembly shall be recorded at the convention and entered of record in the minutes by the secretary of the assembly. Not less than the minimum number of electors required to constitute an assembly of electors shall have recorded their signatures in the minutes of the assembly and must be present when the assembly nominates a candidate. The candidate receiving the highest number of votes of the assembly for the office shall be the nominee of the assembly.

(3) Not later than the 10th day before the meeting of an assembly of electors, notice shall be published at least once in not less than three newspapers of general circulation within the County. The notice shall contain the time and place the assembly will meet, the office or offices for which nominations will be made, and the names and addresses of not fewer than 25 electors qualified to vote in the assembly who desire that it be held.

(4) Proof of publication of the notice required in subsection (3) of this section shall be made by affidavit of the owner, editor, publisher, manager, advertising manager, principal clerk of any of them, or the printer or printer's foreman of the newspaper in which the notice is published. The affidavit shall show publication and shall be filed with the Benton County Elections Office with the certificate of nomination.

(5) Not later than the 10th day before the meeting of an assembly of electors, a copy of the notice under subsection (3) of this section shall be delivered to the Benton County Clerk who will supervise the conduct of the nominating convention.

(6) The presiding officer of an assembly of electors shall deliver the signatures of assembly members entered in the minutes to the Benton County Elections Office. The signatures shall be verified by that office. A copy of the minutes, certified by the secretary of the assembly, and an affidavit of compliance, for the assembly, from the Benton County Elections Office shall be filed along with the certificate of nomination.

(7) The Benton County Clerk or designee shall supervise the conduct of the nominating convention. The County Clerk shall insure that, when the assembly of electors makes a nomination, the number of electors present at the nominating convention are at least equal to the number of electors necessary to constitute an assembly of electors.

(8) Vacancies shall be filled in the manner provided by ORS 249.735(7). [Ord. 99.0153; Ord. 2019-0291]

4.260 Nomination by Petition of Individual Electors.

(1) A certificate of nomination by petition of individual electors shall contain signatures of electors in the electoral district equal to, but, not less than one percent of the total votes cast in the electoral district for all candidates for presidential electors at the last general election.

(2) Each elector signing a certificate of nomination by petition of individual electors shall include the residence address of the elector.

(3) A certificate of nomination made by individual electors shall contain the name of only one candidate.

(4) Before beginning to circulate the certificate of nomination, the chief sponsor of the certificate shall file a signed copy of the prospective certificate with the Benton County Clerk.

(5) The certificate shall comply with the provisions set forth in ORS 249.740(3) and ORS 249.740(4).

(6) The signatures contained in each certificate of nomination made by individual electors shall be certified for genuineness by the Benton County Elections Office.

(7) As used in this section, "prospective certificate" means the information, except signatures and other identification of certificate signers, required to be contained in a completed certificate of nomination. [Ord. 90-0062; Ord. 2019-0291]

4.265 The Candidate Receiving More Than Fifty Percent of Votes Elected.

(1) In accordance with Benton County Charter Chapter VII Section 25(1) the candidate that receives more than fifty percent of the ranked choice votes is declared the winner. The winning candidate shall be the elected official of the county office.

(2) The person elected shall take office immediately upon receiving the person's certificate of election and filing their oath of office with the Benton County Elections Office in accordance with ORS 204.020. [Ord. 90-0062; Ord. 2019-0291]

**CHAPTER 5
BALLOT MEASURES**

ADMINISTRATION

5.005 Purpose.

The purpose of BCC Chapter 5 is to describe the process for initiative and referendum petitions, referral measures and the creation of ballot titles to be placed on the ballot in accordance with the County Charter, Code and applicable state law. [Ord. 17, adopted March 8, 1978; Ord. 85-0002; Ord. 2019-0291]

5.010 Application.

A county measure may be submitted for inclusion on the ballot by qualifying petition, referral by the Benton County Commissioners or referral by the governing body of a local government in Benton County if:

- (1) The measure is submitted in accordance with state and local laws applicable to the election for which the measure is to appear on the ballot; and
- (2) All procedures set forth in BCC Chapter 5 relating to the preparation of the ballot title and to the explanatory statement for the measure shall be completed on or before the 70th day before the election at which the measure is to be submitted to the electors; and
- (3) One or more of the following persons decides to include a measure on the ballot in the following manner:
 - (a) In the case of a measure proposed by initiative or referendum petition:
 - (A) All chief petitioners agree to include the measure, its ballot title and explanatory statement on the ballot, by filing with the Benton County Elections Office a statement of that decision, in such form as the County Clerk shall prescribe, at the time the prospective petition for the measure is filed with the Elections Office; and
 - (B) A petition containing sufficient numbers of qualified signatures to require submission of the measure to the electors shall be filed with the Elections Office on or before the 90th day preceding the election at which the measure is to be submitted to the electors; or
 - (b) In the case of a measure referred to the electors by a local government body:
 - (A) The local government decides to submit the measure, its ballot title and explanatory statement to its voters, by filing an order reflecting that decision with the Elections Office on or before the 81st day preceding the election at which the measure will be submitted to the electors. [Ord. 17, adopted March 8, 1978; Ord. 85-0002; Ord. 2019-0291]

BALLOT TITLES AND EXPLANATORY STATEMENTS

5.105 Preparation of Ballot Titles and Explanatory Statements.

- (1) When a prospective petition is filed regarding a measure proposed by initiative or referendum petition, the Benton County Clerk shall convey two copies of the prospective petition to the County Counsel, who shall, within five (5) business days after receiving it, prepare a ballot title and explanatory statement for the measure and return a copy of the prospective petition, together with the ballot title and explanatory statement, to the Elections Office and to one of the chief petitioners.
- (2) In the case of a measure referred to the electors by the Board of County Commissioners, the Board shall file with the Elections Office a ballot title and explanatory statement for the measure at the time it files the order described in BCC 5.010(3)(b).
- (3) Ballot titles shall consist of:
 - (a) A caption of not more than 10 words which reasonably identifies the subject of the measure; and
 - (b) A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure; and
 - (c) A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.
- (4) Explanatory statements shall be impartial, simple, and understandable, shall explain the measure and its effect and shall not exceed 500 words. [Ord. 17, adopted March 8, 1978; Ord. 85-0002; Ord. 2019-0291]

5.110 Judicial Review of Ballot Titles and Explanatory Statements.

Within seven (7) business days after the ballot title and explanatory statements are received by the Elections Office under subsection (1) or (2) of BCC 5.105, any elector dissatisfied with the ballot title or explanatory statement may petition the Benton County Circuit Court for review of the title or statement, and shall set forth the reasons why the title or statement does not conform to the requirements of BCC Chapter 5 or other applicable law. If the court finds that the ballot title or explanatory statement complies with the requirements of BCC Chapter 5 and other applicable law, it shall enter an appropriate order to that effect. If the court determines that the ballot title or explanatory statement does not comply with the requirements of BCC Chapter 5 or other applicable law, the court shall prepare an alternative ballot title or explanatory statement. The title or statement so prepared shall replace that of the County Counsel for purposes of BCC Chapter 5. The order of the Circuit Court shall not be appealable. [Ord. 17, adopted March 8, 1978; Ord. 85-0002; Ord. 2019-0291]

ADVISORY MEASURES

5.301 Definitions.

- (1) **“Advisory Measure”** means a ballot measure created by a local government for the purpose of gauging support or opposition to specific issues or ideas. Advisory measures do not mandate changes to the state constitution, state law or regulations or local government charters, local laws or ordinances or policies.
- (2) **“Local government”** has the meaning set forth in ORS 174.116. [Ord. 2019-0291]

5.305 Advisory Measures.

A local government, located wholly within the boundaries of Benton County, may refer no more than one advisory measure to the electorate of the district in any election in accordance with BCC sections 5.301 thru 5.375. A local government that submits an advisory measure to the district electorate in Yes/No format, need not be located wholly within Benton County. [Ord. 2019-0291]

5.315 Filing Requirements.

- (1) A local government may file with the Benton County Elections Office an order calling for a local advisory measure. The order shall include the ballot title of the advisory measure, the method of voting to be utilized (Yes/No or Ranked Choice Options) and the election date on which the measure shall appear on the ballot.
- (2) In the case of a Yes/No advisory measure referred to the electors by a local government, it shall file with the Elections Office a ballot title and explanatory statement in accordance with BCC 5.105(3) & (4).
- (3) In the case of a Ranked Choice Option advisory measure referred to the electors by a local government, it shall file with the Elections Office a ballot title and explanatory statement in accordance with the following:
 - (a) A caption of not more than 10 words which reasonably identifies the subject of the measure; and
 - (b) The question shall provide 3 to 5 Options for voters to rank. Each ranked choice option shall not exceed 8 words or 40 character spaces whichever is less, to plainly identify each option on the ballot, to meet this requirement abbreviations may be utilized. Options will be identified as Option A, Option B, Option C, etc., and shall not be included in the word/character count; and
 - (c) A concise and impartial statement of not more than 150 words summarizing each measure option.
- (4) Explanatory statements shall explain each advisory measure option in an impartial, simple, and understandable manner. Advisory measure statements with three ranking options shall be limited to 400 words, four options shall be limited to 500 words and five options shall be limited to 600 words or less. [Ord. 2019-0291]

5.325 Advisory Measure Filing Deadlines.

A local government shall file its order for an advisory measure with the Benton County Elections Office, on or before the 81st day preceding the election at which the measure is to appear on the ballot. [Ord.2019-0291]

5.335 Advisory Measure Ballot Title & Explanatory Statement Review.

(1) Petition for Review.

(a) Any elector registered and qualified to vote on the subject advisory measure may file a petition with the Elections Office, for an administrative review of the ballot title and/or explanatory statement, not later than the 5th day after the last day on which a notice of election can be filed.

(b) A petition filed under this section shall contain a statement of reasons why the explanatory statement is not impartial, is insufficient, or unclear.

(c) Upon receipt of a petition, the County Clerk, or the Clerk’s designee, shall schedule a hearing at the earliest possible date. At said hearing the petitioner and the local government shall have an opportunity to present evidence and argue the question of impartiality, sufficiency, or clarity of the explanatory statement. At the conclusion of the hearing, the County Clerk may modify the ballot title and/or explanatory statement to comply with the requirements of this section. The reviewed ballot title and explanatory statement, modified or not modified by the County Clerk, shall be certified for use in the election.

(2) The Clerk’s review of the advisory measure ballot title and explanatory statement shall be the first and final review in order to ensure the timely availability of voters’ pamphlets and ballots for the election. [Ord. 2019-0192]

5.345 Printing Advisory Measures on the Ballot.

Ballots shall be printed in accordance with ORS Chapter 254 and in a manner that will provide each qualified elector with the opportunity to rank advisory measure options in the order of preference. [Ord. 2019-0291]

5.375 Cost and Election Date for Advisory Measures

Local governments that refer an advisory measure to their voters shall pay the full apportioned cost for the advisory measure submission. ~~without regard to the~~ The election date on which ~~the~~ an advisory measure may appears on the ballot shall be limited to dates other than the dates set for the Primary, General and regular Special District Election in ORS 203.085. [Ord. 2019-0291]

Commented [CVM1]: What dates does that leave? And, is this fair to the other jurisdictions in the county?

Commented [MJV2]: No it is very fair. This leaves, March and August election dates in odd and even years and November of odd years.

Commented [MJV3R2]: Direct authorization for Advisory Measures is unique to Benton County, these measures are not explicitly authorized or governed by ORS.

CHAPTER 6

VOTERS' PAMPHLET

6.005 Purpose.

The purpose of BCC Chapter 6 is to authorize and direct the Election Office in the production and mailing of a county voters' pamphlet, as directed by the County Clerk. The voters' pamphlet will provide electors with information necessary to make an informed choice in elections by allowing candidates and measure committees the opportunity to put forward information and arguments concerning ballot issues. [Ord. 99-0153; Ord. 2019-0291]

6.105 Preparation and Mailing of Benton County Voters' Pamphlet.

When directed by the County Clerk, the Elections Office, under the supervision of the Supervisor of Elections, shall prepare and mail a county voters' pamphlet as follows:

- (1) The Elections Office shall prepare and have printed a county voters' pamphlet, which will include filed information on all candidates and measures that will appear on the ballot.
- (2) The voters' pamphlets ~~shall~~ may be distributed to all households within the jurisdiction(s) taking part in the election. One pamphlet will be distributed to each household, regardless of how many voters reside in that household. All the measures and candidates that will appear on the ballot for the election may be included in one voters' pamphlet. Additional means of distribution may be utilized if it is determined ~~that the additional distribution is necessary to make pamphlets available to all households of the electoral district.~~
- (3) No voters' pamphlet will be prepared unless there are candidate statements or explanatory statements filed with the county.
- (4) The voters' pamphlets shall be distributed not later than the 7th day before the election or the last day for mailing ballots.
- (5) Voter pamphlets may be distributed by including one in each ballot envelope mailed to voters. If the voters' pamphlet is distributed in this manner, the information in the pamphlets may be district specific, ~~but, shall include all other information prescribed in this section and BCC 6.110.~~ [Ord. 99-0153; Ord.2019-0291]

Commented [CVM1]: Does the Board make this determination? If so, we should add that to the sentence.
Commented [MJV2]: No, we do that.

Commented [CVM3]: I don't understand why we are removing the 6.110 elements from the district-specific pamphlets.
Commented [MJV4]: Just because it's redundant. The 6.110 elements are still required.

6.110 Other Required Items in Voters' Pamphlet.

In compliance with state election law the following items shall be part of the Benton County voters' pamphlet or the combined voters' pamphlet, if inserting with a state produced pamphlet, ~~in addition to those items previously listed:~~

- (1) The requirements for a citizen to qualify to vote.
- (2) The requirements to register to vote.
- (3) The hours that the Benton County Elections Office will be open on Election Day, as well as the location of all ballot drop sites throughout the county and the hours during which voters will be able to deliver ballots to those drop sites.
- (4) Instructions to voters concerning their rights and duties dealing with the election process to include: how voters may obtain an absentee ballot, how to request a second ballot if the first was spoiled or that voters may cast a ballot in-person by coming to the Elections Office.
- (5) The ballot title of each measure, the explanatory statements, and any arguments submitted, in accordance with the terms of this ordinance.
- (6) Any candidate statements submitted in accordance with the terms of this ordinance.
- (7) Such other information as may be necessary or appropriate. [Ord. 99-0153; Ord. 20190291]

6.205 Explanatory Statements.

- (1) Filing Deadlines.

Not later than the filing deadline for the notice of election provided in state statute.

- (a) Any authorized governing body which institutes a measure to appear on the ballot, shall submit an impartial, simple, and understandable statement explaining the measure and its effect.
- (b) For measures instituted by petition to the authorized governing body, the governing body may submit an impartial, simple, and understandable statement explaining the measure and its effect.

- (2) Contents.

The explanatory statement shall contain words and numbers only and shall not exceed 500 words, shall be typewritten, and shall be an impartial, simple, and understandable statement, which explains the measure and its effects. This shall be in addition to the ballot title requirements set forth by state statute.

- (3) Availability to Public.

A full and complete copy of the explanatory statement shall be available to the public in the Elections Office.

(4) Challenge and Review.

- (a) Any elector registered and qualified to vote on the subject measure may file a petition with the Elections Office, for an administrative review of the explanatory statement, not later than the 5th day after the last day on which a notice of election can be filed.
- (b) A petition filed under this section shall contain a statement of reasons why the explanatory statement is not impartial, is insufficient, or unclear.
- (c) Upon receipt of a petition, the County Clerk, or the Clerk's designee, shall schedule a hearing at the earliest possible date. At said hearing the petitioner and the filing body shall have an opportunity to present evidence and argue the question of impartiality, sufficiency, or clarity of the explanatory statement. At the conclusion of the hearing, the County Clerk may modify the explanatory statement to comply with the requirements of this section in a manner that reflects the drafter's intent as closely as possible. The modified explanatory statement, or the original explanatory statement, if not modified by the Supervisor of Elections, shall be certified and included in the voters' pamphlet. [Ord. 99-0153; Ord. 2019-0291]

6.305 Arguments.

(1) Filing Deadline.

Arguments supporting or opposing a measure must be filed not later than the 5th day after the last day on which the notice of election may have been filed.

(2) Form of Argument.

- (a) The argument filed shall be in words and numbers only, shall be typewritten, and shall be printed on no more than 29.8 square inches, which allows a maximum of 325 words.
- (b) The Elections Office shall reject any argument which:
 - (i) Contains any obscene, profane, scandalous or defamatory language.
 - (ii) Incites, promotes or advocates hatred, abuse, violence or hostility toward or which tends to cast ridicule or shame upon any person or group by reason of race, color, gender, religion or manner of worship.
 - (iii) Contains any language that may not legally be circulated in the mail.

(iv) Otherwise does not comply with this ordinance.

(3) Filing Fee.

Shall be established by resolution approved by the Benton County Board of Commissioners.

(4) Subscription and Disclaimer.

The argument shall also contain the name of the submitting organization or person; whether the argument supports or opposes the measure; and a disclaimer in substantially the following form;

"The printing of this argument does not constitute an endorsement by Benton County, nor does the County warrant the accuracy or truth of any statements made in the argument."

(5) The language referred to in BCC 6.305(4) shall not be included in the 325 word limitation set forth in BCC 6.305(2). [Ord. 99-0153; Ord. 2019-0291]

6.405 Candidate Statements.

(1) Filing Deadline.

Not later than the filing date set forth in state statute for filing for the position, a candidate may file with the Benton County Elections Office a typewritten statement of reasons why the candidate should be nominated or elected; and a photograph of the candidate.

(2) Contents of candidate's statement.

- (a) The candidate's statement shall consist of words or numbers only, and shall not exceed 325 words. The candidate's statement shall begin with a summary of the following: Occupation, education and occupational background, and prior governmental experience.
- (b) The Elections Office shall reject any candidate's statement which:
 - (i) Contains any obscene, profane, scandalous or defamatory language.
 - (ii) Incites, promotes or advocates hatred, abuse, violence or hostility toward or which tends to cast ridicule or shame upon any person or group by reason of race, color, gender, religion or manner of worship.

- (iii) Contains any language which may not legally be circulated in the mail.
- (iv) Otherwise does not comply with this ordinance.
- (c) Each candidate's statement submitted shall be subscribed and sworn to before a notary or a Deputy Clerk in the Elections Office, and the subscription shall be in the following form:

"I hereby subscribe and swear under penalty of law that the above submitted candidate's statement is true and accurate to the best of my knowledge and belief."

(3) Photograph Requirements.

A candidate, at the time of filing a candidate's statement, may submit two identical 5" X 7" glossy photographs for use in the voters' pamphlet. A candidate shall not submit for inclusion in the voters' pamphlet a photograph that was taken more than two years before the date the photograph is filed with the Elections Office.

- (a) A photograph submitted for inclusion in the voters' pamphlet shall:
 - (i) Be a conventional photograph with a plain background; and
 - (ii) Show the face or head, neck and shoulders of the candidate.
- (b) A photograph submitted for inclusion in the voters' pamphlet shall not:
 - (i) Include the hands or anything held in the hands of the candidate;
 - (ii) Show the candidate wearing a judicial robe, a hat or military, police or fraternal uniform;
 - (iii) Show the uniform or insignia of any organization; and
 - (iv) Include the display of any flag or pennant.

(4) Filing Fee.

Each candidate's statement filed shall be accompanied by the required fee, \$25 for unpaid offices and \$100 for paid offices. The Elections Office shall reject any candidate's statement tendered for filing unless accompanied by the specified fee.

(5) Language.

The subscription language provided for in BCC 6.405(2)(c) shall not be included in the 325 word limitation set forth in BCC 6.405(2)(a). [Ord. 99-0153; Ord. 2019-0291]

6.505 Miscellaneous.

(1) Spacing and Type Size.

The Supervisor of Elections shall have the authority to determine type size and spacing to be used in the printing of explanatory statements, arguments and candidate's statements. The Supervisor of Elections shall exercise this authority only for the purpose of ensuring that each explanatory statement, argument or candidate's statement occupies no more than one page of the printed voters' pamphlet. A page for the purpose of this means 46.5 square inches, or one of the two columns on each page of the voters' pamphlet.

(2) Deadline.

A measure, explanatory statement, argument, or candidate's statement, together with the required fee, must be filed with the Elections Office not later than 5 PM of the day the document or fee is due. If the day the document or fee is due is a Saturday, Sunday, or holiday, the document or fee can be filed by 5 PM on the next business day. If a person is physically present within or in line to enter the Elections Office, in order to deliver the document or fee, the person shall be considered as having begun the act of delivering the document or fee. The person shall then be permitted to file so long as that person does not leave prior to completing the process with the Elections Office.

(3) Forms.

The Elections Office may develop and require the use of standardized forms for any or all of the filings authorized or required by this ordinance. [Ord. 99-0153; Ord. 2019-0291]

6.605 Disposition of funds.

(1) The Benton County voters' pamphlet shall be published and distributed under the authority of the Benton County Clerk.

(2) Revenues derived pursuant to this ordinance shall be utilized to offset the cost of producing and distributing the voters' pamphlet. If the revenues generated, as a result of argument fees, candidate's statement fees or other revenues exceeds the total cost of producing and distributing the voters' pamphlet, the balance shall be used to offset the election costs. [Ord. 99-0153; Ord. 2019-0291]

BOC Agenda Checklist Master

Agenda Placement and Contacts

Suggested Agenda Date 02/21/23

View [Agenda Tracker](#)

Suggested Placement * BOC Tuesday Meeting

Department * Community Development

Contact Name * Darren Nichols

Phone Extension * 6394

Meeting Attendee Name * Inga Williams

Agenda Item Details

Item Title * Appeal of Planning Commission Land Use Decision Regarding LU-22-023; Jordan

Item Involves * Check all that apply

- Appointments
- Budget
- Contract/Agreement
- Discussion and Action
- Discussion Only
- Document Recording
- Employment
- Notice of Intent
- Order/Resolution
- Ordinance/Public Hearing 1st Reading
- Ordinance/Public Hearing 2nd Reading
- Proclamation
- Project/Committee Update
- Public Comment
- Special Report
- Other Public Hearing on Appeal of a Planning Commission land use decision

Board/Committee Involvement * Yes
 No

Name of Board/Committee Planning Commission

Advertisement*

Yes

No

Names/Dates of Publications

List each publication name and date

Albany/Corvallis newspaper advertisement
published 02/06/23; Notice of Public Hearing
mailed 02/02/23

Issues and Fiscal Impact

Item Issues and Description

Identified Salient Issues*

The Community Development Department found that the applicant's request did not comply with Benton County Code (BCC) section 55.120(1)(b), and denied the application. The applicant and the property owner appealed the decision to the Planning Commission. The Planning Commission also found that the applicant's request did not comply with BCC 55.120(1)(b). The applicant and the property owner now appeal that decision to the Board of Commissioners.

Options*

- 1) Overturn the Planning Commission's decision and approve the request for a farm-help dwelling for a relative of the farm operator; or
- 2) Uphold the Planning Commission's decision and deny the request for a farm-help dwelling for a relative of the farm operator.

Fiscal Impact*

- Yes
 No

2040 Thriving Communities Initiative

Mandated Service? * Yes No

2040 Thriving Communities Initiative

Describe how this agenda checklist advances the core values or focus areas of 2040, or supports a strategy of a departmental goal.

To review the initiative, visit the website [HERE](#).

Mandated Service Description * If this agenda checklist describes a mandated service or other function, please describe here.

The process to appeal a decision of the Planning Official and the Planning Commission is provided by state law and Benton County Code, BCC 51.815, 51.825, and 51.830.

Values and Focus Areas

Check boxes that reflect each applicable value or focus area and explain how they will be advanced.

Core Values * Select all that apply.

- Vibrant, Livable Communities
- Supportive People Resources
- High Quality Environment and Access
- Diverse Economy that Fits
- Community Resilience
- Equity for Everyone
- Health in All Actions
- N/A

Explain Core Values Selections * This item involves an appeal of a Planning Commission decision under the provisions of state law and the County's acknowledged land use ordinances.

Focus Areas and Vision * Select all that apply.

- Community Safety
- Emergency Preparedness
- Outdoor Recreation
- Prosperous Economy
- Environment and Natural Resources
- Mobility and Transportation
- Housing and Growth
- Arts, Entertainment, Culture, and History
- Food and Agriculture
- Lifelong Learning and Education
- N/A

Explain Focus Areas and Vision Selection * This item involves an appeal of a Planning Commission decision under the provisions of state law and the County's acknowledged land use ordinances.

Recommendations and Motions

Item Recommendations and Motions

Staff Recommendations* Staff recommends the Board of Commissioners uphold the Planning Commission's decision to deny the application.

Meeting Motions* I move to ...
Based on the evidence in the record, and upon hearing testimony on the issue, I move to deny the applicants' appeal, thereby upholding the original Notice of Decision on file number LU-22-023.

Attachments, Comments, and Submission

Item Comments and Attachments

Attachments

Upload any attachments to be included in the agenda, preferably as PDF files. If more than one attachment / exhibit, please indicate "1", "2", "3" or "A", "B", "C" on the documents.

PDF File for County Agenda.pdf

14.22MB

Comments (optional) The packet for this appeal hearing includes:

- The applicant's original application materials;
- The original staff report and decision;
- Materials submitted to the Planning Commission on appeal;
- Materials submitted to the Board of Commissioners on subsequent appeal; and
- A staff memo in response to the appeal to the Board of Commissioners.

If you have any questions, please call ext.6800

**Department
Approver**

DARREN NICHOLS

1.

Department Approval

Comments

Signature

Darren Nichols

2.

Counsel Approval

Comments

Signature

Vance H. Chokey

3.

County Administrator Approval

Comments

Signature

Hanna Kwiatkowski

4.

BOC Final Approval

Comments

Signature

Hanna Kwiatkowski



MEMORANDUM

To Benton County Planning Commission
From Inga Williams, Associate Planner; and
Darren Nichols, Community Development Director
Date February 8, 2023
Subject Summary of LU-22-023 Staff Decision and Appeal

PROCEDURAL ITEMS

On March 21, 2022, the Community Development Department received an application for an accessory farm-help dwelling for a relative of the farm operator and deemed the application complete. The applicant is Cynthia Crosby; the property owner is Connie Jordan. The application was reviewed administratively pursuant to BCC 53.160. The county's Notice of Decision denying the request was mailed on June 30, 2022; recipients then had 14 calendar days from the date of decision to file an appeal. The applicant and the property owner jointly filed a timely appeal of the decision.

The appeal was forwarded to the Planning Commission and scheduled for public hearing on November 15, 2022 – Exhibit A Planning Commission Minutes for November 15. At the end of the public hearing, the applicant's attorney requested that the record be held open. The Planning Commission reconvened on December 6, 2022, for deliberation on the item. Five members of the Planning Commission were present; Commissioner Gervais abstained from the discussion and vote. Following deliberation, the Planning Commission voted 3 to 1 to uphold the staff decision denying the application, with one abstention. A Notice of Decision of the Planning Commission's denial of the appeal was emailed on December 8th and mailed on 9th.

The appellants then submitted a timely appeal of the Planning Commission's decision. The item, as required by County Code, is being forwarded to the Board of County Commissioners for a public hearing.

BACKGROUND

The subject property contains 64 acres zoned Exclusive Farm Use. Connie Jordan purchased the property in 2015. Cynthia Crosby is the applicant and is identified in the application as the farm operator. Ms. Crosby's daughter and son-in-law, Claire Fulsher and Kevin Fulsher, are identified as relatives who provide help to Ms. Jordan and Ms. Crosby.

Staff reviewed the application and supporting documentation for compliance with Benton County Code (BCC, Code). The staff report documents the findings and conclusions for each relevant Code section. Staff concluded that the request does not comply with BCC 55.120(1)(b) (Pages 4 through 7 of the staff report). The Code reads, “...*the relatives’ assistance in the management and farm use of the existing commercial farming operation is required by the farm operator...*” The Planning Commission also found that the applicant’s request does not comply with Benton County BCC 55.120(1)(b) – Exhibit B Planning Commission Minutes for December 6.

Applicants’ Supporting Documentation

The applicants have submitted documentation supporting their request. The information submitted includes comprehensive detail on the workings of their farm. This information can be found at the following listed pages:

Pages 96 through 101 – supporting documentation for the original application

Pages 104-139 and 142-149 - Appeal of the Development Department’s Decision

Pages 244-288 - Appeal of the Planning Commission’s Decision

The applicants’ agents have also submitted supporting documentation countering staff’s determination that the farm does not rise to the level of a commercial farming operation and that live-on-the-farm help from Claire Fulsher and Kevin Fulsher is not required. The documentation includes discussion of Land Use Board of Appeals cases and prior Community Development Department reviews of applications for farm-help dwellings for a relative of a farm operator.

STAFF DECISION

Below is a summary of the issues presented. The two staff memos that were submitted to the Planning Commission outline the arguments in more detail.

The arguments condense into two issues:

- when is farming a commercial farm operation? and
- how does the term ‘required’ apply to an applicant’s stated need?

When is farming a commercial farm operation?

“Farm Use” is defined as “the current employment of land for the primary purpose of obtaining a profit in money.”¹ The applicants only identify two farming operations that create a profit: breeding Dexter cattle and raising hay. Other farming activities on the property include horse boarding for personal use, an apple orchard, and a vegetable garden. The applicants do not utilize the land primarily to obtain a profit, nor do they rely upon this farm for their income. They live on the property to enjoy its beauty, enjoy a rural lifestyle and the opportunity to remain active in retirement, part of which is learning farming techniques and applying them to the property.

The applicants are clearly stewarding the established farm uses and on-site natural resources with the intention of preserving those resources for years to come but the applicants’ activities do not rise to

¹ ORS 215.203(2) and 308A.056

the level of a farm operator who gains the majority, if not all, of their income from managing a farm use and who intends to concentrate their activities on the land to create that income.

In the absence of express county code criteria staff utilized the objective criteria established by LUBA to determine that the applicants' operations do not rise to the level of a commercial farming operation.

- LUBA has established three safe harbors to determine if a farm is a commercial farm operation:
 - Does it meet the minimum parcel size that the Oregon Administrative Rules put forth as the minimum size that is considered acceptable to provide continuity for a commercial agricultural enterprise?
 - Oregon statute² requires a property to contain at least 80 acres. The subject property contains 64 acres; the application does not satisfy the minimum acreage test.
 - Is the farm use productive enough to meet or exceed the base income requirements required to establish a primary farm dwelling?
 - Oregon law establishes an \$80,000 annual income test to establish a primary farm dwelling. The applicant's income does not meet the \$80,000 dollar income requirement. Staff estimates current income at less than \$30,000 based on submitted beef receipts and an estimate of hay production at current hay prices.
 - Could the property qualify for an accessory farm dwelling under code requirements?
 - The requirements for an establishing an accessory farm dwelling are the same as for a primary farm dwelling – the property must contain a minimum of 80 acres or produce \$80,000 of annual farm income. The application does not meet these requirements.
- We could not determine that the farm is a commercial farming operation under the three safe harbor standards and so looked at the fourth part of the criteria, the definition of a 'commercial agricultural enterprise,' a term referenced by LUBA as equivalent to a commercial farming operation. A 'commercial agricultural enterprise must:
 - Contribute in a substantial way to the area's existing agricultural economy; and
 - Help maintain agricultural processors and established farm markets.
 - Staff concludes that the farm did not substantially contribute to Benton County's agricultural economy or maintain agricultural processors or established farm markets. It contributes slightly to the cattle market and the hay market but the farm's contributions have not risen to a point that its elimination would create an impact on any farm market or the local economy.

Is live-on farm help required?

On its face, the term "required" is easy to understand without the need to resort to a dictionary. The dictionary definition offered by the applicant's counsel defines 'required' as "to demand as necessary

² ORS 215.780

or essential (as on general principles or in order to comply with or satisfy some regulation).” Staff concludes it is neither necessary nor essential that the relatives live on the farm to provide support to farm operations on the subject property. Claire Fulsher and Kevin Fulsher provide supplemental help to the farm operation and live within a 15-minute drive of the subject property. The applicants also rely on help from neighbors, other community members, a local veterinarian, and a part-time hired employee. The appellants have invested in modern equipment, and built new irrigation, fencing and buildings. All these items decrease the requirement for repairs and upkeep, and decrease time spent in farm operations.

While the appellants and their attorneys do not agree with staff’s assessment, appellants may not simply substitute their own definition of a commercial farm operation on appeal.

ANALYSIS OF NEW APPEAL

The appellants have included a review of prior Community Development department decisions for Farm Help Dwellings for a Relative applications. Appellants assert that prior decisions should have been acknowledged and used as a basis for the staff decision on this application. Staff interpretations of the code, however, are based on the unique circumstances and evidence presented in each application.

Each farm dwelling situation is unique. While some comparisons between situations may be loosely drawn from one application to another but an application-to-application comparison is very difficult. In this case, staff’s review of the evidence presented against the standards in County Code and state law determined that, in this unique case, the application simply does not meet the tests.

Information supplied with the original application, and on appeal, including business plan information submitted in support of the appeal causes staff to revise the decision to deny the application.

RECOMMENDATION

Recommendation: Staff recommends the Board of County Commissioners uphold the Planning Commission decision to deny the application.

Proposed Motion: “Based on evidence in the record, and upon hearing testimony on the issue, I move to deny the applicant’s appeal, thereby upholding the original Notice of Decision on file number LU-22-023.”

Encl. Exhibits

Exhibit A – Planning Commission Minutes from November 15

Exhibit B – Planning Commission Minutes from December 6

Attachments

- Original Staff Report and Attachments
- Staff Reply to Appeal of the Development Department Decision

- November 15 Planning Commission Staff Documents
 - December 6 Planning Commission Staff Documents
- Original Application for a Farm-Help Dwelling for a Relative of the Farm Operator
- Application to Appeal the Development Department's Decision
 - Information submitted by the applicant for the November 15 Planning Commission Hearing
 - Information submitted by the applicant for the December 6 Planning Commission Hearing
- Application to Appeal the Planning Commission's Decision – Information submitted by the applicant for the February 21 Board of County Commissioners' Hearing



COMMUNITY DEVELOPMENT DEPARTMENT
4500 SW Research Way
Corvallis, OR 97333
(541) 766-6819

MEETING MINUTES
Benton County Planning Commission
November 15, 2022

The Benton County Planning Commission Chair Nicholas Fowler called the meeting to order at 7:00 p.m. The meeting was open to the public in-person and virtually via GoTo Webinar.

COMMISSION MEMBERS:

Present

Nicholas Fowler, Chair
Evelyn Lee
Sean Scorvo
Christina White
Liz Irish

Absent: Jennifer Gervais

STAFF:

Present

Darren Nichols, Director
Greg Verret, Deputy Director for Policy & Program Development
Inga Williams, Associate Planner
Gordon Kurtz, Associate Engineer
Shea Steingass, Environmental Project Coordinator
Linda Ray, Recorder

APPROVAL OF MINUTES for Planning Commission Meeting on October 11th Joint Commission meeting with Adair Village.

The Planning Commissioners approved their portion of the minutes.

PUBLIC HEARING; LU-22-023; JORDAN; APPEAL

Planner Williams presented the Staff Report on an application for a Farm Help Dwelling for a Relative submitted by Cynthia Crosby & Connie Jordan. Staff denied the application and the applicant has appealed that decision. Planner Williams stated that the applicant's property did not meet the criteria of commercial farm use due to the scale and intensity of the use. It does not meet the criteria for a farm help dwelling for a relative. Therefore, the application was denied.

QUESTIONS OF THE PLANNING COMMISSIONERS.

Answers to questions raised by the Commissioners to Planner Williams are as follows:

- The applicant can expand on the existing dwelling located on the property.
- The property is already below the minimum standard for parcel size, so there is no possibility of partitioning the property.

- Tax Assessors code of 551 “commercial farm operation” would have put the property at a lower tax rate.

PRESENTATION BY THE APPLICANT’S ATTORNEY

Mike Reeder, Attorney, 375 W 4th Ave, Eugene, Oregon is representing the applicant and owner of the property. He began his statement by pointing out that the Oregon State Legislature has already determined that certain circumstances would allow for the approval of the applicant’s request. Mr. Reeder disagrees with county staff’s decision to deny the application for two main reasons:

1. Mr. Reeder believes that the property in question is considered a Commercial Farming Operation. Mr. Reeder pointed out that state statute and county code do not define the term “commercial farming”. He disagrees with county counsel’s October 24 memo.
2. Mr. Reeder believes that assistance is required and therefore makes this case suitable for approval.

PLANNING COMMISSION DISCUSSION FOLLOWING THE PRESENTATION BY THE APPLICANT’S ATTORNEY

The term “necessary” is not used in consideration by LUBA, only in state statute and county code. The term “required” is relevant according to Mr. Reeder.

Mr. Reeder stated that staff’s suggestion that the property contains enough labor for one full time operator is in error.

Chair Fowler referenced the staff report that stated the property was acquired in 2015 with a cattle operation in place and the requirements for a primary dwelling. He asked Mr. Reeder why there is a request for a second dwelling. Mr. Reeder responded that state statute regarding farm help does not have a rule therefore legislature intended to allow for operator housing.

Safe harbor is not equivalent to this situation. Mr. Reeder stated that the applicant met the standards that it is more than a “hobby farm”.

TESTIMONY BY THE APPLICANT:

Connie Jordan is the owner of the property in question. She gave a brief background of the history and friendship between her and Cynthia Crosby. Ms. Jordan chose to go into the farm business as part of her retirement. Connie does the manual labor around the farm, while Cynthia takes care of the management and office work. Ms. Jordan emphasized the need for additional help around the farm as it has become too much for her to manage alone. Claire and Kevin Fulsher (daughter and son-in-law of Ms. Crosby) have been helping with the labor involved in the farm. Ms. Jordan gave a synopsis of the farm operation, investment she has

made and hope for the future of the property. She intends to make Ms. Crosby the primary beneficiary and Claire would be the secondary beneficiary. In hopes that the farm will be generational.

The Planning Commissioners asked questions and received detailed information about the cattle operation, horse raising, and fruit tree status on the farm, along with specifics regarding the hay production. Chair Fowler asked for clarification on the need for additional help. Ms. Crosby stated that age and the strains of physical labor involved in operating the farm increases the need for additional help. Both Ms. Jordan and Ms. Crosby hope to see the work done by family instead of hiring outside help.

PUBLIC TESTIMONY IN SUPPORT OF THE APPLICANT

Rose & Patrick Mahoney, 31916 Fern Rd, Philomath. They have been neighbors of the property since 1996. They stated that their observation since Ms. Jordan purchased the land has been consistent with farming. Mrs. Mahoney stated that Ms. Jordan is working hard to raise the next generation of farmers which is valuable to their community. They are in support of the applicant's request.

Claire Fulsher, 4936 SW Roseberry St, Corvallis. Ms. Fulsher is the only daughter of Cynthia Crosby. Their goal for the farm is to see it succeed, to incorporate a roadside stand to sell produce and as the cow production grows, she hopes to share beef with the community. Ms. Fulsher helps with the day-to-day operations of the farm. She pointed out that the houses located on the property are next to the county road, so they are not taking up viable land that is needed for the livestock or hay production.

REBUTTAL BY THE APPLICANT'S ATTORNEY, MIKE REEDER

Mr. Reeder noted that the farming operation requires 2.5 full time workers. Which in his opinion justifies the need for farm help. He stated that relative farm help is required in this case due to the owner and operator's physical limitations due to age.

Andree Phelps, 375 W 4th Ave, Ste 204, Eugene Oregon. Ms. Phelps is a colleague of Mr. Reeder and she stated that the staff report's mention of "some" hay is not portrayed correctly. She noted that the hay production and profit intake, along with farm equipment reflect "more than some".

Mr. Reeder closed his rebuttal by referring to the LUBA supporting cases as a proposition to grant approval of the application. He asked to leave the public hearing record open to provide additional information.

Commissioner Scorvo **MOVED** for a continuance allowing for additional testimony. The motion was **SECONDED** by Commissioner White; the **MOTION PASSED 5-0**.

The record will be held open until November 22nd. The Planning Commission will reconvene on Tuesday, December 6th.

PLANNING COMMISSION WORK SESSION

Community Development Deputy Director, Greg Verret presented county code amendments concerning the upcoming changes to the Benton County Code regarding stormwater management and permitting. Benton County's Oregon Department of Environmental Quality (DEQ) National Pollutant Discharge Elimination System (NPDES) permit has two new requirements ("control measures") going into effect on March 1, 2023. There will be changes to the county's Erosion & Sediment Control permit as well. Gordon Kurtz, Benton County Public Works Engineer was also present to contribute to the discussion. A public hearing is scheduled for December 6th on these changes to the county code.

The meeting adjourned at 10:07 pm.

MEETING MINUTES
Benton County Planning Commission
December 6, 2022

Benton County Planning Commission Chair Nicholas Fowler called the meeting to order at 7:10 p.m. The meeting was open to the public in-person and virtually via GoTo Webinar.

COMMISSION MEMBERS:

Present

Nicholas Fowler, Chair
Jennifer Gervais, Vice Chair
Evelyn Lee
Sean Scorvo
Elizabeth Irish

STAFF:

Present

Darren Nichols, Director
Inga Williams, Associate Planner
Linda Ray, Recorder

PLANNING COMMISSION DELIBERATIONS ON LU-22-023; JORDAN; APPEAL

The Chair asked for commissioner reactions to an earlier hearing on the appeal of a staff decision denying an application for a Farm Help Dwelling for a Relative.

Commission members offered the following observations and perspectives:

- The applicant does not meet the test for required help with a commercial farm operation according to BCS 55.120(1)(b).
 - It was difficult to determine that the farming operation is commercial.
 - Reviewing the operational hours spent per year, there is not enough work identified to require full-time help.
 - Under Benton County Code's (BCC) 55.109, BCC 55.115 \$80k income test, if the applicant were seeking to build a primary dwelling or accessory dwelling the application would be denied.
 - Despite the applicant's goals, the portion of the farm dedicated to commercial farming does not justify a second dwelling.
- This property is part of an area of former prime farmland that was split into parcels for five dwellings. Both of those factors reduce the footprint of agricultural use and increased the footprint of dwellings which creates undeniable risks to the parcel's commercial farm operation potential.
- The applicant's farming operation reflects a lifestyle choice rather than a business.
- Placing another dwelling on prime agricultural land is inconsistent with Statewide Planning Goal 3 and Benton County policy to keep agricultural lands in production.
- The State has left it to each county to use local discretion to interpret the term "necessary" and the Planning Commissioners need to help maintain continuity with previous decisions and sustain the type of community desired by county residents.
- Acknowledgement of the applicant's need for help on the farm and noting that it is the County's duty to protect farmland and control Accessory Dwelling Units allowed in designated zones.

- Acknowledging the income threshold challenge for the applicant to qualify as a “commercial” farm operation and strongly suggesting the County revisit the issue around the many small farms around the county and consider clarifying the standards to qualify for this type of application.

MOTION:

Commissioner Scorvo **MOVED to DENY** the applicant’s appeal, thereby upholding the original staff Notice of Decision on LU-22-023. Commissioner Lee seconded the **MOTION**.

Benton County Planning Commission vote on the appeal of the staff decision for LU-22-023:

- Commissioner Fowler – Yes
- Commissioner Gervais – Abstained
- Commissioner Irish – No
- Commissioner Lee – Yes
- Commissioner Scorvo - Yes

The **MOTION** passed 3 to 1 with one abstention.

Items from Planning Commission

Chair Fowler provided an update on the Benton County Talks Trash Workgroup and reminded the Commission of their need to appoint a representative to the Workgroup. Planning Commission members declined to volunteer due to limited capacity.

Items from Staff

Nichols updated the commission about the current vacancies on the Planning Commission. The BOC has received an application for the vacant positions and will be interviewing one candidate on Friday, December 9th. A few other community members have expressed interest in the vacancies as well.

Nichols also gave an update on the Adair Village UGB expansion: the Benton County Board of Commissioners are meeting with Adair Village City Council this evening to consider the proposed UGB amendment previously recommended by the Planning Commission.

Nichols also gave brief updates and information on upcoming events:

- 2023-25 Department budgets are due in January.
- Community Roundtable Discussion will be on Thursday, December 15th.¹
- The next Monthly Morning Grind will be on Thursday, January 6th.
- Benton County will host a 2023 Oregon Planners Network Meeting – a joint production of the Oregon Department of Land Conservation and Development and the Oregon Chapter of the American Planners Association.
- The Community Wildfire Protection Plan draft has been finalized and goes before the BOC for a work session on December 20th.

The next Planning Commission meeting will be on January 3, 2023.

The meeting adjourned at 8:00 p.m.

Original Staff Report and Attachments



STAFF REPORT

FARM-HELP DWELLING FOR A RELATIVE

NATURE OF APPLICATION	A request for a farm-help dwelling for a relative of the farm operator on an approximately 64-acre property.
APPLICABLE CRITERIA	Benton County Code Sections 55.120, 55.405, 99.810 and 99.705.
PROPERTY LOCATION	31992 Fern Road, Philomath, OR, 97370 T12S R6W Section 24C, Tax Lot 108
PROPERTY OWNER APPLICANT	Connie L. Jordan Cynthia A. Crosby
ZONE DESIGNATION	Exclusive Farm Use (EFU)
COMP. PLAN DESIGNATION	Agriculture
CAC PLANNING AREA	Mid Benton (not active)
STAFF CONTACT	Inga Williams, Inga.Williams@co.benton.or.us

PUBLIC NOTICE

On March 21, 2022, the Community Development Department received an application for an accessory farm-help dwelling for a relative of the farm operator and deemed it complete. This application is reviewed administratively pursuant to BCC 53.160. The Department is not required to and did not send a Notice of Application to surrounding property owners but will send a Notice of Decision that will allow the recipients 14 calendar days from the date of the decision to submit an appeal. The Department did send notice to relevant agencies and other county departments for review and comment on April 11, 2022.

BACKGROUND AND PROPERTY INFORMATION

Connie Jordon is the property owner. She purchased the property in 2015, along with a herd of 28 Dexter cattle that were on the property. Cynthia Crosby is the applicant and is identified in the application as the farm operator. She and the property owner live on the property. Ms. Crosby’s daughter and son-in-law are the relatives who provide help to Ms. Jordon and Ms. Crosby.

The subject property is within the Exclusive Farm Use (EFU) Zone. Surrounding land to the north, south, east, and west of the subject property is also zoned EFU. Benton County Assessor records show that the subject property contains an existing dwelling constructed in 1987. There are three barns. Access is obtained from Fern Road.

The dwelling was approved in 1986 as a farm dwelling¹. The property at that time was planted in hay and pasturage. The approval criteria for the farm dwelling at that time is as follows:

Article IV.03(2) (a1) of the Benton County Zoning Ordinance states that a farm related residence may be permitted if the proposed residence is the only dwelling on the property.

Article IV.03(2)(a2) of the Zoning Ordinance requires the subject parcel to be in farm use in order to allow establishment of a farm related residence.

Article IV.03(2)(a3) of the Zoning Ordinance permits a farm related residence if the size of the farm unit is consistent with the size of commercial farm enterprises in the area.

Whereas, currently the criteria for approval of a farm dwelling on high value farmland is an 80,000² dollar income test.

A small portion of the property along the west edge is in a flood zone³. There are four types of soil on the parcel, all of which are considered prime farmland soils: Santiam silt loam (prime class 2e, 3e), McAlpin silty clay loam (prime class 2e), Linslaw loam (prime class 3e), and a small area of Dayton silt loam (prime class 4w). There are wetlands located on the property. One wetland is a small freshwater pond close behind the dwelling. The other wetland runs along the west property boundary and is a freshwater forested/shrub wetland.

In the application narrative, the applicant lists many specific tasks that are necessary to maintain the property. These tasks, generalized, include managing: the Dexter cattle herd, the horse herd, the pasturage, an orchard of 35 trees (70% of which were planted in 2020 and 2021), a large garden bed, and a pond. The applicant indicates that income has been earned on the sale of cattle. No other income generating uses are described in the narrative. The applicant indicates that excess fruit and vegetables are distributed to a local food bank and the horses are for personal use. In accordance with the State's rules and Benton County's local regulations (copied below), the only identified farm use of the property is the cattle breeding operation.

BCC 51.015(15) "Farm use" means the following: (a) In only the Exclusive Farm Use, Forest Conservation, and Multi-Purpose Agriculture zones, "farm use" means 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 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. Marijuana, grown commercially pursuant to a license issued by the State of Oregon, is a crop. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "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, bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees defined in ORS 215.203 (3)

¹ Planning Files # MA-86-26

² Gross annual income from the sale of farm products, not including marijuana, in each of the last two years or three of the last five years, or in an average of three of the last five years

³ Panel 41043C0500G, Effective 9/29/2010

or land described in ORS 321.267 (3) or 321.824. A wholesale or retail plant nursery is considered horticultural use and therefore is allowed under this definition.

COMMENTS

Gordon Kurtz, Associate Engineer for Benton County Public Works, submitted comments on the application on April 11, 2022.

“No road improvements will be required in association with this application.”

Community Development Response: No response needed.

Bernard S. Altenbach, Engineer/Survey Technician 2 for Benton County Public Works, submitted comments on the application.

“No Road Approach Permit required.”

Community Development Response: No response needed.

Rich Saalsaa, Fire and Life Safety Officer for Philomath Fire and Rescue, submitted comments on the application.

“Any new dwelling must have a completed Access and Water Supply Worksheet. The site plan must also show access driveway, length and width, and if >150’ from Fern, a turnaround.”

Community Development Response: These requirements will be necessary at the building permit stage. This requirement will not be applied at this stage of the process.

FINDINGS APPLYING CODE CRITERIA

All applications are subject to the requirements of the Benton County Development Code (BCC). Pertinent sections of Code are excerpted below, distinguished by **boldface** type. Excerpts from the applicant’s testimony are in *italics*.

CHAPTER 55

BCC 55.120 Farm-Help Dwelling for a Relative of the Farm Operator.

(1) One farm-related dwelling may be permitted on a lawfully established parcel or lot, subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:

Findings and Conclusion regarding a lawfully established parcel: This parcel and adjacent parcels were originally a part of a 92-acre parcel, identified as Tax Lot 101, T12S R6W Section 24. The 92-acre parcel was partitioned to segregate out a 5.4-acre and an 11.38-acre parcel in November 1978. In 1983, a 0.61-acre non-farm parcel, with existing dwelling, located along Fern Road⁴ was partitioned from the 75 acres through a minor land partition application. Another partition was approved in June 1986 to create a 10.16-acre parcel and the existing 64-acre parcel⁵. The Community Development Department concludes that this parcel is lawfully established. This criterion is met.

(a) The dwelling will be located on property used for farm use;

Findings: The property assessor has classified the property as 551, which is a commercial farming classification. According to the farm operator, when the owner purchased the property, she also purchased the herd of 28 Dexter cattle that were on the property. The bull and several cow/calf pairs were sold and other cows were butchered in 2019 and the meat sold. A new bull was purchased in 2020 to continue the breeding operation.

⁴ Planning Files # LD-82-38

⁵ Planning Files # PC-86-10

“To date, the Owner, Connie, and the farm operator, Cindy, have managed (sold, purchased, or butchered) 55 cattle on the property since purchasing the initial herd.”

The management of the cattle herd meets the definition of “farm use” in that the farm operator is obtaining a profit in money by the feeding, breeding, management and sale of livestock.

Conclusion: Based on the assessment of the property as qualifying for farm assessment and the applicant’s 2020 Schedule F showing gross income of \$3,358, staff concludes the accessory dwelling will be located on property used for farm use. This criterion is met.

(b) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, step grandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator’s spouse, whose assistance in the management and farm use of the existing commercial farming operation (not including marijuana) is required by the farm operator; [BCC 55.020(2) “Farm operator” means a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.]

Findings and Conclusion - the dwelling will be located on the same lot or parcel as the dwelling of the farm operator:

The principal dwelling is occupied by the farm operator and the property owner. Ms. Crosby is considered the farm operator by the property owner.

“Ms. Crosby works closely with Ms. Jordan to manage the farm and functions in the role of the farm operator including accounts payable and renewables, livestock record keeping, registration and marking maintenance, marketing livestock and mobile butcher process, property and pond upkeep, grass hay and pasture production, fertilizing and tilling schedules, orchard maintenance, and garden production.”

This criterion is met.

Findings and Conclusion- the dwelling will be occupied by a child, parent, stepparent, grandchild, grandparent, step grandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator:

The farm operator states, in the application narrative, that the proposed dwelling will be lived in by her daughter, Claire, and son-in-law, Kevin.

“Claire and Kevin have been involved with many aspects of the farm operations and have expressed a desire to be located closer to the farm in order to assist in more of the day-to-day operations.”

This criterion is met.

Findings and Conclusion - the relatives’ assistance in the management and farm use of the existing commercial farming operation is required by the farm operator:

In the application narrative, the farm operator lists the following commercial operation tasks that require assistance:

- *Maintenance of the daily nutritional needs of the livestock including procuring the necessary feed and hay supplies for a year round operation, including storage and distribution.*
- *Maintenance of the health, breeding and sales records for the livestock. This includes working with the local veterinary services in developing an annual calendar of routine care and maintenance.*

- *Fence maintenance including repairing the pastures with perimeter, cross fencing and electric fencing to facilitate rotational grazing throughout the 60 acres.*
- *Farm equipment maintenance and tool repair.* [The list of equipment is not copied here but is included in the applicant's narrative]
- *Grass management and the development of short and long term goals as a grass farmer and hay producer.* [The list of goals involved is included in the applicant's narrative.] *Also includes rotational grazing for the cattle and marketing any excess hay to local horse and cow owners.*
- *Assistance during calving season of the Dexter cattle, butcher preparations and with any veterinary tasks needed to maintain the health of the livestock.*
- *Well and water maintenance of the property. Filling and cleaning cattle water tanks, assuring well functions and protection from livestock and weather as well as routine maintenance*
- *Monitoring and maintenance of infrastructure such as irrigation, electric and general fencing, water sources and flow, faucets, batteries, and feed supplies necessary to ensure animal safety and welfare and uninterrupted operations; this includes any services needed by a licensed worker.*

Defining the words required and necessary

Louks v. Jackson County, 28 Or LUBA 501 (1995) - Where a local code requires that a second farm dwelling be shown "conclusively" to be "necessary⁶ for the operation of the commercial farm," but does not define the term necessary, it is appropriate to use the dictionary definition of the term "necessary". Benton County Code utilizes the word required in place of the word necessary and does not define the term. The Merriam-Webster dictionary defines required as, "stipulated as necessary to be done, made, or provided." The Cambridge Dictionary defines it as, "necessary according to the rules or for a particular purpose." Definitions of necessary include:

- Merriam-Webster - absolutely needed
- Cambridge - needed in order to achieve a particular result

Defining commercial farming operations

The closest definition of a commercial farming operation is from the Oregon Administrative Rules⁷:

- (2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:
- (A) Contribute in a substantial way to the area's existing agricultural economy; and
 - (B) Help maintain agricultural processors and established farm markets.
- (b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

The definition has been further developed by a decision in a 2019 Land Use Board of Appeals (LUBA) case, Richards v. Jefferson County, 79 Or 171, which outlines various methods that can be used to determine if a farm operation constitutes a commercial farming operation. From LUBA's findings in the case:

"We here describe the two approaches discussed in Richards I and Harland as 'safe harbors,' because they are based on specific and facially more rigorous rule standards that apply to somewhat analogous determinations and uses governed by OAR chapter 660, division 033. The two approaches are based on (1) the OAR 660-033-0020 standards for determining what

⁶ Necessary is the term used in ORS 215.283(d)

⁷ [Chapter 660 Division 33 AGRICULTURAL LAND](#) 660-033-0020 Definitions

minimum parcel size is consistent with continuing the "commercial agricultural enterprise" within a local area, and (2) the OAR 660-033-0135 standards for approving a dwelling in conjunction with farm use. The rationale is that if a farm operation meets or exceeds the local thresholds for a 'commercial agricultural enterprise,' or the farm operation is productive enough to qualify for a primary farm dwelling, then a county could safely conclude, without more analysis, that the farm operation is also a 'commercial farming operation' for purposes of approving a 'relative farm help dwelling' under OAR 660-033-0130(9). To those two identified 'safe harbors,' we can add a third. OAR 660-033-0130(24)(b) sets out standards for when a farm operation with a primary farm dwelling qualifies for an accessory farm dwelling, occupied by a nonrelative. Because a relative farm help dwelling is similar in function to an 'accessory farm dwelling' allowed under OAR 660-033-0130(24), if the farm operation supporting the primary farm dwelling is sufficient to qualify the property for an accessory farm dwelling under the standards at OAR 660-033-0130(24)(b), we think a county could safely conclude, without more, that the farm operation qualifies as a 'commercial farming operation' for purposes of OAR 660-033-0130(9). Of course, the reverse is not true: if the farming operation supporting a proposed relative farm help dwelling did not meet or exceed the relevant standards under any of these three 'safe harbors,' it would not necessarily mean that the county must conclude that the farming operation at issue is not a "commercial farming operation" for purposes of OAR 660-033-0130(9). It means only that the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a 'commercial farming operation'."

"..., we believe that, as a legal matter, what distinguishes an existing 'commercial' farming operation from its noncommercial counterparts is largely a matter of scale and intensity. Roughly speaking, we believe a commercial farming operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property."

The applicant has submitted a Schedule F showing gross income in 2020 to be \$3,358. This is 4% of the income required for a farm dwelling approval under current Code requirements. Under the first two safe harbors of the LUBA rationale cited above, the farm operation is not productive enough to qualify for a primary farm dwelling and therefore the county can conclude it is also not productive enough for purposes of approving a relative farm help dwelling. The third safe harbor also hinges on the same local income requirements for an accessory farm dwelling (BCC 55.115), which LUBA concludes is similar in function to a relative help dwelling. This request does not meet the minimum requirements in the Benton County Code for an accessory dwelling unit and so this safe harbor is not met. Therefore, the decision for this application hinges upon if the operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property.

The applicant does not indicate the farm operator's time spent in running the commercial portion of the agricultural operations but given that this is a small portion of the overall agricultural activities occurring on the property, it can be concluded that the majority of the farm operator's time is not spent in the cattle breeding operation. The amount of assistance that is needed by the relative in that commercial operation is also not specified. Based on the amount of gross income from the operation, it can be concluded that the cattle breeding operation does not contribute in a substantial way to the support of the family and so the relatives must support themselves by other means, with the majority of their time in that pursuit. It can also be concluded that it does not contribute substantially to the area's existing agricultural economy nor help maintain

agricultural processors and established farm markets. The conclusion is that the relatives' help is not absolutely needed for management of the commercial agricultural operation and therefore it is not necessary for the relatives to live on the property.

The size of the property, which is below the State's established minimum acreage requirements, limits the amount of commercial agriculture that can be conducted. It appears unlikely that the size of the herd could be increased in any great capacity. Income from fruit and vegetables and hay could be generated in the future but it is questionable that it would increase income or the scale of the commercial farming operation to a level significant enough for approval of an accessory dwelling.

Conclusion: This criterion is not met.

- (c) The farm operator shall continue to play the predominant role in the management and farm use of the farm. For purposes of this section, a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.**

Findings: The farm operator indicates that she and the owner have been taking classes from OSU's Small Farms Program. This indicates a willingness of the farm operator to maintain the predominant role in management of the farm but this is not explicitly stated in the application.

Conclusion: This criterion is probably met.

- (d) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements of the zone, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect. For the purpose of this section, "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).**

Findings: Benton County code requires that no new parcel shall be created from a lot or parcel containing a farm help dwelling for a relative. Therefore, except for the foreclosure described in this section, future approval of a land division for the subject property that would separate the accessory farm-help dwelling approved pursuant to BCC 55.120 from the primary dwelling would not be approved unless a secured party foreclosed on the dwelling.

Conclusion: No conclusion necessary.

- (e) The landowner shall sign a covenant as required by BCC 55.405(6).**

55.405 Siting Standards and Requirements. (6) Approval of any dwelling in the EFU zone shall include a condition of approval requiring the landowner for the dwelling to 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.

Conclusion: If the application were to be approved, this would be a Condition of Approval.

- (g) The subject tract is not employed in the growing of a marijuana crop.**

Findings: There is no indication that marijuana is grown on the subject tract. There have been no requests for a Land Use Compatibility Statement for a license to grow marijuana for this parcel.

Conclusion: This criterion is met.

BCC 55.405 Siting Standards and Requirements. All structures allowed in the Exclusive Farm Use Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards: BCC 55.405(1) through (5) Siting Standards.

Findings: The remaining siting standards in BCC 55.405(1) through (5) must be evaluated based on a site-specific development plan, which would occur at the time the applicant submits plans for a building permit.

Conclusion: If the application were to be approved, this would be a Condition of Approval.

CHAPTER 99

BCC 99.810 Water Well Standards for Building Permit. If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

- (1) A well log prepared by a licensed well driller and filed with the State Watermaster indicating the well is a drilled, cased well.**
- (2) A water quality test prepared by an approved testing laboratory showing that the well meets the Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates. If water quality does not meet the EPA standards, the Benton County Health Department must approve plans for water treatment.**
- (3) A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested.**

Findings: The applicant requests approval for a Farm Help Dwelling for Relative, therefore BCC 99.810 would apply to a subsequent building permit to authorize the establishment of a dwelling on the property.

Conclusion: If the application were to be approved, this would be a Condition of Approval.

BCC 99.705. Sewage Disposal. Each proposed dwelling...shall be served by a sewage disposal system which complies with the requirements of the Oregon Department of Environmental Quality. [BCC 99.705]

Findings: A Septic Authorization Notice would be required for the connection of the Farm Help Dwelling for a Relative to an existing system.

Conclusion: If the application were to be approved, this would be a Condition of Approval.

CONCLUSION and DECISION

Based on the findings above, as well as information in the file, the Planning Official has determined that the application does not meet the criteria for an accessory farm-help dwelling for a relative of the farm operator. The application is **DENIED** because it does not meet BCC 55.120(1)(b).

**Staff Reply to Appeal
of the Development
Department Decision
November 15
Planning Commission
Staff Documents**



Community Development Department

Office: (541) 766-6819
4500 SW Research Way
Corvallis, OR 97333
co.benton.or.us/cd

MEMORANDUM

To Benton County Planning Commission
From Inga Williams, Associate Planner; and
Darren Nichols, Community Development Director
Date November 9, 2022
Subject Summary of LU-22-023 Staff Decision and Appeal

Background and Decision

On March 21, 2022, the Community Development Department received an application for an accessory farm-help dwelling for a relative of the farm operator and deemed it complete. This application was reviewed administratively pursuant to BCC 53.160, which does not require a Notice of Application to surrounding property owners but does require a Notice of Decision. The Notice of Decision was mailed on June 30, 2022, and it allowed the recipients 14 calendar days from the date of the decision to submit an appeal.

Connie Jordan is the owner of the 64-acre property zoned Exclusive Farm Use that is the subject property of the application. The property is located at 31922 Fern Road in Philomath. She purchased the property, along with a herd of 28 cattle established by the previous owner, in 2015. Cynthia Crosby, who lives with Ms. Jordan, is the applicant and is identified in the application as the farm operator. Ms. Jordan is described as a co-manager. Ms. Crosby's daughter and son-in-law, Clair and Kevin Fulsher, are identified as the relatives who would provide help to Ms. Jordan and Ms. Crosby.

Staff reviewed the application and supporting documentation to verify compliance with relevant Benton County Code Sections; the relevant sections include BCC 55.120 and 55.405. The staff report documents the findings and the conclusion of compliance for each of relevant Code sections. The review concludes that:

- 1) the property is a lawfully established parcel;
 - 2) the existing dwelling is located on property used for "farm use" because the farm operator is obtaining a profit in money from livestock;
 - 3) the principal dwelling is occupied by the farm operator;
 - 4) the proposed dwelling would be occupied by a relative of the farm operator;
 - 5) the farm operator would continue to play a predominant role in the management of the farm;
- and

6) the farm is not used to grow a marijuana crop.

The staff report, however, found that the application does not comply with BCC 55.120(1)(b) (Pages 4 through 7 of the staff report). This part reads, "...the relatives' assistance in the management and farm use of the existing commercial farming operation is required by the farm operator:..." Staff utilized a Land Use Board of Appeals (LUBA) decision, *Louks v. Jackson County*, to help define the term "required" and another LUBA decision, *Richards v. Jefferson County*, and a definition from the Oregon Administrative Rules to define what a commercial farming operation is. The conclusion was that, while the existing use is a "farm use", the entirety of the farm operations do not constitute a commercial farm operation because those operations do not substantially contribute to the area's existing agricultural economy. The income produced from the farm operations is below the \$80,000 in annual revenue required for a farm dwelling approval. It was also concluded that the size of the property, which is below the State's established minimum acreage requirement of 80 acres, limits the amount of farm use and income that could be generated by the property into the future. Live in farm help from a relative is therefore not a requirement or a necessity for this property based on staff's review of the application per the LUBA decisions.

The Benton County Planning Official signed a Notice of Decision denying this application for a Farm Help Dwelling for a Relative.

Appeal

The Notice of Decision specified a 14-day appeal period¹, as required by State statute and the county's Development Code. The applicant timely appealed the decision. The applicant/appellant also requested the Community Development Department stay the appeal process to attend to a family emergency. To accommodate the requested stay, the applicant signed a waiver of the 150-day deadline for a local government to take final action on the application².

On September 14, 2022, the applicant submitted additional information in support of the appeal through their attorney, Mike Reeder, and asked staff to move forward with scheduling a public hearing on the appeal. The applicant has submitted a detailed list of activities that maintain the current farm operation on the property and the estimated hours per month and per year required to complete the activities. The list of activities provides an overview of the effort and the commitment required to run the farm. The details of the operation include maintaining pastures for cattle and horses, managing timber land, and growing vegetables, berries and tree fruit. The list also includes sustaining the wildlife habitat of a quarter-acre pond. The applicant provided a similar detailed list of information in the original application.

Mr. Reeder provided a rebuttal of staff's findings that the application was not in compliance with a subsection of BCC 55.120(1)(b). Mr. Reeder's rebuttal states that staff used the incorrect analysis of scale and intensity when analyzing the farm as not meeting the standards for a "commercial farming"

¹ ORS 215.422 and BCC 51.815

² Subsection (1) of ORS 215.427

operation and that the staff did not correctly define the term ‘required’. Vance Croney, Benton County Counsel, has written a rejoinder to Mr. Reeder’s rebuttal of staff’s analysis. Mr. Croney’s memorandum is attached to this memorandum.

Response & Analysis

Staff concurs that the applicant lives on a farm and that she and the property owner contribute considerable time and effort to the farm operations. The income producing portion of the farm, however, is limited to the cattle breeding operation and some hay sales. The denial of the application was based on the scale and intensity of the cattle breeding operation, including the income derived from that portion of the farm, and the applicant’s need for a relative’s help with that portion of the farm use. The information submitted in the appeal provides a more detailed overview of the time and effort involved in all of the farm activities.

The applicant indicates the work requires approximately 2.3 full time people to work the entire farm, which includes Ms. Crosby and Ms. Jordan working full time, and a part time person for approximately 75 hours a month. Ms. Crosby’s review of the activities, however, indicates that only one person, and sometimes a second individual, is necessary to provide management of the income producing portion of the farm use. The cattle breeding operation does not require a sufficient scale or intensity of effort to require a relative to live on the farm to provide help.

None of the information supplied with the appeal causes staff to revise the decision to deny the application.

Recommendation

Staff recommends that the Planning Commission uphold the staff decision to deny the application.

Proposed motion: “Based on evidence in the record, and upon hearing testimony on the issue, I move to deny the applicant’s appeal, thereby upholding the original Notice of Decision on file number LU-22-023.”

Encl.

Memo from County Counsel

Staff Report

LUBA Final Opinion and Order for Louks vs. Jackson (referenced in the staff report)

LUBA Final Opinion and Order for Richards vs. Jefferson County (referenced in the staff report)

LUBA Final Opinion and Order for Stratton vs. Clackamas County (referenced by Mike Reeder)

Applicant Appeal and Supportive Materials

Public Testimony from Christopher Browne



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MEMORANDUM

TO: Darren Nichols, Inga Williams
FROM: Vance Croney, Counsel
DATE: October 24, 2022
RE: Relative Farm Help Dwelling Response

Petitioner puts forward three bases for its appeal of staff's denial of a Relative Farm Help Dwelling. None of the bases are persuasive or correct.

1. Petitioner's reliance on concurring opinion is misplaced.

The first objection is "Staff decision misreads *Richards v. Jefferson County*, 79 Or LUBA 171 (2019)" because it failed to address a more recent LUBA decision.

Staff relied on *Richards* to analyze the phrase "existing commercial farming operation," which is undefined in both Benton County's Development Code or the LCDC regulations (OAR 660-033). To develop a framework for its analysis, staff turned to OAR 660-033-0020(2)(a) which is LCDC's definition of "commercial agricultural enterprise," and the approach endorsed by LUBA in *Richards* at 177 fn. 4.

As part of its analysis of the LCDC regulation, staff assessed the scale and intensity of the farm use by examining farming income, and whether the operations contribute to the area's existing agricultural economy or will help maintain agricultural processors and established farm markets. These are all elements identified in OAR 660-033-002(2)(a).

Despite LUBA's explicit reference to this definition as guidance for determining whether an "existing commercial farming operation" can be proven, Petitioner asserts a concurring opinion in a later LUBA decision should be followed, and not the unanimous decision in *Richards*.

Petitioner cites to, and relies on, *Stratton v. Clackamas County*, ___ Or LUBA ___, LUBA No. 2021-044 (Aug. 30, 2021). But, rather than citing the unanimous decision, Petitioner used a concurring opinion to support their argument that the *Richards* analytical framework is incorrect. That is a misplaced argument for the simple fact that concurring opinions are not binding legal precedent. See [Alexander v. Sandoval, 532 U.S. 275, 285 n.5 \(2001\)](#) (concurring opinions normally do not have precedential effect); [Bronson v. Bd. of Educ. of Cincinnati, 510 F. Supp. 1251, 1265 \(S.D. Ohio 1980\)](#) ("concurring opinions have no legal effect, and thus, are in no way binding on any court"); Ryan M. Moore, Comment, [I Concur! Do I Matter?: Developing a Framework for Determining the Precedential Influence of Concurring Opinions, 84 Temp. L. Rev. 743, 744 \(2012\)](#) ("concurring opinions written by a single appellate-level jurist are not

considered binding upon lower courts and have almost no dispositive impact upon the law on which they speak”).

In both *Richards* and *Stratton*, the unanimous opinions of the LUBA Board emphasize the discretion given counties in interpreting the phrase “existing commercial farming operation.” See *Stratton* at 5-6; *Richards* at 179. Staff chose to use OAR 660-033-0002(2)(a) as guidance for its interpretation. That was not incorrect and was, in fact, cited in *Richards* as an acceptable means of assessing whether a “commercial farming operation” exists.

2. The Word “Required” is not Ambiguous.

BCC 55.120 describes when a Relative Farm Help Dwelling will be permitted. Subsection (1)(b) includes the condition when the relative “whose assistance in the management and farm use of the existing commercial farming operation (not including marijuana) is required by the farm operator.” Staff interpreted the word “required” by looking to both the Merriam-Webster and Cambridge Dictionaries for the definition.

Petitioner objects to the county’s interpretation and offers their own definition, from a different dictionary. This is simply a case of opposing interpretations. But, in this particular case, Benton County’s interpretation is given significant deference.

The Oregon Supreme Court found when a local government interprets its own development code, it is “entitled to the deference described in ORS 197.829(1).” *Siporen v. City of Medford*, 349 Or. 247, 258 (2010).

And the extent of that deference is substantial:

[W]hen a local government plausibly interprets its own land use regulations by considering and then choosing between or harmonizing conflicting provisions, that interpretation must be affirmed, as held in *Clark v. Jackson County*, 313 Or. 508 (1992) and provided in ORS 197.829(1)(a), unless the interpretation is inconsistent with *all* of the “express language” that is relevant to the interpretation, or inconsistent with the purposes or policies underpinning the regulations. (emphasis in original)

Id. at 259.

When LUBA assesses whether an interpretation is “plausible,” the standard of review is “highly deferential” to the governing body and the “existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation ‘implausible.’” *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or. App. 543, 555 (2012), quoted in *Crowley v. City of Hood River*, 308 Or. App. 44, 52 (2020).

Thus, as long as staffs’ interpretation of its development code is plausible, that interpretation is legal and will be given significant deference.

3. Approval Standards Must be Clear and Objective.

Petitioner points out ORS 197.307(4) applies to buildable land both inside and outside the UGB and that it requires the county to apply clear and objective standards when reviewing proposed development of housing. Benton County does not disagree with those assertions.

However, the “standards” Petitioner cites as inadequate under ORS 197.307 are both clear and objective.

Petitioner states, “[s]ince neither the state nor the county has defined with clear and objective standards what constitutes a ‘commercial’ farming operation the County may not apply the standard.” While it is true that phrase has not been defined, LUBA has provided clear guidance on how to interpret, and apply that phrase. As previously cited above, staff used the definition of “commercial agricultural enterprise” in OAR 660-033-0020(2)(a) to interpret the phrase. LUBA has affirmed that method of interpretation because the definition in the administrative rule is clear and objective. *Richards*, 79 Or LUBA at 177 fn. 4.

And, it is insufficient to argue that ORS 197.307(4) is not met where alternate interpretations are possible. The Oregon Court of Appeals has addressed that very issue:

[P]etitioners’ arguments rely on potential ambiguity in various terms when they are considered without reference to their context and the purpose of the ordinance. As explained above, that is not what the ‘clear and objective’ standard requires.

Roberts v. City of Cannon Beach, 316 Or. App. 305, 317 (2021).

In addition, Petitioner asserts “since the terms ‘necessary’ and ‘required’ are also not defined and are ambiguous, those terms are also not clear and objective and may not be the basis for denying the Application.” But, again, just because Petitioner disagrees with the county’s interpretation, doesn’t mean the terms are not clear and objective, as noted by the Court of Appeals in *Roberts*.

To take Petitioner’s argument to its extreme, would result in the inability of a government to interpret its own development code. Such interpretations are inevitable and a foundational element of code application. An interpretation of code language may, and often does, result in opposing opinions. But, as long as its interpretation is “plausible” the county’s interpretation will be given high deference. See *Crowley v. City of Hood River*, 308 Or. App. 44, 52 (2020).

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

1
2
3
4 JOHN L. LOUKS, KENDRA G. LOUKS,)
5 THOMAS LAVAGNINO, and VICKI)
6 LAVAGNINO,)
7)
8 Petitioners,)

9 vs.)

10 JACKSON COUNTY,)
11)
12)
13 Respondent,)
14)

15 and)

16 ASSOCIATED FRUIT COMPANY,)
17)
18)
19 Intervenor-Respondent.)

LUBA No. 93-133

FINAL OPINION
AND ORDER

20 Appeal from Jackson County.

21
22
23 G. Philip Arnold, Ashland, filed the petition for
24 review on behalf of petitioners. With him on the brief was
25 Drescher & Arnold. John L. Louks, Medford, filed a reply
26 brief and argued on his own behalf.
27
28

29 No appearance by respondent.

30
31
32 John R. Hassen and Richard H. Berman, Medford, filed
33 the response brief and argued on behalf of intervenor-
34 respondent. With them on the brief was Blackhurst,
35 Hornecker, Hassen & Ervin B. Hogan.
36

37 HOLSTUN, Chief Referee; SHERTON, Referee; KELLINGTON,
38 Referee, participated in the decision.
39

40 REMANDED 01/11/94

41
42 You are entitled to judicial review of this Order.
43 Judicial review is governed by the provisions of ORS
44 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county hearings officer's decision
4 approving two farm dwellings on an EFU-zoned parcel.

5 **MOTION TO INTERVENE**

6 Associated Fruit Company, the applicant below, moves to
7 intervene on the side of respondent. There is no opposition
8 to the motion, and it is allowed.

9 **FACTS**

10 The relevant facts are set forth in the challenged
11 decision:

12 "* * * The subject property * * * consists of
13 108.29 acres. The property * * * is a producing
14 pear orchard owned and managed, along with other
15 orchards, by Associated Fruit Co. Applicant owns
16 or operates a total of approximately 1,500 acres
17 of orchard land at various locations in the Rogue
18 Valley.

19 "Applicant has been in the orchard business for 50
20 years. The average annual value of applicant's
21 gross farm sales for three years preceding the
22 application exceeded \$5,000,000. Applicant's
23 profits are approximately \$150-300 per acre and
24 constitute about 1% of the gross income per acre.

25 "Applicant employs approximately 40 full-time
26 workers and as many as 150 additional workers on a
27 seasonal basis. Both full-time and seasonal
28 workers are engaged in the planting, raising,
29 harvesting[,] packing and shipping of applicant's
30 orchard products.

31 "There is one existing farm dwelling on the
32 property which is licensed, seasonally, as a farm
33 labor camp. * * *

1 "Applicant currently provides 13 single family
 2 dwellings for its full-time employees and 5
 3 seasonal-worker residential facilities for
 4 approximately 80 individuals. The proposed farm
 5 dwellings would be occupied by applicant's full-
 6 time employees." Record 7-8.

7 **FIRST ASSIGNMENT OF ERROR**

8 Petitioners contend the challenged decision violates
 9 former Jackson County Land Development Ordinance (LDO)
 10 218.030(4).¹ LDO 218.030(4) identifies the following
 11 permitted uses in the EFU zone:

12 "Farm dwellings * * * and other buildings
 13 customarily provided in conjunction with farm use.
 14 More than one farm dwelling shall not be permitted
 15 unless substantial evidence is provided which
 16 shows conclusively that the additional farm
 17 dwelling is necessary for the operation of the
 18 commercial farm. * * *

19 "* * * * *"

20 Petitioners argue the evidence in the record does not
 21 "conclusively" establish "that the additional farm dwelling
 22 is necessary for the operation of the commercial farm," as
 23 required by LDO 218.030(4). Petitioners are correct.

24 As the hearings officer's findings point out,
 25 LDO 218.030(4) differs significantly from ORS 215.213(1)(g)
 26 and 215.283(1)(f), which allow farm dwellings in EFU zones.
 27 Neither statute requires that an applicant carry an

¹After the decision challenged in this appeal was rendered, the county amended LDO Chapter 218 to comply with Oregon Laws 1993, chapter 792 (HB 3661). Those amendments repealed the provisions of former LDO 218.030(4) which petitioners contend the hearings officer erroneously found to be satisfied in this case.

1 evidentiary burden to demonstrate "conclusively" that a
2 proposed farm dwelling be "necessary for the operation of
3 the commercial farm." LDO 218.030(4) does not impose that
4 burden for the first farm dwelling, but it does impose that
5 burden for subsequent farm dwellings.

6 The hearings officer recognized that decisions by LUBA
7 and the appellate courts have considered the meaning of the
8 term "necessary" in the context of the requirement under
9 Statewide Planning Goal 4 (Forest Lands) that forest
10 management dwellings be "necessary for and accessory to
11 forest uses." Record 9. However, the hearings officer
12 concluded that interpretations of the meaning of the term
13 "necessary" in the Goal 4 context need not be applied in
14 this case, because the EFU zone at issue here implements
15 Goal 3 (Agricultural Land). While the hearings officer
16 found the term "necessary" should not be interpreted in the
17 same way it has been interpreted in the Goal 4 context, he
18 did not explain how he believed it should be interpreted.²

19 Although it is true the challenged LDO provision was
20 adopted to implement Goal 3 rather than Goal 4, that is not
21 a sufficient basis for assigning a different meaning to the
22 word "necessary," as it is used in LDO 218.030(4). Just as

²The hearings officer also found that even if the "necessary" requirement of LDO 218.030(4) were interpreted in the same manner it has been interpreted under Goal 4, the disputed dwellings are necessary for intervenor's commercial farming operation. For the reasons explained below, the record does not support that finding.

1 the LDO does not define the term "necessary" as that term is
2 used in LDO 218.030(4), the Lane County Code did not define
3 that term as it was used in the code provisions at issue in
4 1000 Friends of Oregon v. LCDC (Lane County), 83 Or App 278,
5 282-83, 731 P2d 457, on reconsideration 85 Or App 619
6 (1987), aff'd 305 Or 384 (1988). In that case the Court of
7 Appeals explained its understanding of the "necessary"
8 component of the "necessary and accessory" requirement in
9 the Goal 4 context as follows:

10 "* * * The dictionary definition [of necessary] is
11 'that cannot be done without: that must be done or
12 had: absolutely required.' Webster's Third New
13 International Dictionary 1511 (1976). That
14 definition is compatible with LCDC's use of
15 'necessary' and with Goal 4's requirement that
16 forest lands be preserved for forest uses. Lane
17 County's criteria would allow dwellings which can
18 be done without, need not be had and are not
19 absolutely required for a forest use; they
20 therefore do not comply with the goal.

21 "* * * Living on the land may help deter
22 arsonists, and thereby enhance production, but
23 that fact does not render a forest dwelling
24 necessary. For a forest dwelling to be necessary
25 and accessory to wood fiber production, it must,
26 at least, be difficult to manage the land for
27 forest production without the dwelling. The
28 purpose of the dwelling must be to make possible
29 the production of trees which it would not
30 otherwise be physically possible to produce. * *
31 *" (Emphasis added.)

32 In Champion International v. Douglas County, 16 Or LUBA
33 132, 138-39 (1987), we explained that the first of the above
34 emphasized sentences suggests a mere "difficulty" standard,
35 while the last sentence suggests an "impossibility" standard

1 which would preclude approval of forest dwellings in most
2 circumstances. We explained:

3 "While it is possible to read the Court of
4 Appeals' decision in its entirety to reject a
5 literal 'impossibility' standard for forest
6 dwellings, it is also unmistakable that the Court
7 of Appeals believes substantially more than
8 convenience, enhancement, and cost efficiencies
9 are required to show a dwelling is necessary for
10 forest use."

11 See also Tipperman v. Union County, 22 Or LUBA 775 (1992);
12 Dodd v. Hood River County, 22 Or LUBA 717 (1992).

13 Absent a contrary definition in the LDO or some
14 legislative history to the contrary, we believe the term
15 "necessary" in LDO 218.030(4) has the same meaning it has in
16 the Goal 4 context. Differences between farm uses and
17 management practices on the one hand and forest uses and
18 management practices on the other may affect the result when
19 determining whether a dwelling is "necessary" on these
20 different kinds of resource lands. However, there is no
21 basis for assigning a different meaning to the word
22 necessary.³

³We review petitioners' challenges of the hearings officer's interpretation and application of LDO 218.030(4) to determine whether the interpretation is reasonable and correct. McCoy v. Linn County, 90 Or App 271, 752 P2d 323 (1988). In considering the hearings officer's interpretation, we do not apply the more deferential standard of review that would be required by ORS 197.829 and Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992), if the challenged decision had been adopted by the local governing body. Gage v. City of Portland, 319 Or 308, 877 P2d 1187 (1994); Watson v. Clackamas County, 129 Or App 428, 879 P2d 1309, rev den 320 Or 407 (1994).

1 Turning to the challenged decision, the hearings
2 officer correctly notes there is evidence in the record that
3 efficiency and productivity of the orchard would be enhanced
4 by allowing on-site dwellings. Among the factors noted in
5 the decision are "frost control, prevention of trespassing,
6 vandalism and theft." Record 9. The findings go on to
7 explain that the existing dwelling on the 108 acres has not
8 prevented trespass, vandalism or theft.⁴

9 The record in this case does not show the proposed
10 dwellings are necessary for the commercial operation. The
11 findings make no attempt to explain how the requested houses
12 will deter trespass, vandalism and theft, if the dwelling
13 already on the property does not. We also have difficulty
14 seeing how the proposed dwellings will have any deterrent
15 effect with regard to other parcels that make up this large
16 commercial orchard operation. Moreover, as petitioners
17 correctly point out, this commercial orchard has operated
18 for years without the requested dwellings. This strongly
19 suggests that while the dwellings might make the operation
20 more efficient, more profitable and less susceptible to
21 trespass, vandalism and theft, the dwellings are not
22 "necessary" for the continuation of the commercial farm.

23 We do not mean to minimize the problems identified in
24 the local proceedings that may be associated with the

⁴Intervenor correctly notes pears are significantly easier to steal than are trees.

1 currently inadequate supply of housing for year-round and
2 seasonal farm workers. However, that shortage does not
3 establish the requested housing on the subject 108 acre
4 parcel is "necessary."⁵

5 The first assignment of error is sustained.

6 **SECOND ASSIGNMENT OF ERROR**

7 Petitioners contend the hearings officer erred when he
8 considered the commercial farm to be the entire 1500 acres
9 included in intervenor's commercial farming operation.

10 Petitioners cite no provision of the LDO that would
11 permit or require the hearings officer to consider less than
12 intervenor's entire commercial farming operation. The
13 hearings officer's interpretation and application of
14 LDO 218.030(4) as referring to intervenor's entire
15 commercial farm, not just the subject 108 acre parcel, is
16 consistent with the language of LDO 218.030(4).

17 The second assignment of error is denied.

18 **REMAINING ISSUES**

19 Intervenor-respondent argues the county's decision
20 should be affirmed in this case, without regard to LDO
21 218.030(4), because that provision is inconsistent with and

⁵We do not go so far as to say the county could not establish that the proposed housing is "necessary" within the meaning of LDO 218.030(4). However, in view of the high standard imposed by LDO 218.030(4) and the lack of a requirement for a showing of necessity in the current approval standards that would apply to a new application, the applicant may wish to submit a new application and proceed under current approval standards.

1 preempted by ORS 197.312(2) and 215.283(1)(f).⁶ We reject
2 the argument for two reasons.

3 First, intervenor's argument that the county erred in
4 applying LDO 218.030(4), and should have found that
5 provision to be preempted by the cited statutes, is properly
6 presented in a petition for review or a cross-petition for
7 review. That challenge to the county's application of LDO
8 218.030(4) cannot be made in a response brief. McKay Creek
9 Valley Assoc. v. Washington County, 25 Or LUBA 238, 243,
10 rev'd on other grounds, 122 Or App 59 (1993).

11 Second, testimony submitted on intervenor's behalf to
12 the hearings officer cited a number of statutes, including
13 the statutes it now contends preempt LDO 218.030(4), in
14 support of its contention that there is a need for farm
15 worker housing. Supplemental Record 62. In response to the
16 hearings officer's inquiry concerning whether the evidence
17 of need for farm worker housing provides a basis for
18 imposing a "lesser burden" than required under the LDO,

⁶ORS 197.312(2) provides:

"No * * * county may impose any approval standards, special conditions or procedures on seasonal and year-round farm-worker housing that are not clear and objective or have the effect, either in themselves or cumulatively, of discouraging seasonal and year-round farm-worker housing through unreasonable cost or delay or by discriminating against such housing."

ORS 215.283(1)(f) allows the following uses in EFU zones:

"The dwellings and other buildings customarily provided in conjunction with farm use."

1 intervenor's representative stated it did not. Supplemental
2 Record 64. We agree with petitioners that intervenor
3 affirmatively waived the issue it attempts to raise in the
4 response brief, i.e., that the county could approve the
5 disputed dwellings without finding they comply with the
6 "necessary" requirement of LDO 218.030(4).⁷ See Newcomer v.
7 Clackamas County, 92 Or App 174, 187, 758 P2d 450, modified
8 94 Or App 33 (1988); Louisiana Pacific v. Umatilla Co., 26
9 Or LUBA 247, 258 (1993).

10 The county's decision is remanded.

⁷Because we do not reach the preemption issue intervenor attempts to raise in its response brief, we express no opinion concerning the merits of that argument.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

KEVIN RICHARDS,
Petitioner,

and

CENTRAL OREGON LANDWATCH,
Intervenor-Petitioner,

vs.

02/27/19 11:04 LUBA

JEFFERSON COUNTY,
Respondent,

and

NEW GRASS LLC,
JEFF DUPONT and JENNIFER DUPONT,
Intervenors-Respondents.

LUBA No. 2018-117

FINAL OPINION
AND ORDER

Appeal from Jefferson County.

Andrew Mulkey, Eugene, filed a petition for review and argued on behalf of petitioner.

Rory Isbell, Bend, filed a petition for review and argued on behalf of intervenor-petitioner. With him on the brief was Central Oregon Landwatch.

David C. Allen, Madras, filed a response brief and argued on behalf of respondent.

1 Mark O. Cottle, Sherwood, filed a response brief on behalf of
2 intervenors-respondents.

3
4 BASSHAM, Board Member; RYAN, Board Chair; ZAMUDIO, Board
5 Member, participated in the decision.

6
7 REMANDED 02/27/2019

8
9 You are entitled to judicial review of this Order. Judicial review is
10 governed by the provisions of ORS 197.850.

1 Opinion by Bassham.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision on remand approving a relative farm help
4 dwelling.

5 **FACTS**

6 We repeat the relevant facts from our earlier decision, *Richards v.*
7 *Jefferson County*, __ Or LUBA __ (LUBA No 2017-103, Jan 3, 2018) (slip op
8 at 2-3) (*Richards I*):

9 “The subject property is a rectangular 119-acre parcel located
10 approximately two miles south of the city of Madras. The property
11 is developed with a single-family dwelling located in its northeast
12 corner and a shop building located near the middle of the southern
13 border. The property currently supports a hay-growing operation,
14 irrigated by a center-pivot, supplemented by handline and wheel-
15 line irrigation in the corners.* * *

16 “The property is owned by New Grass, LLC, whose principals are
17 Jennifer DuPont and Jeff DuPont (the DuPonts). The DuPonts own
18 several businesses, including two in Madras with a total of 25
19 employees. In 2011, the DuPonts purchased the subject property
20 under a land sale contract. From 2011 on, the DuPonts farmed the
21 property with one or more of their sons, growing hay, and reported
22 revenue from farm operations through an S corporation, Arrow D.
23 In February 2017, the DuPonts, via New Grass, LLC, acquired title
24 to the property. The DuPonts currently reside in the primary
25 dwelling on the property.

26 “In early 2017, the DuPonts bought approximately 100 head of
27 cattle, and grazed them on leased lands located some distance from
28 the subject property, supplemented by hay grown on the subject
29 property. The DuPonts informed the county that they intend to
30 transport the cattle to the subject property in the fall to graze off
31 the aftermath of the hay harvest.

1 “In April 2017, the DuPonts, through New Grass, LLC, filed an
2 application for a relative farm help dwelling, to allow their son
3 Jeremy DuPont to live on the farm and assist with farm operations.
4 The proposed accessory dwelling would be located near the
5 existing shop building. * * *”

6 Neighboring farmers, including petitioner, opposed the application, arguing that
7 the DuPonts failed to demonstrate compliance with the code standards
8 governing approval of a relative farm help dwelling, including requirements
9 that the applicant establish that the “farm operator,” who plays a “predominant
10 role” in a “commercial farming operation,” “does or will require the assistance”
11 of a relative to manage the farm operation.¹

12 The county planning commission and board of commissioners approved
13 the application. The petitioners appealed the commissioners’ decision to

¹ Jefferson County Zoning Ordinance (JCZO) 301.6(F) requires the applicant for a relative farm help dwelling (which the JCZO terms an “Accessory Farm Dwelling for a Relative”) to demonstrate compliance with the following relevant standards:

- “3. The farm operator does or will require the assistance of the relative in the management of the existing commercial farming operation; and
- “4. The farm operator will continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.”

JCZO 301.6(F) implements OAR 660-033-0130(9) in substantively identical language. OAR 660-033-0130(9) is quoted below.

1 LUBA. LUBA sustained the petitioners' second and third assignments of error,
2 remanding to Jefferson County (the county) for additional evidence and
3 findings regarding the approval standards, including: (1) the identity of the
4 "farm operator," (2) whether the farm operator continues to play "the
5 predominant role" in the farming operation, (3) whether the farm operator "does
6 or will require the assistance" of a relative to manage the farm operation, and
7 (4) whether the farm operation qualifies as a "commercial farming operation."

8 On remand, the county accepted additional evidence from Jeff DuPont,
9 and adopted additional findings. This appeal followed.

10 **FIRST ASSIGNMENT OF ERROR (COLW)**

11 Intervenor-petitioner Central Oregon Landwatch (COLW) argues that the
12 county's decision on remand violated the "law of the case" established in
13 *Richards I*, because it is inconsistent with the terms of LUBA's remand.

14 As noted, LUBA remanded the county's initial decision for the county to
15 adopt more adequate findings, supported by substantial evidence, regarding four
16 matters that the applicant has the burden of establishing in order to demonstrate
17 compliance with the approval criteria governing a relative farm help dwelling.
18 COLW contends that in *Richards I* LUBA established as a matter of law that
19 certain findings and evidence are necessary to establish compliance with OAR
20 660-033-0130(9) and JCZO 301.6(F), with respect to the "farm operator,"
21 "predominant role," "does or will require the assistance," and "commercial
22 farming operation" elements of the applicable standards. According to COLW,

1 on remand the county ignored LUBA’s directives and instead adopted
2 conclusory findings that fail to grapple with and resolve, based on substantial
3 evidence, each of the elements that the applicants must establish in order to gain
4 approval of a relative farm help dwelling under OAR 660-033-0130(9) and
5 JCZO 301.6(F).

6 As discussed below, we agree with petitioner and COLW that the
7 county’s findings on remand, combined with its original findings, are still
8 inadequate to demonstrate compliance with all of the applicable OAR 660-033-
9 0130(9) and JCZO 301.6(F) standards, and that some findings are still not
10 supported by substantial evidence. But we agree with the county that COLW’s
11 arguments regarding “law of the case” do not provide a basis—or at least an
12 independent basis—for reversal or remand. COLW’s arguments regarding “law
13 of the case” are based on *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678
14 (1992). At issue in *Beck* was whether a party could fail to appeal an adverse
15 LUBA ruling in a decision that remanded to the local government, but instead
16 wait until the remand decision comes back to LUBA to challenge that adverse
17 ruling before LUBA and the Court of Appeals. *Id.* at 151. The Oregon Supreme
18 Court held that matters conclusively resolved before LUBA cannot be
19 relitigated in subsequent appeals of subsequent decisions on the same matter.
20 *Id.* at 151-54. However, COLW has not established how that principle is
21 violated where (1) LUBA remands to the county to adopt new findings, based
22 on substantial evidence, and (2) on remand, the county accepts new evidence

1 and adopts new findings, as LUBA directed. COLW cites to nothing in the
2 record on remand or in the county's remand decision suggesting that the county
3 attempted to relitigate any issue conclusively resolved in *Richards I*. While our
4 decision in *Richards I* included discussion of the requirements in OAR 660-
5 033-0130(9) and JCZO 301.6(F), and that discussion was intended to provide
6 guidance and a framework for the proceedings on remand, COLW has not
7 established that the county on remand took any position contrary to any issue
8 conclusively resolved in *Richards I*. That we conclude below that some of the
9 county's findings are still insufficient to demonstrate compliance with OAR
10 660-033-0130(9) and JCZO 301.6(F) does not mean that the county violated the
11 "law of the case" principle articulated in *Beck*.

12 In addition, COLW's arguments are duplicative of the arguments under
13 its second and third assignments of error, which directly challenge the adequacy
14 of the county's findings to establish compliance with OAR 660-033-0130(9)
15 and JCZO 301.6(F). COLW's arguments under the first assignment of error do
16 not provide an independent basis for reversal or remand and, for that reason
17 alone, are denied.

1 **FIRST ASSIGNMENT OF ERROR (Petitioner)**
 2 **SECOND ASSIGNMENT OF ERROR (COLW)**

3 ORS 215.283(1)(d) authorizes in the exclusive farm use (EFU) zone² a
 4 “dwelling on real property used for farm use if the dwelling is occupied by a
 5 relative of the farm operator * * * if the farm operator does or will require the
 6 assistance of the relative in the management of the farm use and the dwelling is
 7 located on the same lot or parcel as the dwelling of the farm operator.” OAR
 8 660-033-0130(9) implements and elaborates on the requirements of ORS
 9 215.283(1)(d), authorizing a relative farm help dwelling only if the dwelling is
 10 occupied by relatives “whose assistance in the management and farm use of the
 11 existing commercial farming operation is required by the farm operator.”³

² In Jefferson County, the “EFU A-1” zone has been established to preserve areas containing predominantly irrigated agricultural soils for existing and future farm uses related to the production of agricultural crops or products. The EFU A-1 zone recognizes and preserves areas of agricultural land which are more productive than lands in the “EFU A-2” zone, due to soil class and presence of irrigation water. JCZO 301.1(A)–(B).

³ OAR 660-033-0130(9) provides, in relevant part:

“(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who

1 In its initial decision, the county adopted no findings whatsoever
2 regarding whether the DuPonts' farm operation constitutes an "existing
3 commercial farming operation" for purposes of OAR 660-033-0130(9) and
4 JCZO 301.6(F). In our initial appeal, we noted that neither the rule nor the code
5 define "commercial farming operation." The petitioners argued that, under any
6 definition, the hay-growing operation on the subject 119-acre property is simply
7 too small in scale and intensity to constitute a "commercial" farm operation for
8 purposes of OAR 660-033-0130(9) and JCZO 301.6(F). We remanded the
9 decision to the county to address the issue in the first instance, after first
10 discussing two acceptable "safe harbor" approaches, previously identified in
11 our cases, to determining whether a farm operation qualifies as a "commercial"
12 farm operation under the rule.⁴ ___ Or LUBA at ___ (LUBA No 2017-103, Jan 3,

operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

“(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.

“(c) For the purpose of subsection (a), ‘relative’ means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator’s spouse.”

⁴ We here describe the two approaches discussed in *Richards I* and *Harland* as “safe harbors,” because they are based on specific and facially more rigorous rule standards that apply to somewhat analogous determinations and uses governed by OAR chapter 660, division 033. The two approaches are based on

1 2018) (slip op at 18-19) (citing *Harland v. Polk County*, 44 Or LUBA 420, 434
2 (2003)).

3 On remand, the county did not resolve the question of whether the
4 DuPonts' farm operation on the property is a "commercial farming operation"
5 in either of the two "safe harbor" ways we suggested in *Richards I*. The county

(1) the OAR 660-033-0020 standards for determining what minimum parcel size is consistent with continuing the "commercial agricultural enterprise" within a local area, and (2) the OAR 660-033-0135 standards for approving a dwelling in conjunction with farm use. The rationale is that if a farm operation meets or exceeds the local thresholds for a "commercial agricultural enterprise," or the farm operation is productive enough to qualify for a primary farm dwelling, then a county could safely conclude, without more analysis, that the farm operation is also a "commercial farming operation" for purposes of approving a "relative farm help dwelling" under OAR 660-033-0130(9).

To those two identified "safe harbors," we can add a third. OAR 660-033-0130(24)(b) sets out standards for when a farm operation with a primary farm dwelling qualifies for an accessory farm dwelling, occupied by a non-relative. Because a relative farm help dwelling is similar in function to an "accessory farm dwelling" allowed under OAR 660-033-0130(24), if the farm operation supporting the primary farm dwelling is sufficient to qualify the property for an accessory farm dwelling under the standards at OAR 660-033-0130(24)(b), we think a county could safely conclude, without more, that the farm operation qualifies as a "commercial farming operation" for purposes of OAR 660-033-0130(9). Of course, the reverse is not true: if the farming operation supporting a proposed relative farm help dwelling did not meet or exceed the relevant standards under any of these three "safe harbors," it would not necessarily mean that the county must conclude that the farming operation at issue is not a "commercial farming operation" for purposes of OAR 660-033-0130(9). It means only that the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a "commercial farming operation."

1 did not attempt to devise its own method, or articulate what constitutes a
2 “commercial” versus “noncommercial” farming operation in this area of the
3 county. Instead, the county adopted the following brief finding:

4 “The Board finds that the Applicant’s farm operation constitutes an
5 existing commercial farm operation. The farm has farm deferral
6 tax status. The farm exceeds the 80 acre minimum lot[] size for a
7 farm in the EFU-A-1 zone. The operator runs cattle, grows crops,
8 and receives irrigation on site. The operator buys, sells, and leases
9 equipment for the farm. The operator provided tax returns that
10 identified farm income from the property. Aerial photographs
11 show the property has been cropped continuously for several
12 years.” Record 4.

13 Petitioner and COLW argue, and we agree, that the above-quoted finding
14 is inadequate to determine whether the farming operation on the subject
15 property constitutes a “commercial farming operation” within the meaning of
16 OAR 660-033-0130(9) and JCZO 301.6(F).

17 The finding first cites the fact that the farm has farm deferral tax status.
18 As petitioner argues, a farm need not be commercial in scale or intensity to
19 qualify for deferred tax status, so this finding lends little support to the
20 conclusion that the DuPont’s farm operation qualifies as “commercial.”

21 The finding next notes that the subject property exceeds the 80-acre
22 minimum lot size for a farm in the county EFU A-1 zone. The minimum parcel
23 in the EFU zone is established by Statewide Planning Goal 3 (Agricultural
24 Lands) and ORS 215.780(1). OAR 660-033-0100 authorizes a county to
25 approve a minimum parcel size less than 80 acres for land not designated

1 rangeland as long as the county determines that the lesser minimum parcel size
2 is consistent with maintenance of the “commercial agricultural enterprise” in
3 the area. The statutory 80-acre minimum parcel size is, in effect, legislatively
4 deemed consistent with maintenance of the commercial agricultural enterprise.
5 Thus, that a particular parcel meets or exceeds the applicable minimum parcel
6 size provides some support for the conclusion that a farm operation on the
7 property, at least one that occupies all usable portions of the property at an
8 appropriate level of intensity, is a commercial farming operation. However,
9 that the parcel meets or exceeds the applicable minimum parcel size does not, in
10 itself, suffice to establish that any or all farm operations on that parcel are
11 “commercial” in scale or intensity, or that the parcel thereby qualifies for any
12 dwelling. *See* OAR 660-033-0100(3) (“A minimum size for new parcels for
13 farm use does not mean that dwellings may be approved automatically on
14 parcels that satisfy the minimum parcel size for the area. New dwellings in
15 conjunction with farm use shall satisfy the criteria for such dwellings set forth
16 in OAR 660-033-0130(1)”).

17 The above-quoted finding then recites that the “operator runs cattle,
18 grows crops, and receives irrigation on site.” Record 4. These undisputed facts
19 establish that there is a farm operation on the property, but do little to establish
20 that that farm operation is “commercial” in scale or intensity.

21 The finding next states that “[t]he operator buys, sells, and leases
22 equipment for the farm.” *Id.* Petitioner argues that there is no evidence in the

1 record that the DuPonts buy, sell or lease farm equipment. According to
2 petitioner, the only evidence on this point is that the DuPonts do not own much
3 if any farm equipment, and rely on a barter arrangement to borrow equipment
4 for planting and harvesting. We agree with petitioner that even if it is true that
5 the DuPonts buy, sell and lease farm equipment, that finding does little to
6 establish that the farm operation is commercial in scale or intensity.

7 Next, the findings note that “[t]he operator provided tax returns that
8 identified farm income from the property.” *Id.* Again, this establishes the
9 existence of a farm operation on the subject property, but does not have an
10 obvious bearing on whether that farm operation is commercial in scale and
11 intensity. Further, as we understand it, the tax returns in the record reflect farm
12 income and expenses that are not limited to operations on the subject property.

13 Finally, the findings note that aerial photographs show “the property has
14 been cropped continuously for several years.” *Id.* This undisputed fact
15 establishes a farm operation on the property, but again does little to establish
16 that that farm operation is commercial in scale or intensity.

17 Collectively, the above-quoted findings fall far short of establishing that
18 the DuPont’s farm operation is a “commercial farming operation.” It is difficult
19 to fault the county for the paucity of its analysis, given that the Land
20 Conservation and Development Commission (LCDC) has not seen fit to
21 provide any definition or guidance on what constitutes a “commercial farming
22 operation” for purposes of OAR 660-033-0130(9). Nonetheless, it is the

1 county's obligation, when addressing an application for a relative farm help
2 dwelling under OAR 660-033-0130(9), to attempt to articulate the thresholds
3 that separate a "commercial" from a non-commercial farming operation.
4 Because it is an undefined term, counties have some discretion to determine the
5 thresholds for a "commercial farming operation" as applied within the county or
6 within a particular local area or agricultural sector. *Harland*, 44 Or LUBA at
7 435. If the county chooses not to employ one of the "safe harbors" discussed
8 above at n 4, the county has no choice but to determine those thresholds in the
9 first instance. That determination will necessarily constitute a mixed question
10 of fact and law, subject to LUBA's review for legal error and evidentiary
11 sufficiency.

12 We understand the county to request that if LUBA remands for more
13 adequate findings regarding the "commercial farming operation" element of
14 OAR 660-033-0130(9), LUBA should provide what guidance it can to the
15 county. We can do so only in a limited and abstract manner, as many of the
16 predicate findings are necessarily factual in nature. However, as our discussion
17 above indicates, we believe that, as a legal matter, what distinguishes an
18 existing "commercial" farming operation from its noncommercial counterparts
19 is largely a matter of scale and intensity. Roughly speaking, we believe a
20 commercial farming operation is one that is of sufficient scale and intensity that
21 would induce and require a reasonable farmer to devote the majority of his or
22 her working hours to operating a farm on the subject property.

1 Petitioner’s first assignment of error and COLW’s second assignment of
2 error are sustained.

3 **SECOND ASSIGNMENT OF ERROR (Petitioner)**

4 **THIRD ASSIGNMENT OF ERROR (COLW)**

5 These assignments of error challenge the county’s findings regarding the
6 other elements of OAR 660-033-0130(9) and JCZO 301.6(F), specifically, that
7 the “farm operator” residing on the property “requires the assistance” of a
8 relative in managing the farm operation, and the identified farm operator
9 continues to play the “predominant role” in that farm operation. Although these
10 elements are logically distinct (theoretically, a person may be the farm operator,
11 but not play the predominant role in the farm operation, or vice versa), the
12 arguments, evidence and findings regarding each element tend to overlap. *See*
13 *Kenagy v. Benton County*, 112 Or App 17, 20, 826 P2d 1047 (1992) (the
14 questions of whether the landowner qualifies as a ‘farm operator’ and whether
15 the farm operator requires assistance in the farm operation are two sides of the
16 same coin). While we separately address the challenges to the findings under
17 each element, our discussion will also consider related findings and evidence.

18 **A. Farm Operator**

19 OAR 660-033-0130(9) and JCZO 301.6(F) define a “farm operator” as
20 the “person who operates a farm, doing the work and making the day-to-day
21 decisions about such things as planting, harvesting, feeding and marketing.”
22 Intervenors-respondents’ initial application identified Jeff DuPont as the farm

1 operator and, based on little more than assertions on that point, the county
2 concluded that Jeff DuPont is the farm operator as required by OAR 660-033-
3 0130(9) and JCZO 301.6(F). However, the county's initial findings did not
4 address contradictory arguments and evidence suggesting that Jeff DuPont was
5 in fact not the farm operator, but that someone else, either someone leasing the
6 subject property or Jeremy DuPont, the DuPonts' son, was the person who
7 qualified as the farm operator, *i.e.*, the person conducting the hay operation,
8 doing the work and making the day-to-day decisions. LUBA remanded in part
9 for the county to address those issues.⁵

⁵ LUBA concluded, in *Richards I*:

“[P]etitioners cite to testimony in the record expressing the surmise that the DuPonts do not farm the subject property at all, but instead lease their hay field to a custom farm operator. Petitioners note that the DuPonts own no hay equipment, report income consistent with lease payments, reported few expenses typical of running a hay operation, and provided no record of actually selling hay. Further, petitioners cite their personal observation that a custom farm operator, Oliver Watson Farms, has conducted all planting and harvest activity on the subject property. Record 29. The record includes photographs of equipment marked Oliver Watson Farms allegedly operating on the subject property. Record 31.

“As noted, the DuPonts responded to this issue in their oral testimony, denying that they lease the subject property or employ other farm operators to plant or harvest the hay.[□] Instead, the DuPonts testified that Jeremy DuPont is able to borrow equipment as compensation for his employment with

1 On remand, Jeff DuPont testified that the DuPonts do not lease the subject
 2 property to a custom hay operator, and also testified regarding the proposed
 3 division of labor between Jeff and Jeremy DuPont. On remand, the county
 4 adopted the following finding:

5 “The Board finds that Jeff DuPont is the farm operator. He makes
 6 the day to day decisions about activities on the farm. The Board
 7 accepts Mr. DuPont’s testimony that he directs the daily farming
 8 activities, including planting, harvesting, feeding and marketing.
 9 He chooses what equipment is needed for the farm. He decides
 10 what to grow. He instructs his son on farm actions; the son is the
 11 worker on the farm and for whom the dwelling is needed. The
 12 Applicant accepts the financial risk of operating the farm. * * *
 13 The Board found that the evidence supported Mr. DuPont’s
 14 assertion that he farms the property himself.” Record 3.

15 The findings do not directly address the dispute regarding whether the property
 16 is leased to a custom hay operator, but the finding that Jeff DuPont makes the

another farm operator elsewhere, and Jeff or Jeremy DuPont operates the borrowed equipment on the subject property.

“Despite this issue being raised below, the commissioners’ findings do not address the issue, nor adopt any findings addressing whether Jeff DuPont, or some other person or entity, is the ‘farm operator.’¹¹ See findings quoted at n 3.¹² The findings clearly presume that Jeff DuPont is the farm operator, but there are no findings addressing the evidentiary dispute on this point. We agree with petitioners that if the subject property is leased to another farm operator or the hay operation is otherwise predominantly conducted by someone other than Jeff DuPont, then Jeff DuPont does not qualify as the required ‘farm operator.’ Remand is necessary for the county to address this issue in the first instance.” __ Or LUBA at __ (LUBA No 2017-103, Jan 3, 2018) (slip op at 10-11) (footnotes omitted).

1 day to day decisions about the farm operation would seem to implicitly resolve
2 that dispute in the applicant’s favor. The finding also does not directly address
3 the dispute, based on tax records, regarding whether Jeremy DuPont is in fact
4 the person primarily responsible for conducting farm operations on the subject
5 property. However, the above-quoted finding is responsive to the definition of
6 “farm operator,” which focuses not only on who does the “work,” but also on
7 who makes the “day-to-day decisions about such things as planting, harvesting,
8 feeding and marketing.” Under that definition, the county reasonably focused
9 on identifying the person who performs the higher-order decision-making in
10 running the farm. The county chose to rely on Jeff DuPont’s testimony that he,
11 and not Jeremy DuPont, makes the final decisions regarding planting,
12 fertilizing, weed control, marketing, harvesting, cattle operations, etc. Record
13 125.

14 Petitioner and COLW argue that the above-quoted finding is inadequate
15 and not supported by substantial evidence, citing to tax records that can be read
16 to indicate that Jeremy DuPont plays a larger role in the farm operation than
17 Jeff DuPont. We discuss the dispute on that point under the “predominant role”
18 element of the test. For present purposes, we disagree with petitioner that the
19 county’s finding identifying Jeff DuPont as the “farm operator” is not supported
20 by substantial evidence in the whole record. Substantial evidence is evidence in
21 the whole record that a reasonable person would rely upon to conclude
22 compliance with approval criteria. *Dodd v. Hood River County*, 317 Or 172,

1 179, 855 P2d 608 (1993); *Younger v. City of Portland*, 305 Or 346, 351-52, 752
2 P2d 262 (1988). A reasonable person could conclude, based on the evidence in
3 the whole record, that Jeff DuPont is the farm operator as defined in OAR 660-
4 033-0130(9) and JCZO 301.6(F).

5 The subassignments of error directed at the “farm operator” element are
6 denied.

7 **B. Predominant Role**

8 OAR 660-033-0130(9) and JCZO 301.6(F) require that the farm operator
9 “continue to play the predominant role in the management and farm use of the
10 farm.” As discussed in *Richards I*, the county’s application form requires the
11 applicant to quantify how many hours per week both the relative and the farm
12 operator will be engaged in the farm operation, presumably so the county can
13 use that information to identify the farm operator and determine whether the
14 farm operator will continue to play the predominant role. The Duponts’
15 original application asserted that Jeremy DuPont would work “30+” hours per
16 week, but provided no similar information regarding Jeff DuPont. ___ Or LUBA
17 at ___ (LUBA No 2017-103, Jan 3, 2018) (slip op at 5). The county concluded
18 that Jeff DuPont would play the predominant role in the farm operation, but on
19 appeal LUBA concluded that that finding was not supported by any evidence.

20 In *Richards I*, we stated:

21 “The county’s farm relative dwelling application requires that the
22 applicant indicate ‘how many hours per week’ both the relative and
23 the farm operator ‘will be engaged in the farming operation.’

1 Record 185. The application states that Jeremy DuPont will work
2 ‘30+’ hours per week on the farm, but does not provide any
3 information regarding how many hours per week Jeff DuPont will
4 be engaged in the farm operation. *Id.* No party cites us to any
5 evidence on that point. While detailed evidence on that point may
6 not be necessary in all cases to establish that the applicant qualifies
7 as a ‘farm operator’ as defined in OAR 660-033-0130(9)(a), in the
8 present case we agree with petitioners that the evidence in the
9 record does not provide a sufficient basis for a reasonable decision-
10 maker to conclude that Jeff DuPont will play the predominant role
11 in the farm operation, and the limited findings on that point, quoted
12 at n 3, are conclusory and inadequate.

13 “First, as petitioners note, the undisputed evidence in the record is
14 that the DuPonts own and operate several businesses, including
15 two businesses in the nearby city of Madras employing a total of
16 25 people. The county argues that it is irrelevant under OAR 660-
17 033-0130(9)(a) whether and to what extent the farm operator is
18 employed off the farm. We disagree that such information is
19 entirely irrelevant. While a person can certainly be employed off a
20 farm and still qualify as a ‘farm operator’ for purposes of OAR
21 660-033-0130(9)(a), the applicant must establish that the farm
22 operator ‘continue[s] to play the predominant role’ in farm use of
23 the property, and continues to ‘operate [the] farm, doing the
24 work[.]’ These qualifications might not be met if the reason the
25 farm operator requires the assistance of the relative is because the
26 farm operator is substantially employed off the farm and does not
27 have enough time to do the work.” __ Or LUBA at __ (LUBA No
28 2017-103, Jan 3, 2018) (slip op at 11-12).

29 In relevant part, LUBA noted testimony that Jeff DuPont owns a number
30 of off-farm businesses, and agreed with the petitioners that the “predominant
31 role” element may not be met if the reason the farm operator requires assistance
32 is that the farm operator “is substantially employed off the farm and does not
33 have enough time to do the work.” *Id.* (slip op at 13).

1 On remand, the applicant did not submit any testimony quantifying or
2 comparing the number of hours the farm operator would contribute to the
3 operation, compared to the relative, and in its findings the county did not rely
4 upon any such quantification or comparison. Instead, the county simply found:

5 “The Board finds that Jeff DuPont plays and will continue to play
6 the predominant role in the farm operation. He makes the day to
7 day decisions on the farm. He takes the risks of the farm operation.
8 He provided testimony as to his activities on the farm (day to day
9 decision-maker, equipment and crop decisions, instructing son)
10 establishing his predominant role. He testified to the fact that he
11 would continue to play the predominant role in the farm operation.
12 The Board heard testimony as to Applicant’s additional
13 commercial activities outside of the farm operation and found that
14 many of those activities were related to his farm operation.”
15 Record 3.

16 Petitioner and COLW argue that this finding is inadequate in a number of
17 respects and not supported by substantial evidence. First, petitioner and COLW
18 argue that the finding seems to count the time Jeff DuPont spends on his off-
19 farm businesses toward establishing that Jeff DuPont plays the “predominant
20 role” in the farm operation on the subject property. The county made a similar
21 finding in addressing whether Jeff DuPont is the farm operator, finding that Jeff
22 DuPont “has vertically integrated his activities on the farm into his other
23 businesses.” Record 3. Petitioner argues that these findings are not supported
24 by the record and, even if they were supported by the record, they erroneously
25 consider non-farm activities off the property for purposes of determining

1 whether Jeff DuPont is the farm operator and continues to play the predominant
2 role in the farm operation on the property.

3 We agree with petitioner. Neither intervenors-respondents nor the county
4 cite any evidence in the record supporting the findings regarding the nature of
5 Jeff DuPont's businesses. Even if those findings were supported by substantial
6 evidence, that those businesses are in some unspecified way related to the farm
7 operation on the subject property has no bearing on whether Jeff DuPont
8 continues to play the predominant role in the farm operation. The focus of
9 these elements of OAR 660-033-0130(9) and JCZO 301.6(F) is on the farm
10 operation on the subject property. *See* OAR 660-033-0135(8)(b) (for purposes
11 of OAR chapter 660, division 033, "[f]arm or ranch operation" means "all lots
12 or parcels of land in the same ownership that are used by the farm or ranch
13 operator for farm use as defined in ORS 215.203"). Consequently, time and
14 effort spent on Jeff DuPont's cattle operation on leased lands in Grass Valley
15 cannot be counted toward establishing any element of OAR 660-033-0130(9)
16 and JCZO 301.6(F). And, even if it is assumed that some of Jeff DuPont's
17 other off-site businesses are related in some way to his cattle operation or the
18 hay operation on the subject property, Jeff DuPont's involvement in those
19 businesses do not help establish any element of OAR 660-033-0130(9) and
20 JCZO 301.6(F).

21 Indeed, as we noted in *Richards I*, Jeff DuPont's involvement in off-farm
22 businesses are relevant to establishing the elements of OAR 660-033-0130(9)

1 and JCZO 301.6(F) only in the sense that time spent on those businesses and
2 away from the farm operation might undermine the claim that Jeff DuPont will
3 continue to play the predominant role in the farm operation, and requires
4 assistance in running the farm operation. __ Or LUBA at __ (LUBA No 2017-
5 103, Jan 3, 2018) (slip op at 12-13). The county’s findings do not address that
6 question, and instead erroneously appear to conclude that Jeff DuPont’s
7 involvement in off-site businesses somehow counts toward establishing the
8 farm operator and predominant role elements. Record 3.

9 Second, the above-quoted finding concludes that Jeff DuPont plays the
10 predominant role in part because he “takes the risks of a farm operation,” by
11 which we understand to mean the financial risks. *Id.* However, such a financial
12 role is assumed by the owner of any farm, even an absentee land owner who
13 otherwise has nothing to do with the farm operation. Absent a better
14 explanation on this point, we conclude that Jeff DuPont’s assumption of the
15 financial risks of the farm operation is not a factor that helps to establish that he
16 plays the “predominant role” for purposes of OAR 660-033-0130(9) and JCZO
17 301.6(F).

18 Third, petitioner and COLW argue that the findings fail to quantify or
19 substantiate in any way the conclusion that Jeff DuPont will play the
20 “predominant role” in the farm operation, compared to Jeremy DuPont’s role.
21 It appears the county evaluated the “predominant role” element based not on a
22 quantified comparison of how much time the farm operator and relative put into

1 the farming operation, the approach its application form suggests the county
2 would follow, but instead based on a *qualitative* assessment of the relative value
3 of Jeff DuPont’s contributions versus Jeremy DuPont’s contributions. In a
4 finding addressing the “requires assistance” element, discussed below, the
5 county found that Jeff DuPont’s physical limitations make it difficult to perform
6 all of the physical tasks required, suggesting that the division of labor between
7 Jeff and Jeremy DuPont falls mainly between physical and non-physical tasks,
8 with the non-physical tasks focused on making various kinds of decisions and
9 supervising execution of those decisions. Record 3. We understand the county
10 to conclude that Jeff DuPont’s role is “predominant” vis-à-vis Jeremy DuPont’s
11 role because he is the one making most of the executive farming decisions, even
12 if Jeremy DuPont’s subordinate role in carrying out those decisions may
13 represent the majority of the work hours needed for the farm operation as a
14 whole.

15 We do not understand petitioner or COLW to dispute that a legitimate
16 reason under OAR 660-033-0130(9) and JCZO 301.6(F) for which a farm
17 operator may require relative assistance is the farm operator’s physical
18 disabilities, due to age, illness, etc., that prevent the farm operator from
19 performing *some* physical farm operations or tasks. We also do not understand
20 petitioner to dispute that time spent making executive decisions regarding farm
21 operations and supervising the physical tasks needed for the farm operation
22 count toward a determination of the “predominant role.” Nonetheless, we

1 understand petitioner and COLW to argue that even in that circumstance the
2 applicant must still demonstrate that the farm operator plays the “predominant
3 role” in the farm operation, and that the only way to make the demonstration is
4 to submit evidence that in some way quantifies and compares the amount of
5 work each contributes.

6 We partially agree with petitioner. In a more typical case involving a
7 relative farm help dwelling, the dwelling would be justified based on claims
8 that the scale or intensity of the farm operation requires more work than a single
9 farmer engaged in a commercial farming operation can reasonably perform. In
10 that case, some quantification and comparison of hours worked by the farm
11 operator and relative would probably be necessary to show that the farm
12 operator continues to play the predominant role. In the present case, the
13 applicant and the county are not—or are no longer—proceeding on the theory
14 that there is too much work for one farm operator, but rather that Jeff DuPont’s
15 physical limitations prevent him from performing some of the physical work
16 required by the farm operation. In those circumstances, a quantification and
17 comparison of hours worked is less important for purposes of the “predominant
18 role” element. In such circumstances, we do not think it is inconsistent with
19 OAR 660-033-0130(9) and JCZO 301.6(F) to assign more weight to the fact
20 that the farm operator will continue to perform the executive or decision-
21 making functions, even if it is the case that most of the physical tasks or the
22 majority of all farm tasks viewed as a whole are performed by the relative. As

1 noted above, the definition of “farm operator” requires not only that the
2 operator “do the work,” but makes particular reference to “making the day-to-
3 day decisions about such things as planting, harvesting, feeding and marketing.”

4 Nonetheless, we agree with petitioner that *some* details or breakdown and
5 comparison of the respective roles of the farm operator and relative must be in
6 the record to support an adequate finding that the farm operator continues to
7 play the predominant role. If the record includes such evidence, no party cites
8 to it. And the county’s above-quoted finding on this point is conclusory and
9 wholly inadequate.

10 The sub-assignments of error directed at the “predominant role” element
11 are sustained.

12 **C. Requires Assistance**

13 With respect to the “requires assistance” element of OAR 660-033-
14 0130(9) and JCZO 301.6(F), the county found:

15 “In finding that the farm operator requires the assistance of a
16 relative in the management of the existing commercial farming
17 operation, the Board accepted Mr. DuPont’s testimony that his
18 health challenges made it difficult to perform all of the physical
19 work required on the farm, which was supported by a letter from
20 his treating physician as to his physical conditions that supported
21 the Applicant’s position that his physical conditions hinder his
22 ability to do some of the physical activities involved in the daily
23 management of his farming operation.” Record 3-4.

24 As noted, petitioner does not dispute that physical disability is a potentially
25 legitimate basis for finding that a farm operator requires the assistance of a

1 relative. However, petitioner argues that in the present case the findings and
2 evidence fail to establish that the farm operator requires any assistance with the
3 farm operation on the subject property. Petitioner cites to evidence that
4 opponents submitted that the relatively small size of the subject property and
5 the limited nature of the farm operation requires only a modest amount of total
6 hours worked on an annual basis, at most only approximately 975 hours, or
7 18.75 hours per week. Petitioner argues that working 18.75 hours per week is
8 well within one farm operator's ability to handle without assistance, presumably
9 even a farm operator who has some physical limitations.

10 Jeff DuPont submitted a declaration, supported by a letter from his
11 physician, testifying to multiple physical limitations due to age and injury.
12 Record 125-27. Petitioner cites no evidence in the record suggesting that Jeff
13 DuPont can, despite those limitations, perform all the physical tasks required by
14 the farm operation. Petitioner may be correct that the farm and the farm
15 operation are not large or intensive enough to occupy a farmer full-time, and if
16 so that might well be fatal to an application based solely on the claim that there
17 is too much work for the farm operator to do. However, on remand the county
18 proceeded under the theory that Jeff DuPont requires assistance due to his
19 physical limitations, rather than under the theory that there is too much work for
20 Jeff DuPont to do. In such circumstances, the scale and intensity of the farm
21 operation, while pertinent to the "commercial farming operation" element of
22 OAR 660-033-0130(9) and JCZO 301.6(F), are not particularly pertinent to the

1 “requires assistance” element. We do not understand petitioner to dispute that
2 OAR 660-033-0130(9) and JCZO 301.6(F) are intended in part to facilitate
3 relative assistance for an otherwise qualified operator of a commercial farming
4 operation who, due to age or illness, is unable to perform all the tasks required
5 by the farming operation. That the farming operation is relatively small in size
6 and intensity, and would not fully occupy the work hours of either the farmer or
7 the relative, does not necessarily preclude a finding that the farm operator
8 requires assistance.

9 The sub-assignments of error directed at the “requires assistance”
10 element are denied.

11 Petitioner’s second assignment of error and COLW’s third assignment of
12 error are sustained in part.

13 The county’s decision is remanded.

1 Opinion by Ryan.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county hearings officer decision denying their
4 application for a relative farm help dwelling.

5 **FACTS**

6 Petitioner's property is 55.92 acres, is zoned exclusive farm use (EFU),
7 and includes an existing dwelling. Petitioner applied to the county to site a
8 relative farm help dwelling on the property for their son to live in, so that their
9 son could help on the farm. Petitioner previously planted and harvested
10 raspberries. In 2017, petitioner ended that crop and leased 35 acres of the property
11 to a nearby farmer, who farmed wheat. The lease arrangement ended and, in
12 2020, petitioner planted 2,300 Christmas trees on the property. As we explain in
13 more detail below, the farm is not currently generating any income from farming.
14 However, the record includes evidence that the net income from the Christmas
15 tree production could be \$48,000 per year beginning in five or six years after an
16 additional 4,000 trees are planted, when the trees mature and are harvested and
17 sold. Record 229.

18 The planning director denied the application, and petitioner appealed the
19 decision to the hearings officer. The hearings officer upheld the planning
20 director's decision and denied the application. This appeal followed.

1 **ASSIGNMENT OF ERROR**

2 Petitioner’s single assignment of error includes what we characterize as
3 two subassignments of error. We begin with a fairly detailed description of the
4 relevant statute, the Land Conservation and Development Commission (LCDC)
5 administrative rule that implements that statute, and the relevant Clackamas
6 County Zoning and Development Ordinance (ZDO) provisions.

7 ORS 215.283(1)(d) authorizes the county to approve an accessory
8 dwelling on EFU-zoned land to be occupied by a relative of the farm operator if
9 “the farm operator does or will require the assistance of the relative in the
10 management of the farm use.” OAR 660-033-0130(9), an administrative rule that
11 implements ORS 215.283(1)(d) and Statewide Planning Goal 3 (Agricultural
12 Lands), adds several qualifications. As relevant here, the rule requires that the
13 relative’s assistance be necessary for the management of the “existing
14 commercial farming operation.” OAR 660-033-0130(9)(a).¹

¹ OAR 660-033-0130(9)(a) provides:

“To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. * * * The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.”

1 *Former* ZDO 401.05(C)(12) (Oct 2, 2018) provides the applicable criteria
2 for a relative farm help dwelling:

3 “A relative farm help dwelling for a relative of the farm operator
4 may be allowed subject to the following criteria:

5 “* * * * *

6 “c. The accessory farm dwelling shall be occupied by child,
7 parent, stepparent, grandchild, grandparent, stepgrandparent,
8 sibling, stepsibling, niece, nephew or first cousin, of the farm
9 operator or the farm operator’s spouse, whose assistance in
10 the management and farm use *of the existing commercial*
11 *farming operation*, such as planting, harvesting, marketing or
12 caring for livestock, is required by the farm operator.

13 “* * * * *

14 “f. The net income derived from the farm products shall be
15 significant and products from the farm unit shall contribute
16 substantially to the agricultural economy, to agricultural
17 processors and farm markets.” (Emphasis added.)²

18 The hearings officer found that petitioner failed to establish that a commercial
19 farming operation currently exists on the property and that petitioner derives
20 significant net income from farm products. Stated differently, the hearings officer
21 found that, although 2,300 Christmas trees are planted and growing, a
22 “commercial” farming operation does not currently exist on the property because
23 it is undisputed that no net income is currently derived from farming on the

² In October 2020, *former* ZDO 401.05(C)(12) (Oct 2, 2018) was renumbered as ZDO 401.05(C)(11) and amended in a way that does not affect the issues in this appeal.

1 property. In determining whether a commercial farming operation currently
2 exists on the property, the hearings officer relied on ZDO 401.03(D), which
3 defines “commercial farm” as

4 “[a] farm unit with all of the following characteristics:

5 “1. The land is used for the primary purposes of obtaining a profit
6 in money from farm use;

7 “2. The net income derived from farm products is significant; and

8 “3. Products from the farm unit contribute substantially to the
9 agricultural economy, to agricultural processors, and to farm
10 markets.”

11 The hearings officer found that the evidence in the record failed to demonstrate
12 that “the net income derived from farm products is significant” because petitioner
13 failed to demonstrate that the farm currently produces an annual net income of
14 \$10,000.³

³ In *Richards v. Jefferson County*, we explained that counties have some discretion to determine the thresholds for a “commercial farming operation” since LCDC has not adopted a definition of that phrase or provided any guidance on applying it:

“It is difficult to fault the county for the paucity of its analysis, given that [LCDC] has not seen fit to provide any definition or guidance on what constitutes a ‘commercial farming operation’ for purposes of OAR 660-033-0130(9). Nonetheless, it is the county’s obligation, when addressing an application for a relative farm help dwelling under OAR 660-033-0130(9), to attempt to articulate the thresholds that separate a ‘commercial’ from a non-commercial farming operation. Because it is an undefined term, counties have some discretion to determine the thresholds for a ‘commercial farming

1 In this case, the hearings officer found that ZDO 401.03(D)'s definition of
2 "commercial farm" is relevant context for determining whether a farm is an
3 "existing commercial farming operation" within the meaning of *former* ZDO
4 401.05(C)(12) (Oct 2, 2018), and they relied on what they described as a "well
5 established" interpretation of ZDO 401.03(D) to mean that the net income from
6 a farm is not "significant," and the farm therefore does not qualify as
7 "commercial," unless the net income is more than \$10,000 annually. Record 8.
8 The hearings officer cited *Kunze v. Clackamas County*, 27 Or LUBA 130, *rev'd*
9 *on other grounds*, 129 Or App 481, 879 P2d 1311 (1994), in support of that
10 interpretation. We do not understand petitioner to challenge the \$10,000
11 threshold *per se*.

12 The hearings officer also found that the potential future income from the
13 sale of Christmas trees after they mature does not qualify the farm as an
14 "existing" commercial farming operation because the trees are not currently
15 generating any annual net income. The hearings officer interpreted the word
16 "existing" in *former* ZDO 401.05(C)(12) (Oct 2, 2018) (and OAR 660-033-
17 0130(9)(a)) as requiring that the commercial nature of the farming operation on
18 which the applicant is relying to qualify for a relative farm help dwelling be
19 established at the time of application.

operation' as applied within the county or within a particular local
area or agricultural sector." 79 Or LUBA 171, 179 (2019) (citing
Harland v. Polk County, 44 Or LUBA 420, 435 (2003)).

1 **A. First Subassignment of Error**

2 In the first subassignment of error, we understand petitioner to challenge
3 the hearings officer's interpretation of "existing" as requiring annual net income.
4 We understand petitioner's first subassignment of error to be that the hearings
5 officer improperly construed the word "existing" when they concluded that, in
6 order to satisfy the relative farm help dwelling administrative rule and
7 implementing ZDO provisions, an applicant must demonstrate *current* annual net
8 income above \$10,000. In support of this subassignment of error, petitioner
9 argues that the county's decision in *Kunze* does not support the hearings officer's
10 interpretation of the word "existing" but, rather, supports petitioner's
11 interpretation.

12 As we discuss in more detail below, *Kunze* involved an appeal of the
13 county's approval of a primary farm dwelling. The county found that the
14 applicant's farm management plan, with blueberry bushes already planted and an
15 existing hay operation, established that the future farming operation would
16 produce more than \$10,000 of net income. According to petitioner, *Kunze*
17 supports an interpretation of *former* ZDO 401.05(C)(12)(c) (Oct 2, 2018) to mean
18 that the county must consider future income from crops that are already planted
19 but not yet generating income in determining whether a commercial farming
20 operation is "existing" on the property.

21 The county responds that *Kunze* is distinguishable and, for that reason,
22 does not compel the county to consider petitioner's future income from the sale

1 of already-planted Christmas trees in determining whether petitioner’s farm is an
2 “existing” commercial farming operation. In addition, the county argues that,
3 even if *Kunze* was not distinguishable, the county is not bound to follow prior
4 interpretations made in a quasi-judicial land use proceeding. We agree on both
5 points.

6 *Kunze* involved an application for a primary farm dwelling. The criteria
7 that applied at that time required the county to determine that there was “an
8 existing commercial farm use” and that the property was “currently used for
9 commercial farm use.” *Kunze*, 27 Or LUBA at 132.⁴ The criteria also required
10 the submission of a farm management plan. *Id.*⁵ The county interpreted the

⁴ Former ZDO 401.04A provided:

“A permanent principal dwelling may be established in conjunction with *an existing commercial farm use* on a legal lot of record larger than five (5) acres in size, subject to review with notice, pursuant to [ZDO] 1305.02, *when the applicant provides a farm management plan* as provided under [ZDO] 401.10 and other evidence as necessary to demonstrate that all the following criteria are satisfied:

- “1. The land is *currently used for a commercial farm use* and such use will be continued or intensified with the addition of a permanent dwelling.” *Kunze*, 27 Or LUBA at 132 (emphases in *Kunze*).

⁵ Petitioner and the county agree that no *applicable criterion* requires the submission of a farm management plan in connection with a relative farm help dwelling, but petitioner points out that the *application form* used by the county for that type of dwelling does include such a requirement. Record 180 (“This information must clearly demonstrate that the farm operation constitutes an

1 requirements for “existing” and “current” commercial farm use and concluded
2 that they would be satisfied when the farm management plan was implemented
3 to the extent that (1) perennials capable of producing at least \$10,000 in annual
4 net income were planted on the subject property and (2) the subject property was
5 “used for the primary purpose of obtaining a profit in money from” farm use. *Id.*
6 at 136. LUBA concluded that the county’s interpretation was correct and that the
7 county could issue a building permit for the primary farm dwelling when the farm
8 management plan was “substantially implemented, including a situation where
9 perennial crops capable of producing the level of income required for commercial
10 farm use have been planted on the subject property.” *Id.* at 138.

11 Here, petitioner argues that the county’s decision in *Kunze* compels the
12 county to interpret the word “existing” in *former* ZDO 401.05(C)(12)(c) (Oct 2,
13 2018) in the same way that it interpreted the word “existing” in the criteria that

existing commercial farm operation, OAR 660-033-0130(9)(a). A commercial farm operation is a farm that has and is currently **generating \$10,000 net income** per year which is the threshold for identifying a commercial farm operation. *Complete the attached farm management plan information sheet describing the specific characteristics of the farm operation, including types of crops or livestock, acres in production, density of crop, yield per acre, and income.*” (Boldface and underline in original; italics added.) Petitioner submitted a farm management plan. Record 228-37.

1 applied to primary farm dwelling applications at the time of that decision.⁶ The
2 hearings officer addressed this argument:

3 “[U]nlike the farm dwelling at issue in *Kunze*, this is an application
4 for a farm help dwelling on an existing operating farm. In *Kunze*,
5 the farm dwelling was necessary to allow the farm operator to live
6 on the property in order to implement the farm plan and establish an
7 entirely new farm operation. As the hearings officer noted in *Kunze*,
8 requiring the applicant to meet the income test prior to building a
9 farm dwelling ‘[i]s extremely burdensome,’ presumably because
10 this would require that the farm operator establish and operate the
11 farm and meet the net income requirement while living offsite. In
12 this case, unlike in *Kunze*, the farm operator is currently living on
13 the subject property and operating the farm.”⁷ Record 9 (quoting
14 *Kunze*, 27 Or LUBA at 135).

15 We review the hearings officer’s interpretation of *former* ZDO
16 401.05(C)(12) (Oct 2, 2018), which implements OAR 660-033-0130(9), to
17 determine whether it is correct. *Gage v. City of Portland*, 319 Or 308, 877 P2d
18 1187 (1994); *McCoy v. Linn County*, 90 Or App 271, 276, 752 P2d 323 (1988).
19 We conclude that it is. First, we disagree with petitioner’s argument that the
20 county’s interpretation of the word “existing” in the criteria that were at issue in
21 *Kunze* compels the county to interpret the word “existing” in *former* ZDO
22 401.05(C)(12)(c) (Oct 2, 2018) in the same way. As the hearings officer

⁶ The county points out that, after *Kunze* was decided, the legislature adopted clear income standards for primary farm dwellings. Response Brief 16 n 8 (citing ORS 215.279).

⁷ OAR 660-033-0130(9) requires the farm operator to be living on the farm.

1 explained, the application in *Kunze* was an application for a primary farm
2 dwelling, and different considerations were at issue, including the consideration
3 that the county did not intend to burden an owner of farmland with living off of
4 the property while establishing a *new* farm use. In the context of a relative farm
5 help dwelling, however, OAR 660-033-0130(9)(a) contemplates that the
6 relative's help must be needed for a commercial farming operation that is
7 *currently* occurring on the farm. *Wachal v. Linn County*, ___ Or LUBA ___, ___
8 (LUBA No 2019-140, July 28, 2020) (slip op at 7), *aff'd*, 307 Or App 500, 475
9 P3d 947 (2020) (“[OAR 660-033-0130(9)] appears intended to reflect that in
10 order to qualify for a relative farm help dwelling, the relative must be currently
11 assisting or intends in the future to assist the farmer with a commercial farming
12 operation that is currently occurring on the farm, rather than one that the farmer
13 plans to establish at some unspecified time in the future.”). *Kunze* does not assist
14 petitioner.

15 Second, absent any code provision requiring it, the county is not bound by
16 prior interpretations in quasi-judicial land use decisions. *Greenhalgh v. Columbia*
17 *County*, 54 Or LUBA 626, 640-41 (2007), *aff'd*, 215 Or App 702, 170 P3d 1137
18 (2007) (citing *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004), *aff'd*, 197 Or
19 App 124, 107 P3d 83, *rev den*, 339 Or 66 (2005)). Given the discretion allowed
20 counties—in the absence of LCDC guidance on the issue—to determine whether
21 an “existing commercial farming operation” is present on a farm, and absent any

1 argument from petitioner identifying any additional or alternative basis for why
2 the hearings officer's decision is not correct, we agree with the county that it is.

3 The first subassignment of error is denied.

4 **B. Second Subassignment of Error**

5 We also understand petitioner to argue that the hearings officer's
6 interpretation of the phrase "existing commercial farming operation" in OAR
7 660-033-0130(9) and *former* ZDO 401.05(C)(12)(c) (Oct 2, 2018) is inconsistent
8 with ORS 215.283(1)(d) and Goal 3. Petition for Review 11, 13-14, 22. Petitioner
9 argues that the county's interpretation "results in a significant adverse effect on
10 the accepted farm practice of allowing relatives to help with farming." Petition
11 for Review 11. We understand petitioner to argue that the purpose of ORS
12 215.283(1)(d) and Goal 3 is to ensure the continuation of farming by allowing a
13 relative to live on the farm and assist with farming operations while the
14 management of the farm is transitioned to that relative.⁸ Petition for Review 14.
15 However, even if petitioner is correct about the purpose of ORS 215.283(1)(d),
16 petitioner does not develop any argument explaining why the county's
17 interpretation of the phrase "existing commercial farming operation" is
18 inconsistent with that statute or Goal 3. Absent a developed argument explaining

⁸ The decision suggests that petitioner could apply for temporary hardship dwelling approval under ZDO 401.05(C)(14), which implements ORS 215.283(2)(L). Record 3 ("[G]iven [petitioner's] health issues, [petitioner] can apply for a temporary care dwelling.").

1 why the statute and the goal compel the county to interpret OAR 660-033-
2 0130(9) in the way that petitioner urges, petitioner's argument provides no basis
3 for reversal or remand of the decision. *Deschutes Development v. Deschutes Cty.*,
4 5 Or LUBA 218, 220 (1982) ("It is not our function to supply petitioner with
5 legal theories or to make petitioner's case for petitioner.")

6 The second subassignment of error is denied.

7 The assignment of error is denied.

8 The county's decision is affirmed.

9 Zamudio, Board Chair, concurring.

10 I agree with the disposition of this appeal because I agree that petitioner's
11 sole assignment of error relies on an incorrect premise that the county is bound
12 to follow a prior interpretation of a local code provision made in a quasi-judicial
13 land use proceeding. I agree that is not a legal basis to reverse or remand the
14 challenged decision. I also agree that petitioner does not adequately develop any
15 argument that the hearings officer's application of the ZDO significant net
16 income requirement is inconsistent with applicable state law. Accordingly, I
17 concur in the disposition of this appeal. I write separately to explain why I do not
18 think that current annual net income is or should be dispositive for purposes of
19 determining whether an existing farming operation is commercial.

20 ORS 215.283(1)(d) authorizes in the EFU zone

21 "[a] dwelling on real property used for farm use if the dwelling is
22 occupied by a relative of the farm operator * * * if the farm operator
23 does *or will* require the assistance of the relative in the management

1 of the farm use and the dwelling is located on the same lot or parcel
2 as the dwelling of the farm operator.” (Emphasis added.)

3 In my view, that statute contemplates looking at a farmer’s need for help over
4 time with respect to the existing farming operation.

5 OAR 660-033-0130(9) implements ORS 215.283(1)(d) and requires an
6 “existing commercial farming operation.” It is undisputed here that petitioner has
7 an existing farming operation. The issue is whether the farming operation is
8 commercial. It is also undisputed that petitioner has demonstrated a current need
9 for help tending a long-term crop, Christmas trees, which is not going to mature
10 or turn a profit for five to six years but that requires farm work in the meantime.⁹
11 It is also undisputed that petitioner’s son is currently assisting or intends in the

⁹ Petitioner testified that “[t]he trees will not be large enough to sell for five to six years. However, [petitioner] will need to weed, spray, trim, and otherwise maintain the trees during that time.” Record 4. The hearings officer found:

“[Petitioner] has demonstrated a need for assistance and management of a farm use on the property. [Petitioner’s son] will assist in managing the recently planted Christmas tree farm including the following types of work: farm equipment maintenance, farm infrastructure installation, ground clearing, cultivating, planting, fertilizing, spraying, mowing and weeding and harvesting for the Christmas tree farm. [Petitioner’s son’s] physical assistance is required by the farm operator due to health reasons and the anticipated level of work associated with taking over the existing wheat farming on a portion of the subject property and continuing and expanding Christmas trees production on the remainder of the subject property.” Record 7.

1 future to assist petitioner with the farming operation that is currently occurring
2 on the subject property.

3 I tend to agree with petitioner’s policy-based arguments that the
4 legislature’s allowance of relative farm help dwellings acknowledges and
5 preserves the common practice of intergenerational family farming and that
6 practice serves the Goal 3 purpose of maintaining agricultural land in farm use. I
7 also agree with petitioner that imposing a current annual net income requirement
8 ignores some of the practical realities of farming, including natural disasters,
9 market fluctuations, crop rotations, and longer-maturing crops—all of which can
10 result in annual losses or no current annual net income for an existing commercial
11 farming operation.

12 In the absence of controlling statute or administrative rule, the county has
13 some discretion to define what constitutes an existing commercial farming
14 operation. However, I do not think that current annual net income is dispositive
15 for purposes of determining whether an existing farming operation is
16 “commercial” for purposes of OAR 660-033-0130(9). In my view, a farmer could
17 show that their farming operation is commercial if it is of such a scale and
18 intensity that it does *or will* obtain a significant profit, even if it is not currently
19 profitable as demonstrated by current annual net income. *See Richards v.*
20 *Jefferson County*, 79 Or LUBA 171, 179 (2019) (“[A]s a legal matter, what
21 distinguishes an existing ‘commercial’ farming operation from its
22 noncommercial counterparts is largely a matter of scale and intensity.”).

1 Notwithstanding the foregoing, I concur in the disposition of this appeal
2 because petitioner has not argued, let alone established, that the hearings officer's
3 application of the ZDO significant net income requirement as requiring current
4 annual net income violates state law.

From: [Christopher Browne](#)
To: [WILLIAMS Inga](#)
Subject: Written testimony concerning File Number LU-22-023
Date: Wednesday, November 2, 2022 12:05:07 PM
Attachments: [image_50365185.JPG](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



We have received notification of an appeal regarding the Community Development Department's finding and conclusion that the subject application does not meet Benton County Code 55.120(1) (b). The property location is 31992 Fern Road, Philomath, OR 97370, and the application request is to build a farm-help dwelling for a relative of the farm operator.

Without comment on the validity of this application, we are submitting the attached photograph for consideration by the Planning Commission in making a decision.

Our concern is that should the application be approved, then the site of the dwelling be such that it does not further impact our view of Mary's Peak and the foothills leading to it.

We purchased our home on one acre at 31946 Fern Road in 2016. Referring to the photograph, we had a clear view of Mary's Peak. The only structures then visible were the stables to the left and the subject property residence to the right. Since then our view has been impacted by the construction of multiple structures and fencing associated with the keeping of horses. Being partial to horses, we accept this and appreciate that the work was done professionally.

However, should a new dwelling be built south of the existing residence, then it would substantially and further impact our view to the west. We therefore request that, should the application be approved by the Planning Commission, then that approval should specify the location be not south of the existing residence.

Thank you for consideration of this request and testimony.

Christopher and Shelley Browne
31946 Fern Road
Philomath, OR 97370
Home Phone: (541)929-6989
Email: browncstb@gmail.com



**Staff Reply to Appeal
of the Development
Department Decision
December 6
Planning
Commission
Staff Documents**



Community Development Department

Office: (541) 766-6819
4500 SW Research Way
Corvallis, OR 97333
co.benton.or.us/cd

MEMORANDUM

To Benton County Planning Commission
From Inga Williams, Associate Planner; and
Darren Nichols, Community Development Director
Date November 22, 2022
Subject LU-22-023, Staff Response on the Appeal Hearing and Petitioner's Presentation

Background and Decision

On the evening of November 15, 2022, the Planning Commission held a public hearing on an appeal to the staff decision for the application cited above. The Community Development Department denied a request for an accessory Farm-Help Dwelling for a Relative of the Farm Operator. The applicant, Cynthia Crosby, appealed the decision. The applicant, her attorney, Mr. Reeder, and the property owner, Connie Jordan, submitted written testimony in support of the appeal and verbal testimony at the public hearing. Upon review of the additional information submitted by the applicant, staff reiterated these findings and conclusion at the public hearing. The request does not comply with the requirement that the relatives' "assistance in the management and farm use of the existing commercial farming operation is required by the farm operator..." BCC 55.120(1)(b).

At the end of the public hearing, the applicant's attorney, Mr. Reeder, requested that the record be held open. The Commission moved to hold the record open for seven days for written testimony, until close of business November 22, 2022, and to allow the petitioner seven days until close of business November 30, 2022, to respond to any written testimony received. The commission set deliberations for December 6, 2022.

Analysis

Mr. Reeder's September 14, 2022, letter, cites a concurring opinion in a LUBA case, *Stratton V. Clackamas County*¹, to argue that County staff cannot use the income from the farm as justification for denial. County counsel points out that a concurring opinion holds no legal authority. The case, however, directly discusses "commercial farming operation."

¹ LUBA No. 2021-044 (August 30, 2021)

In Richards v. Jefferson County, we explained that counties have some discretion to determine the thresholds for a "commercial farming operation" since LCDC has not adopted a definition of that phrase or provided any guidance on applying it:

"It is difficult to fault the county for the paucity of its analysis, given that [LCDC] has not seen fit to provide any definition or guidance on what constitutes a 'commercial farming operation' for purposes of OAR 660-033-0130(9). Nonetheless, it is the county's obligation, when addressing an application for a relative farm help dwelling under OAR 660-033-0130(9), to attempt to articulate the thresholds that separate a 'commercial' from a non-commercial farming operation. Because it is an undefined term, counties have some discretion to determine the thresholds for a 'commercial farming operation' as applied within the county or within a particular local area or agricultural sector." 79 Or LUBA 171, 179 (2019) (citing Harland v. Polk County, 44 Or LUBA 420, 435 (2003))."

The County has chosen to articulate the thresholds that separate a 'commercial' from a non-commercial farming operation by applying the two safe harbors ²referenced in ³*Richards v Jefferson County* and the additional safe harbor that the Board included *"because they are based on specific and facially more rigorous rule standards that apply to somewhat analogous determinations and uses."* The Board went on to state that, *"If the county chooses not to employ one of the "safe harbors" discussed above at n 4, the county has no choice but to determine those thresholds in the first instance. That determination will necessarily constitute a mixed question of fact and law. . ."* The county chooses not to determine the thresholds outside of those identified by LUBA.

These safe harbor thresholds are, first, that the farming operation is of a minimum parcel size that would allow a commercial agricultural enterprise to be a long-lasting viable business, and second, that the farming operation makes enough money to provide justification for a primary farm dwelling.

⁴ *(1) the OAR 660-033-0020 standards for determining what minimum parcel size is consistent with continuing the "commercial agricultural enterprise" within a local area, and (2) the OAR 660-033-0135 standards for approving a dwelling in conjunction with farm use. The rationale is that if a farm operation meets or exceeds the local thresholds for a "commercial agricultural enterprise," or the farm operation is productive enough to qualify for a primary farm dwelling, then a county could safely conclude, without more analysis, that the farm operation is also a "commercial farming operation" for purposes of approving a "relative farm help dwelling" under OAR 660-033-0130(9).*

LUBA also identified a third safe harbor in *Richards v Jefferson County*. The third threshold correlates the fact that a farm help dwelling for a relative is similar in function to an accessory farm dwelling for a nonrelative and, therefore, if the farm operation can support a primary farm dwelling and an accessory farm dwelling then it could be determined that the farm operation is a commercial farming operation. The primary farm dwelling and the accessory farm dwelling sections of the Benton County Code require an ⁵\$80,000 income over several years to qualify for either of these dwellings. The income from

² *Richards v Harland*

³ Page 9 of *Richards v Jefferson County*

⁴ Page 10 of *Richards v Jefferson County*

⁵ For properties containing prime agricultural soils

this operation is much lower than the safe harbor threshold. Further, the applicant and property owner both testified that their primary income is from retirement savings.

Staff then applied a secondary test to see if the application could meet the criteria using LUBA's test in *Richards v. Jefferson County* and the Oregon Administrative Rules to define a commercial farming operation. While the existing use is a "farm use", the entirety of the farm operations do not constitute a commercial farm operation because those operations do not substantially contribute to the area's existing agricultural economy. The income produced from the farm operations is substantially less than the \$80,000 in annual revenue required for a farm dwelling approval. Further, the size of the property, which is below the State's established minimum acreage requirement of 80 acres, limits the amount of farm use and income that could be generated by the property into the future. Live in farm help from a relative is therefore not a requirement or a necessity for this property.

The closest definition of a commercial farming operation is from the Oregon Administrative Rules⁶:

(2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:

(A) Contribute in a substantial way to the area's existing agricultural economy; and

(B) Help maintain agricultural processors and established farm markets.

(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

Mr. Reeder also states that the term "required" does not mean "absolutely necessary" and that this is an ambiguous term as it is not defined by the Benton County Development Code nor administrative rule. Mr. Reeder references Webster's Third New International Dictionary. County counsel staff was able to obtain a scan of the dictionary page containing the term "required" from the State Library. One part of the definition states, "*to demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation).*" In fact, although staff turned to a dictionary to define the term 'required' based on LUBA case ⁷*Loucks v Jackson County*, the term 'essential', 'necessary' and 'required' are well understood without the need to refer to a dictionary definition.

While Ms. Jordan and Ms. Crosby have stated that Claire Fulsher provides help on the farm, they have not provided evidence that the help is essential for the farm to continue to function or flourish and they have not provided evidence that she and her family need to live on the property to provide help. The testimony of Ms. Crosby, Ms. Jordan, and Claire Fulsher do not support such a conclusion. Claire Fulsher testified that she lives 15 minutes away, a reasonable driving distance. Ms. Crosby stated Claire and Kevin came and helped with the haying this past season. They were able to do this without living on the property. Also, Ms. Jordan and Ms. Crosby testified that they utilize a very good vet, have help from a neighbor during calving season, and hire part time help. Ms. Jordan testified that their goal is to be able to not hire help. This goal does not raise the request to the level of necessity.

In addition, Ms. Crosby testified that she has purchased all new machinery, built new agricultural buildings on the property, installed new fencing and a new watering system. The new acquisitions present reduced support for the need for help as they diminish the amount of upkeep that would be

⁶ [Chapter 660 Division 33 AGRICULTURAL LAND](#) 660-033-0020 Definitions

⁷ LUBA No. 93-133

needed for aged infrastructure and machinery. Ms. Jordan also stated that the new watering system is less labor intensive. Ms. Jordan did indicate that they intend to add 30 more acres of hay and that this is one of the changes on the farm that necessitates help live on the property. First, future farm use cannot be used to provide support for a farm help dwelling, it must be existing per the Benton County Code. Second, Claire and Kevin Fulsher can provide help without living on the property.

Response to Mr. Reeder's November 14, 2022, Letter

In Mr. Reeder's November 14, 2022, he states that "Interpreting the Relative Farm Help Dwelling laws as restrictively as County staff does defeats the purpose of Goal 3 and is not legally defensible." However, county staff is relying upon Final Order and Opinion promulgated by the Land Use Board of Appeals. LUBA has outlined a path for the county to follow and LUBA has identified the "safe harbor" thresholds as maintaining and preserving agricultural land, therefore supporting the purpose of Goal 3.

Mr. Reeder references *Harland v Polk County (2003)* as a basis for supporting the applicant's request. The LUBA case supports the County's denial of the application. Within the case, LUBA acknowledges that the term "commercial farm operation" is ambiguous. They agree that ⁹the intervenor's farm is a "farm use" then states, ". . . a "commercial farm operation," is clearly something different from "farm use," as that term is defined by ORS 215.203(2)(a) and 308A.05b [and County definition BCC Chapter 53]. Stated differently, the relatively minor level of agricultural activity that might qualify a property for preferential agricultural assessment is not necessarily sufficient to qualify as a commercial farm operation within the meaning of OAR 660-033-0130(9)."

And further,¹⁰However, because LCDC did not define the term "commercial farm operation" in OAR 660-033-0130(9) or draft the rule to expressly provide that only those farm operations that make up the county's "[c]ommercial [a]gricultural [e]nterprise are eligible for a family farm help dwelling, we do not believe it is appropriate to assume that LCDC intended to require that county's derive a definition of commercial farm operation" from OAR 660-033-0020(2). Rather, we conclude that LCDC intended to allow the county some discretion in distinguishing "hobby" or "recreational" farms from those farms that rise to the level of a commercial farm operation. If LCDC did not intend that county have such discretion, the rule can be easily amended to add a definition of commercial farm operation that eliminates that discretion.

LUBA also indicates that they, in part, relied on the level of farm income to make their decision.

¹¹"Although we know from the record that the intervenor's wife works off the farm and we do not know from the record how much income intervenor derives from the farm, the tax service letter that the intervenor submitted is substantial evidence that all of intervenor's income is derived from the farm . . ."

⁸ Polk County's Development Code is different from Benton County Development Code as Polk County uses the term "needed" rather than "required".

⁹ Page 7 of 13 of Mr. Reeder's November 14 Memo

¹⁰ Page 8 of 13 of Mr. Reeder's November 14 Memo

¹¹ Page 8 of 13 of Mr. Reeder's November 14 Memo

In Ms. Crosby and Ms. Jordan's case, they have already testified that they derive their income from retirement savings.

Additional Analysis

Mr. Reeder referred to the deferred tax assessment status of the property as indicating that the property has a commercial farming operation. The threshold level for deferred tax assessment status is very low within the EFU zone.

¹²Exclusive farm use (EFU) zoned land qualifies for "farm use" special assessment provided the owner maintains an acceptable farm practice with the **intent to make a profit** as defined by ORS 308A.056. Landowners don't need to apply for land to be qualified and assessed as farm use [emphasis added].

Conclusion and Recommendation

None of the information supplied with the appeal causes staff to revise the decision to deny the application.

Staff recommends that the Planning Commission uphold the staff decision to deny the application.

Proposed motion: "Based on evidence in the record, and upon hearing testimony on the issue, I move to deny the applicant's appeal, thereby upholding the original Notice of Decision on file number LU-22-023."

¹² https://www.oregon.gov/dor/forms/FormsPubs/farm-use-manual_303-422.pdf Page 2-1, 2022 Farm Use Manual, Oregon Department of Revenue

Original Application for a Farm-Help Dwelling for a Relative of the Farm Operator



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Community Development Department

Office: (541) 766-6819
360 SW Avery Avenue
Corvallis, OR 97333

co.benton.or.us/cd

APPLICATION

FARM DWELLING IN THE EFU OR MPA ZONE

File # LU-22-023

Fee: \$ 698⁰⁰
(SEE CURRENT FEE SCHEDULE)

**ALL SECTIONS MUST BE COMPLETED. ATTACH ADDITIONAL SHEETS IF NECESSARY.
REVIEW WILL BEGIN ONLY WHEN THE APPLICATION IS DETERMINED TO BE COMPLETE**

I. Property Owner(s) Information

Name(s): Connie L. Jordan Phone #1: 602-622-9004
Mailing Address: 31992 Fern Rd. (P.O. Box 778) Phone #2: _____
City: Philomath State: OR Zip: 97370 Email: nrhajordie@hotmail.com

II. Applicant Information

Name(s): Cynthia A. Crosby Phone #1: 503-364-8310
Mailing Address: 31992 Fern Rd. (P.O. Box 391) Phone #2: _____
City: Philomath State: OR Zip: 97370 Email: cyncrosby@comcast.net

Other individuals to be notified of this application: Name, Address, City & Zip, or Email

III. Property Information

Site Address: 31992 Fern Rd. Philomath, OR 97370
Assessor's Map & Tax Lot Number: T 12 S, R 6 W, Section(s) 24C, Tax Lot(s) 304713 + 290118
Acreage: 64.65 Zoning: EFU + Residential Fire District: Philomath
Water Supplied By: Well Sewage Disposal Type: septic tank + drain field
Existing Structures: 4 Bdrm. house, 2 agriculture bldgs., 10 stall horse barn, well houses
Current use(s) of the property: Small commercial farm operation

IV. Dwelling Type Requested: (Example: "Farm-Help Dwelling for a Relative of the Farm Operator.")

V. Attached Documentation: With all land use applications, the "burden of proof" is on the applicant. It is important that you provide **ALL** the information listed on the following pages at the time you submit your application. The processing of your application does not begin until the application is determined to be complete.

Identify the soil characteristics on the property:

Soil Type: yellow clay 1-24' USCS Class: _____ % of Parcel: approx. 3% High Value? Y / N

Uses, Crops, etc.: Cow + horse pasture, 35 tree orchard and garden

Please circle this property's Standard Industrial Class – SIC Code, below:

(Standard Industrial Class - SIC Code)		
001-Not in Production	002-Cons. Reserve Prog. (CRP)	011-Cash Grains
013-Field Crops	016-Vegetables & Melons	017-Fruits and Tree Nuts
018-Hort. Specialities Crops	<u>021-Livestock</u>	024-Dairy Farms
025-Poultry and Eggs	027-Animal Specialities	029-Gen. Farm, Primarily Livestock
081-Forestry including woodlots	082-Christmas Trees	

Attachments

1. Is there an existing well or spring on the proposed parcel(s)? yes Please attach a copy of any well log or pump test that identifies the rated yield of this water source. A water source yielding at least five gallons per minute per residence (by pump or bailer test) is required for a building permit.
2. Is there an existing septic system on the proposed parcel(s)? no An evaluation by Environmental Health may be required of an existing system unless the system was recently installed or repaired. Please attach a copy of any septic system records you may have available. If a site has not been approved for a septic system, you may apply for a site feasibility, but a septic installation permit will be withheld pending approval of this application.
3. A copy of deed(s) covering the subject property.
4. If the parcel for which a dwelling is proposed does not have frontage on a public road, attach a copy of the easement granting access to the parcel.
5. An accurate scale drawn map of the property, showing the locations of existing and proposed structures, roads, water supply, septic system, easements, and driveways. Label all tax lots.
6. Is the only access or proposed access to the property via a road that crosses a railroad? no If yes, please draw the location on your map and explain here:

Please identify the type of dwelling you are requesting from the following list and respond to the questions for that type of dwelling. Attach additional sheets as necessary to fully answer questions. Be sure all property owners sign the form on page 4.

- Farm Related Dwelling on predominantly High Value Farmland**, pursuant to Benton County Code Section 55.109 and 55.015(2)
1. Is the subject tract (the subject property and contiguous property in the same ownership) in farm use?
 2. Provide information that shows that the current farm use produced \$80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years or three of the last five years, or in an average of three of the last five years. Only income from land owned, not leased or

rented, shall be counted. The cost of purchased livestock shall be deducted from the total gross income.

3. What is the current farm use of the property(ies) that produced that gross annual income?
4. Is there a dwelling on the subject tract? _____
5. Except as permitted for seasonal farm worker housing that has been approved pursuant to ORS 215.283(1)(p) (1999 Edition), is there any other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator?
5. Name of the occupant(s) of the proposed dwelling: _____
6. Will the proposed occupant(s) be the person(s) who produced the commodities which grossed the income in Number 1 above? _____

Farm Related Dwelling on 160 Acres or More of land that is not predominantly High Value Farmland, pursuant to Benton County Code Section 55.110 and 55.015(2).

1. What is the current farm use of the property? _____
2. Will the dwelling be occupied by a person(s) who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale? _____
If yes, please describe the work that will be conducted by the occupant(s) of the proposed dwelling.
3. Is there any other dwelling on the subject tract (other contiguous lots or parcels in the same ownership)? _____ If yes, please describe the use of these dwellings.

Commercial Dairy Farm Dwelling shall demonstrate compliance with the decision criteria listed in Benton County Code Section 55.111.

Farm Related Dwelling on Land that is not predominantly High Value Farmland, pursuant to Benton County Code Section 55.112 and 55.015(2).

1. Provide information that shows the subject tract (the subject property and all contiguous property in the same ownership) is currently employed for farm use. Provide information that shows that the current farm use produced in the last two years or three of the last five years, or in an average of three of the last five years, the lower of the following:
 - a. At least \$40,000 in gross annual income from the sale of farm products, not including marijuana; or
 - b. Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon.
2. Are there any other dwellings on lands zoned EFU or MPA owned by the farm or ranch operator or on the farm or ranch operation? _____ If yes, describe the use of this/these dwellings and the work conducted by the occupant(s).
3. Name of the occupant(s) of the proposed dwelling: _____
4. Would the occupant(s) of the proposed dwelling be the person(s) who produced the commodities which grossed the income identified in number one (1) of this section?
5. In determining the gross income, the income from the sale of marijuana and the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

Accessory Farm-Related Dwelling for Year-Round and Seasonal Farmworkers, pursuant to Benton County Code Section 55.115.

1. Is the subject tract (the subject property and contiguous property in the same ownership) in farm use?
2. Demonstrate that the principal farm dwelling to which the proposed dwelling would be accessory meets one of the following:

(A) On land not identified as high-value farmland, the principal farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years, or in an average of three of the last five years, the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products, not including marijuana. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the income from the sale of marijuana and the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the principal farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, that produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products, not including marijuana, in the last two years or three of the last five years or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

3. Describe who will occupy the accessory dwelling, what their role will be in the farm use of the land and why their assistance in the management of the farm use will be required by the primary farm operator.
4. The accessory dwelling will be located: ___ on the same lot or parcel as the dwelling of the primary farm operator; ___ on an adjacent parcel in the same ownership; or ___ on a non-adjacent parcel?
5. Are there other dwellings on *any* land owned by the farm operator and designated for Exclusive Farm Use or Multi-Purpose Agriculture that are vacant or currently occupied by persons not working on the subject farm or ranch? _____. If yes, explain why this/these dwelling(s) could not reasonably be used as the requested accessory dwelling.

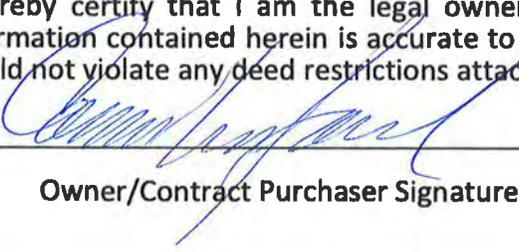
Farm-Help Dwelling for a Relative of the Farm Operator, pursuant to Benton County Code Section 55.120.

1. Is the subject property, and contiguous property in the same ownership, in farm use? *See attached.*
2. How will the occupant(s) of the proposed dwelling be related to the farm operator?
3. In what ways is the occupant's assistance required by the farm operator?
4. Describe how the farm operation qualifies as a commercial farm operation.

Note: The dwelling must be located on the same lot or parcel as the dwelling of the farm operator. The dwelling must be occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, step-parent, grandchild, grandparent, step-grandparent, sibling, stepsibling, niece, nephew or first cousin of either, whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator.

Signature(s)

I hereby certify that I am the legal owner or contract purchaser of the above noted property; that the information contained herein is accurate to the best of my knowledge; and that the requested farm dwelling would not violate any deed restrictions attached to the property.



3-21-2022

Owner/Contract Purchaser Signature

Date

Owner/Contract Purchaser Signature

Date

For Office Use Only

Date Application Received: 3/21/22 Receipt Number: 43755 By: TL

File Number Assigned: L11-22-23 Planner Assigned: _____

Date Application Deemed Complete: _____

Application for Farm-Help Dwelling for a relative of the farm operator

1. Is the subject property, and contiguous property in the same ownership, in farm use?

Yes, this approximate two acres is close to Fern Rd. to the north and right side of the driveway heading West into the property. This parcel is currently used as an alternate pasture for cattle and horses.

2. How will the occupants of the proposed dwelling be related to the farm operator?

The 64.65 acre property was purchased in September of 2015 and is owned by the Connie L. Jordan Trust with Connie L Jordan (aged 73) listed as the beneficiary. Connie has a medical history that includes open heart surgery (2016) for mitral valve repair and coronary artery bypass. Medically she is at high risk for the COVID-19 infection. Connie is fully vaccinated and boosted. Her long-time friend of forty plus years, Cynthia (Cindy) Crosby (aged 69) is listed as the beneficiary of the Connie L Jordan Trust should Connie pass before Cindy. Connie does not have any descendants. Cindy's trust lists Connie as first beneficiary to her trust should Cindy pass. Both Connie and Cindy's trusts list Cindy's daughter, Claire (Crosby) Fulsher, as the next beneficiary should we both pass. Claire is married to Kevin Fulsher and they have two daughters, ages 8 and 5.

Ms. Crosby works closely with Ms. Jordan to manage the farm and functions in the role of the farm operator including accounts payable and renewables, livestock record keeping, registration and marking maintenance, marketing livestock and mobile butcher process, property and pond upkeep, grass hay and pasture production, fertilizing and tilling schedules, orchard maintenance, and garden production. Claire and Kevin have been involved with many aspects of the farm operations and have expressed a desire to be located closer to the farm in order to assist in more of the day-to-day operations.

3. In what ways is the occupant's assistance required by the farm operators?

There is a variety of work that needs to be performed on the farm. Listed below are some aspects of these operations:

- Maintain the daily nutritional needs of the livestock and horses including procuring the necessary feed and hay supplies for a year round operation, including storage and distribution.
- Assist in maintaining the health, breeding and sales records for the livestock and horses. This includes working with the local veterinary services in developing an annual calendar of routine care and maintenance.
- Assist with waste management for the farm especially including the horse barn and resulting composting biomass and distribution throughout the property. Includes developing strategies for marketing biomass in local areas.
- Fence maintenance including repairing the pastures with the perimeter, cross fencing and electric fencing to facilitate rotational grazing throughout the 60 acres.
- Assist with farm equipment maintenance and tool repair. Equipment includes:
 - ~ 5055E John Deere tractor and attachments including bucket, forks, scraper blade and brush hog.
 - ~ A harrow, grappler, disc, seeder, turf roller, manure spreader and pallet mover.
 - ~ A smaller Kubota tractor and implements.
 - ~ A 1986 Ranger farm truck, John Deere Gator, and Honda quad
 - ~ A John Deere tractor mower, and a Husquevarna mower.

- ~ A 16 ft. hydraulic dump trailer
- ~ Two cattle squeezes, holding pens, and various water tanks, and feeding troughs.
- ~ Fencing materials to maintain the property livestock and associated tools.

- Assist with grass management and provide input for the development of short and long term goals as a grass farmer and hay producer. Includes assisting with soil testing, liming, fertilizing, tilling, seeding, managing weed pressure, discing, harrowing, planting, harvesting, hay bailing, storage and distribution. Also includes rotational grazing for the cattle and marketing any excess hay to local horse and cow owners.

- Maintain high quality orchard of 35 fruit trees (apples, plums, apricots, nectarines, cherries and pears) and the tasks involved with establishing and working the seasonal large vegetable garden, including two hoop houses, a small vineyard and berry section. Includes assisting in distributing excess product to local food banks and developing potential local markets.

- Assist during calving season of the Dexter cattle, butcher preparations and with any veterinary tasks needed to maintain the health of the livestock.

- Well and water maintenance on the property. The property currently has three working wells. This includes filling and cleaning cattle water tanks, assuring well functions and protection from livestock and weather as well as routine maintenance.

- Maintain solar pole installations used for electric fencing and residential use.

- Assess and manage the property for fire protection.

- Assist with the identification and management of noxious weeds on the property.

- Assist with gopher, voles, moles and rodent control throughout the fields and farm buildings, including any other potential pests such as flickers, bats, foxes, raccoons, coyotes, ground squirrels, etc.

- Monitor and maintain farm infrastructure such as irrigation, electric and general fencing, water sources and flow, faucets, batteries, and feed supplies necessary to ensure human and animal safety and welfare and uninterrupted operations; this includes any services needed by a licensed worker (electrician, veterinarian, pump repair, rental of equipment, etc.)

4. Describe how the farm operation qualifies as a commercial farm operation.

Connie purchased this 64.65 acre property in 2015 and decided to also purchase the herd of 28 Dexter cattle that the previous owner had established on the property. Many of the initial five year planning goals to make this a viable commercial farm have been met.

2015 - 2020 Initial five year planning goals:

- Assessed the herd genetics and developed the herd to include only registered Dexter cattle with the American Dexter Cattle Association (ADCA). Established and maintain annual ADCA membership and participate with the Oregon state ADCA community.

- The herd was gradually culled over the next three years. The remaining livestock are genetically non-carriers of PHA and Chondro. Dexter cattle are known to be good milk cows for their calves as well as able to produce for dairy markets. Some of the genetic markers for milk

production are highly sought after due to their increased milk yield and whey protein content and is favorable for cheese production. Dexter cattle are known to be grazers that do very well on pasture land and generally have a gentle temperament. The meat is lean and of high quality and great taste.

- The original bull was sold in 2019 due to reaching the inline breeding maximum. Several cow/calf pairs were sold and other cattle beefed out to achieve these goals. Purchased an ADCA registered six-month old bull in 2020.

- To date, the Owner, Connie, and farm operator, Cindy, have managed (sold, purchased, or butchered) 55 cattle on the property since purchasing the initial herd.

- Over several years have purchased and are using necessary farm equipment to manage the pastures and farm operations. See #3 above.

- Assess property for livestock pasture management. A pasture grid of rotational grazing had been established by the previous owner. It was very labor intensive for maintaining and providing water for the livestock. The grid was oriented to the property in such a way that the cattle had little relief from mud during the wet season, and no protection from severe weather of storms or heat. The rotational grid was reworked over the course of two years and now includes an alley way for the cattle to access water from any of the open grid pastures. The water is obtained from a reactivated well and spigot in the lower field with watering tanks set on a concrete pad to help manage the land over use of the cattle seeking water. The new grid follows a West to East pattern that allows the cows to get out of the lower wetter pasture as needed, get shade during the heat of the summer and to seek shelter in a wooded area opened up to them as part of the alley. They also use the trees for scratching and are less tough on the posts of the perimeter fencing. The foundation of this work was established in 2019.

- In 2016, Connie built a ten stall equine barn with a 27 ft. ridge height area for more than 6000 sq. ft. including loft. This was in preparation for bringing her seven horses to Oregon from Arizona where they were being boarded. As this work was in process, Connie experienced a health crisis. As a result of a severe course of childhood rheumatic fever, her mitral valve was affected and needed to be replaced. After four months of increasing heart failure she was able to have open heart surgery to replace this valve in July of 2016. This delayed bringing up the horses for about a year. When Connie got the approval from her doctors, the horses arrived to Oregon on May 31, 2017. Several pastures have been established on the upper East portion of the property that can be used by the horses or cows as needed.

- More investments were made to clean up, renovate and expand the existing arena and smaller barn to create more covered storage space for agricultural use. Approx. 11,420 sq. ft. of storage space was added for implements, hay, seed, fencing materials, tools, etc.

- The property includes a deer-fenced orchard and garden site of approximately two acres. There were some old fruit trees, a greenhouse and two hoop houses, but no specific garden area had been established by the land owner whom Connie purchased the farm from. This original orchard area was established by the original land owner. Since Connie purchased this farm, the orchard has now been expanded by 70% with new fruit trees planted in 2020 and 2021, along with a new irrigation system. A large Hugelkultur garden bed was established within the garden area with additional planting areas are being established each year. When excess fruit and garden goods are produced, the harvest is donated to the Philomath Community Services food bank and as well as areas are opened up to the Philomath Gleaners Club.

2020 to present. Medium-term planning goals include:

1. Repeat soil testing for lower 20 acre parcel and horse pastures to assess for pH and other nutritional needs. Completed in April, 2021.
2. Lime was added to all the established pasture areas in 2017. Will add lime again when indicated in preparation for seeding these areas in the fall of 2022.
3. Located a local grass farmer who can produce two-string bales for ease of handling. Obtained 10 tons from lower 20 acre parcel in 2021. Plan to fertilize this area in the spring of 2022 and assess the yield to sustain the cattle operation.
4. Assess and monitor other pastures that were reseeded in the fall of 2020 for improved grass production during the spring and summer of each subsequent year.
5. Continue to increase herd count by 30% along with meat share market. Plan and prepare for calving season from March through April for improved calf survival and health. The young bull was introduced to a small group of heifers in July of 2021. Anticipating at least two calves in the late spring of 2022.
6. Maintain herd health throughout the year. Determine which cattle to breed or beef out and make arrangements with the mobile butcher at least a year in advance.
7. Explore feasibility of applying for a farm-help dwelling for a relative of the farm operator in the EFU zone just off Fern Rd. by spring 2022. Several houses are located off Fern Rd. in this area. A similar template for a farm-help dwelling may be possible. May need to meet with tax assessors to determine more precisely where the five acres that are taxed as residential are located.

Present and long-term goals include:

1. If Farm Help Dwelling for a Relative is approved, move forward with a contractor to build a house on the designated site along Fern Rd.
2. Continue to maintain high standards of animal care for the livestock and horses.
3. Actively grow the herd size with this new bull by breeding eligible heifers and maintain good health records in order to continue with a high quality of Dexter cattle that can be registered with the American Dexter Cattle Association (ADCA.)
4. Sell extra cow calf pairs or heifers as needed in order to maintain a healthy, sustainable sized herd and to realize some income to offset expenses.
5. Develop meat market with Oregon Pasture Network, a network for local pasture-raised products under the umbrella organization of Friend of Family Farmers and other networks where shares of beef can be marketed.
6. Continue to develop garden and orchard production for local distribution and donation to local food banks and farmer market sales.
7. Maintain, preserve and improve the pond, wetland areas and other natural habitat on the property.
8. Continue learning more about the many aspects of commercial farming by reading, taking classes, and networking with the larger farming community locally and state wide.

Additional background information:

- The property is now owned free and clear without encumbrances. Connie celebrated being five years post open heart surgery in July 2021. Cindy's daughter, Claire and her husband Kevin, are willing to assist us with more of the farm operations and apply their knowledge to farming. Kevin grew up on a farm in Oregon. Connie grew up on a farm in Iowa and her family always owned livestock and horses. Cindy grew up in the orchards of Western Colorado. Due to many twists and turns of life, Connie and Cindy's friendship from college room mate days has brought them back together again to enjoy this beautiful farm in Philomath Oregon.

- We are committed to maintaining the area's existing agricultural economy by continuing to provide good land stewardship to sustain the pastures and timber land on the property for the use of hay and livestock production, pasture fed beef, fresh vegetables, berries and fruit. A quarter acre habitat pond below the house is home to several Western pond turtles and several fish species including blue gill, bass and crappies. Many species of birds also enjoy the pond including a variety of ducks, Canadian geese, and a nesting pair of eagles. The wildlife includes red tail hawks, as well as local black-tailed deer, foxes, raccoons, and the occasional coyote and cougar.

- Connie and Cindy have been taking several classes from OSU's Small Farms Program. For example pasture management, horse pasture management, which includes waste management practices, maintaining wetlands, garden and pest management, farm selling direct to consumers and financial record keeping. As we continue to learn how best to manage the farming aspects of this property, Connie and Cindy have also modified our home and property to better accommodate us as we age. It is our desire to maintain residence on this property for as long as feasible. And as we age, it becomes apparent the time to take more steps in this process is upon us. We feel the willingness of our family to help us is a crucial part to be able to maintain and expand the future potential of the farm.

Page 169 of 384
Profit or Loss From Farming

OMB No. 1545-0074

2020

Attachment Sequence No. **14**

▶ Attach to Form 1040, Form 1040-SR, Form 1040-NR, Form 1041, or Form 1065.
 ▶ Go to www.irs.gov/ScheduleF for instructions and the latest information.

CONNIE L JORDAN

Social security number (SSN)

A Principal crop or activity BEEF	B Enter code from Part IV ▶ 112111	C Accounting method: <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Accrual	D Employer ID number (EIN) (see instr.)
E Did you 'materially participate' in the operation of this business during 2020? If 'No,' see instructions for limit on passive losses <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
F Did you make any payments in 2020 that would require you to file Form(s) 1099? See instructions <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
G If 'Yes,' did you or will you file required Form(s) 1099? <input type="checkbox"/> Yes <input type="checkbox"/> No			

Part I Farm Income – Cash Method. Complete Parts I and II. (Accrual method. Complete Parts II and III, and Part I, line 9.)

1 a Sales of livestock and other resale items (see instructions).....	1a		
b Cost or other basis of livestock or other items reported on line 1a.....	1b		
c Subtract line 1b from line 1a.....			1c
2 Sales of livestock, produce, grains, and other products you raised.....			2 3,358.
3 a Cooperative distributions (Form(s) 1099-PATR).....	3a		3 b Taxable amount..... 3b
4 a Agricultural program payments (see instructions).....	4a		4 b Taxable amount..... 4b
5 a Commodity Credit Corporation (CCC) loans reported under election.....			5a
b CCC loans forfeited.....	5b		5 c Taxable amount..... 5c
6 Crop insurance proceeds and federal crop disaster payments (see instructions):			
a Amount received in 2020.....	6a		6 b Taxable amount..... 6b
c If election to defer to 2021 is attached, check here. ▶ <input type="checkbox"/>		6 d Amount deferred from 2019.....	6d
7 Custom hire (machine work) income.....			7
8 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions).....			8
9 Gross income. Add amounts in the right column (lines 1c, 2, 3b, 4b, 5a, 5c, 6b, 6d, 7, and 8). If you use the accrual method, enter the amount from Part III, line 50. See instructions.....			9 3,358.

Part II Farm Expenses – Cash and Accrual Method. Do not include personal or living expenses. See instructions.

10 Car and truck expenses (see instructions). Also attach Form 4562.....	10		23 Pension and profit-sharing plans.....	23	
11 Chemicals.....	11		24 Rent or lease (see instructions):		
12 Conservation expenses (see instructions).....	12		a Vehicles, machinery, equipment.....	24a	
13 Custom hire (machine work).....	13		b Other (land, animals, etc.).....	24b	
14 Depreciation and section 179 expense (see instructions).....	14	1,753.	25 Repairs and maintenance.....	25	
15 Employee benefit programs other than on line 23.....	15		26 Seeds and plants.....	26	
16 Feed.....	16	699.	27 Storage and warehousing.....	27	
17 Fertilizers and lime.....	17	106.	28 Supplies.....	28	
18 Freight and trucking.....	18		29 Taxes.....	29	
19 Gasoline, fuel, and oil.....	19	174.	30 Utilities.....	30	
20 Insurance (other than health).....	20	114.	31 Veterinary, breeding, and medicine.....	31	294.
21 Interest (see instructions):			32 Other expenses (specify):		
a Mortgage (paid to banks, etc.).....	21 a		a	32 a	
b Other.....	21 b		b	32 b	
22 Labor hired (less employment credits).....	22		c	32 c	
			d	32 d	
			e	32 e	
			f	32 f	
33 Total expenses. Add lines 10 through 32f. If line 32f is negative, see instructions.....				33	3,140.
34 Net farm profit or (loss). Subtract line 33 from line 9.....				34	218.

If a profit, stop here and see instructions for where to report. If a loss, complete lines 35 and 36.
 35 Reserved for future use.
 36 Check the box that describes your investment in this activity and see instructions for where to report your loss:
 a All investment is at risk. b Some investment is not at risk.



BENTON COUNTY ENVIRONMENTAL HEALTH ON-SITE SEWAGE DISPOSAL SYSTEM PLOT PLAN

Owner: Connie L. Jordan

Date: 02/29/16

Applicant: Groundhog LLC

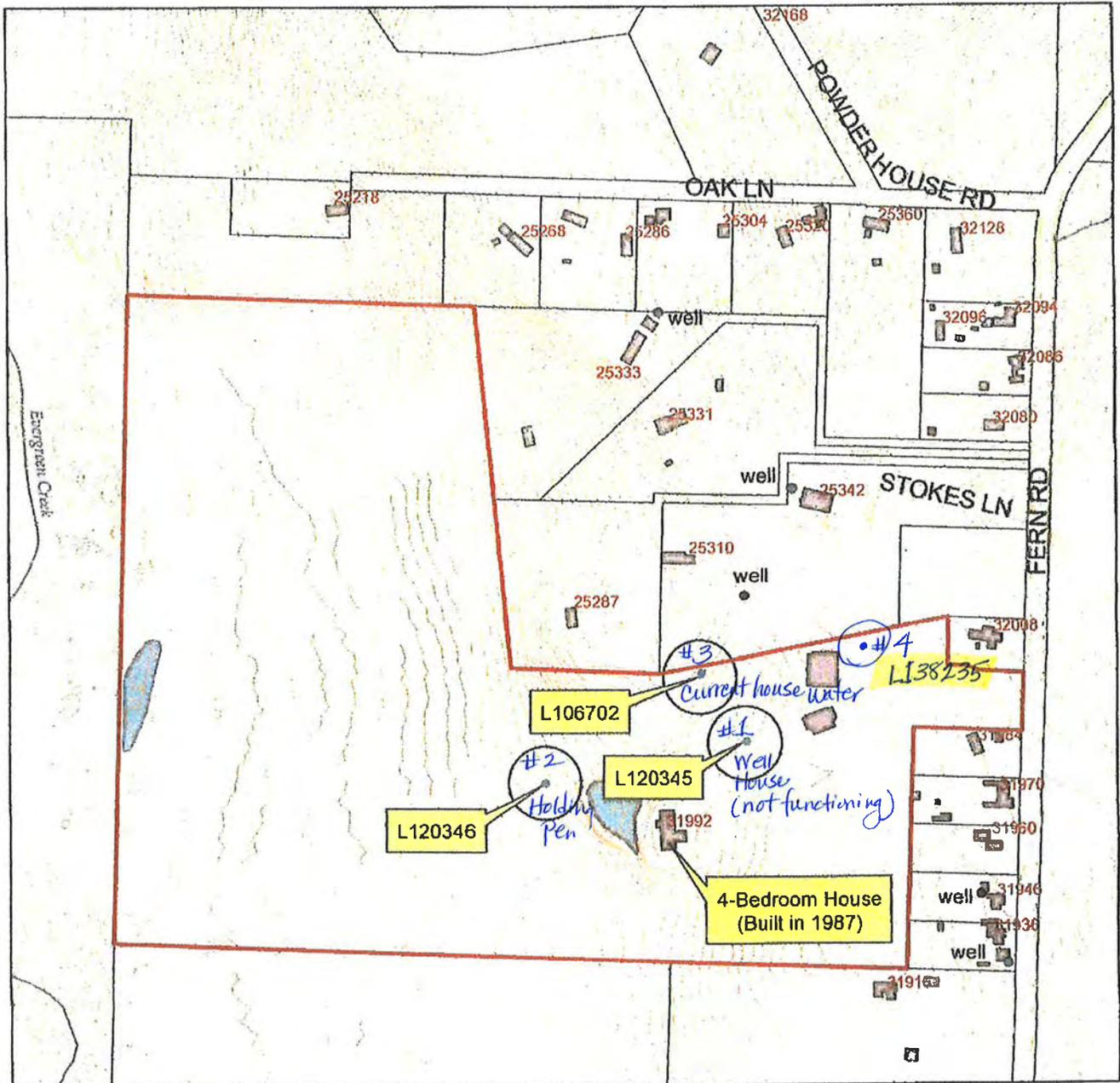
Assessor's Map and Tax Lot Numbers: 12-6-24 C TL 108

Address: 31992 Fern Road, Philomath, OR 97370

SITE #: -
PERMIT #: SW160010
TYPE: Minor Alteration

Parcel: 64.80 Acres

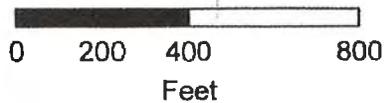
Scale: 1 inch = 400 feet

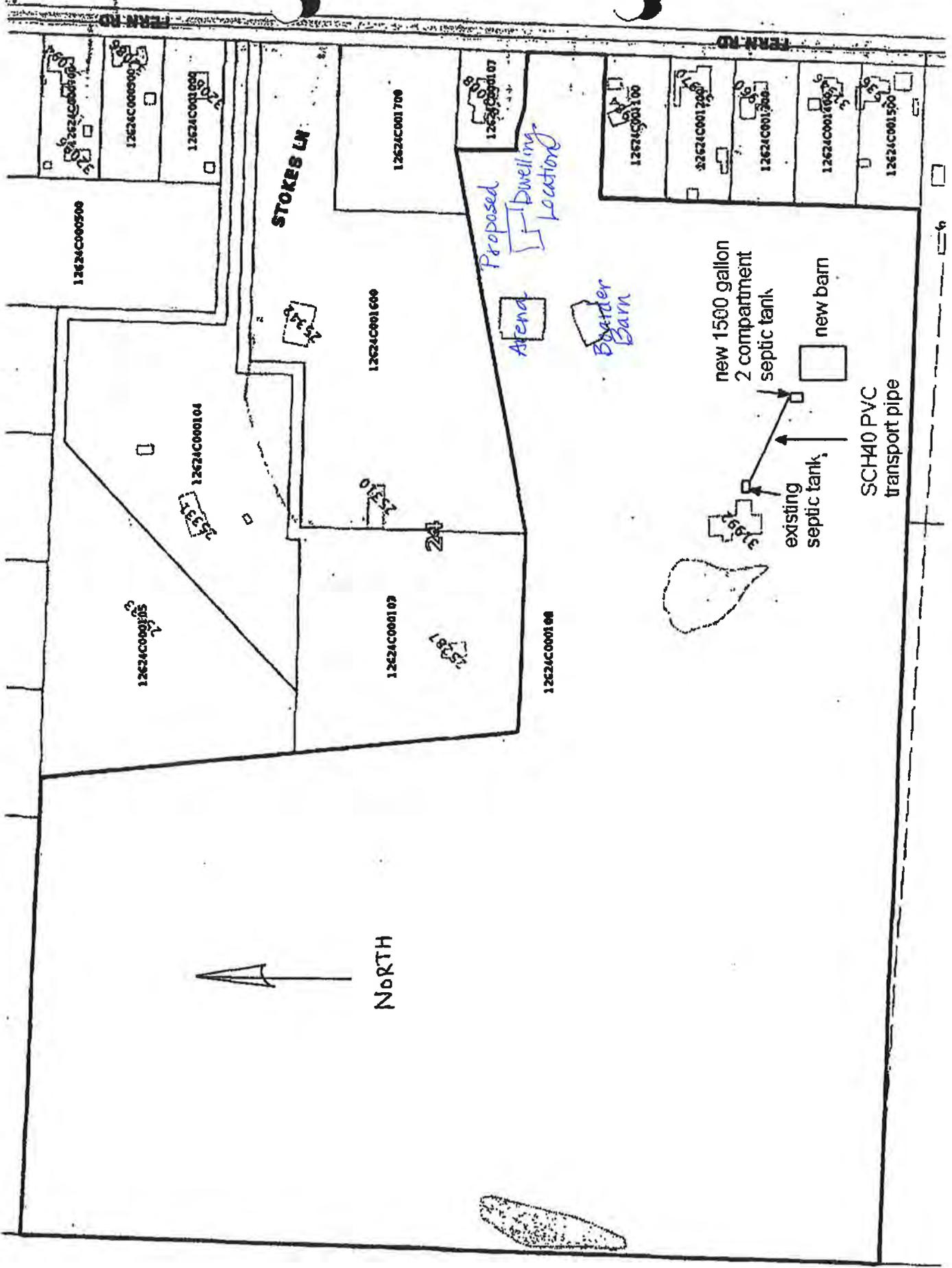


RECEIVED

MAR 02 2016

WATER RESOURCES DEPT
SALEM, OREGON





ON-SITE SEWAGE DISPOSAL FINAL INSPECTION REPORT

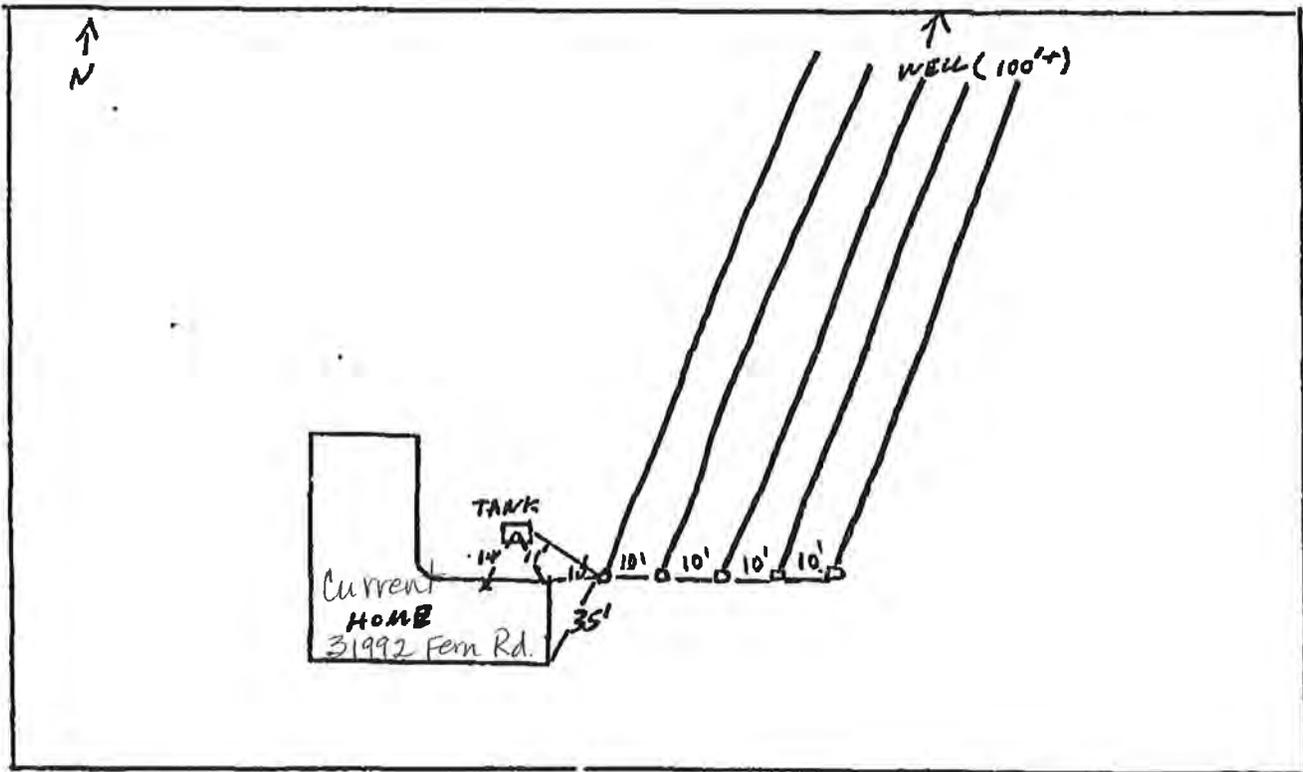
Benton County Environmental Health Services
530 N.W. 27th St., Corvallis, OR 97330 Phone: 757-6841

Permit No. 86-781 T 12 R 6 S 24 T.L. 101
Date Received 8/7/87 Owner Peterson/Miller
Installer Kevin Armstrong System Designed For 5 Bedroom Home
Location Fern Rd.

ITEM:
Type of System: STANDARD SERIAL
Septic Tank Capacity 1500 Gallons
Distance between tank & first box 11'
Total Linear Feet of Drainline 460
No. of Drainlines 5
Width of Drainlines 24"
Depth of Drainlines 24"
Depth of Gravel 12"

COMMENTS:
NEW

The installation conforms to plot plan drawing () yes (x) no
Sketch (if necessary)



CERTIFICATE OF SATISFACTORY COMPLETION

This on-site sewage disposal system has been inspected and found to meet current minimum State construction standards. In accordance with O.R.S. 454-665, this Certificate is issued as evidence of Satisfactory Completion of an on-site sewage disposal system at this location. The system can be backfilled.

Sanitarian: Ron Smith RS. Date: 8-24-87 Time: 9:45 AM (PM)

TICOR TITLE 471815038300

GRANTOR:
Daniel P. Cunningham and Melissa M. Cunningham

GRANTEE:
Connie Jordan

SEND TAX STATEMENTS TO:
Connie Jordan
31992 Fern Road - Philomath, OR 97370

AFTER RECORDING RETURN TO:
Connie Jordan
31992 Fern Road - Philomath, OR 97370

Escrow No: 471815038300-TTMIDWIL10

Acct#290118
31992 Fern Road - Philomath, OR 97370

BENTON COUNTY, OREGON		2015-535768
DE-WD	08/31/2015 09:26:44 AM	
Stn=4 DB	\$73.00	
\$10.00 \$11.00 \$10.00 \$20.00 \$22.00		
I, James V. Morales, County Clerk for Benton County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.		
James V. Morales - County Clerk		

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Daniel P. Cunningham and Melissa M. Cunningham, as tenants by the entirety, Grantor, conveys and warrants to **Connie L. Jordan, Trustee of the Connie L. Jordan Trust dated February 23, 2009** Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Benton, State of Oregon:

A tract of land situated in Section 24, Township 12 South, Range 6 West of the Willamette Meridian, in the County of Benton and State of Oregon, described as follows:

Beginning at a point which is 330 feet South of the Northwest corner of the James M. Chisham Donation Land Claim No. 54 in Section 24, Township 12 South, Range 6 West of the Willamette Meridian, Benton County, Oregon, said point also being on the West line of that tract of land as described in Book 149, Page 82, Deed Records of Benton County, Oregon; thence East 933.24 feet to the Northwest corner of that tract of land as described in M-49476-83, Microfilm Records of Benton County, Oregon; thence South 7° 31' 40" East, along the West line of said tract and extended, 995.39 feet to the Southwest corner of that tract of land as described in M-47181-83, Microfilm Records of Benton County, Oregon; thence, along the Southerly boundary of said M-47181-83, North 89° 58' 30" East 408.46 feet to the Southeast corner thereof; thence North 77° 38' 47" East 819.10 feet to the Northwest corner of that tract of land described in M-54521-84, Microfilm Records of Benton County, Oregon; thence along the Westerly and Southerly boundaries of said M-54521-84, and extended South 1° 18' 20" East 128.68 feet, North 89° 38' 42" East 49.41 feet, South 72° 06' 22" East 38.70 feet, and South 88° 57' 52" East 155.24 feet to the centerline of the County Road; thence South, along the centerline of said County Road, 158.55 feet to the Northeast corner of that tract of land as described in M-44129-83, Microfilm Records of Benton County, Oregon; thence West, along the North line of said last mentioned tract, 330.00 feet to the Northwest corner thereof; thence Southerly, along the Westerly boundary of said M-44129-83, and extended, 660.00 feet to the most Southerly Southeast corner of said first mentioned tract (Book 149, Page 82); thence West, along the Southerly boundary of said first mentioned tract, 2187.24 feet to the Southwest corner thereof; thence North, along the West line of said first mentioned tract, 1,770.32 feet to the point of beginning.

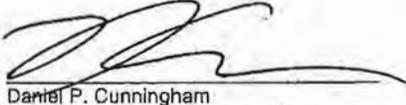
THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS \$1,000,000.00.
(See ORS 93.030)

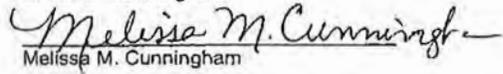
Subject to and excepting:

CCRs, reservations, set back lines, power of special districts and easements of record.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED: 8/13/15

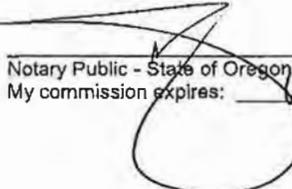

Daniel P. Cunningham


Melissa M. Cunningham

State of OREGON

COUNTY of Clatsop

This Instrument was acknowledged before me on August 13, 2015 by Daniel P. Cunningham and Melissa M. Cunningham.


Notary Public - State of Oregon
My commission expires: 6/4/19



**Application to Appeal
the Development
Department's Decision
Information submitted
by applicant for the
November 15 Planning
Commission Hearing**



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Community Development Department

Office: (541) 766-6819
360 SW Avery Avenue
Corvallis, OR 97333

co.benton.or.us/cd

APPLICATION

APPEAL OF A DEVELOPMENT DEPARTMENT DECISION

File # LU-22-023

Fee: \$250

Appellant

Name: Cynthia A. Crosby Bus Phone: _____

Address: 31992 Fern Rd. Home Phone: 503-363-8310

City & Zip: Philomath, OR 97370 Email: cyncrosby@gmail.com

Other individuals to be notified of this application:

<u>Name</u>	<u>Address</u>	<u>City & Zip</u>
<u>Connie L. Jordan</u>	<u>31992 Fern Rd.</u>	<u>Philomath, OR 97370</u>

The appellant hereby requests the Planning Commission to consider the following decision:

File Number: LU-22-023 Nature of Application: Farm-help dwelling for a relative of the farm

Decision: Denied, does not meet BCC 55.120(1)(b) Decision Date: 06/30/2022

Assessor's Map & Tax Lot Number: T 12 S, R 6 W, Section(s) 24 Tax Lot(s) 304713, 290118

REQUIRED: State the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated. Failure to cite specific Plan or Code provisions will nullify your appeal. See BCC 51.830. Attach additional sheets if necessary.

Reason and code are found in attached cover letter.

Cynthia Crosby
Signature

7/13/22
Date

(For Office Use Only)

Date Application Received: _____ Receipt Number: _____

File Number Assigned: _____ Planner Assigned: _____

Date: July 13, 2022

To: Benton Co. Planning Commission

Re: Appeal of the Community Development Dept. Decision File No. LU - 22 - 023

From: Connie L. Jordan - Owner

Cynthia A. Crosby - Farm Operator

We respectfully appeal the Community Development Department's decision denying our request for a farm-help dwelling for a relative of the farm issued on 6/30/2022. The denial hinged on BCC 55.120(1)(b) specifically defining commercial farming operations.

We believe we meet the criteria for a farm-help dwelling of a relative and will gather more specific data to address the scale and intensity concerns presented in the denial staff report.

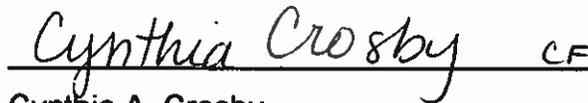
We will submit additional information to support our appeal for your consideration within the next 60 days and request that no hearing be held prior to receiving this information. We recently learned of a significant family member developing terminal cancer and are traveling now to spend time with her.

Included with this letter is a check for the appeal fee of \$250.00.

Sincerely,

 CF

Connie L. Jordan

 CF

Cynthia A. Crosby



Law Office of Mike Reeder
Oregon Land Use Law

September 14, 2022

Via Email and USPS

inga.williams@co.benton.or.us

Inga Williams, Planner
Benton County Community Development
360 SW Avery Ave.
Corvallis, OR 97333

Re: **Letter in Support of Appeal of Staff Denial of LU-22-023**
Cynthia Crosby & Connie Jordan | Relative Farm Help Dwelling

Dear Ms. Williams,

I represent Cynthia Crosby (the “Applicant”) in the above-referenced application (the “Application”). I also represent Connie Jordan, the owner of the subject property. I write to address the issue that was the sole basis of denial of the Application.

The Staff decision states as follows:

“Therefore, the decision for this application hinges upon if the operation is one that is of sufficient *scale* and *intensity* that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property. The applicant does not indicate the farm operator’s time spent running the commercial portion of the agricultural operations but given that this is a small portion of the overall agricultural activities occurring on the property, it can be concluded that the majority of the farm operator’s time is not spent in the cattle breeding operation. The amount of assistance is not specified.

The applicant has submitted a Schedule F showing gross income in 2020 to be \$3,358. This is 4% of the income required for a farm dwelling approval under current Code requirements. Under the first two safe harbors of the LUBA rationale cited above, the farm operation is not productive enough to qualify for a primary farm dwelling and therefore

the county can conclude it is also not productive enough to qualify for purposes of approving a relative farm help dwelling.”

It can also be concluded that it does not contribute substantially to the area’s existing agricultural economy nor help maintain agricultural processors and established farm markets. The conclusion is that the relatives’ help is not *absolutely* needed for management of the commercial agricultural operation and therefore it is not necessary for the relatives to live on the property.” (Emphasis added).

These statements are in error. The County staff used the incorrect analysis in determining whether the farm operation was of sufficient scale and intensity as to be considered a “commercial farming” operation. The Applicant provides the following information regarding the intensity and scale of the commercial farming operation for which a relative farm help is required.

I. The Scale and Intensity of the Operation is not determined by Net Income or Size of the Parcel

The Staff decision misreads *Richards v. Jefferson County*, 79 Or LUBA 171 (2019). Staff also failed to address a more recent and relevant Relative Farm Help Dwelling, *Stratton v. Clackamas County*, ___Or LUBA___, LUBA No. 2021-044 (August 30, 2021).

First, unlike some counties, “commercial farming” is not defined by the Benton County Land Use Code. Without a definition for what constitutes “commercial farming” such as with an income or profit threshold, the County cannot use the fact that the Applicant showed a gross income of only \$3,358 as justification for denial.

LUBA Board Chair’s concurring opinion in *Stratton* explains:

“I write separately to explain why I do not think that annual net income is or should be dispositive for purposes of determining whether an existing farming operation is commercial.

I tend to agree with petitioner’s policy-based arguments that the legislature’s allowance of relative farm help dwelling acknowledges and preserves the common practice of intergenerational family farming and that practice serves the Goal 3 purpose of maintaining agricultural land in farm use. I also agree with petitioner that imposing a current annual net income requirement ignores some of the practical realities of

farming, including natural disasters, market fluctuations, crop rotations, and longer-maturing crops—all of which can result in annual losses or no current annual net income for an existing commercial farming operation.

In my view, a farmer could show that their farming operation is commercial if it is such a scale and intensity that it does *or will* obtain a significant profit, even if it is not currently profitable as demonstrated by current annual net income [citing *Richards*].” Emphasis in original.

LUBA does not impose a gross income or net profit requirement for Relative Farm Help Dwellings. Nor do the state Relative Farm Help Dwelling statute and administrative rule implementing the statute. “Scale” and “intensity” are fact specific questions and relate to the hours necessary to operate the farming enterprise.

The Applicant herein provides as Exhibit A and Exhibit B evidence regarding the scale and intensity of the farming operation to establish that the subject property is used as a “commercial” farming operation. The evidence provided in these two exhibits specifically responds to the Staff decision findings that were used to justify a denial of the application and the evidence conclusively shows that the Applicant meets the definitional standards for a “commercial” farming operation.

II. The term “Required” does not mean “Absolutely Necessary”

The term “required” is not defined by the Benton County Development Code, nor is it defined by the Relative Farm Help Dwelling state or administrative rule. Therefore, this ambiguous term must be interpreted by looking at the *Webster’s Third New International Dictionary* (not *Meriam Websters* or the *Cambridge* dictionary as the Staff Decision did). The *Webster’s Third New International Dictionary*, pages 1150-1151, defines “necessary” as follows:

“(b) of, or relating to, or having the character of circumstances or other outside forces so as to have little or no independence of volition : not exercising free choice : acting under compulsion.”

Evidence in the record shows that due to the ages of the Applicant and the owner of the property, and due to the fact that there is more work to be done than can reasonably be expected of two aging farmers, it is necessary that they receive farm help to continue to manage and operate this farm. “Absolutely required” is not a definition that can be used because the Relative Farm Help Dwelling administrative rule and the Benton County Development Code uses the “required” (not “absolutely”). County staff are not free to insert terms that are not present in the administrative rule or Development Code. *See* ORS 174.010.

Webster's Third International Dictionary, page 1929, defines “require” as follows: “3 a : to call for as suitable or appropriate in a particular case.” This definition is much more expansive and not as restrictive as is suggested by County staff. Clearly, this is the intended meaning of the Development Code’s term “required”. The Relative Farm Help Dwelling statute, administrative rule and Development Code provision cannot all be interpreted to be so restrictive.

III. Approval Standards must be Clear and Objective

Regardless of the facts and legal conclusions above, state law requires that Benton County only apply clear and objective standards and procedures for residential development. This law, ORS 197.307(4), states:

“Except as provided in subsection (6) of this section, *a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.*” (Emphasis added).

Prior to the adoption of Senate Bill 1051 in 2017 (Or Laws 2017, ch 745), ORS 197.307(4) applied only to housing on “buildable land” within an urban growth boundary. However, LUBA and the Oregon courts have held that since SB 1051 (2017) no longer refers to “buildable land” all development for housing, regardless of where it is located, is subject to the “clear and objective” standards of the statute. *See East Park, LLC v. City of Salem*, __Or LUBA__, LUBA No. 2022-050 (August 30, 2022); *Warren v. Washington County*, 296 Or App 595, 598, *rev den*, 365 Or 502 (2019); *Roberts v. City of Cannon Beach*, 316 Or App 305, 311, *rev den*, 370 Or 56 (2022). LUBA and the Oregon courts have specifically held that counties must adopt and apply only clear and objective standards for housing development. LUBA has recently held as follows:

“The county contends that ORS 197.307(4) does not require clear and objective standards for the development of housing outside a UGB. The county is mistaken. As we explained above, SB 1051 amended ORS 197.37 and enlarged the clear and objective requirement by removing the previous requirements that the proposed development of housing be ‘on buildable land’ and that it be for ‘needed housing.’ By its terms, the clear and objective requirement applies to ‘the development of housing, including needed housing.’ ORS 197.307(4). The applicability of ORS 197.307(4) is not confined to areas within a UGB by the definition of needed housing in ORS 197.303(1).” *Community Participation Organization 4M v. Washington County*, __Or LUBA__, LUBA No. 2020-110 (September 9, 2021), Slip Op16-17.

In this case, the County may not apply its standards (whether they derive from requirements of state law or not) that are not clear and objective. Since neither the state nor

the County has defined with clear and objective standards what constitutes a “commercial” farming operation the County may not apply such a standard.

Relatedly, since the terms “necessary” and “required” are also not defined and are ambiguous, those terms are also not clear and objective and may not be a basis for denying the Application. *See Warren v. Washington County*, 296 Or App 595, 602-603 (2019)(where the Court of Appeals held that the “clear and objective” test applies to “definitions” of terms in the statute, rule or code).

IV. Conclusion

The Application meets all criteria for approval. The farm operation is “commercial” and the relative farm help dwelling is “necessary” and “required” for the continued operation of the commercial farm use of the property.

Furthermore, even if the County does not agree with the statement above, the County is prohibited from imposing standards for the development of housing that are not clear and objective. The “commercial” and “necessary/required” definitional standards are not clear and objective and are therefore not applicable to the Application.

The Applicant respectfully requests that you reverse the Staff decision to deny the Application and approve the Application.

Respectfully,



Micheal M. Reeder
Attorney for Applicant and Owner



Law Office of Mike Reeder
Oregon Land Use Law

EXHIBIT A

CROSBY RELATIVE FARM HELP DWELLING
APPEAL

[Benton County File No: LU 22-023]

Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 10:37 AM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Lower 20 acres for cattle.zip; 35 Fruit Orchard Trees.zip

Good morning Mike,

Hope you enjoyed the Labor Day weekend!

We are emailing you several zip files of photos today.

- Lower 20 acres pastures are used for rotational grazing, set up in grids that are created with electric fencing powered by solar and wind panel poles. There is an open alley way that allows the cattle to walk to the watering and feed stations from any grid that is open. The alley includes some timberland in the north corner that allows shade and weather protection when needed.

- Orchard fruit trees. Currently there are 35 spaces for fruit trees in this orchard. There are eight mature established fruit trees that are still bearing fruit. Most of the orchard has been newly planted in 2020 and 2021 and need about three years of growth to start bearing fruit. A new irrigation system was also established along with the planting of the trees.

This is limiting the files to 25 MB so it may be several emails. Let us know if you receive them okay and what next steps are.

Thank you,
Cindy and Connie





Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 10:50 AM
To: Mike Reeder
Cc: Connie Jordan
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Calving stalls and small cattle squeeze.zip; Holding pen with big cattle squeeze.zip

Mike,

Second email with photos in zip files.

- Four calving stalls off the arena equipped with small cattle squeeze for vet exams and treatments as needed. One of the photos shows a recent calf born this spring. We have so many cute calf pictures if needed...just sayin'

- Holding pen with big Powder River squeeze used for vaccinations, vet exams, ear tagging, fly treatments, etc.

CC

On 09/06/2022 10:37 AM Cynthia Crosby <cyncrosby@comcast.net> wrote:

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Cindy and Connie





Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 11:09 AM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Dexter Cattle.zip; Farm equipment.zip

Third email with photos in zip files.

- Dexter cattle pictures showing our most recent bull and some of his offspring.
- Farm equipment necessary to operate the farm. John Deere Tractor 5055E with bucket, forks, rotary cutter (brush hog) and blade. Also John Deere Gator as a farm vehicle. These photos include the seeder, stump grinder and harrow.

CC

On 09/06/2022 10:50 AM Cynthia Crosby <cyncrosby@comcast.net> wrote:

Mike,

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- Four calving stalls off the arena equipped with small cattle squeeze for vet exams and treatments as needed. One of the photos shows a recent calf born this spring. We have so many cute calf pictures if needed...just sayin'
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Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 11:27 AM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Old barn outbuilding.zip; More farm equipment.zip

Fourth email with photo zip files.

- More farm equipment shown including the hay grappler that will pick up eight bales of hay with the hydraulics on the tractor; a hydraulic disc so we can determine how deep to turn the soil; a manure spreader that is used in waste management of the horse manure to add nutrients to the lower cattle pastures; and a flat bed trailer used for everything.

- Old barn outbuilding and new storage added. This barn was on the property when purchased, hence the name "old." We have a dedicated room with fencing materials of all sorts, tools, cattle operations materials for calving, feeding calves, tagging cattle, refrigerator for vaccinations, storage for fuel, farm equipment repair, lifts, spraying equipment, weeding equipment, mowers, etc.

CC

On 09/06/2022 11:08 AM Cynthia Crosby <cyncrosby@comcast.net> wrote:

Third email with photos in zip files.

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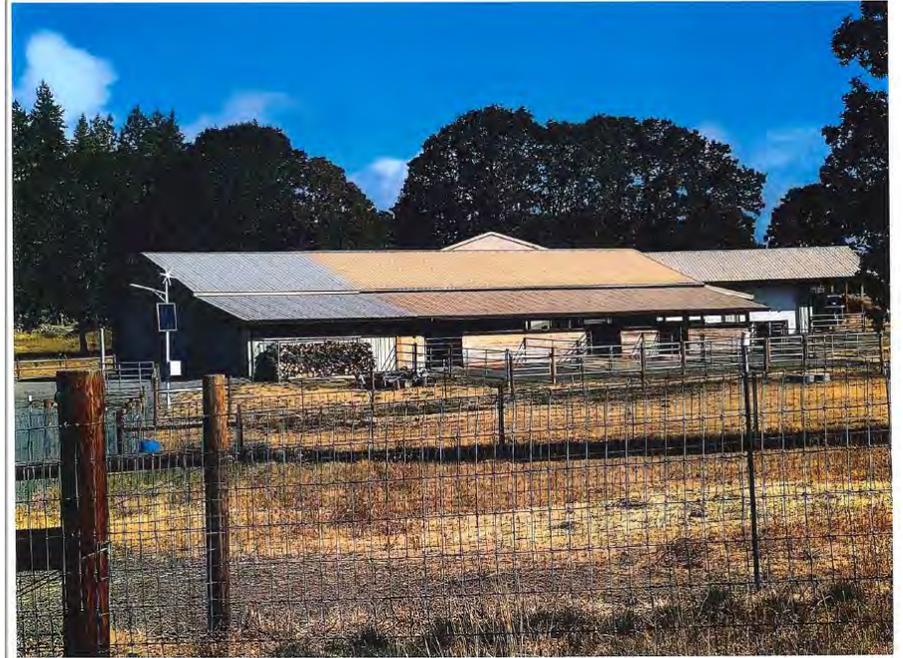
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Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 11:47 AM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Arena Outbuilding.zip; Hay Harvest.zip

Fifth email with photo zip files.

- Arena outbuilding. The previous owners used this as an arena for their daughter's horses. We use it for storage of farm equipment and hay.

- Hay harvest from this parcel increased from 10 tons last year to 50 tons with some fertilizer added this spring. We are developing a local hay market. Currently we estimate we will need 15 tons of hay for the cattle through the lean grazing months of hot summer and wet winter.

CC

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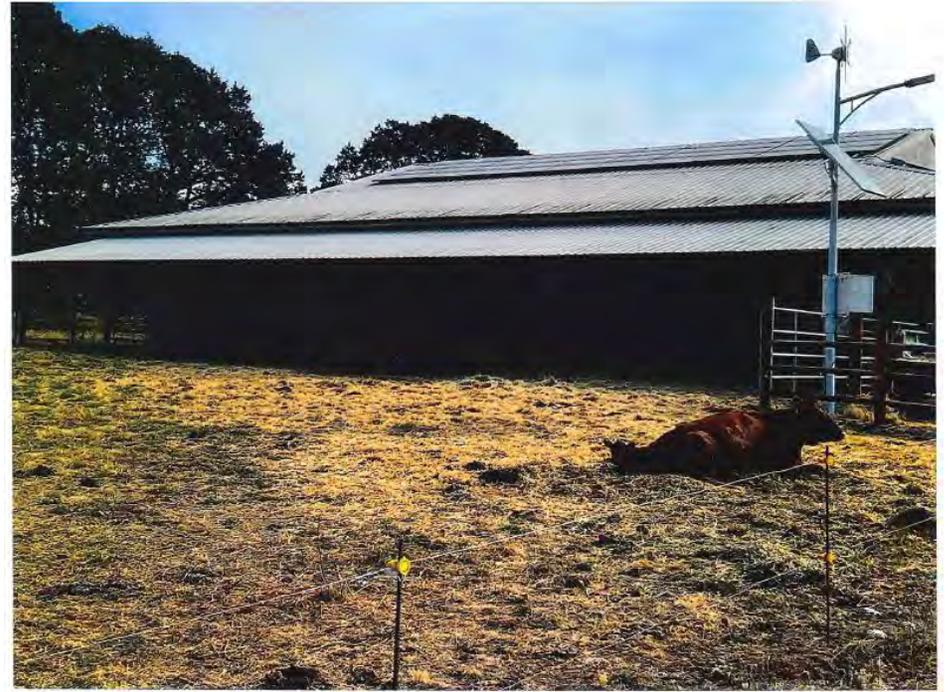
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- Farm equipment necessary to operate the farm. John Deere Tractor 5055E with bucket, forks, rotary cutter (brush hog) and blade. Also John





Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 11:54 AM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: New horse barn.zip; Horse wash station.zip

Sixth email with photos in zip files.

- Connie's new dream 10 stall horse barn built in 2016. Each stall has an individual paddock. There are now eight pastures around the horse barn for grazing of horses or cattle. There is an alley way that runs along the East and South sides with gates into the pastures for ease of moving cattle and to help protect the horses from well meaning neighbors.

- Horse wash station.

CC

On 09/06/2022 11:47 AM Cynthia Crosby <cyncrosby@comcast.net> wrote:

Fifth email with photo zip files.

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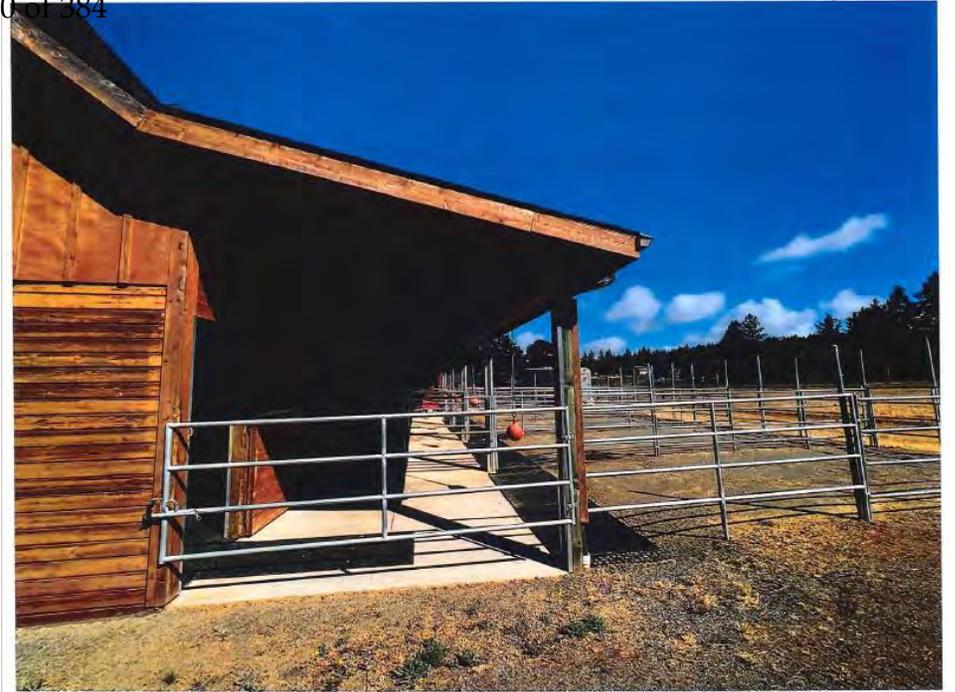
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- Old barn outbuilding and new storage added. This barn was on the property when purchased, hence the name "old." We have a dedicated room with fencing materials of all sorts, tools, cattle operations materials





Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 12:07 PM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Tack Room.zip; Area outside horse barn.zip; Horse trailers.zip

Seventh email with photos in zip files.

- Tack room inside horse barn.
- Area outside horse barn showing hitching posts, round pen, and one of the nine solar and wind powered electric and light poles used to provide electricity for the ranch.
- Two horse trailers needed in case of evacuation due to fire or other transport.

CC

On 09/06/2022 11:54 AM Cynthia Crosby <cyncrosby@comcast.net> wrote:

Sixth email with photos in zip files.

- Connie's new dream 10 stall horse barn built in 2016. Each stall has an individual paddock. There are now eight pastures around the horse barn for grazing of horses or cattle. There is an alley way that runs along the East and South sides with gates into the pastures for ease of moving cattle and to help protect the horses from well meaning neighbors.
- Horse wash station.

CC

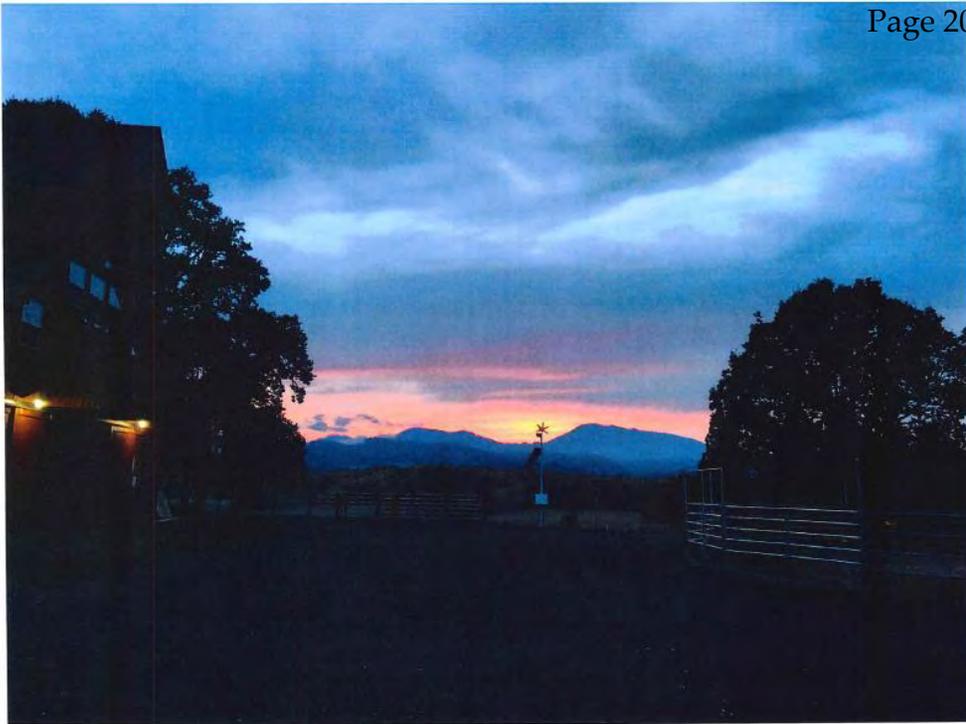
On 09/06/2022 11:47 AM Cynthia Crosby <cyncrosby@comcast.net> wrote:

Fifth email with photo zip files.

- Arena outbuilding. The previous owners used this as an arena for their daughter's horses. We use it for storage of farm equipment and hay.
- Hay harvest from this parcel increased from 10 tons last year to 50 tons with some fertilizer added this spring. We are developing a local hay market. Currently we estimate we will need 15 tons of hay for the cattle through the lean grazing months of hot summer and wet winter.

CC







Mike Reeder

From: Cynthia Crosby <cyncrosby@comcast.net>
Sent: Tuesday, September 6, 2022 12:18 PM
To: Mike Reeder
Cc: Connie Jordan; Cynthia Crosby
Subject: RE: Supplemental information re: intensity and scale for appeal of Benton Co. File No. LU-22-023
Attachments: Some of the horses.zip; National Reining Horse Associaion.zip; Chintimini Ranch.zip
Follow Up Flag: Follow up
Flag Status: Flagged

Eighth...and last...email with photos in zip files.

- Photos of some of the horses.
- Connie is a lifetime member of the National Reining Horse Association. Connie's breeding program has produced champions. Dodge won the National Reining by the Bay Futurity Championship.
- Other pictures of Chintimini Ranch showing the pond, roads that have been added, the house and just one of the beautiful sunsets we get to enjoy.

Mike, let us know if these come through okay and next steps and timeline.

Thank you,
Cindy and Connie

On 09/06/2022 12:06 PM Cynthia Crosby <cyncrosby@comcast.net> wrote:

Seventh email with photos in zip files.

- Tack room inside horse barn.
- Area outside horse barn showing hitching posts, round pen, and one of the nine solar and wind powered electric and light poles used to provide electricity for the ranch.
- Two horse trailers needed in case of evacuation due to fire or other transport.

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Law Office of Mike Reeder
Oregon Land Use Law

END OF EXHIBIT A

CROSBY RELATIVE FARM HELP DWELLING
APPEAL

[Benton County File No: LU 22-023]



Law Office of Mike Reeder
Oregon Land Use Law

EXHIBIT B

CROSBY RELATIVE FARM HELP DWELLING
APPEAL

[Benton County File No: LU 22-023]

Exhibit B

Date: September 14, 2022

To: Benton County Planning Commission

From: Cynthia Crosby and Connie Jordan of Chintimini Ranch LLC

Re: Supplemental Information in Support of Relative Farm Help Dwelling Application Appeal
Evidence Regarding the Scale and Intensity of the Commercial Farm Operation
File No. LU-22-023 (Cynthia Crosby/Chitimini Ranch)

Background of Applicant and Owner

Cynthia Crosby is the farm operator. Connie Jordan is the fee title landowner. However, both Cynthia and Connie work closely together to manage and maintain the commercial farming operations.

Connie purchased the ranch in September of 2015 and with the previous owner's blessing, she registered the Assumed Business Name of Chintimini Farm that had been used by the previous owner. The Registry Number is 114677396. Connie also registered the name Chintimini Ranch LLC with the Oregon Corporation Division. That Registry Number is 114677297. The business activity is listed as educational development of sustainable farming, natural food production and animal care. These are maintained on an annual basis with the intention to grow the farming and ranching operation into a financially healthy and profitable business. However, there is much time, labor, material and money investment required to increase net profits for the commercial operation.

We are committed to maintaining the area's existing agricultural economy by continuing to provide good land stewardship to sustain the pastures and timber land on the property for the use of hay and livestock production, pasture fed beef, fresh vegetables, berries and fruit. A quarter acre habitat pond below the house is home to several Western pond turtles and several fish species including blue gill, bass and crappies. Many species of birds also enjoy the pond including a variety of ducks, Canadian geese, and a nesting pair of eagles. The wildlife includes red tail hawks, as well as local black-tailed deer, foxes, raccoons, and the occasional coyote and cougar.

Introduction to the Operation Details

Below is a listing of the work that needs to be done in order for the ranch to currently manage and operate the commercial farming operation. This document includes approximate time per month or year to accomplish these tasks. Timing estimates are conservative and do not include the preparation of parts, tools or travel time from one task to the next. The intensity of the work varies from season to season and so much depends on the weather. Haying season, calving season, and maintaining livestock and horse health during the cold wet winter months are more labor and time demanding seasons by the nature of the work. Orchard trimming in the spring, spraying as the weather allows and then harvesting are more busy seasons and is the same for the garden. All of this is very time-consuming work as well as the work of preparing for the future growth of the ranch in horse breeding and increased cattle numbers.

Operation Details**Accounts payable and renewables**

Approx. 12 hrs. / mo. Total 144 hrs. / year

Monthly bills, including arranging for professional services necessary such as well repair and building maintenance that is beyond our capacity. For example, the main sliding door to the arena

that is used for hay storage needed to be enlarged and altered to allow for a large hay delivery from Amity for Connie's quarter horses.

Maintaining inventory of livestock supplies

Approx. 12 hrs. / mo. Total 144 hrs. / year

Some supplies, such as vaccinations for the cattle are ordered online via Valley Vet, other supplies, such as feed, mineral blocks and horse bedding, are purchased through Coastal or Wilco depending on pricing and availability. Consult regularly with local veterinarian Dr. Keenan Rogers regarding the vaccination plan for livestock, horses and cattle dogs and other health concerns as the needs arise.

During calving season, the supplies include injections of BoSe from Dr. Rogers for each calf, Betadyne to dip the cords, fresh ink for tattooing the left calf ear with the current protocol from the American Dexter Cattle Association, numbered tags appropriate for the calf and necessary emergency equipment such as NG tube and bottle feeding supplies including colostrum, electrolytes for heifer and calf. Supplemental feed purchased to promote adequate lactation in the pregnant and birthing heifers, as well as stocker grower feed supply purchased and stored properly to prevent rodent infestation.

Cattle supplies required for fly season include new fresh fly ear tags rotating pesticide use per industry recommendations. Attachment tools updated as needed. Ivermectin pour-on is used in the early summer as the cattle are taken through the squeeze to apply new ear fly tags and give vaccinations. The two cattle squeezes require maintenance and greasing and protection from the elements.

Daily feeding and care of livestock

Approx. 30 hrs. / month. Total 360 hrs. / year

Dexter cattle are very well adapted to a forage diet, but during the heat of the summer and the dormant grass season, and during the cold wet winter months the cattle need supplemental hay in order to maintain a good condition. Maintaining a clean fresh water supply for the cattle herds are imperative. Water troughs are cleaned bi-weekly and more often as necessary. Vinegar is added to the water troughs to decrease algae growth as well as barley bags maintained in the troughs. As cattle are moved through the pastures, water troughs and mineral supplements are set up for easy access for the cattle.

During calving season the pregnant and lactating heifers are given supplemental nutritional feed to support the demands of calving and lactating. This is given one month prior and after calving.

Livestock record keeping

Approximate 4 hrs. / month. Total 48 hrs. / year

Each heifer, steer, bull and calf have its own record. All the cattle on our ranch are registered through the American Dexter Cattle Association, which requires reporting, certification, transfer and other livestock tracking information and an annual membership fee of \$35.

Cattle inventory and tracking of vaccinations, herd placement and breeding are documented. Veterinarian appts. are scheduled on this record keeping, as well as butcher appointments made. We choose to have a mobile butcher process the cattle for us. This process is more humane and less stressful for the cattle. We have now established two holding pens that can be used for kill pens and keep the rest of the herd down in the lower pastures on the day the butcher comes. The availability of mobile butchers has decreased over the past five or six years as some retire and no one else is taking their place. We typically could schedule the mobile butcher about three months out in 2016 but now we have to schedule more than a year in advance. This proves challenging for herd management, size and function.

Hay production

Spring and fall work take approx. one month each season of 8 hr. days x 30 days or 240 hrs. x 2. Total 480 hrs. / year

We now are able to produce our own valley grass hay on a 20-acre area for the cattle supply. The weed pressure was intense in this area when the property was purchased. Over the course of about five years, this weed pressure has been greatly reduced by manual weeding and spot spraying of herbicides. In the spring of 2018, we worked with a neighbor farmer to try a crop of teff hay on this parcel. After investing approx. \$5000 for seed, fertilizer and the farmer's time, this crop was not successful and gave only about 10 bales of hay that was not even edible by the cows. Additional over seeding of orchard grass was done later that fall as the valley grass reestablished itself. This parcel had additional lime applied last year in addition to liming the majority of the entire property in 2016.

In 2021 we found a local farmer who has the equipment to bale two string 50 lb. bales of hay and this 20-acre area produced 10 tons of valley grass hay (orchard grass, fescue, brome, timothy grass, rye, etc.) that we used to supplement the cattle when seasonal foraging is low in the remaining pastures and rotational grazing grid. We need this size of bale for easier handling.

Over the winter of 2020, and in the spring of 2021, we enrolled in several online classes through OSU and other sources to better learn how to grow pasture grass. One course sponsored by the Oregon Pasture Network, a project of Friends of Family Farmers, was taught by Dr. Woody Lane. <https://www.woodylane.com/> The course, Soil Health, Soil Test: The Practical Skills included the participants taking several soil samples of their property, getting the soil tested at a local lab, and having Dr. Lane interpret the results with each participant.

Based on this information in the early spring of 2022, we paid \$2900 for fertilizer for this parcel. In July 2022, 50 tons of hay was harvested off of this parcel. We were anticipating 20 tons and hoped to have some left over to sell. 15 tons of this hay is now stored for our use. We are currently developing a customer base to sell this bounty of hay to and hope to develop some loyal customers to decrease the marketing time necessary to sell the hay.

The hay is loaded onto trailers by hand as well as using the tractor grappler. The remaining hay is stacked in the field. This involves hiring labor to assist with moving the hay off the field.

Maintaining inventory of equine supplies and care

Approx. 40 hrs. / month. Total 480 hrs. / year

Bi-weekly inspection of supplies in the horse barn. Feeding schedule for the horses include alfalfa pellets, orchard grass pellets, rice bran supplement during winter feeding routine, mineral supplements, joint supplements, and probiotics during cold snaps and as needed.

This process includes staging feed bags in protected outside storage, then moving feed into the feed room in rodent protective bins and processing the daily feeding schedule.

When Connie brought her horses up from Arizona, two of the horses broke out in hives all over their bodies due to the change to some of the Oregon grass qualities. Both required weeks of hospitalization at the OSU Vet Hospital. They both recovered and now require monthly injections of individualized serum specific to their allergies. This specialty allergy serum for two of the horses is ordered directly from the Portland Dermatology Clinic. Annual remote clinic appointments are necessary to maintain their good health. Based on this history and a long process of trial and error, orchard grass hay is now ordered for all the quarter horses to avoid triggering any additional hive breakouts.

Various supplies are needed by the horses, for example, fly masks, new blankets for winter and tack as the horses wear out their current equipment.

We oversee the work of a ferrier who maintains the horses hooves every six weeks. He works in conjunction with OSU Vet Hospital for two of the horses who have special needs for their hooves. It takes about four hours to trim and maintain the seven horses' hooves.

The mobile vet services with Dr. Rogers performs dental work, cleaning sheaths, and vaccinations annually. These visits are spread over a couple of days, and our assistance is appreciated.

Since the Labor Day fires of 2020 we currently own and maintain two horse trailers with the capacity to transport seven horses in case we need to evacuate the horses from the property. We took in several animals on the property from the Silverton and Lebanon areas during this time and hosted the gentleman and his wife who was hired by the Corvallis Fire Dept. to oversee the relief operations at the Benton County Fairgrounds. We donated several tons of hay to the animals being cared for at the Fairgrounds. We have since participated in a discussion on disaster preparation through the Oregon Pasture Network via Zoom.

Daily feeding and care of equine

Approx. 120 hrs. / mo. Total 1440 hrs. / year

The horses are fed hay twice a day and grain and minerals once a day. The main large supply of horse hay is stored in the arena and brought up in smaller batches of about 15 bales of hay by the tractor about once a week. The rodent population is better managed this way. The hay is then manually loaded into the hay wagon for distribution to each horse in their stalls.

Each horse is daily given an individualized portion of feed consisting of grains and supplements depending on their condition, weather and pasture growth.

Each horse stall has an automatic waterer that is cleaned thoroughly once a week and spot cleaned as needed. When the horses are on pasture, they are provided fresh clean water daily. The stalls and paddocks are cleaned twice a day to manage the fly pests and to help maintain the horses' health and well being.

Equine record keeping

Approx. 2 hrs / mo. Total 24 hrs. / year

Each horse has its own records and a log of notable events, such as dental work, vaccinations, injuries, hive breakthroughs, etc. In addition, a daily calendar is maintained tracking injections or other medications to be given. Connie maintains the herd history and breeding records as she is experienced with all aspects of care and breeding practices. See additional document titled Jordan Equine breeding and stock describing horses who will continue to be involved in the breeding program.

Noxious weed management

Approx. 30 hrs. / mo. Total 360 hrs. / year

We still maintain manual weeding and spot spraying practices for the hay production pastures. This is time intensive but our goal is to minimize the herbicide load on the farm property. The growing seasons of spring and fall are the most labor intensive, but we are constantly on the lookout for noxious weeds on the property.

Fence line require seasonal spraying with herbicides on both sides of the fence line. There are approximately 18 miles of fence lines on the 65-acre property.

Other areas that need seasonal spraying to preserve the investment are the rock and gravel roads and turning pads needed to get to the pastures. There is rock bedding under the larger cattle squeeze in the holding pen, and a large area of compressed gravel around the two horse barns that need sprayed.

We provide ongoing weed management on the entire property. A couple of times a year help is hired to manage the larger weed areas such as the pond and to provide help with tree trimming. This property has many large centuries old white oaks and many other kinds of trees such as cedars, dogwoods, aspens, the orchard trees and more. Tree trimming and the resulting burn pile management are part of the annual chores.

Hare Barley weed management

Approx. 10, 8 hr. days per year = 80 hrs. / year

Until we were able to harvest our own hay we purchased cow hay to sustain the cattle during the lean seasons. One batch of hay included the noxious weed hare barley, a.k.a. "foxtail" which got established in several pastures where the cattle were fed additional hay. We invited a site visit with the local OSU Extension Agents who have been advising us on ways to manage and hopefully eventually eliminate this weed. We have mowed and collected the seed heads with a mower/bag machine on these pastures for the past two years and have hauled over a dozen full large 14' hydraulic dump trailer loads of these seed heads to the landfill. We will likely be dealing with managing this issue for the next several years, but we feel we are starting to make some progress in containing this weed.

Waste management

Approx. 60 hrs. / mo. Total 720 hrs. / year

Distribution of biomass to the pastures takes approx. 36 hrs. per year.

The large equine barn is cleaned twice daily. The manure is placed in a holding area outside the back of the large barn, and taken down to the manure piles usually once a week using the large tractor. The larger manure piles are turned by the tractor at least once a month and composted well before spreading them on the pastures.

The horse pastures are drug once a year with the harrow to maintain the pastures and manage the fly population. There are 11 horse pastures that need this maintenance.

Fly and rodent management

Approx. 10 hrs. / mo. Total 120 hrs. / year

For the equine biomass, we purchase a product from Spaulding Labs called Fly Predators as the control substance. During fly season a monthly package of the fly larvae eating predators are mailed to the ranch and manually spread on the manure piles. Additionally, fly spray and traps are used throughout the barn areas to lower the fly population.

Rodent management is ongoing all year. The horse feed rooms and cattle feed areas are monitored for pest activity and treated as necessary.

Gophers, voles and moles threaten the orchard tree roots and can destroy sections of pastures. In addition, the larger holes can be tripping hazards for humans and animals. We have hired professional help over the years to beat back the population at the cost of \$40 per gopher. We are using an old lawn mower and directing the exhaust into the burrows and tunnels with some success. Our goal is to avoid poisons which then get into the larger animal food chain. We also need to protect the cattle dogs and our grandchildren who roam the property. This is a constant chore.

Pond maintenance

Approx. 3 hr. / mo plus annual hired help to weed the pond of 8 hrs. Total 44 hrs. / yr.

The ranch has a quarter acre pond located west of the house. The pond serves as a water run off collection site during the wet season and fluctuates about six feet in height from one season to the next. During the wet season the pond run off flows down a channel to the lower south west property edge then flows into the Benton Co. protected waterway. The pond currently hosts a variety of fish, protected Western pond turtles, frogs and amphibians, bats, and many birds like herons, barn swallows, osprey, bald eagles, red wing blackbirds, meadowlarks, goldfinches and

more. The pond was very overgrown with weeds when the property was purchased. It has been cleaned several times with hired help and is now maintained with appropriate pond chemicals to control the weeds and biomass while promoting a good habitat for the pond animals.

Electric and field fence maintenance

Approx. 10 hrs. / mo. Total 120 hrs. / yr.

When Connie purchased the ranch, the lower 40-acre area had been set up in small rotational grazing grids using portable wire fencing. This grazing system was not sustainable for our purposes so this grid was removed, and other rotational grids on the pastures were reworked to help maintain the health of the cattle. The previous grids were oriented north and south which put the cattle in lower wetter pastures with no reprieve from the mud and no shade when needed for the hotter months. The rotational grid was reestablished to run west and east and an open access alley was created so the cattle can access water and minerals more easily, and have access to higher ground and shade regardless of which grid they are working.

There are 11 horse pastures, each about two acres in size, and 10 rotational cow pasture sections, each about five acres or more in size. As animals are moved into these pastures, a check is done on the electric fencing and any fixes completed. As the cattle are worked through the rotational grazing grid, one section is opened and another is closed. The electric fencing is checked often to ensure the animals safety and wellbeing.

In 2018 nine solar/wind light poles were installed by a professional business. These poles are a huge time saver and have provided reliable energy sources for managing these pastures with electric fencing. Prior to the installation, we spent at least two hours a week changing out batteries, recharging batteries, and transporting the batteries throughout the property. Since these solar poles were installed, we have not needed to change a single battery.

Larger fencing projects are hired out. When Connie brought up her horses from Arizona in 2017, several pastures by the horse barn were established. In 2019 the main cattle holding pen was completely redone with new fencing as were several additional sections of fencing. We are currently working to upgrade other portions of the fencing on the property, a section at a time.

Orchard and garden

Approx. 180 hrs. during six months of active growing season plus 40 hrs. of work during dormant season. Total 220 hrs. / year

In 2021, irrigation piping was brought up from a revived well to the orchard and garden area and extensive piping was put into the orchard area. At purchase there were only about 12 established trees in the orchard area and several were very old and needed replacing. Now there are a total of 35 trees (apples, plums, apricots, nectarines, cherries and pears) in the orchard; most of them new trees that will take three years or more to get established before bearing significant fruit. The orchard trees are sprayed seasonally and year round per standard care with various biologics to promote health and control pests. As these trees mature, the fruit can be marketed.

The large open garden area, about 60' by 8' is busy during the active growing season. New material was purchased this year to replace the current worn material on the covered hoop house. The hoop house opens up the potential for expanding the growing season with the long-term goal of selling produce.

The orchard and garden area is approximately two acres in size and is enclosed with high deer fencing to keep the deer and wild turkeys out of the garden. With our current irrigation in place, our intention is a continued expansion of fruit trees and garden beds in the surrounding acreage.

Farm machine maintenance**Approx. 6 hrs. / mo. plus annual professional maintenance 16 hrs. Total 22 hrs. / year**

Monthly maintenance includes greasing the tractors, checking fluid levels, checking tire pressures, sharpening mower blades on the two cutting machines, adding additional fluids specific for each machine, and filling up the gas tanks. The two cattle squeezes also need regular greasing and maintenance.

Once a year before spring, we hire an automotive professional and his assistant to come to the farm to do the annual servicing on the farm machines (oil, fluids, hydraulics, etc.) It usually takes them a full eight-hour day, sometime more time. We purchase the parts and provide a covered area for the work to be done. This saves us from having to load the farm equipment onto trailers and hauling them on public highways to get service.

Notes

These work times are approximate, and likely under estimated, but add up to a total of 4806 hours per year of work which equates to 2.3 persons hired to work the farm full time assuming a standard 2080 hour per year work schedule. This is based on current work load, not the additional work of growing the herd and breeding the horses and increased hay, fruit and garden harvests.

We have found it necessary to hire part time help for the ranch. When someone is available, we ask them to work about 75 hours a month, mainly helping with the daily feeding and care of the animals and to help us with the heavy lifting. The rest of the work is done primarily by us. Kevin and Claire, Cindy's daughter and son-in-law, have also provided labor and support and have expressed willingness to move closer to be able to relieve the need for outside assistance and be on site for all necessary tasks and development to support the work on a daily basis.

In June of this year, 2022, two board members from the Oregon Pasture Network (OPN), a project of Friends of Family Farmers, came to Chintimini Ranch for a site visit due to our request to join this organization. OPN has an active website where members can post their products for sale. We sell live shares of cattle prior to butchering per state laws and regulations. Being part of a reputable organization like OPN will be a valuable marketing tool for us to sell our pasture raised beef. We should hear this fall if we are accepted. The two board members expressed support and stated they were impressed with our ranch and operations. We are in agreement with their vision of a local, diversified, and interconnected agricultural future built by small and midsize farms where people, animals, communities and ecosystems thrive, and equitable policies improve lives and land for Oregonians.

<https://friendsoffamilyfarmers.org/opn/pasture-pledge/>

We have invested heavily in the infrastructure to lay the groundwork for the next phases and the next generations. We know we are physically slowing down now that we are both in our 70s. Our desire is to be able to pass this ranch along to family to enjoy, nurture and grow it into an even more productive place. Our desire is not to have to wait for a medical emergency to ask for this help. Having the family live on the property near us is necessary in order to continue to manage and operation the commercial farming operation.

We believe in the intent of the Exclusive Farm Use policy implemented in the 1970's. In large part it is doing the work intended of protecting farm land so it will be continued to be used as farm land. There are many variations of how this goal looks fifty years later. We do not fit the typical stereotype of farmers or ranchers but we are a fully functional ranch with registered livestock and top bred quarter horses who receive high standards of care. This additional information is provided to better describe the scope and intensity of the work done on the ranch. We are not a hobby farm. Our intention is to keep this ranch in profitable agricultural production and animal reproduction and to promote the knowledge and practice of agriculture into the next generations.

The possibilities and foundations are now here. Please help us to make this a reality by approving our request to build a relative farm help dwelling off of Fern Rd. where there are many other country homes. The bulk of the property is behind this entry way into the site. Please refer to the included pictures that are labeled Exhibit A.



Law Office of Mike Reeder
Oregon Land Use Law

END OF EXHIBIT B

CROSBY RELATIVE FARM HELP DWELLING
APPEAL

[Benton County File No: LU 22-023]

WILLIAMS Inga

From: Cindy <cyncrosby@comcast.net>
Sent: Tuesday, July 19, 2022 4:18 PM
To: WILLIAMS Inga
Cc: Connie Jordan; Cindy Crosby
Subject: Re: LU-22-023

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Inga,

We respectfully request to waive the 150-day deadline per BCC 51.535, and per your request, with the extension not to exceed 215 days for our appeal of the decision re: LU-22-023.

We will notify you when we submit our additional information and are ready to proceed.

Sincerely,
Cynthia Crosby and Connie Jordan

Sent from my iPhone

On Jul 15, 2022, at 7:01 PM, WILLIAMS Inga <Inga.Williams@co.benton.or.us> wrote:

Cindy and Connie,

The County is required to process an application to completion within 150 days from submittal. You are requesting that we not process the appeal for at least 60 days, which takes us past the 150-day deadline.

I am requesting that you reply to this email with specific language stating that you waive the 150-day deadline per BCC 51.535, with the extension not to exceed 215 days.

When I receive your response, I can then wait to schedule this appeal for a date certain in front of the planning commission until you have 1) submitted the additional information that you reference in your appeal narrative, and 2) you have indicated you are ready to proceed.

Thank you and reach out with any questions.

Inga

Inga Williams, Associate Planner
Benton County Community Development Dept.
360 SW Avery, Ave., Corvallis, OR 97333

Benton County Community Development is pleased to provide a full suite of development services for land use applications and building permits. Most services are available remotely - **we encourage customers to contact us via phone, email, and online.** Our website answers many questions and provides a guide for submitting land use applications and building permits – please contact us at the following:

- Website <https://www.co.benton.or.us/cd>

**Submittal from Applicants' Agent given to
Planning Commission on the day of the hearing**



Law Office of Mike Reeder
Oregon Land Use Law

November 14, 2022

Via Email and Hand delivered

inga.williams@co.benton.or.us

Benton County Planning Commission
c/o Inga Williams, Planner
Benton County Community Development
360 SW Avery Ave.
Corvallis, OR 97333

Re: **Appeal Hearing Letter to Planning Commission | LU-22-023**
Cynthia Crosby & Connie Jordan | Relative Farm Help Dwelling

Dear Benton County Planning Commissioners:

I represent Cynthia Crosby (the “Applicant”) in the above-referenced application (the “Application”). I also represent Connie Jordan, the owner of the Subject Property. Mr. Vance Croney, County Counsel, submitted a memorandum to Darren Nichols and Inga Williams dated October 24, 2022. I write to respond to Mr. Croney’s memorandum. However, before so doing, it is important to note that there appears to be only two outstanding issues of disagreement between the Applicant and County Counsel and staff. These two issues are as follows:

1. What is a “commercial farming operation” as used in the Oregon Administrative Rule for Relative Farm Help Dwellings (and the Benton County Code provision that implements the rule)?
2. What does the term “required” mean in the context of the Relative Farm Help Dwelling statute, rule and local code provision?

As will be shown below, the County Counsel incorrectly addressed the two issues above and the Planning Commission should dismiss his conclusions contained in his memorandum.

I. Introduction to Relative Help Dwelling Laws

It is important to understand the laws that permit relative farm help dwellings in EFU zones before responding to the memorandum from County Counsel.

a. Statute – ORS 215.283(1)(d)

ORS 215.283(1)(d) states:

*“A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator **does or will require** the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 (Definitions for ORS 92.010 to 92.192) to 92.192 (Property line adjustment) or the minimum lot or parcel size requirements under ORS 215.780 (Minimum lot or parcel sizes), if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250 (Definitions for ORS 308A.250 to 308A.259), and the foreclosure shall operate as a partition of the homesite to create a new parcel.” (Emphasis mine).*

The above-cited Relative Farm Help Dwelling Statute allows an additional dwelling on EFU zoned property if the Relative Farm Help Dwelling it is occupied by a relative of the farm operator or his or her spouse if the farm operator **does, or will require**, the assistance of the relative in the management of the farm use. It is important in the context of this case to recognize the phrase “does or will require” in the Relative Farm Help Dwelling Statute. This phrase must be interpreted to permit the dwelling even before the help is yet necessary.

b. Administrative Rule – OAR 660-033-0130(9)

The administrative rule that implements ORS 215.283(1)(d) states as follows:

*“(9)(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of **the existing commercial farming operation is required** by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.*

(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.

(c) For the purpose of subsection (a), “relative” means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator’s spouse.

(d) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under 215.780, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the “homesite,” as defined in 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(e) For the purpose of subsection (d), “foreclosure” means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).” (Emphasis mine).

Note that the administrative rule interprets the statute to be available for a certain kind of farm use – “commercial farming operations” and not just hobby or recreational farming.

c. Local Code Provision – BCC 55.120

The Benton County local code provision that implements state law for Relative Farm Help Dwellings, BCC 55.120, states in relevant part:

“(1)(b)The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator’s spouse, whose assistance in the management and farm use of the existing commercial farming operation (not including marijuana) is required by the farm operator[.]” (Emphasis mine).

The local code provision closely tracks the administrative rule in that it requires that the farm use be a “commercial farming operation” and that the relative’s assistance is “required by the farm operator”.

d. Purpose of Relative Farm Help Dwellings

The purpose of Statewide Planning Goal 3: Agricultural Lands is to “*preserve and maintain agricultural lands for farm use, consistent with existing and future needs for agricultural products.*” OAR 660-015-0000(3). The Benton County Code provisions for Exclusive Farm Use Zones similarly states in relevant part: “*The [EFU] Zone shall preserve and protect lands for continued and future commercial agricultural production and related uses.*” BCC 55.005(1).

In order to have commercial agricultural production, we need physically capable and knowledgeable farmers. According to the 2017 Census of Agriculture the average age of the

Oregon farmer or rancher is almost 58 years and the average age continues to rise. According to the Oregon Farm Bureau, the vast majority of farms in Oregon are family owned and operated (97%). The past work, investment and knowledge of current farmers needs to be transmitted to future generations of farmers in order for the purpose of Goal 3 to be achieved in any meaningful fashion. Relative Farm Help Dwellings facilitate the purpose of Goal 3 by maintaining and preserving agricultural land for current and future needs of Oregonians. Interpreting the Relative Farm Help Dwelling laws restrictively as County staff does defeats the purpose of Goal 3 and is not legally defensible.

II. Response to County Counsel Memorandum

Mr. Croney states: *“Petitioner puts forward three bases or its appeal of staff’s denial of a Relative Farm Help Dwelling. None of the bases a persuasive or correct.”* Page 7.¹ Mr. Croney’s declaration is bold but is wrong. You, as the decision maker, are tasked with evaluating the Application, the criteria, state law, and the evidence in the record to determine whether Mr. Croney (or staff) is correct. A fair review of the code criteria, state law, and the evidence presented by the Applicant, will show that the staff decision should be reversed and the Application approved.

1. **“Petitioner’s reliance on concurring opinion is misplaced.”**

Mr. Croney makes a big deal about the Applicant relying on a “concurring opinion” in the Applicant’s September 14, 2022 appeal letter. A more complete evaluation of caselaw will show that the Applicant’s conclusion that the Application should be approved is correct, regardless of whether reliance on a concurring opinion is merited or even necessary.

a. *Harland v. Polk County (2003)*

In *Harland v. Polk County*, 44 Or LUBA 420 (2003), LUBA analyzed the “Relative Farm Help Statute”, currently codified as ORS 215.283(1)(d), and the administrative rule, 660-033-0130(9). *Harland* is on point in this case. Because the facts in *Harland* and the facts in this case are so clearly on point and since *Harland* addresses the two issues at hand in this case that I will quote generously from *Harland* as follows:

“A. Family Member’s Assistance is Required and Farm Owners’ Role Remains Predominant

Petitioner’s challenge to the second and third of the just-noted county conclusions is based almost entirely on the county’s selection of words in the decision and testimony that was offered below on petitioner’s behalf that intervenor’s farm is not of sufficient scale to require full-time or year-round assistance from intervenor’s son.

The county described the son’s assistance as “needed” rather than “required,” and

¹ All cited page numbers are to the Planning Commission Packet prepared by staff unless otherwise noted.

described intervenor's role in the farm operation as "significant involvement," rather than the "predominant role." In his second assignment of error, petitioner argues that this choice of words is fatal.

Although PCZO 136.040(H) requires that the son's assistance must be "needed," and that intervenor must retain the "predominant" role, in view of the evidence in the record, we do not believe the county's choice of words is significant. There is certainly evidence in the record that the son's year-round full-time help is not essential for the farm to continue operation, and we do not understand intervenor to argue that it is. However, PCZO 136.040(H) does not require that intervenor establish that the son's full-time assistance is required year-round. The applicants identified varied tasks the son is to perform on the farm and noted that his assistance would be particularly important during times when intervenor cannot be present. Petitioner makes no direct challenge to those assertions. As intervenor advances in age, it is reasonable to expect that those absences might become more frequent, and the need for the son to assist in the more strenuous farm tasks would become more pronounced. We conclude that the county's findings are adequate to demonstrate that the son's assistance is "required" on the farm, within the meaning of PCZO 136.040(H).

B. The Requirement that Intervenor's Farm be a Commercial Farm

The county's findings explaining why the county concluded that intervenor's farm is a commercial farm operation are set out below:

"The Board [of Commissioners] finds that [it] has the authority to determine if a farm operation is a commercial farm operation on a case-by-case basis. The Board [of Commissioners] conducted a site visit of the subject property on September 11, 2002. The Board [of Commissioners] reviewed the testimony and other evidence in the record. The Board [of Commissioners] finds that the definition of 'farm use' in PCZO 110.223 includes '[t]he employment of land for the primary purpose of obtaining a profit in money.' The Board [of Commissioners] finds that the 70.06-acre subject property was fenced and cross-fenced for cattle production. The Board [of Commissioners] finds that the 70.06-acre subject property, located within the Exclusive Farm Use Zoning District, pastures between 26 and 70 head of cattle to be bred and sold for profit. The Board [of Commissioners] finds that a minimum acreage requirement does not determine whether a farm operation is a commercial farm operation. In addition, the Board [of Commissioners] finds that an

acreage requirement is not an applicable criterion for approval of [a] family farm help dwelling. Polk County agrees that hay purchased and later sold by Mr. Woods cannot be counted as farm income, for purposes of the definition of farm use. Mr. Woods did clarify in his testimony that he purchases low-grade hay for cattle and produces and sells high-grade hay to horse owners. The selling of the high-grade hay that Mr. Woods produced in farming is a farm use, and, if sold or used as part of the existing commercial cattle operation, would be part of a commercial farm operation. The Board [of Commissioners] finds that a minimum income threshold does not determine if a farm operation is commercial, or if farm help is required, and is not a criterion for a family farm help dwelling. The Board [of Commissioners] finds that, based on testimony in the record, there is an existing extensive market for purebred and commercial grade cattle. However, considering marketing strategies and costs of production are not necessary based on the applicable criteria, and proprietary matters of the applicant. Based on these findings the Board [of Commissioners] concludes that the 70.06-acre subject property, which pastures between 26 and 70 head of cattle to be bred and sold for profit, constitutes a commercial farm operation[.]” Record 199.

There are a number of problems with the above-quoted findings. First, the findings never define the operative term “commercial farm operation,” and that term could mean a number of different things. Second, it is unclear whether the county is relying on leased property, in addition to the 70.06-acre subject property, to conclude that intervenor’s farm is a commercial farm operation. Third, the findings suggest that the county may believe that any “farm use,” as the PCZO defines that term, is necessarily a “commercial farm operation” within the meaning of PCZO 136.040(H). Fourth the findings make no attempt to assign a value to the amount of hay that the farm sells. Finally, the findings reject as irrelevant farm size and farm income, without clearly identifying the factors that the county believes are relevant.

As we explain later in this opinion, to the extent the county’s decision can be read to find that all farm uses are properly viewed as commercial farm operations, that finding is erroneous. Nevertheless, even with that erroneous suggestion and the other above-noted problems, we reject petitioner’s challenge to the county’s conclusion that intervenor’s farm qualifies as a commercial farm operation. At their core, the county’s findings conclude that a 70-acre farming operation that (1) includes some additional unspecified number of rented acres of pasture; (2) raises from 26 to 70 head of cattle, some of which are purebred and some of which are crossbred; and (3) grows and sells high grade hay is a commercial farm operation. For the reasons explained below, we see no error in those core findings or their evidentiary support.

ORS 215.283(1)(e)(A) authorizes construction of a dwelling on EFU-zoned parcels

to house a relative of the farm operator, where the “operator require [s] the assistance of the relative in the management of the farm use.” ORS 215.283(1)(e)(A) does not expressly require that the farm use for which assistance is required must be a commercial farm. OAR chapter 660, division 33 is the Land Conservation and Development Commission’s (LCDC’s) rule concerning agricultural land. The table that is associated with OAR 660-033-120 identifies dwellings for relatives as a use that is allowed subject to certain specified standards. One of those specified standards is OAR 660-033-130(9)(a), which, among other things, requires that the farm use be an “existing commercial farm operation.”

However, OAR 660-033-130(9)(a) does not explain what it means by “commercial farm operation” or define that term. The term “commercial farm operation” is also not defined in the OAR chapter 660, division 33 general definitions at OAR 660-033-0020. PCZO 136.040(H) essentially duplicates, and clearly was adopted to implement, OAR 660-033-130(9)(a). PCZO 136.040(H) also does not define the term “commercial farm operation.”

The term “commercial farm operation” is ambiguous and could have a number of different meanings. There is no dispute that intervenor’s farm is a “farm use” as ORS 215.203(1) and PZCO 110.223 define that term. The more difficult question is whether petitioner’s farm use is also properly viewed as a commercial farm operation. As an initial point, a “commercial farm operation,” is clearly something different from a “farm use,” as that term is defined at ORS 215.203(2)(a) and 308A.056. Stated differently, the relatively minor level of agricultural activity that might qualify a property for preferential agricultural assessment is not necessarily sufficient to qualify as a commercial farm operation within the meaning of OAR 660-033-0130(9). The question is how much more or what else is required? LCDC’s rule does not provide a clear answer to that question.

While LCDC has not defined “commercial farm operation,” it uses similar concepts in other places in OAR chapter 660, division 33. For example, OAR 660-033-0020(2) provides the following definition of commercial agricultural enterprise:

*“(a) ‘Commercial Agricultural Enterprise’ consists of farm operations that will:
“(A) Contribute in a substantial way to the area’s existing agricultural economy; and
“(B) Help maintain agricultural processors and established farm markets.*

“(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.” OAR 660-033-0020(2)

The term “[c]ommercial [a]gricultural [e]nterprise,” as defined at OAR 660-033-0020(2) is principally used in OAR 660-033-0100, which in relevant part allows

a county to adopt a minimum parcel size that is smaller than the statutory minimum where the smaller parcel is consistent with maintaining the “commercial agricultural enterprise” in the county or within an area of the county. Neither OAR 660-033-0020(2) nor OAR 660-033-0100 has a direct bearing on the meaning of “commercial farm operation” in OAR 660-033-0130(9)(a). The question of whether a particular parcel size supports a farm operation that contributes to and helps maintain the “commercial agricultural enterprise” in the area is similar to the question of whether a particular farm operation is a “commercial farm operation.” For that reason we conclude that one way the county could have gone about establishing that intervenor’s farm operation is a “commercial farm operation,” for purposes of OAR 660-033-0130(9), would have been to establish that the farm operation (1) “[c]ontributes in a substantial way to the area’s existing agricultural economy, and (2) “[h]elps maintain agricultural processors and established farm markets.” If the farm is of sufficient scale and productivity to satisfy meet those requirements, we believe the farm could clearly be viewed as a commercial farm operation.”

However, because LCDC did not define the term “commercial farm operation” in OAR 660-033-0130(9) or draft the rule to expressly provide that only those farm operations that make up the county’s “[c]ommercial [a]gricultural [e]nterprise are eligible for a family farm help dwelling, we do not believe it is appropriate to assume that LCDC intended to require that county’s derive a definition of “commercial farm operation” from OAR 660-033-0020(2). Rather, we conclude that LCDC intended to allow the county some discretion in distinguishing “hobby” or “recreational” farms from those farms that rise to the level of a commercial farm operation. If LCDC did not intend that county have such discretion, the rule can easily be amended to add a definition of commercial farm operation that eliminates that discretion.

While 26 to 70 cattle is not a large cattle operation, a reasonable person could conclude, as the county apparently did, that a cattle operation of that size with both purebred and crossbred cattle is more than a hobby associated with a rural residence. *Although we know from the record that intervenor’s wife works off the farm and we do not know from the record how much income intervenor derives from the farm, the tax service letter that intervenor submitted is substantial evidence that all of intervenor’s income is derived from the farm. While it is a reasonably close question, we conclude the county’s findings are sufficient to establish that intervenor’s farm use is also a “commercial farm operation,” as that term is used in OAR 660-033-0130(9) and PCZO 136.040(H).*

The first, second and third assignments of error are denied.” Harland, supra, 44 Or LUBA at 428-435.

As cited above, LUBA, in *Harland*, determined that there is no one set formula for determining what constitutes a “commercial agricultural operation”. But the facts in *Harland* are similar to this Application. In *Harland*, LUBA rejected petitioner’s arguments that are being advanced by County Counsel.

In addition, LUBA determined that “required” does not mean “needed”. LUBA expressly rejected the argument being advanced by the County in this case.

b. *Louks v. Jackson County*

The County cites *Louks v. Jackson County*, 28 Or LUBA 501 (1995) to support its erroneous conclusion that “requires” means “absolutely necessary”. Such reliance on *Louks* is in error. *Louks* is not a relevant case and does not support the County’s position. It also contradicts *Harland*, which is a later-issued opinion and interprets the precise statute at issue. Importantly, the Jackson County code provision at issue in *Louks* uses the word “necessary”. However, “necessary” is not used in the Relative Farm Help Dwelling statute, rule or Benton County code. The Staff Report, page 5, footnote 6, errs when it states that ORS 215.283(d) uses the term “necessary”; it does not. There is no reason to look to the dictionary definition of “necessary” when the term “required” is used in the statute, rule and code provision.

The County errs when it substitutes the text of the statute, rule and code provision for another word. ORS 174.010 (courts may “not [] insert what has been omitted, or omit what has been inserted”). To do so violates the separation of powers doctrine. *State v. Linder (In re Linder)*, 177 Or App 715, 717 (2001) (“[A]dding what the legislature omitted requires courts to engage in policy making that is more appropriately left to the legislature.”). If the legislature, LCDC, and/or the Benton County Board of Commissioners wished to make obtaining a Relative Farm Help Dwelling as stringent as suggested by County staff, it could have used the more limiting “necessary” (which can be defined as “absolutely required”) but it did not.

c. *Richards v. Jefferson County*

In *Richards v. Jackson County*, 77 Or LUBA 152, 160-163 (2018), LUBA discussed whether the physical limitations of the farm operator could be used to justify the “required” standard for a Relative Farm Help Dwelling. LUBA’s opinion in *Richards* can fairly be read to hold that the physical limitations of the farm operator may be a factor in determining whether assistance is “required”. Certainly, the age of the farm operator is an important consideration in determining whether farm help is required for the current and future operations of the commercial agricultural enterprise.

2. “The Word ‘Required’ is not Ambiguous.”

County counsel erroneously states that the term “required” is not ambiguous, but then states: “Staff interpreted the word ‘required’ by looking to both the Merriam-Webster and Cambridge Dictionaries for the definition.” Page 8. It is unclear to me why the County would argue that the

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term “required” is unambiguous, but then feel the need to turn to two different dictionaries to assist in coming up with an interpretation. Furthermore, as I noted in my previous letter, the County failed to consult *Webster’s Third New International Dictionary* (which is the preferred dictionary of Oregon courts).² *Webster’s Third New International Dictionary*, page 1929, defines “require” as follows: “**1** *obs* : to ask, request, or desire (a person to do something... and **3 a** : to call for as suitable or appropriate in a particular case.” These two definitions are much more expansive and not as restrictive as is suggested by County staff.

In any case, the fact is that the term is ambiguous and is therefore not to be used in denying the Application because such application of an ambiguous term is the imposition of a standard that is not clear and objective. See “Part 3” below.

However, the thrust of Mr. Croney’s argument here is that the County somehow is entitled to broad deference by LUBA and the Courts pursuant to *Siporen v. City of Medford*, 349 Or 247 (2010). Page 8. Mr. Croney is absolutely incorrect. LUBA and the Courts will not grant any deference to staff’s interpretation for the following reasons.

First, *Siporen* deference applies only to the interpretation made by the local government’s governing body (i.e. the Board of Commissioners) and not County staff, counsel or planning commission. *Hulme v. City of Eugene*, 299 Or App 76 (2019), fn. 1 (citing *Sellwood-Moreland Improv. League v. City of Portland*, 262 Or App 9, 16-17 (2014)).³

Next, *Siporen* deference is granted in the governing body’s plausible interpretation of its own land use regulations; deference is not granted when interpreting local code that merely implements state law – which is the case here.

Lastly, *Siporen* deference is granted only to “plausible” interpretations that are not inconsistent with the text or purposes of the provision in question and after using the interpretive principles of Oregon caselaw. Here, even if County counsel’s and staff’s interpretation of the term “required” is plausible in the abstract, it is not plausible when it is inconsistent with the “express language” or inconsistent with the purposes or policies underpinning the regulations. *Siporen, supra*, 349 Or at 259, *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or App 543, 552-553 (2012). In *Mark Latham Excavation, Inc.* the Court of Appeals stated:

“Whether a local government’s interpretation is ‘inconsistent with the express language’ of its own land use regulations ‘depends on whether the interpretation is plausible, given the interpretive principles that ordinarily apply to the construction of ordinances under the rules of PGE as modified by State v. Gaines, 346 Or 160,

² See *Dearborn v. Real Estate Agency*, 334 Or 493, 502 n 6 (2002), *overruled in part*, 337 Or 309 (2004).

³ *Siporen* deference applies to LUBA and the courts’ review of a local governing body’s decision. *Siporen* does not stand for the proposition that the local government should not correctly interpret local code. The standard for review by the Planning Commission is not whether the interpretation is “plausible” but whether it is the correct interpretation.

171-2 [(2009)]...” (Emphasis mine).

While *Siporen* deference provides local governing bodies somewhat wide discretion to choose plausible interpretations in some circumstances, those circumstances do not apply here. The County should seek to interpret the law in the correct manner regardless of the deference (if any) given by reviewing bodies. Mr. Croney’s statement on page 8 that reads: “*Thus, as long as staffs’ interpretation of its development code is plausible, that interpretation is legal and will be given significant deference.*” is simply wrong. Neither LUBA, nor the courts, will grant any deference to staffs’ interpretation, even if it is adopted by the Planning Commission.

3. **“Approval Standards Must be Clear and Objective.”**

While Mr. Croney agrees with the Applicant that the County must only apply approval standards that are clear and objective (page 9), he errs when he opines that the County standards are both “clear and objective.” He states:

“LUBA has provided clear guidance on how to interpret, and apply that phrase. As previously cited above, staff used the definition of ‘commercial agricultural enterprise’ in OAR 660-033-0020(2)(a) to interpret that phrase. LUBA has affirmed that method of interpretation because the definition in the administrative rule is clear and objective. Richards, 79 Or LUBA at 177 fn. 4.”

LUBA did not come close to providing “clear guidance” that is clear and objective. Merely because LUBA provided multiple possible paths to finding that a particular farming operation could be considered a “commercial agricultural enterprise” does not mean that the guidance is clear or that the potential paths are clear and objective. In *Richards, supra*, 79 Or LUBA at 179-80, LUBA states:

“Collectively, the above-quoted findings fall far short of establishing that the DuPont’s farm operation is a “commercial farming operation.” It is difficult to fault the county for the paucity of its analysis, given that the Land Conservation and Development Commission (LCDC) has not seen fit to provide any definition or guidance on what constitutes a “commercial farming operation” for purposes of OAR 660-033-0130(9). Nonetheless, it is the county’s obligation, when addressing an application for a relative farm help dwelling under OAR 660-033-0130(9), to attempt to articulate the thresholds that separate a “commercial” from a noncommercial farming operation. Because it is an undefined term, counties have some discretion to determine the thresholds for a “commercial farming operation” as applied within the county or within a particular local area or agricultural sector. Harland, 44 Or LUBA at 435. If the county chooses not to employ one of the “safe harbors” discussed above at n 4, the county has no choice but to determine those thresholds in the first instance. That determination

will necessarily constitute a mixed question of fact and law, subject to LUBA's review for legal error and evidentiary sufficiency.

We understand the county to request that if LUBA remands for more adequate findings regarding the "commercial farming operation" element of OAR 660-033-0130(9), LUBA should provide what guidance it can to the county. We can do so only in a limited and abstract manner, as many of the predicate findings are necessarily factual in nature. However, as our discussion above indicates, we believe that, as a legal matter, what distinguishes an existing "commercial" farming operation from its noncommercial counterparts is largely a matter of scale and intensity. Roughly speaking, we believe a commercial farming operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property." (Emphasis mine).

As noted in *Richards, supra* above, LUBA has already determined that the Relative Farm Help Dwelling Administrative Rule (and any local code provision that implements the RFHD OAR) is not clear and objective. LUBA states in *Harland*:

"There are a number of problems with the above-quoted findings. First, the findings never define the operative term 'commercial farm operation,' and that term could mean a number of different things... The term 'commercial farm operation' is ambiguous and could have a number of different meanings." (Emphasis mine).

Harland further states: "Rather, we conclude that LCDC intended to allow the county some discretion in distinguishing 'hobby' or 'recreational' farms from those farms that rise to the level of a commercial farm operation." (Emphasis mine).

If the County must use discretion, the standard is not clear and objective. As an example, a standard that says a dwelling may not be located on Class III soil is clear and objective while a standard that says a dwelling must be located on the land "least suitable for farming" requires the exercise of discretion and is therefore not clear and objective. To apply the challenged terms in the present case, the County must exercise discretion in determining when the farm assistance is "required". As such, the challenged terms are neither clear nor objective. The County's reliance on *Roberts* does not support its interpretation. *Roberts* stands for the unremarkable proposition that one cannot determine that a term is ambiguous by viewing it in isolation; rather, the term must be viewed in the context of the provision being interpreted. The County has not cited to any context within the County's code, administrative rule or state statute implemented by the Code which renders those terms either clear or

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objective, which is precisely why the County had to turn to two dictionary definitions to understand the undefined terms. In so doing, the County effectively admits that it doesn't know what those terms mean (i.e. they are ambiguous) and as such has turned to outside sources (which are not part of the statutory context as discussed in the *Roberts* decision) as an *ad hoc* method of coming to an interpretation of otherwise ambiguous terms. Notably, the County selected dictionary definitions that support its decision of denial while ignoring those that would support finding approval.

LUBA has explained the term "clear" to mean "easily understood" and "without obscurity or ambiguity," and that the term "objective" means "existing of independence of mind." *Knoell v. City of Bend*, __Or LUBA (LUBA No 2021-037, Aug 20, 2021 (slip op 4)(citing *Nieto v. City of Talent*, __Or LUBA__ (LUBA No 2020-100, Mar 10, 2021 (slip op at 9 n 6)). Looking to multiple dictionary definitions is evidence that the standard is not clear and is not objective.

ORS 227.173(2) requires that when an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

Lastly, it is the responsibility of the local government to demonstrate that the standards and conditions imposed on housing required to be clear and objective "are capable or being imposed only in a clear and objective manner." *Walter v. City of Eugene*, 74 Or LUBA 671 (2016).

III. Conclusion

Nothing in the County Counsel memorandum changes the conclusion that the Application should be approved. Mr. Crony is incorrect on the law and staff have ignored the evidence that was provided by the Applicant during the appeal process.

Respectfully,



Micheal M. Reeder
Attorney for Applicant and Owner

RON HARLAND, Petitioner, v. POLK COUNTY, Respondent, ..., 44 Or LUBA 420 (2003)

44 Or LUBA 420 (Or Luba), 2003 WL 22505023

Land Use Board of Appeals

State of Oregon

RON HARLAND, Petitioner,

vs.

POLK COUNTY, Respondent,

and

CHAD WOODS AND BONNIE WOODS, Intervenors-Respondent.

LUBA No. 2002-149

AFFIRMED April 21, 2003

***420 Appeal from Polk County.**

****1** Mark Irick, Dallas, filed the petition for review and argued on behalf of petitioner. With him on the brief was Shetterly, Irick and Shetterly.

David Doyle, County Counsel, Dallas, filed a response brief and argued on behalf of respondent.

Chad Woods, Dallas, filed a response brief and argued on his own behalf.

HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member, participated in the decision.

1. 3.2.2 EFU Statute/Ordinances - Farm Uses - Farm Dwellings.

A local code provision that was adopted to implement the OAR 660-033-0130(9) authorization for family farm help dwellings does not require that an applicant establish that the relative's assistance is required year-round or full-time. Where an applicant identifies varied tasks that the relative will perform and takes the position that the relative's assistance will be particularly needed during times when the only farm operator cannot be present, the applicant adequately establishes that the relative's assistance is "required" under the code.

2. 3.2.2 EFU Statute/Ordinances - Farm Uses - Farm Dwellings.

The question of whether a particular farm parcel size supports a farm operation that contributes to and helps maintain the "commercial agricultural enterprise" in the area, within the meaning of OAR 660-033-0020(2) and 660-033-0100, is similar to the question of whether a particular farm operation is a "commercial farm operation" under OAR 660-033-0130(9). Therefore, a county could require that an applicant for a family farm help dwelling on a commercial farm operation must establish that the farm operation "(1) "[c]ontributes in a substantial way to the area's existing agricultural economy, and (2) "[h]elps maintain agricultural processors and established farm markets."

3. 3.2.2 EFU Statute/Ordinances - Farm Uses - Farm Dwellings.

Because LCDC did not define the term "commercial farm operation" in OAR 660-033-0130(9) or draft the rule to expressly provide that only those farm operations that make up the county's "[c]ommercial [a]gricultural [e]nterprise" are eligible for a family farm help dwelling, it is not appropriate to assume that LCDC intended to *require* that county's derive a definition of "commercial farm operation" from OAR 660-033-0020(2). Rather, LCDC intended to allow the county some discretion in distinguishing "hobby" or "recreational" farms from those farms that rise to the level of a commercial farm operation.

4. 3.2.2 EFU Statute/Ordinances - Farm Uses - Farm Dwellings.

A cattle operation with from 26 to 70 head of purebred and crossbred cattle is not a large cattle operation, but a county does not err in concluding that such a cattle operation is a "commercial farm operation," within the meaning of OAR 660-033-0130(9) and implementing local code provisions, where the cattle operation provides the sole source of taxable income for the farm operator.

****2** Opinion by Holstun.

RON HARLAND, Petitioner, v. POLK COUNTY, Respondent,..., 44 Or LUBA 420 (2003)

NATURE OF THE DECISION

Petitioner appeals a county decision that approves a family farm help dwelling on a 70-acre parcel that is zoned Exclusive Farm Use (EFU).

FACTS

Family farm help dwellings are authorized by Polk County Zoning Ordinance (PCZO) 136.040(H).¹ An *422 applicant for a family farm help dwelling under PCZO 136.040(H) must demonstrate that the farm is a “commercial farm operation” and that the relative’s assistance on the farm is “required.” Intervenor Chad Woods was the applicant below.² That application includes the following description of the proposal:

“The dwelling will be the residence of one of our sons or daughters.

“A second [on-site] dwelling is required to assist in the feeding, health care, calving, and security of our beef cattle herd. We have as many as seventy head of cattle on the place which requires a management presence. In addition, the family member will be involved in haying operations and marketing of farm production.

“The farm has been [our] primary residence for 15 years. The farm has been used for cattle, dairy and hay *423 production since the 1800’s. The original buildings were replaced by a new house, barn, and outbuildings in 1925. We have been working with the Federal Farm Services Office to develop a farm use plan that meets production needs and lessens the farm operation’s impact on water quality. Part of this plan is to build new livestock wintering and feeding areas, and cross fence the property. We want to build a new residence closer to these areas and use existing farm buildings for hay storage. We would like to keep the existing residence for our son to live in on site to help with the feeding and care of the cattle. We would live in the new residence.” Record 173-174.

The planning director approved intervenor’s application on June 12, 2002.

Petitioner appealed the planning director’s decision to the board of county commissioners on June 21, 2002. On July 5, 2002, intervenor submitted an additional statement in support of his application in which he makes the following representations: “This farm is a for profit, family farm operation. The farm consists of 70 acres owned by us and another 68 acres leased, used for purebred and commercial grade cattle production. In addition we rent pasture and hay ground on short term as needed basis. We also sell hay to feed stores, stables, and private individuals.

“My [son Nathan’s] help is needed on the farm. My other children would like to help on the farm, but at this time Nathan is the one seeking to pursue a career in agriculture. At this time we have 36 [purebred] and 34 commercial [crossbred] cattle. I need help in the following [tasks]: [vaccinations], castrations, herding, calving, moving livestock panels, heat detection for artificial insemination, feeding and checking cattle and watching things when I need to be absent overnight. In addition, I need his help when picking up hay out of the field, using the hay elevator to place hay in barns, make hay deliveries to customers and the maintenance of pasture and hay ground. We are also expanding our [purebred] and hay operation. I need Nathan’s on-farm help. I will be responsible for the management and day to day operation of the farm.” Record 132.

**3 *424 On July 24, 2002, petitioner’s attorney sent a letter to intervenor requesting information. Petitioner’s attorney advised intervenor that if the requested information was not provided, he would: “inform the Board of Commissioners of this fact and argue that the reason [intervenor] did not produce the information is that it either did not exist or is adverse to [intervenor], because failure to produce evidence can create a presumption that the evidence is harmful. Record 128. The specific requests in the July 24, 2002 letter are set out below:

“1. If your application is granted, will you Mr. Woods, or your son, work for pay anywhere other than on your farm? Will your son be paid wages from you? If so, how much?

“2. How much time is your son currently spending working on your farm?

“3. In your May 22, written explanation you make reference to IRS Form 1040 and Schedule F. Please provide copies of

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those documents. Please feel free to blackout information set forth in those documents not directly related to the farming operation.

"4. Your July 5, [2002] written explanation states that you have 36 purebred cattle. Please provide copies of the registrations for those purebred cattle and copies of the documents that must accompany the sale of purebred cattle for any such cattle you have sold from or purchased for your farm.

"[5] Please send me a copy of the lease for the 68 acres you indicated in your July 5, [2002] statement that you lease. If you do not have a written lease, please provide a copy of your check for each lease payment you have made for [those] 68 acres. The same request is made for the pasture and hay ground you indicated you rent on a short-term as needed basis, either for a copy of the lease or copies of your checks for each lease payment you have made for those properties.

*425 "[6] Copies of the receipts and/or invoices for all hay you sold in 2001 and 2002 to feed stores, stables, and private individuals.

"[7] How many calves [do] you expect to be produced, on average, from your 70 head of cattle?" Record 128-129.

Intervenor responded to petitioner's attorney's July 24, 2002 letter with a July 27, 2002 letter in which he contends that petitioner's attorney has a conflict of interest because the attorney's law firm represented intervenor on a variety of matters in the past, including legal work in 2001 concerning the subject 70 acres. Record 118. Intervenor has not directly responded further to petitioner's attorney. Intervenor instead submitted a number of letters directly to the county in support of his application. One of those letters from a tax service states:

"We have filed Mr. and Mrs. Woods' tax returns for the past several years and Mr. Woods' income has been listed only on Schedule F of the Federal Tax Forms 1040." Record 78.³

Two other letters indicate the author of the letter purchased grass, hay, alfalfa, or straw from intervenor.⁴ Four other letters state that in the past intervenor sold cattle to, purchased cattle from, or both sold cattle to and purchased cattle from the authors of the letters.⁵ Record *426 82-85. Finally, intervenor submitted what appears to be a confidential National Agricultural Statistics Service form in which intervenor estimates the number of tons of alfalfa and all other hay he harvested in calendar year 2001 and sold between July 1, 2001 and June 30, 2002. Record 80.⁶

**4 Petitioner's attorney sent a second letter to intervenor on August 27, 2002. In that letter he first explains his view that his representation of petitioner does not constitute a violation of Oregon State Bar ethical rules. The letter repeats the earlier request for a copy of intervenor's IRS Form 1040 Schedule F and for a copy of the leases for any leased farm property. In addition the letter asks intervenor to identify the source of the hay referenced in the letters noted above and requests documentation of the amount of hay produced on the 70 acres in 2001 and 2002.⁷

Petitioner's attorney submitted both the July 24, 2002 and August 27, 2002 letters into the record at the *427 September 25, 2002 board of county commissioners' hearing in this matter. Petitioner's attorney also submitted testimony by a county cattle and hay farmer, who took the position that intervenor's farm is not a "commercial farm operation" and that the son's assistance is "not required." Record 68-69. Petitioner also submitted a letter from an Oregon State University Extension Service employee who opined, based on information that petitioner supplied, that "year round" "on the premises" help for a farm of the scale of intervenor's "is not typical." Record 67.⁸ Finally, petitioner submitted a letter and a neighbor submitted a letter in which they state that for the past 12 to 15 years intervenor raised no hay on the 70 acres and has done a poor job of tending the pasture and the cows on the 70 acres. Record 74-75.

In response to the above, intervenor submitted a four-page letter. In part, that letter responds in kind to criticisms of intervenor's past management practices, pointing out that some of those who criticized intervenor have also had similar problems with their farm operations. Record 45-48. The letter also argues that the significant improvements that have been made recently on the 70 acres are at least partially attributable to their son's help, which intervenor contends supports his request for approval of the family farm help dwelling. Record 46. The letter also notes that intervenor hopes to replace some or all of their crossbred cattle with purebred cattle, which require more hours of labor. In response to questions raised about

whether intervenor actually has 70 head of cattle, the letter explains:

“On July 25, 2002, [a] county [planner] made an on-farm visit taking photos. I did not know he was looking for total numbers of cattle. He photographed 26 of the 40 *428 cows that were on this property at that time. The cows were dispersed and some were out of sight in shaded areas and barns. The other 30 cattle were on rented pasture. In answer to [petitioner’s attorney’s] question, ‘WHERE’S THE BEEF?’ we found it difficult to line all the cattle up for a group photo.” Record 48.

The board of commissioners’ decision approving the application concludes that intervenor’s farm is a “commercial farm operation.” Record 199. The decision describes the farm as including 26 to 70 head of cattle and describe those cattle as being made up of “36 purebred cattle and 34 commercial crossbred cattle.” *Id.* The board of commissioners found that intervenor “identified a need for help with the existing farming practices that would require assistance in the future.” *Id.* This appeal followed.

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

*5 In his first, second and third assignments of error, petitioner challenges the board of county commissioners’ conclusions that three of the requirements of PCZO 136.040(H) are met. Specifically, petitioner challenges the county’s conclusions that (1) intervenor’s farm is a “commercial farm operation,” (2) intervenor’s son’s assistance is required on the farm, and (3) intervenor will “continue to play the predominant role in the management and use of the farm.” Petitioner contends that those conclusions are inadequately explained in the decision and are not supported by substantial evidence.

A. Family Member’s Assistance is Required and Farm Owners’ Role Remains Predominant

Petitioner’s challenge to the second and third of the just-noted county conclusions is based almost entirely on the county’s selection of words in the decision and testimony that was offered below on petitioner’s behalf that intervenor’s farm is not of sufficient scale to require full-time or year-round assistance from intervenor’s son.

The county described the son’s assistance as “needed” rather than “required,” and described intervenor’s role in the farm operation as “significant involvement,” *429 rather than the “predominant role.” In his second assignment of error, petitioner argues that this choice of words is fatal.

1 Although PCZO 136.040(H) requires that the son’s assistance must be “needed,” and that intervenor must retain the “predominant” role, in view of the evidence in the record, we do not believe the county’s choice of words is significant. There is certainly evidence in the record that the son’s year-round full-time help is not essential for the farm to continue operation, and we do not understand intervenor to argue that it is. However, PCZO 136.040(H) does not require that intervenor establish that the son’s full-time assistance is required year-round. The applicants identified varied tasks the son is to perform on the farm and noted that his assistance would be particularly important during times when intervenor cannot be present. Petitioner makes no direct challenge to those assertions. As intervenor advances in age, it is reasonable to expect that those absences might become more frequent, and the need for the son to assist in the more strenuous farm tasks would become more pronounced. We conclude that the county’s findings are adequate to demonstrate that the son’s assistance is “required” on the farm, within the meaning of PCZO 136.040(H)..

The county’s finding that intervenor will retain “significant involvement in the farm operation” is conclusory and is not the same as a finding that the intervenor will play “the predominant role in the management and use of the farm,” which is what PCZO 136.040(H) requires. However, petitioner cites nothing in the record that even remotely suggests that intervenor will not continue to be predominantly responsible for running the farm or that his son’s role will be anything more than a secondary role.

*6 The second assignment of error and the parts of the first and third assignments of error that challenge the evidentiary basis of the county’s decision regarding whether intervenor’s son’s assistance is required and whether intervenor will continue to be predominantly responsible for running the farm are denied.

*430 B. The Requirement that Intervenor’s Farm be a Commercial Farm

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The county's findings explaining why the county concluded that intervenor's farm is a commercial farm operation are set out below:

"The Board [of Commissioners] finds that [it] has the authority to determine if a farm operation is a commercial farm operation on a case-by-case basis. The Board [of Commissioners] conducted a site visit of the subject property on September 11, 2002. The Board [of Commissioners] reviewed the testimony and other evidence in the record. The Board [of Commissioners] finds that the definition of 'farm use' in PCZO 110.223 includes '[t]he employment of land for the primary purpose of obtaining a profit in money.' The Board [of Commissioners] finds that the 70.06-acre subject property was fenced and cross-fenced for cattle production. The Board [of Commissioners] finds that the 70.06-acre subject property, located within the Exclusive Farm Use Zoning District, pastures between 26 and 70 head of cattle to be bred and sold for profit. The Board [of Commissioners] finds that a minimum acreage requirement does not determine whether a farm operation is a commercial farm operation. In addition, the Board [of Commissioners] finds that an acreage requirement is not an applicable criterion for approval of [a] family farm help dwelling. Polk County agrees that hay purchased and later sold by Mr. Woods cannot be counted as farm income, for purposes of the definition of farm use. Mr. Woods did clarify in his testimony that he purchases low-grade hay for cattle and produces and sells high-grade hay to horse owners. The selling of the high-grade hay that Mr. Woods produced in farming is a farm use, and, if sold or used as part of the existing commercial cattle operation, would be part of a commercial farm operation. The Board [of Commissioners] finds that a minimum income threshold does not determine if a farm operation is commercial, or if farm help is required, and is not a criterion for a family farm help dwelling. The Board [of Commissioners] finds that, based on testimony in the record, there is an existing extensive market for purebred and commercial grade cattle. However, considering marketing strategies and costs of production are not necessary based on the applicable criteria, and proprietary matters of the *431 applicant. Based on these findings the Board [of Commissioners] concludes that the 70.06-acre subject property, which pastures between 26 and 70 head of cattle to be bred and sold for profit, constitutes a commercial farm operation[.]" Record 199.

****7** There are a number of problems with the above-quoted findings. First, the findings never define the operative term "commercial farm operation," and that term could mean a number of different things. Second, it is unclear whether the county is relying on leased property, in addition to the 70.06-acre subject property, to conclude that intervenor's farm is a commercial farm operation. Third, the findings suggest that the county may believe that any "farm use," as the PCZO defines that term, is necessarily a "commercial farm operation" within the meaning of PCZO 136.040(H). Fourth the findings make no attempt to assign a value to the amount of hay that the farm sells. Finally, the findings reject as irrelevant farm size and farm income, without clearly identifying the factors that the county believes *are relevant*.

As we explain later in this opinion, to the extent the county's decision can be read to find that all farm uses are properly viewed as commercial farm operations, that finding is erroneous. Nevertheless, even with that erroneous suggestion and the other above-noted problems, we reject petitioner's challenge to the county's conclusion that intervenor's farm qualifies as a commercial farm operation. At their core, the county's findings conclude that a 70-acre farming operation that (1) includes some additional unspecified number of rented acres of pasture; (2) raises from 26 to 70 head of cattle, some of which are purebred and some of which are crossbred; and (3) grows and sells high grade hay is a commercial farm operation. For the reasons explained below, we see no error in those core findings or their evidentiary support.

ORS 215.283(1)(e)(A) authorizes construction of a dwelling on EFU-zoned parcels to house a relative of the farm operator, where the "operator require [s] the assistance of the relative in the management of the farm *432 use." ORS 215.283(1)(e)(A) does not expressly require that the farm use for which assistance is required must be a commercial farm. OAR chapter 660, division 33 is the Land Conservation and Development Commission's (LCDC's) rule concerning agricultural land. The table that is associated with OAR 660-033-120 identifies dwellings for relatives as a use that is allowed subject to certain specified standards. One of those specified standards is OAR 660-033-130(9)(a), which, among other things, requires that the farm use be an "existing commercial farm operation."¹⁰

However, OAR 660-033-130(9)(a) does not explain what it means by "commercial farm operation" or define that term. The term "commercial farm operation" is also not defined in the OAR chapter 660, division 33 general definitions at OAR 660-033-0020. PCZO 136.040(H) essentially duplicates, and clearly was adopted to implement, OAR 660-033-130(9)(a). PCZO 136.040(H) also does not define the term "commercial farm operation."

****8** The term "commercial farm operation" is ambiguous and could have a number of different meanings. There is *433 no

dispute that intervenor's farm is a "farm use" as ORS 215.203(1) and PZCO 110.223 define that term.¹¹ The more difficult question is whether petitioner's farm use is also properly viewed as a commercial farm operation. As an initial point, a "commercial farm operation," is clearly something different from a "farm use," as that term is defined at ORS 215.203(2)(a) and 308A.056. Stated differently, the relatively minor level of agricultural activity that might qualify a property for preferential agricultural assessment is not necessarily sufficient to qualify as a commercial farm operation within the meaning of OAR 660-033-0130(9). The question is how much more or what else is required? LCDC's rule does not provide a clear answer to that question.

While LCDC has not defined "commercial farm operation," it uses similar concepts in other places in OAR chapter 660, division 33. For example, OAR 660-033-0020(2) provides the following definition of commercial agricultural enterprise:

"(a) 'Commercial Agricultural Enterprise' consists of farm operations that will:

"(A) Contribute in a substantial way to the area's existing agricultural economy; and

"(B) Help maintain agricultural processors and established farm markets.

"(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are *434 important factors because of the intent of Goal 3 to maintain the agricultural economy of the state." OAR 660-033-0020(2)

3 The term "[c]ommercial [a]gricultural [e]nterprise," as defined at OAR 660-033-0020(2) is principally used in OAR 660-033-0100, which in relevant part allows a county to adopt a minimum parcel size that is smaller than the statutory minimum where the smaller parcel is consistent with maintaining the "commercial agricultural enterprise" in the county or within an area of the county. Neither OAR 660-033-0020(2) nor OAR 660-033-0100 has a direct bearing on the meaning of "commercial farm operation" in OAR 660-033-0130(9)(a). The question of whether a particular parcel size supports a farm operation that contributes to and helps maintain the "commercial agricultural enterprise" in the area is similar to the question of whether a particular farm operation is a "commercial farm operation." For that reason we conclude that one way the county could have gone about establishing that intervenor's farm operation is a "commercial farm operation," for purposes of OAR 660-033-0130(9), would have been to establish that the farm operation (1) "[c]ontributes in a substantial way to the area's existing agricultural economy, and (2) "[h]elps maintain agricultural processors and established farm markets." If the farm is of sufficient scale and productivity to satisfy meet those requirements, we believe the farm could clearly be viewed as a commercial farm operation."¹²

*9 3 However, because LCDC did not define the term "commercial farm operation" in OAR 660-033-0130(9) or draft the rule to expressly provide that only those farm operations that make up the county's "[c]ommercial [a]gricultural [e]nterprise" are eligible for a family farm help *435 dwelling, we do not believe it is appropriate to assume that LCDC intended to require that county's derive a definition of "commercial farm operation" from OAR 660-033-0020(2).¹³ Rather, we conclude that LCDC intended to allow the county some discretion in distinguishing "hobby" or "recreational" farms from those farms that rise to the level of a commercial farm operation. If LCDC did not intend that county have such discretion, the rule can easily be amended to add a definition of commercial farm operation that eliminates that discretion.

4 While 26 to 70 cattle is not a large cattle operation, a reasonable person could conclude, as the county apparently did, that a cattle operation of that size with both purebred and crossbred cattle is more than a hobby associated with a rural residence. Although we know from the record that intervenor's wife works off the farm and we do not know from the record how much income intervenor derives from the farm, the tax service letter that intervenor submitted is substantial evidence that *all* of intervenor's income is derived from the farm.¹⁴ While it is a reasonably close question, we conclude the county's findings are sufficient to establish that intervenor's farm use is also a "commercial farm operation," as that term is used in OAR 660-033-0130(9) and PCZO 136.040(H).

The first, second and third assignments of error are denied.

FOURTH ASSIGNMENT OF ERROR

Petitioner's fourth assignment of error is unclear. Petitioner appears to challenge the following county *436 finding, which appears in the earlier more extensive quotation of the county's findings addressing the "commercial farm operation" requirement:

"The Board finds that the definition of 'farm use' in PCZO 110.223 includes '[t]he employment of land for the primary purpose of obtaining a profit in money.'"¹⁵

Petitioner argues the county erred by applying the PCZO 110.223 definition of "farm use" in determining whether intervenor's farm qualifies as a "commercial farm operation" without listing PCZO 110.223 as an applicable criterion. Petitioner complains that he was given no prior notice that the county apply that definition and that PCZO 110.223 is addressed for the first time in the board of county commissioner's final decision.

The legal significance of the county's finding that intervenor's farm is a farm use is far from clear. As we have already explained, if the finding is read to say that all farm uses are also "commercial farm operations," within the meaning of PCZO 136.040(H), the finding is clearly erroneous. However, we do not read the county's decision to adopt that position. The county simply found that intervenor's farm qualifies as a farm use. Although petitioner clearly disputes the county's conclusion that intervenor's farm is a "commercial farm operation," we do not understand petitioner to dispute that intervenor's farm is a "farm use," as PCZO 110.223 and ORS 215.203(2)(a) define that term. The finding that intervenor's farm is a "farm use" has little bearing on whether intervenor's farm is a "commercial farm operation." The county goes on to describe the farm and ultimately concludes that it has characteristics that make it a commercial farm. We do not understand the county to have relied exclusively or predominantly on the fact that intervenor's farm is a "farm use," as that term is defined by PCZO 110.223, in concluding that intervenor's farm is a commercial farm operation. We conclude that the county's failure to provide *437 prior notice that it would apply PCZO 110.223 to determine whether intervenor's farm qualifies as a farm use, provides no basis for remand.

****10** The fourth assignment of error is denied.

The county's decision is affirmed.

Footnotes

¹ Family farm help dwellings are authorized by statute (ORS 215.283(1)(e)(A)), administrative rule (OAR 660-033-0120 and 660-033-0130(9)) and county zoning ordinance (PCZO 136.040(H)). We set out the statutory and administrative rule language later in this opinion. PCZO 136.040(H) provides:

"Dwelling for Family Farm Help [OAR 660-33-120 and 660-33-130(9)]. A dwelling for family farm help may be authorized, on the same lot or parcel as the dwelling of the farm operator, where *the dwelling will be occupied by a relative of the farm operator whose assistance in the management and farm use of the existing commercial farm operation is required by the farm operator*. The farm operator shall continue to play the predominant role in the management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing. As defined in ORS 215.283[(1) (e)(A)], relative means grandparent, grandchild, parent, child, brother or sister of the farm operator, or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator." (Emphasis added; bracketed reference to administrative rules in original).

² Intervenor Bonnie Woods did not submit a brief or sign the brief that was submitted by intervenor Chad Woods. All references in this appeal to intervenor are to intervenor Chad Woods.

RON HARLAND, Petitioner, v. POLK COUNTY, Respondent, ..., 44 Or LUBA 420 (2003)

3 Internal Revenue Service (IRS) Form 1040, Schedule F is entitled "Profit or Loss from Farming." We understand the tax service letter to take the position that the farm was Mr. Woods's exclusive source of income "for the past several years." The tax service letter does not disclose the amount of that income. Apparently Mrs. Woods works at a hospital, and this nonfarm employment is her sole source of income.

4 One of those letters from "the Feed Store" states intervenor has been its "sole provider of grass hay, alfalfa, and straw since 1999." Record 79. That letter does not indicate how much hay, alfalfa and straw the Feed Store purchased from intervenor. The other letter states intervenor supplied six tons of hay per month to a horse farm. Record 81.

5 The letter at Record 82 states "[i]n [M]arch of 2002 [intervenor] purchased all of my registered calves and yearling heifer calves." That letter does not state how many cattle intervenor purchased. The letter at Record 83 states that the author sold intervenor 16 "[c]ows, replacement heifers and yearling bulls" in 2000. The copy of the letter at Record 84 is faint and very difficult to read. It indicates that the author bought cattle from and sold cattle to intervenor and that intervenor rented the author's pasture in the past. The letter at Record 85 states the author has known intervenor since 1984 and sold intervenor eight purebred heifers "in 1989 to add to his purebred herd." The author of that letter goes on to state that intervenor is "knowledgeable in the purebred cattle business that requires a lot more time (at least twice the time) as commercial cattle."

6 The report is unsigned and undated. It indicates that intervenor harvested 847 tons of hay in 2001 and sold 861 tons of hay between July 1, 2001 and June 30, 2002. The report also estimates the number of tons of hay sold for each of the twelve months beginning July 2001 through June 2002. Those monthly estimates total 6,276 tons. There is nothing in the form itself that explains the difference between the 861 tons of hay that intervenor says he sold between July 1, 2001 and June 30, 2002 and the total individual monthly hay sales estimates that add up to 6,728 tons of hay sold. It may be that all but 861 tons of the estimated 6,728 tons of hay that intervenor says he sold during that period were purchased elsewhere and resold by intervenor.

7 Apparently the source of the hay is potentially relevant, because any income that intervenor realized from purchasing hay from others and reselling that purchased hay could not be considered part of the farm's income for purposes of determining if it qualifies as a commercial farm. Record 199.

8 The extension service employee estimated that labor requirements should be "on the order of ten hours per cow per year, or in this case about 700 hours a year, 12-14 hours per week." Record 67. One of the letters submitted by intervenor takes the position that purebred cattle require twice as much work as crossbred cattle. *See* n 5 Because intervenor's herd includes purebred cattle, intervenor disputes the 700-hour per year labor requirement estimate.

9 The dwelling authorized by ORS 215.283(1)(e)(A) is as follows:

"A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator."

RON HARLAND, Petitioner, v. POLK COUNTY, Respondent, ..., 44 Or LUBA 420 (2003)

¹⁰ OAR 660-033-0130(9)(a) provides:

“To qualify [for a dwelling described in ORS 215.283(1)(e)(A), the] dwelling *shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator*. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.” (Emphasis added).

¹¹ ORS 215.203(2)(a) defines “farm use,” in part, as follows:

“‘[F]arm use’ means 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.” PCZO 110.223 adopts a similar definition of “farm use.”

¹² We also note that OAR 660-033-0135 establishes standards that county’s must apply in approving dwellings that are customarily provided in conjunction with farm use. That rule includes a \$10,000 annual gross sales standard that we described as LCDDC’s threshold for “small commercial farms” for purposes of that rule. *Friends of Linn County v. Linn County*, 39 Or LUBA 627, 637 (2001). We see no reason why the county could not have looked to this minimum annual gross sales standard for guidance.

¹³ Similarly, because LCDDC did not expressly or impliedly incorporate the \$10,000 annual gross sales standard from OAR 660-033-0135, we do not believe the city is required to apply that standard to determine if intervenor’s farm is a commercial farm operation.

¹⁴ Intervenor could have eliminated any suspicion that the farm is the exclusive source of his income by submitting a copy of IRS Form 1040 Schedule F. However, his reluctance to do so is understandable and his refusal to do so is not fatal, given the tax service’s representation, which no one offers any reason to question.

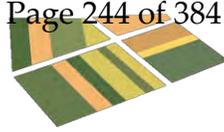
¹⁵ We do not set out the PCZO 110.223 definition of “farm use,” which is similar to the ORS 215.203(2)(a) definition of farm use.

44 Or LUBA 420 (Or Luba), 2003 WL 22505023

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**Application to Appeal
the Development
Department's Decision
Information submitted
by applicant for the
December 6 Planning
Commission Hearing**



Law Office of Mike Reeder
Oregon Land Use Law

November 29, 2022

Via Email Only

inga.williams@co.benton.or.us

Benton County Planning Commission
c/o Inga Williams, Planner
Benton County Community Development
4500 SW Research Way
Corvallis, OR 97333

Re: **Final Argument to Planning Commission | LU-22-023**
Cynthia Crosby & Connie Jordan | Relative Farm Help Dwelling

Dear Benton County Planning Commissioners:

Please accept this letter as the Applicant's final argument pursuant to ORS 197.797. There has been a considerable amount of information for this Application and it is quite clear that County staff and counsel disagree with the Application on two points. I write to emphasize the following points to aid the Planning Commission in coming to the correct decision, notwithstanding County staff's counter positions. I urge you to make your own, independent decision as you are the quasi-judicial officials tasked with making this judgement.

The Applicant has shown that this Application must be approved for two, independent reasons:

I. ORS 197.307(4) Requires the County to Apply Only Clear & Objective Standards

The state statute governing approval for housing development, ORS 197.307(4), requires that only clear and objective standards may be applied to applications for housing. The two standards that County staff believe have not been met in the Application for housing development are not clear and objective, and therefore cannot be applied to this case.

Put succinctly, the Oregon Legislature has determined that having clear and objective standards for housing is a more important policy consideration than applying subjective and/or ambiguous standards such as the undefined terms "assistance is required" and "commercial farming operation." Pursuant to ORS 197.307(4), these two ambiguous and subjective standards may not be applied to this Application, and the Application must therefore be approved. All other arguments presented by County staff and County Counsel

must give way to the commands of ORS 197.307(4).

In this Application review process the County is attempting to apply subjective standards to undefined terms. This is because the County has yet to legislatively adopt clear and objective standards. The County cannot, through a quasi-judicial land use permit application process, impose purported “clear and objective” standards through interpretation. For example, the fact that the relative helper (Applicant’s daughter) lives 15 minutes away from the farm leads to the County’s conclusion that this circumstance runs against the “need” for live-in help on the Subject Property is highly subjective. How far away must the relative live for this to be factored as a reason the relative can live on the Subject Property? Because the County is implementing state law here for terms that are undefined, neither the Planning Commission nor the County Board can interpret the law with subjective standards. The “commercial” and “assistance is required” standards are not clear and objective and are therefore not applicable to this Application.

II. The Application Meets the Subjective Definitions of “Required” and “Commercial Farming Operation”

Although it is not necessary for approval for the reasons explained in Part I above, out of an abundance of caution, the Applicant has shown, by a preponderance of the evidence, that she meets the code, rule and statutory (ambiguous/subjective) standards for a Relative Farm Help Dwelling.

Below is the summary of the Applicant’s arguments for your consideration. All of these summarized arguments are discussed in greater detail in the Applicant’s written and oral testimony already found in the record on this matter.

1. Relative Farm Help Dwellings promote the agricultural use of farmland and was the intent behind Oregon Revised Statute (ORS) 215.283 (formerly ORS 215.213(1)(e)).¹ Therefore, it is contrary to Statewide Planning Goal 3 to strictly interpret the standards so as to limit Relative Farm Help Dwellings.
2. The Applicant and Farm Operator have provided un rebutted evidence of their devotion and time commitments to their commercial farming operation and their need for help in farming from the Applicant’s daughter as they age and their farm improves in efficiency and productivity. These are the exact circumstances envisioned when the Relative Farm Help Dwelling legislation was implemented.
3. The fact that it takes more than one person to run the commercial farming operation,

¹ See *Hopper v. Clackamas County*, 87 Or. App. 167 (1987) (“there is an overriding statutory and regulatory policy to prevent agricultural land from being diverted to non-agricultural use....However, they [petitioners] do not persuade us that that policy requires that the statute be construed as precluding the construction of this proposed dwelling; ***the statute's clear import is that the construction of such dwellings, under circumstances of the precise kind present here, is related to and promotes the agricultural use of farm land.***”) (Emphasis mine).

in addition to hired help is conclusive evidence that the Relative Farm Help Dwelling is “required”.

4. County Staff is misreading case law and misinterpreting what “safe harbor” means. As “commercial farming operation” remains undefined in state law and County code, the LUBA and the courts have identified three “safe harbors” for counties to rely on in making this determination. They have clarified that these safe harbors offer *more rigorous rule standards* than the question at hand, meaning that that if a farming operation meets the standards of one of these safe harbors, then a county can safely conclude that the farm is a “commercial farming operation.”² However, the court goes on to clearly state that, in the case that a farm does not meet one of these safe harbors, then, “the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a ‘commercial farming operation.’” *Id.*

The courts have also identified what counties may consider when articulating the thresholds to apply to determine when a farm is “commercial” vs “non-commercial”:

² *Richards v. Clackamas County*, 79 Or LUBA 171 (2019), ¶ 4 states as follows:

“We here describe the two approaches discussed in *Richards I* and *Harland* as ‘safe harbors,’ because they are based ***on specific and facially more rigorous rule standards that apply to somewhat analogous determinations*** and uses governed by OAR chapter 660, division 033. The two approaches are based on (1) the OAR 660-033-0020 standards for determining what minimum parcel size is consistent with continuing the ‘commercial agricultural enterprise’ within a local area, and (2) the OAR 660-033-0135 standards for approving a dwelling in conjunction with farm use. The rationale is that if a farm operation meets or exceeds the local thresholds for a ‘commercial agricultural enterprise,’ or the farm operation is productive enough to qualify for a primary farm dwelling, ***then a county could safely conclude, without more analysis,*** that the farm operation is also a ‘commercial farming operation’ for purposes of approving a ‘relative farm help dwelling’ under OAR 660-033-0130(9).

To those two identified ‘safe harbors,’ we can add a third. OAR 660-033-0130(24)(b) sets out standards for when a farm operation with a primary farm dwelling qualifies for an accessory farm dwelling, occupied by a non-relative. Because a relative farm help dwelling is similar in function to an ‘accessory farm dwelling’ allowed under OAR 660-033-0130(24), if the farm operation supporting the primary farm dwelling is sufficient to qualify the property for an accessory farm under the standards at OAR 660-033-0130(24)(b), we think a county could safely conclude, without more, that the farm operation qualifies as a ‘commercial farming operation’ for purposes of OAR 660-033-0130(9). ***Of course, the reverse is not true: if the farming operation supporting a proposed relative farm help dwelling did not meet or exceed the relevant standards under any of these three ‘safe harbors,’ it would not necessarily mean that the county must conclude that the farming operation at issue is not a ‘commercial farming operation’ for purposes of OAR 660-033-0130(9). It means only that the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a ‘commercial farming operation.’***” (Emphasis mine).

- (1) the farm rises above being a hobby or recreational farm,³ and
- (2) the scale and intensity is such that a reasonable farmer would devote the majority of his or her working hours to operating the farm.⁴

Prior to the most recent County Memo dated November 22, 2022, Staff determined that the Crosby farm did not meet any of the three safe harbors and then attempted to look to “scale and intensity.”⁵ However, in the November 22 Memo, Staff appear to switch tacks and are solely looking to the three safe harbors without providing further analysis, removing any analysis of scale and intensity. Although the County, if ORS 197.307(4) did not apply,⁶ would have some discretion as to what constitutes a commercial vs. non-commercial farm, when the more rigorous safe harbors are not met, the County has failed to articulate what the thresholds are and are now ignoring any additional analysis.

5. The “requires assistance” standard is not nearly as stringent as County staff represent and the standard is easily met here. Case law repeatedly supports this assertion.

In *Hopper* the court found:

“We do not construe that phrase to mean that the amount of the required assistance is the determinant of whether there may be a relative’s dwelling, as long as the ‘farm operator’ continues to have some significant involvement in the farm operations. Nothing in the statutory language suggests that the permissibility of the accessory dwelling is

³ *Harland v. Polk County*, 44 Or LUBA 420 (2003) (“Rather, we conclude that LCDC intended to allow the county some discretion in distinguishing ‘hobby’ or ‘recreational’ farms from those farms that rise to the level of a commercial farm operation.”)

⁴ *Richards, supra*, states:

“However, as our discussion above indicates, we believe that, as a legal matter, what distinguishes an existing ‘commercial’ farming operation from its noncommercial counterparts is largely a matter of scale and intensity. Roughly speaking, we believe a commercial farming operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property.”

⁵ See Staff Memorandum, November 9, “The cattle breeding operation does not require a sufficient scale or intensity of effort to require a relative to live on the farm to provide help.” and County Counsel Memorandum, October 24, 2022 “As part of its analysis of the LCDC regulation, staff assessed the scale and intensity of the farm use...”

⁶ However, any such discretion is removed by ORS 197.307(4). As discussed above, standard that are not clear and objective must not be applied and the Application must therefore be approved.

inversely proportional to the level of assistance the relative provides.”
Hopper, supra at 924.

In a Benton County case, *Kenagy v. Benton County*, 97 Or LUBA 65 (1992), LUBA found:

“The unchallenged facts reflected in the appealed decision are that the farm operator requires assistance to perform the tasks necessary to carry out the cattle operation on the nine acre portion of the parcel due to his physical condition. As pointed out in *Hopper*, petitioners' arguments that the proposed assistance of the farm operator's relatives is ‘nominal’ do not provide a basis for reversal or remand of the challenged decision.”

In *Harland*, LUBA found:

“However, PCZO 136.040(H) does not require that intervenor establish that the son's full-time assistance is required year-round. The applicants identified varied tasks the son is to perform on the farm and noted that his assistance would be particularly important during times when intervenor cannot be present. As intervenor advances in age, it is reasonable to expect that those absences might become more frequent, and the need for the son to assist in the more strenuous farm tasks would become more pronounced. We conclude that the county's findings are adequate to demonstrate that the son's assistance is ‘required’ on the farm, within the meaning of PCZO 136.040(H).”

III. Conclusion

The Application should be approved because the only two standards that County staff argues are not met are not clear and objective. Mr. Croney is incorrect on the law. No evidence has been provided to rebut the substantial testimony that the Applicant is using the property as a commercial farming operation that permits a Relative Farm Help Dwelling.

Respectfully,

/s/Micheal M. Reeder

Micheal M. Reeder
Attorney for Applicant and Owner

LAW OFFICE OF BILL KLOOS PC

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BILLKLOOS@LANDUSEOREGON.COM

November 15, 2022

Via Email inga.williams@co.benton.or.us

Benton County Planning Commission
c/o Inga Williams, Planner
Benton County Community Development
360 SW Avery Ave.
Corvallis, OR 97333

Re: **Appeal to Planning Commission | LU-22-023**

Dear Benton County Planning Commissioners:

This letter is filed on behalf of the Home Builders Association of Lane County (HBA), whose members include builders in Benton County.

This is a very important appeal; the decision must apply state housing law, which provides important protections to persons intending to build housing. I have reviewed the letter of this date from Cynthia Crosby and Connie Jordan in support of their proposed relative farm dwelling. That letter correctly summarizes the law. The HBA adopts the legal argument therein as its own.

I would point out several important, summary principles to keep in mind.

The county is applying state law here, not county law. The county law must be consistent with the state law that governs.

Because it is state law that applies, there is no room for the Planning Commission or the County Board to do its own interpretation. Rules of deference do not apply.

If the County denies this application based on its own code, or a misreading of state law, and LUBA reverses the denial and orders an approval, an attorney fee award against the county is mandatory, even if the county does not defend the denial on appeal. See, e.g., *Hendrickson v. Lane County* __ Or LUBA __ (Order, Aug. 18, 2020).

On behalf of the HBA, I urge the Commission to approve this proposed use.

Sincerely,

Bill Kloos

Bill Kloos
Cc: HBA of Lane County

From: [Andree Phelps](#)
To: [WILLIAMS Inga](#)
Cc: [Mike Reeder](#)
Subject: Letter in Support of Appeal of Staff Denial of LU-22-023
Date: Tuesday, November 22, 2022 4:54:37 PM
Attachments: [LU-22-023 Benton Commissioner support letter.docx](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Williams:

Please accept the following written testimony in support of the family farm help dwelling application, U-22-023.

Andrée Phelps
Andrée Phelps Law, LLC
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November 22, 2022

Via email

Inga.williams@co.benton.or.us

Inga Williams, Planner
Benton County Community Development
4500 SW Research Way
Corvallis, OR 97333

**Re. Letter in Support of Appeal of Staff Denial of LU-22-023
Cynthia Crosby & Connie Jordan - Family Farm Help Dwelling Application**

Thank you, Commissioners, for your time and attention paid to the testimony related to the family farm help dwelling application as it was presented at the Planning Commission hearing on November 15, 2022. We anticipate that the testimony of Cynthia Crosby (the “Applicant”) and Connie Jordan (the “Owner/Operator”), as well as the Applicant’s daughter and Applicant’s neighbor, was persuasive in determining that the Application meets all relevant Benton County Code (BCC) criteria and that approval of the Application would allow successive generational farming and, therefore, promote Goal 3 policy. As the record has remained open, we provide the following additional written testimony.

Family farm help dwellings are a permitted use in exclusive farm zones (EFU). In Oregon, there is an overriding statutory and regulatory policy to prevent agricultural land from being diverted to non-agricultural use,¹ thereby preserving and maintaining agricultural lands. The ability to place a dwelling on EFU farmland for the purpose of family farming assistance was first put into law in 1981.² These applications are one of the least common farm dwelling applications in the state with “the number of dwellings approved for relatives whose assistance is needed on the farm has been fairly consistent over the past six years averaging 30 dwelling approvals a year.”³ State statute, Oregon Administrative Rule (OAR), and the BCC permit this type of dwelling on EFU farmland. The family farm dwelling statute is found within section (d) of ORS 215.283,⁴ the

¹ *Hopper v. Clackamas County*, 87 Or. App 167, 924 and OAR 660-033-0010

² See ORS 215.213(1)(e), 1981.

³ Oregon Farm and Forest Land Use Report, 2018-2019, DLCD, November 15, 2020, 14.

⁴ ORS 215.283(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse, which means a child, parent, stepparent, grandchild, grandparent,

state rule is found at OAR 660-033-0130(9),⁵ and the BCC is found at 55.120 (1)(b).⁶ The BCC implements the OAR while adding that BCC 55.120 does not apply to marijuana farms.

There were multiple questions from Commissioners at the November 15 hearing relating to issues such as parcel size, farm income, contributions to markets, and concerning what constitutes “requires assistance.” There appeared to be some confusion if this was an appropriate query as the staff mentioned many of these issues in their analysis.⁷ The ORS, OAR, and BCC do not include requirements such as minimum acreage or minimum income from the property; these are requirements for other types of EFU dwellings⁸ and we strongly disagree with County counsel that, “LUBA has provided clear guidance on how to interpret, and apply that phrase [commercial farming operation].”⁹ These questions are arising exactly because the term “commercial farming operation” is undefined and an analysis of what constitutes needed assistance is likewise undefined by the state or in BCC; therefore, the County cannot, as the BCC is written, apply this criteria.

However, if the County chooses to apply the terms “commercial farming operation” and what constitutes “requiring assistance,” LUBA has identified pertinent analyses in several family farm help dwelling cases. For the two criteria¹⁰ that were found to be not met by County Staff, LUBA has determined that for the query:

1. if the *help is required*, means if the farmers need assistance¹¹ and
2. if the *scale and intensity* of the farming operation constitutes a commercial farming operation, means to determine if a reasonable farmer would devote the majority of his or her working hours to operating the farm.¹²

stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator **does or will require the assistance of the relative in the management of the farm use** and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. (emphasis added)

⁵ OAR 660-033-0130 (9)(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives **whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator.** (emphasis added)

⁶ BCC 55.120 (1)(b) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator’s spouse, **whose assistance in the management and farm use of the existing commercial farming operation** (not including marijuana) **is required by the farm operator;** (emphasis added)

⁷ Staff Report at 6 and Benton County Memorandum at 2.

⁸ Many of these factors were discussed in the staff report to determine if the farming operation could meet a “safe harbor” that the farm constituted a “commercial agricultural enterprise.”

⁹ Crony Memorandum at 9.

¹⁰ The Staff Report and subsequent Memorandum from Benton staff continue to conflate these two issues in their analysis. However, the *Richards* case is clear that these are two separate inquiries.

¹¹ “The selling of high-grade hay that Mr. Woods produced in farming is a farm use, and, if sold or used as part of the existing commercial cattle operation, would be part of a commercial farm operation.” *Harland* at 9.

¹² “Roughly speaking, we believe that a commercial farming operation is one that is sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property.” *Richards* at 14.

I. Oral testimony related to “scale and intensity” and help “required” provided at the November 15, 2022 hearing

In addition to the photographic evidence and estimates of time spent working on specific farm tasks that were supplied in Exhibits A and B¹³ by Applicant’s attorney, the following is a summary of oral evidence provided to the Commission at the November 15, 2022 hearing related to the operation’s “scale and intensity” and “assistance needed:”

1. that, of the 64-acre site, the home site consists of approximately 5 acres, the orchard is approximately 2 acres, and the horse barn and pastures (shared with cattle) are approximately 4 to 5 acres. The remainder of the property, more than 50 acres, is predominantly dedicated to the cattle operation;
2. the cows are Dexter breed that are easier to manage than other breeds as they are lighter and gentler, they produce A2 milk, they are bred for meat, and the cattle on the farm are registered and individually identified;
3. the advanced ages of the Applicant and Operator (in their 70s) and that their need for farming assistance has escalated over the years since they purchased the property;
4. the Applicant and Operator have been farming the property for more than seven (7) years, improving the prior existing farming practice that included more than twenty (20) head of cattle in the sale;
5. the Applicant and Operator have made over a million-dollar investment in the property,
6. neither the Applicant nor the Operator has employment outside the farm;
7. the farming activities that the Applicant and Operator perform *themselves* include fixing fencing, baling and moving hay, managing invasive species by hand, birthing the cows and managing the bull for breeding;
8. the Applicant’s daughter and son-in-law currently work on the farm when they are needed and available;
9. the daughter does not have other paid employment;
10. the Operator hires help or asks for relative assistance particularly for tasks that require heaving lifting;
11. the neighbor gave testimony that the Applicant and Operator are seen farming the property all the time,
12. and, finally, the Applicant and Operator intend this farm to be their legacy to pass onto their relatives.

In addition to the above oral testimony by the proponents of the family farm help dwelling application, there was also testimony offered, contrary to the opinion of County counsel, that the commercial farming is *not* limited to a look at the “cattle sales and some hay sales.”¹⁴ It appears that part of the issue in reviewing this application is that the farm has other farming practices occurring simultaneously on the property that are not part of the commercial endeavor. The Application and Owner agree that the orchard and horse activities are not commercial endeavors and, currently, fall into the category of a “hobby farm” and farming for “pleasure.” However, any

¹³ September 14, 2022 *Letter in Support of Appeal of Staff Denial*, submitted by Micheal Reeder

¹⁴ Willaims/Nichols Memo at 3.

equipment, buildings, and activities related to hay production used to feed and care for cattle are also to be considered as part of the commercial portion of the farming operation.¹⁵

II. Relative's help is "required"

The staff conclude that the relatives' help is not "absolutely needed" for management of the commercial farming operation and, therefore, it is not necessary for the relatives to live on the property. There is no requirement in the state statute, state rule, or the BCC to take into account the amount of help, type of help, or even whether that help must be year-round. Although there has been some back and forth about how to define the term "required," we would like to clarify that LUBA has supported the idea that "required" is not nearly as stringent as staff have stated. Prior cases have told us that "required" is met when circumstances, such as age or illness, that would result in the operator being unable to perform the tasks required by the farming operator, meets the criteria. LUBA has also found that an inquiry into whether the help needed would fully occupy the work hours of either the farmer or the relative or that there be a particular break down of farm duties between the owner and the relative. Finally, even if assistance of the farm operator's relatives is "nominal" it still meets the criteria.

Here, as stated in oral and written testimony, the Applicant and Operator are in their 70s, and their time is devoted to the farm operation. The farmers, from time to time, rely on the help of their daughter Claire and her husband, and sometimes they have to hire help to perform tasks such as building fences when Claire is not available. Although it is unclear how Staff came to the conclusion that only "one person and sometimes a second person" is needed to work the commercial farming operation portion of the farm, the question here is much simpler: is the assistance needed by the farm operator. The answer to this question is affirmative.

III. The farm is a "commercial agricultural operation"

If the County attempts to define the the term "commercial agricultural operation," it is the County's obligation to articulate the thresholds that separate a "commercial" from a non-commercial farming operation. The Richards case tells us that the County has some discretion in this determination, but that this determination constitutes a mixed question of fact and law.¹⁶ However, because the County has not articulated any thresholds, and because "commercial farming operation" is a state term that is undefined, the County is afforded no deference in defining this term and this criterion is inapplicable.

However, the facts presented from oral and written testimony about activities and time spent on the farming operation, by both the Applicant and the Operator, as well as the daughter and son-

¹⁵ Harland at 9.

¹⁶ Richards v. Jefferson County, 79 Or 171 (2019)

in-law, are evidence that these farmers are knowledgeable about their farming practices, and they participate in their farming activities, and that they are devoted to farming. Even Staff acknowledge that, “they [the farmers] spend considerable time on these activities.”

Although no thresholds are identified by the County, staff found that the criteria were not met based on:

1. Time spent in running the commercial portion of the agricultural operations is a small portion of the overall agricultural activities occurring on the property that the majority of the farm operator’s time is not spent in the cattle breeding operation. Staff Report at 6.
2. the cattle breeding operation does not contribute in a substantial way to the support of the family and so the relatives must support themselves by other means, with the majority of their time in that pursuit. Id.
3. operation does not contribute substantially to the area’s existing agricultural economy nor help maintain agricultural processors and established farm markets. Id. at 6-7.
4. The size of the property, which is below the State’s established minimum acreage requirements, limits the amount of commercial agriculture that can be conducted. Id at 7.
5. It appears unlikely that the size of the herd could be increased in any great capacity. Id.
6. Income from fruit and vegetables and hay could be generated in the future but it is questionable that it would increase income or the scale of the commercial farming operation to a level significant enough for approval of an accessory dwelling. Id.
7. whether the operations contribute to the area’s existing agricultural economy or will help maintain agricultural processors and established farm markets. Id.
8. The applicant indicates the work requires approximately 2.3 full time people to work the entire farm, which includes Ms. Crosby and Ms. Jordan working full time, and a part time person for approximately 75 hours a month. Ms. Crosby’s review of the activities, however, indicates that only one person, and sometimes a second individual, is necessary to provide management of the income producing portion of the farm use.¹⁷ Nov 9, 2022 Williams/Nichols Memo at 3.

¹⁷ “The applicant indicates the work requires approximately 2.3 full time people to work the entire farm, which includes Ms. Crosby and Ms. Jordan working full time, and a part time person for approximately 75 hours a month. Ms. Crosby’s review of the activities, however, indicates that only one person, and sometimes a second individual, is necessary to provide management of the income producing portion of the farm use. The cattle breeding operation does not require a sufficient scale or intensity of effort to require a relative to live on the farm to provide help.”

Many of these reasons to deny are not supported by evidence, and many of these reasons to deny are not applicable to the inquiry. Instead, a review of the facts and law clearly show that this farm rises above a “hobby farm” and, as a reasonable farmer would devote the majority of his or her working hours to operating this farm, it can be considered a “commercial farming operation.”

Conclusion

If in fact the County determines that the criteria are “clear and objective” and can be applied, the analysis should be limited to: 1. does the farm operator need assistance and 2. would a reasonable farmer devote the majority of his or her working hours to operating this farm.

Written and oral testimony clearly support the conclusion that the farmers need assistance as there is more work than can be done by the Operator, the farmers are advancing in age and, therefore, there is need for more assistance. Secondly, there is adequate evidence in the record provided by the Applicant and Operator, as well as others who have offered testimony in favor of the Application, that these farmers are farming cattle and hay for the purpose of making a profit, the farm currently produces income, the farmers do not have other employment, and the farmers are out farming the property all the time. We believe that a reasonable person would listen to this testimony about work being performed by the farmers of birthing cows, building fences, and registering cattle and easily conclude that this farm is not a “hobby farm,” that the farmers are devoting a majority of their time to the commercial portion of the farm, and that they do require assistance.

We respectfully request that the Staff decision to deny the application is reversed and urge you to vote to approve the family farm help dwelling application, LU-22-023.

Respectfully,



Andree Phelps
Attorney for Applicant and Owner with Micheal Reeder

**Submittal from Applicants' Agent
after the record closed.**

**This was not given to the Planning Commission
because it was submitted after the time period
allowed for applicant rebuttal to additional
public comment**



December 6, 2022

Via email

Inga.williams@co.benton.or.us

Inga Williams, Planner
Benton County Community Development
4500 SW Research Way
Corvallis, OR 97333

**Re. Letter Urging Inclusion of Prior Family Farm Help Dwelling Applications at Dec. 6 Hearing
Cynthia Crosby & Connie Jordan - Family Farm Help Dwelling Application LU-22-023**

Ms. Williams:

Thank you for sending the documents compiled in response to the public records request regarding family farm-help dwelling applications submitted to Benton County over the past five years. Unfortunately, as these documents were received after the record was closed, these documents are not available to the Commissioner's for their review at the December 6 hearing. After reviewing these documents, it appears that your discussions with prior applicants, as well as the findings from prior approved farm help dwelling applications, are aligned with our position: that meeting one of the three "safe harbors" is not required to find a farm to be a "commercial farming operation," that the County distinguishes what rises above a "hobby or recreational farm" versus a commercial farm, that the farm income *does not need to be large* but should be more than the amount to qualify for a farm deferral, and that "requires assistance" is not defined as "absolutely necessary" or "essential."¹ You presented the County's analogous position to the applicant for a prior family farm help dwelling, LU-22-021, in an email correspondence on April 22, 2022:

Based on case law, the subjective [income] amount is:

- more than merely demonstrating income necessary for farm deferral
- less than income standard for primary dwelling (\$80,000)

¹ In LU-21-065, the definition of "required" was found by the County to be "need for a particular purpose." This is in alignment with the similarly less restrictive definition provided in the September 14, 2022 letter by Mr. Reeder from *Webster's Third New International Dictionary*: "to call for as suitable or appropriate in a particular case."

- set in a way to distinguish between a “hobby or recreational farm” and a “commercial farm.”

See LUBA case Harland v. Polk Co., 2003. While not definitive, it does lay out some guidelines; namely that the level of income to maintain farm deferral is probably not sufficient, and that a situation where all of the applicant’s income is derived from the farm (even if that total income is not large) probably is sufficient. (Also see March 29, 2019 email re. LU-19-010 application.)²

Unfortunately, the above analysis is not the analysis that has been brought forward to the Commissioners for this Application; the analysis for LU-22-023 has been limited to the farm use being required to meet one of the three Harland “safe harbors” in order to be considered a “commercial farming operation,” and “requires assistance” is being defined as “necessary.” Because of this incongruity, I urge you to share with the Commissioners at the December 6 hearing the analysis as you have represented it to prior family farm help dwelling applicants and that you share the documents resulting from our public records request, in particular, your email to Paul Spies on April 22, 2022 and the records relating to the two approved family farm help dwellings (LU-19-027 and LU-21-065).

The email you sent to Paul Spies earlier this year is quite relevant to this Application, especially as it lays out your discussions with DLCD regarding analyzing farming practices based on investment that,

... can potentially be demonstrated prior to generating a commercial level of income if the farm use in question requires multiple years of farming activity and significant investment prior to harvest and sales. Examples are fruit or nut trees, and livestock. A property owner who has made significant investment into establishing a crop or livestock farm operation that would have the potential to produce gross income at a commercial scale could be used to demonstrate an ‘existing commercial farm operation,’ when sale of crop or livestock is projected into the future.

As you know, the Applicant and Farm Operator have made a significant investment in their farm, over \$1 million; they are investing in fruit trees, irrigation, fencing, buildings, hay, and livestock – all farm uses that take a significant investment of money and time prior to regular harvest and sales. However, this investment was not considered a factor for the Crosby/Jordon farm and, instead, the Applicant was told in the hearing that consideration of the potential to produce future income from

² “You will need to demonstrate that your income is more than enough to merely qualify for a farm deferral but can be less than the income standard for a primary dwelling.”

these investments and their farm uses was not allowable in determining if this farm is a commercial farming operation.

The two approved family farm help dwelling applications, LU-19-027 and LU-21-065, are likewise informative and are aligned with our position.

Application LU-19-027 was approved for a 47-acre farm planted with hazelnut trees; the Farm Operator had physical limitations, and this application was approved as an “existing commercial farming operation” **without the applicant showing any income.** As laid out in your letter quoted above for a different application, the County looked to potential income from the hazelnut crop as hazelnuts require substantial investment before harvest and sales can be realized. The County found that the farm was distinguishable from a ‘hobby’ or ‘recreational’ farm and that, although the farm had not generated any income, the future income would be the operator’s sole source of income, the farm, therefore, met the threshold of a “commercial farming operation.”³ Benton County also found that the farm met the “requires assistance” element because the Operator had a physical limitation and that the majority of duties on a hazelnut farm requires the work more than two people.⁴ The “smaller” size of this farm, the limited farm income while taking into account potential income based on investment and time of the fruit and cattle operations, and taking into account evidence that the farming duties require more help that the farmer can perform, are all aligned with our position and are contrary to the staff position held in LU-22-023.

Application LU-21-065 was approved for a 118-acre property planted in grass seed, where the Farm Operator was aging, and the Operator only *verbally* indicated that his son is required to help. Here, the definition of “required” was found by the County to be “need for a particular purpose.” A definition much less restrictive than the current case, where required is defined as “absolutely necessary” or “essential.” The County also analyzed the farming practice outside the three Harland “safe harbors,” used “scale and intensity” per the *Richards v. Jefferson County* case to analyze whether the farm was a “commercial farming operation.”⁵ This definition of “required,” the verbal statement that the relative’s assistance is required due to aging as being adequate evidence to meet the “assistance

³ “As of the writing of this report the farm operation has not generated an income. The applicant has not and cannot – immediately – provide evidence of income from the subject farming operation to base an income comparison provided in *Harland v. Polk County*. . . . [The Operator’s] only source of income will be from the farming operation in the subject property. . . . This is comparable to the factor used in the *Harland* case in distinguishing a commercial farm from a ‘hobby’ or ‘recreational’ farm.” Staff Report Page 6.

⁴ “As described by the Farm Operator . . . limitations posed by a health condition requires she receive assistance with the day-to-day operation of the hazelnut farm.” Staff Report Page 5. Support for approval was letter from a crop consultant that “the majority of duties necessary to operate a profitable hazelnut farm require two or more people. The application has identified the management and labor of the hazelnut farm will be distributed between the Farm Operator and the Relative of the Farm Operator.” Staff Report Page 6.

⁵ “The scale and intensity of this applicants’ farming operation indicates that it can be considered a commercial operation.”

required” element, as well as the use of methods aside from the three “safe harbors” analysis are all aligned with our position and are contrary to the staff position held in LU-22-023.

Again, we urge you to reconcile these contrary positions and share with the Commissioners at the December 6 hearing the analysis as you have represented it to prior family farm help dwelling applicants and the documents resulting from our public records request, in particular, your email to Paul Spies on April 22, 2022 and the records relating to the two approved family farm help dwellings (LU-19-027 and LU-21-065).

Thank you for considering. We look forward to the hearing tonight.

Respectfully,



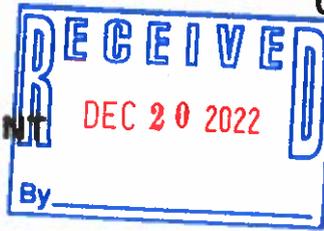
Andree Phelps
Attorney for Applicant and Owner with Micheal Reeder

**Application to Appeal
the Planning
Commission's Decision
Information submitted
by applicant for the
February 21 Board of
County
Commissioners'
Hearing**



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**



Community Development Department

Office: (541) 766-6819
360 SW Avery Avenue
Corvallis, OR 97333

co.benton.or.us/cd

APPLICATION

APPEAL OF A PLANNING COMMISSION DECISION

File # LU-22-023

Fee*: Cost of Original Application \$ 698

**ALL SECTIONS MUST BE COMPLETED. ATTACH ADDITIONAL SHEETS IF NECESSARY.
REVIEW WILL BEGIN ONLY WHEN THE APPLICATION IS DETERMINED TO BE COMPLETE**

Appellant

Name: Cynthia Crosby & Connie Jordan Phone #1: 503-364-8310
Address: 31992 Fern Road Phone #2: _____
City & Zip: Philomath, 97370 Email: cyncrosby@comcast.net

Other individuals to be notified of this application:

<u>Name</u>	<u>Address</u>	<u>City & Zip</u>

The appellant hereby requests the Board of County Commissioners to consider the following decision:

File Number: LU-22-023 Nature of Application: Farm Help Dwelling for a Relative

Decision: Planning Commission Denial of Dwelling Application Decision Date: December 6, 2022

Assessor's Map & Tax Lot Number: T 12 S, R 6 W, Section(s) 24C, Tax Lot(s) 108

REQUIRED: (Failure to cite specific Plan or Code provisions and to demonstrate standing will nullify your appeal. See BCC 51.830. Attach additional sheets as necessary.)

1. State the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated:

Applicable criteria were Benton County Code (BCC) Sections 55.120, 55.405, 99.810, and 99.705. All criteria were met except BCC 55.120(1)(b), which is the basis of this appeal.

2. A statement of the standing to appeal: Appellants have standing to appeal per BCC 51.825(3), as they provided written and oral testimony to the Planning Commission regarding the decision in question while the record was open.

***NOTE:** The required fee is a deposit in the amount of the fee of the original application (or if the original application fees were waived per BCC 51.520, then the fee is \$200). Costs of processing the appeal will be tracked and any portion of the deposit not expended in the appeal will be returned to the appellant together with an accounting of the costs.

Cynthia Crosby

Signature

12/19/2022

Date

[Signature]

Signature

12-19-2022

Date

(For Office Use Only)

Date Application Received: 12/19/2022

Receipt Number: 45454

File Number Assigned: Appeal of PC Decision
for LU-22-023

Planner Assigned: I. Williams

NICHOLS Darren

From: Andree Phelps <andree@andreehelpslaw.com>
Sent: Monday, December 19, 2022 2:28 PM
To: WILLIAMS Inga; NICHOLS Darren
Cc: Mike Reeder; Cynthia Crosby; Connie Jordan
Subject: LU-22-023: Notice of Appeal of the PC Decisions
Attachments: LU-22-023_AppealNotice_12-19-22.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Williams and Mr. Nichols:

Please accept the following attachment as the Notice of Appeal of the Planning Commission to deny the Family Farm Help Dwelling, File No. LU-022-023. Ms. Crosby and Ms. Jordan plan on paying the filing fee by the end of business on the 20th.

Please advise on next steps and timeline in the appeal process.

Thank you and have a good holiday.

Andrée Phelps
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Eugene, OR 97401
Phone: 541-221-1431
Email: andree@andreehelpslaw.com

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Law Office of Mike Reeder
Oregon Land Use Law

December 19, 2022

Via Email

inga.williams@co.benton.or.us

darren.nichols@Co.Benton.OR.US

Benton County Board of Commissioners
c/o Inga Williams, Associate Planner
4500 Research Way
Corvallis, Oregon 97333

Re: **Notice of Appeal of Planning Commission Decision
Cynthia Crosby & Connie Jordan – Relative Farm Help Dwelling
Benton County File No.: LU-22-023**

Dear Benton County Board of Commissioners,

Along with attorney Andree Phelps, I represent Cynthia Crosby (the “Farm Operator”) in the above-referenced application for a Relative Farm Help Dwelling on the property at 31992 Fern Road located in Philomath, Oregon (the “Application”). We also represent Connie Jordan, the “Farm Owner” of the Subject Property. For simplicity, the Farm Operator and the Farm Owner are referred to in this Notice of Appeal written narrative together as the “Applicant.”

Please accept this Notice of Appeal written narrative and its attachments as the Applicant’s Notice of Appeal (“Notice of Appeal” or simply “appeal”) of the Benton County Planning Commission’s December 6, 2022 decision to deny the Relative Farm Help Dwelling application (the “PC Decision”). This Notice of Appeal meets the requirements for an appeal to the Benton County Board of Commissioners (the “Board”) pursuant to Benton County Code (“BCC”) Chapter 51.

The County’s Notice of PC Decision identified December 20, 2022 at 5:00 pm as the final appeal date deadline. This appeal of the PC Decision is being submitted to the Board before 5:00 pm, December 20, 2022. This appeal is therefore timely filed. A copy of the PC Decision to be reviewed is attached.

Notice of Appeal Requirements

51.830 Filing an Appeal. The appeal requirements of this section are jurisdictional. Failure to fully comply with the appeal requirements of this section is a jurisdictional defect. An

appeal shall be filed with the Planning Official no later than 5:00 p.m. on the final day of the appeal period. The appeal must be filed in writing on the form provided by the Planning Official, and shall include:

The County's blank appeal form provided to the Applicant by Inga Williams, Associate Planner, has been completed and is attached to this Notice of Appeal written narrative.

(1) A statement of the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated;

Applicable criteria for the Relative Farm Help Dwelling Application are found at BCC Sections 55.120, 55.405, 99.810 and 99.705. All criteria were found to be met by the PC except for BCC 55.1209(1)(b).

The two relevant BCC standards at issue in this appeal are: (1) that the relative's "assistance is required" and, (2) that the farm is a "commercial farming operation."

The Applicant appeals the PC Decision findings and conclusions that the Application does not meet BCC 55.1209(1)(b) and its ultimate decision to deny the Application. Below is a statement of the reasons for the appeal which Ms. Crosby and Ms. Jordan rely on for this appeal:

1. ORS 197.307(4) Requires the County to Apply Only Clear & Objective Standards.

The state statute governing approval for housing, ORS 197.307(4), requires that only clear and objective standards may be imposed for applications for housing. The two standards that are the basis of denial of the Application for housing development, "assistance is required" and "commercial farming operation," are not defined in state or county law and are not clear and objective, and therefore cannot be applied to this Application.

Put succinctly, the Oregon Legislative Assembly has determined that having clear and objective standards for housing is a more important policy consideration than applying subjective and/or ambiguous standards such as the undefined terms "assistance is required" and "commercial farming operation." Pursuant to ORS 197.307(4), these two ambiguous and subjective standards may not be applied to this Application, and, as all other criteria have been met, the Application must therefore be approved. All other arguments presented by County staff and County Counsel must give way to the commands of ORS 197.307(4). The majority of the Planning Commission agreed with staff and County Counsel's arguments but ignored the commands of ORS 197.307(4). This was error and therefore the PC Decision to deny the Application must be reversed by the Board.

The PC Decision improperly applied subjective standards to undefined terms and also did not identify what the County's thresholds are. The County has yet to legislatively adopt clear and objective standards. The County cannot, through a quasi-judicial land use permit application process, impose purported "clear and objective" standards through interpretation. For example, the fact that the relative lives 15 minutes away from the farm leads to the staff conclusion that this circumstance runs against the need for live-in help on the property. This is highly subjective. How far away must the relative live for this to be factored as a reason

that the relative can live on the property? The subjectivity of these standards is even more apparent after reviewing prior relative farm help dwelling applications. The attached files for the two prior approved applications and communications with the other two applicants over the past five years illustrate how the County has altered their “thresholds” for meeting these two standards. This is discussed in detail in Part III below.

Because the County is implementing state law here for terms that are undefined, the Board cannot interpret the law with subjective standards. The “assistance is required” and “commercial farming operation” standards are not clear and objective **and are therefore not applicable to this Application.**

II. The Application Meets the Subjective Definitions of “Assistance is Required” and “Commercial Farming Operation.”

Although it is not necessary for approval for the reasons explained in Part I above, out of an abundance of caution, the Applicant has shown by a preponderance of the evidence that she meets the code, rule and statutory standards for a Relative Farm Help Dwelling.

Below is the summary of the Applicant’s arguments for your consideration. All of these summarized arguments are discussed in greater detail in the Applicant’s written and oral testimony already found in the record on this matter.

1. Relative Farm Help Dwellings promote the agricultural use of farmland and was the intent behind Oregon Revised Statute (ORS) 215.283 (formerly ORS 215.213(1)(e)).¹
2. The Applicant has provided un rebutted evidence of their devotion and time commitments to their commercial farming operation and their need for help in farming from the Applicant’s daughter as they age and their farm improves in efficiency and productivity. These are the exact circumstances envisioned when the Relative Farm Help Dwelling legislation was implemented.
3. As “commercial farming operation” is undefined in state law and county code, LUBA and the courts have identified three “safe harbors” for counties to rely on in making this determination. They have clarified that these safe harbors offer *more rigorous rule standards* than the question at hand, meaning that that if a farming operation meets the standards of one of these safe harbors, then a county can safely conclude that the farm is a “commercial farming operation.”² However, the court goes on to clearly state that,

¹ See *Hopper v. Clackamas County*, 87 Or. App. 167 (1987) (“there is an overriding statutory and regulatory policy to prevent agricultural land from being diverted to non-agricultural use... However, they [petitioners] do not persuade us that that policy requires that the statute be construed as precluding the construction of this proposed dwelling; *the statute’s clear import is that the construction of such dwellings, under circumstances of the precise kind present here, is related to and promotes the agricultural use of farm land.*”) (Emphasis mine)

² *Richards v. Clackamas County*, 79 Or LUBA 171 (2019), f 4 states as follows:

in the case that a farm does not meet one of these safe harbors, then, “the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a ‘commercial farming operation.’” *Id.*

The courts have also identified what counties may consider when articulating the thresholds to apply to determine when a farm is commercial vs non-commercial: (1) the farm rises above being a hobby or recreational farm³ and (2) the scale and intensity is such that a reasonable farmer would devote the majority of his or her working hours to operating the farm.⁴

“We here describe the two approaches discussed in *Richards I* and *Harland* as ‘safe harbors,’ because they are based *on specific and facially more rigorous rule standards that apply to somewhat analogous determinations* and uses governed by OAR chapter 660, division 033. The two approaches are based on (1) the OAR 660-033-0020 standards for determining what minimum parcel size is consistent with continuing the ‘commercial agricultural enterprise’ within a local area, and (2) the OAR 660-033-0135 standards for approving a dwelling in conjunction with farm use. The rationale is that if a farm operation meets or exceeds the local thresholds for a ‘commercial agricultural enterprise,’ or the farm operation is productive enough to qualify for a primary farm dwelling, *then a county could safely conclude, without more analysis*, that the farm operation is also a ‘commercial farming operation’ for purposes of approving a ‘relative farm help dwelling’ under OAR 660-033-0130(9).

To those two identified ‘safe harbors,’ we can add a third. OAR 660-033-0130(24)(b) sets out standards for when a farm operation with a primary farm dwelling qualifies for an accessory farm dwelling, occupied by a non-relative. Because a relative farm help dwelling is similar in function to an ‘accessory farm dwelling’ allowed under OAR 660-033-0130(24), if the farm operation supporting the primary farm dwelling is sufficient to qualify the property for an accessory farm under the standards at OAR 660-033-0130(24)(b), we think a county could safely conclude, without more, that the farm operation qualifies as a ‘commercial farming operation’ for purposes of OAR 660-033-0130(9). *Of course, the reverse is not true: if the farming operation supporting a proposed relative farm help dwelling did not meet or exceed the relevant standards under any of these three ‘safe harbors,’ it would not necessarily mean that the county must conclude that the farming operation at issue is not a ‘commercial farming operation’ for purposes of OAR 660-033-0130(9). It means only that the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a ‘commercial farming operation.’*” (Emphasis mine)

³ *Harland v. Polk County*, 44 Or LUBA 420 (2003) (“Rather, we conclude that LCDC [Land Conservation and Development Commission] intended to allow the county some discretion in distinguishing ‘hobby’ or ‘recreational’ farms from those farms that rise to the level of a commercial farm operation.”)

⁴ *Richards, supra*, states:

“However, as our discussion above indicates, we believe that, as a legal matter, what distinguishes an existing ‘commercial’ farming operation from its noncommercial counterparts is largely a matter of scale and intensity. Roughly speaking, we believe a commercial farming operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property.”

The PC Decision to deny was based on the determination by Staff that the Applicant's farm did not meet any of the three safe harbors and then attempted to look to "scale and intensity."⁵ However, in the November 22 Memo, Staff switched tacks and solely looked to the three safe harbors without providing further analysis, removing any analysis of scale and intensity. Although the County has some discretion⁶ as to what constitutes a commercial vs. non-commercial farm, when the more rigorous safe harbors are not met, the PC decision has failed to articulate what the thresholds are and did not do any additional analysis.

4. The "assistance is required" standard is not nearly as stringent as the PC Decision determined it is, and despite the PC Decision, it is easily met here. Case law for Relative Farm Help Dwellings repeatedly supports the Applicant's assertion.

In *Hopper* the court found:

We do not construe that phrase to mean that the amount of the required assistance is the determinant of whether there may be a relative's dwelling, as long as the 'farm operator' continues to have some significant involvement in the farm operations. Nothing in the statutory language suggests that the permissibility of the accessory dwelling is inversely proportional to the level of assistance the relative provides. *Hopper; supra* at 924.

In a Benton County case, *Kenagy v. Benton County*, 97 Or LUBA 65 (1992), LUBA found:

The unchallenged facts reflected in the appealed decision are that the farm operator requires assistance to perform the tasks necessary to carry out the cattle operation on the nine acre portion of the parcel due to his physical condition. As pointed out in *Hopper*, petitioners' arguments that the proposed assistance of the farm operator's relatives is 'nominal' do not provide a basis for reversal or remand of the challenged decision.

In *Harland*, LUBA found:

However, PCZO 136.040(H) does not require that intervenor establish that the son's full-time assistance is required year-round. The applicants identified varied tasks the son is to perform on the farm and noted that his assistance would be particularly important during times when intervenor cannot be present. As intervenor advances in age, it is

⁵ See Staff Memorandum, November 9, "The cattle breeding operation does not require a sufficient scale or intensity of effort to require a relative to live on the farm to provide help." and County Counsel Memorandum, October 24, 2022 "As part of its analysis of the LCD regulation, staff assessed the scale and intensity of the farm use..."

⁶ However, this discretion is removed by ORS 197.307(4). In absence of discretion, as argued above, the standard must not be applied and the Application must therefore be approved.

reasonable to expect that those absences might become more frequent, and the need for the son to assist in the more strenuous farm tasks would become more pronounced. We conclude that the county's findings are adequate to demonstrate that the son's assistance is 'required' on the farm.....

III. The Denial is Inconsistent with Prior County Findings and Communications on Meeting the Definitions of "Assistance is Required" and "Commercial Farming Operation," Providing Additional Support that the County does not have Established Thresholds and, therefore, these Terms cannot be Applied.

There have been four (4) applications for Relative Farm Help Dwellings submitted to the County in the last five (5) years, LU-19-010, LU-19-027, LU-21-065, and LU-22-021. Two were approved, one was withdrawn, and one was closed. A review of the findings for the two applications that were approved, LU-19-027 and LU-21-065, as well as staff communication with applicants of the other two applications, illustrate that the County application of the terms "assistance is required" and "commercial farming operation" has previously been aligned with the positions argued by the Applicant and as articulated in Part II above. However, the County position on these standards has shifted relating to the analysis of the Crosby Application. The analysis for Crosby Application, LU-22-023, has been limited to the farm use being required to meet one of the three *Harland* "safe harbors" in order to be considered a "commercial farming operation," and "assistance is required" defined as "necessary." Neither staff nor the Planning Commission explained the rationale for the change in position.

Application LU-19-027 was approved for a 47-acre farm planted with hazelnut trees; the Farm Operator had physical limitations, and that application was approved as an "existing commercial farming operation" **without the applicant showing any income.** The County looked to potential income from the hazelnut crop as hazelnuts require substantial investment and time before harvest and sales can be realized. The County found that the farm was distinguishable from a "hobby" or "recreational" farm and that, although the farm had not generated any income, the future income would be the operator's sole source of income, the farm, therefore, met the threshold of a "commercial farming operation."⁷ The County also found that the farm met the "assistance is required" standard because the operator had a physical limitation and that the majority of duties on a hazelnut farm requires the work of more than two people.⁸ The "smaller" size of the farm in LU-19-027, the limited farm income

⁷ The staff report for LU-19-027 states in relevant part:

"As of the writing of this report the farm operation has not generated an income. The applicant has not and cannot – immediately – provide evidence of income from the subject farming operation to base an income comparison provided in *Harland v. Polk County*. [The Operator's] only source of income will be from the farming operation in the subject property.... This is comparable to the factor used in the *Harland* case in distinguishing a commercial farm from a 'hobby' or 'recreational' farm." LU-19-027 Staff Report Page 6.

⁸ The staff report states as follows:

while taking into account potential income based on investment of longer term farming uses such as fruit trees and cattle operations, and taking into account evidence that the farming duties require more help that the farmer can perform, are all aligned with the Applicant's position and are contrary to the PD Decision.

Application LU-21-065 was approved for a 118-acre property planted in grass seed, where the farm operator was aging, and the operator only *verbally* indicated that his son's assistance is required. Here, the definition of "required" was found by the County to be "need for a particular purpose." This is in alignment with the similarly less restrictive definition provided in the Applicant's September 14, 2022 letter from *Webster's Third New International Dictionary*, "to call for as suitable or appropriate in a particular case." This definition is much less restrictive than the "threshold" identified for the Crosby Application, where required was defined as "absolutely necessary" or "essential." In LU-21-065, the County also analyzed the farming practice outside the *Harland* "safe harbors," and instead used "scale and intensity" per the *Richards v. Jefferson County* case to analyze whether the farm was a "commercial farming operation."⁹ This definition of "required," the verbal statement that the relative's assistance is required due to aging as being adequate evidence to meet the "assistance is required" standard, as well as the use of methods aside from the three "safe harbors" analysis are all aligned with our position and are contrary to the PD Decision.

Correspondence with the applicants who later withdrew or had their applications closed also illustrate how the County previously interpreted these terms with other applications. Regarding the LU-19-010 application that was withdrawn, staff emailed to the applicant on March 29, 2019:

The easiest way to qualify is by income.... But that level is for a primary dwelling and doesn't necessarily apply to the farm help dwelling. You will need to demonstrate that your income is more than enough to merely qualify for a farm deferral but can be less than the income standard for a primary dwelling.

Regarding the LU-22-021 application that was closed, staff emailed the applicant earlier just this year on April 22, 2022. County staff, Inga Williams, wrote:

"As described by the Farm Operator....limitations posed by a health condition requires she receive assistance with the day-to-day operation of the hazelnut farm." Staff Report Page 5. Support for approval was letter from a crop consultant that "the majority of duties necessary to operate a profitable hazelnut farm require two or more people. The application has identified the management and labor of the hazelnut farm will be distributed between the Farm Operator and the Relative of the Farm Operator." LU-19-027 Staff Report Page 6.

⁹ "The scale and intensity of this applicant's farming operation indicates that it can be considered a commercial operation."

The requirement for a certain amount of income is based on case law.The ways to do so are:

1. **based on income**

- The cleanest way to demonstrate a “commercial farming operation” is by showing farm income.
- The amount of farm income needed is not set by rule or code. Based on case law, this subjective amount is:
 - o more than merely demonstrating income necessary for farm deferral
 - o less than income standard for primary dwelling (\$80,000)
 - o set in a way to distinguish between a ‘hobby or recreational farm’ and a ‘commercial farm.’

See LUBA case Harland v. Polk Co., 2003. While not definitive, it does lay out some guidelines; namely that the level of income to maintain farm deferral is probably not sufficient, and that a situation where all of the applicant’s income is derived from the farm (even if that total income is not large) probably is sufficient.
- Needs to be ‘existing’ income, not speculative or planned

2. **Existing commercial farming operation based on investment**

Per discussion with [Oregon Department of Land and Conservation Development] DLCDD staff, an existing commercial farm operation can potentially be demonstrated prior to generating a commercial level of income if the farm use in question requires multiple years of farming activity and significant investment prior to harvest and sales. Examples are fruit or nut trees, and livestock. A property owner who has made significant investment into establishing a crop or livestock farm operation that would have the potential to produce gross income at a commercial scale could be used to demonstrate an ‘existing commercial farm operation,’ when sale of crop or livestock is projected into the future. An application based on this evidence must analyze:

- Whether the existing farm use and infrastructure (e.g. planted fruit trees, irrigation system, livestock or other farming operations that require long term significant investment to establish prior to yield) have the potential to produce an income at a commercial scale. The farm use must be already established, but income at a commercial level need not have been received.
- Whether the work at this stage requires the assistance of a relative. If the relative’s assistance is really not be needed for several years (e.g. at harvest) then the dwelling application is premature. (highlighting removed)

Staff never offered a similar analysis for this Application. It is unclear whether this Planning Commission knew of the past decisions that: (1) there are two ways to meet income threshold, (2) that the Commission had the discretion to determine if this farm exceeds a “hobby” farm, and (3) the possibility to qualify as a “commercial farming operation” based on investment for certain crops. Aside from oral testimony from Ms. Crosby and Ms. Jordan regarding their extensive farming activities, such as birthing cows and moving hay themselves, registering cattle, and manually moving the bull for mating, that clearly rise above activities conducted on a “hobby” farm, the Applicant included a discussion on the significant investment in their farm - over \$1 million. This investment is related to fruit trees, irrigation, fencing, buildings, hay, and livestock – all farm uses that take a significant investment of money and time prior to regular harvest and sales. However, this investment was not considered a factor for the Applicant farm; instead, the Applicant was told in the hearing by staff that consideration of the potential to produce future income from these investments and their farm uses was not allowable in determining if this farm is a commercial farming operation. This is contrary to previous County decisions and yet staff never so much as hinted at these prior decisions, much less highlight the fact that staff was suggesting to the Planning Commission that staff was advocating a change in interpretation.

The PC Decision is inconsistent with prior County decisions, findings and communications regarding relative farm help dwelling applications on determining when a relative’s assistance is required and when a farm is a commercial farming operation. Prior County interpretations of these terms are in line with the positions the Applicant has taken in Part II. These inconsistencies provide additional evidence that the County, in fact, does not have established thresholds for these two factors and, therefore, these terms cannot be applied pursuant ORS 197.307(4).

(2) A statement of the standing to appeal; and

Pursuant to BCC 51.825(3), a person may appeal a decision of the Benton County Planning Commission to the Board of Commissioners if, while the record was open, the person provided written or oral testimony to the Planning Commission regarding the decision.

Cynthia Crosby, Connie Jordan, and their attorneys, Micheal Reeder and Andree Phelps, provided both written and oral testimony in support of approving the Application to the Planning Commission while the record was open. Through their attorneys, Ms. Crosby and Ms. Jordan provided written testimony on September 14, 2022, November 14, 2022, November 22, 2022, and November 29, 2022. Ms. Crosby and Ms. Jordan, as well as their attorneys, provided oral testimony in person at the Planning Commission appeal hearing held on November 15, 2022.

As Ms. Crosby and Ms. Jordan provided written and oral testimony while the record was open in support of the Application and an appeal of the decision to deny the Application, they have standing to appeal the denial of the Application pursuant to BCC 51.825.

(3) Payment of the filing fee established by order of the Board of Commissioners.

Payment of the filing fee, in the amount of \$698, accompanies this Notice of Appeal.

Conclusion

The Applicant respectfully requests that the PC Decision be reversed, and the Application be approved. The two standards that County staff argues are not met must be clear and objective to be applied, and no evidence has been provided that rebuts the substantial testimony that the Applicant is using the property as a commercial farming operation and that the relative's assistance is required.

Respectfully submitted,

/s/Micheal M. Reeder

Micheal M. Reeder
Attorney for Cynthia Crosby and Connie Jordan

Attachments:

1. *Benton County Appeal Form*
2. *Planning Commission Decision*
3. *Prior Benton County Relative Farm Help Dwelling Findings and Communications*

File #: LU-22-023

Appeal of Planning Commission Decision

Attachment 1: Benton County Appeal Form



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Community Development Department

Office: (541) 766-6819
360 SW Avery Avenue
Corvallis, OR 97333

co.benton.or.us/cd

APPLICATION

APPEAL OF A PLANNING COMMISSION DECISION

File # _____

Fee*: Cost of Original Application \$ 698

*ALL SECTIONS MUST BE COMPLETED. ATTACH ADDITIONAL SHEETS IF NECESSARY.
REVIEW WILL BEGIN ONLY WHEN THE APPLICATION IS DETERMINED TO BE COMPLETE*

Appellant

Name: Cynthia Crosby & Connie Jordan Phone #1: 503-364-8310

Address: 31992 Fern Road Phone #2: _____

City & Zip: Philomath, 97370 Email: cyncrosby@comcast.net

Other individuals to be notified of this application:

<u>Name</u>	<u>Address</u>	<u>City & Zip</u>
_____	_____	_____
_____	_____	_____

The appellant hereby requests the Board of County Commissioners to consider the following decision:

File Number: LU-22-023 Nature of Application: Farm Help Dwelling for a Relative

Decision: Planning Commission Denial of Dwelling Application Decision Date: December 6, 2022

Assessor's Map & Tax Lot Number: T 12 S, R 6 W, Section(s) 24C, Tax Lot(s) 108

REQUIRED: *(Failure to cite specific Plan or Code provisions and to demonstrate standing will nullify your appeal. See BCC 51.830. Attach additional sheets as necessary.)*

1. State the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated:

Applicable criteria were Benton County Code (BCC) Sections 55.120, 55.405, 99.810, and 99.705. All criteria were met except BCC 55.120(1)(b), which is the basis of this appeal.

2. A statement of the standing to appeal: Appellants have standing to appeal per BCC 51.825(3), as they provided written and oral testimony to the Planning Commission regarding the decision in question while the record was open.

*NOTE: The required fee is a deposit in the amount of the fee of the original application (or if the original application fees were waived per BCC 51.520, then the fee is \$200). Costs of processing the appeal will be tracked and any portion of the deposit not expended in the appeal will be returned to the appellant together with an accounting of the costs.

Audri N. Phelps FOR CYNTHIA CROSBY ; CONNIE JOHNSON
Signature

12/19/2022
Date

Signature
(For Office Use Only)

Date

Date Application Received: _____ Receipt Number: _____

File Number Assigned: _____ Planner Assigned: _____

File #: LU-22-023

Appeal of Planning Commission Decision

Attachment 2: Planning Commission Decision



Planning Division

Office: (541) 766-6819

4500 SW Research Way

Corvallis, OR 97333

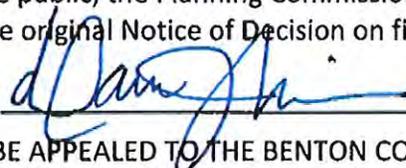
co.benton.or.us/cd

File No. LU-22-023**NOTICE OF PLANNING COMMISSION DECISION**

Planning Commission Public Hearing	This meeting of the Benton County Planning Commission was conducted in-person with the option to attend in-person and via GoTo Meeting. The purpose of the meeting is to hear an appeal of the Planning Official's decision to deny an application for a farm-help dwelling.		
Nature of Application Request	Applicant requests a farm-help dwelling for a relative of the farm operator on an approximately 64-acre property in the exclusive farm use (EFU) zone.		
Applicable Criteria	Benton County Code (BCC) Sections 55.120, 55.405, 99.810 and 99.705.		
Reason for the Appeal	The applicant appeals the Community Development Department's findings and conclusion that the application does not meet BCC 55.120(1)(b), and a staff decision to deny the application.		
Property Location	Address: 31992 Fern Road, Philomath, OR 97370 Map/Tax Lot: T12S R6W Section 24C, Tax Lot 108 (see attached map)		
Property Owner Applicant	Connie L. Jordan Cynthia Crosby		
Zone Designation	Exclusive Farm Use	Staff Contact:	Inga Williams
Comprehensive Plan Designation	Agriculture	File Number:	LU-22-023
CAC Planning Area	Mid Benton (Not-Active)		

DECISION

On December 6, 2022, the Planning Commission held a public hearing to hear an appeal of the Planning Official's decision in this matter. After receiving testimony from the applicant, appellant, and other members of the public, the Planning Commission deliberated and voted to **DENY the APPEAL**, thereby upholding the original Notice of Decision on file number LU-22-023.

PLANNING OFFICIAL:  Date of Notice: December 7, 2022

THIS DECISION MAY BE APPEALED TO THE BENTON COUNTY BOARD OF COMMISSIONERS BY FILING AN APPEAL FORM AND PAYING THE APPEAL FEE BEFORE 5:00 P.M. ON **December 20, 2022**. You may obtain an appeal form, and you may submit the completed form and the appeal fee, at the Community Development Department, 4500 SW Research Way Corvallis. A person receiving this notice by mail may appeal this decision only to the Board of Commissioners and may not appeal directly to the Oregon Land Use Board of Appeals. This decision will not become final until the appeal period has elapsed. The findings of fact relied upon in making this decision are available for review at the Community Development Department. A copy will be provided at a reasonable cost.

File #: LU-22-023

Appeal of Planning Commission Decision

**Attachment 3: Prior Benton County Relative Farm
Help Dwelling Findings and Communications**

LU-19-027 Findings – Approved

LU-21-065 Findings – Approved

LU-22-021 – Email Communications - Closed

LU-19-010 – Email Communications - Withdrawn


COMMUNITY DEVELOPMENT DEPARTMENT

360 SW Avery Avenue
 Corvallis, OR 97333-1139
 (541) 766-6819
 FAX (541) 766-6891

File No. LU-19-027

STAFF REPORT

NATURE OF APPLICATION:	Request for an accessory farm-help dwelling for a relative of the farm operator on an approximately 46-acre property.
APPLICABLE CRITERIA:	Benton County Code Sections 55.120, 55.405, 99.405, 99.705, and 99.800.
PROPERTY LOCATION:	1654 Christmas Tree Lane NW (T10S R4W Section 36, Tax Lot 100 & 205)
PROPERTY OWNER:	Seth & Hannah Fortier
ZONE DESIGNATION:	Exclusive Farm Use (EFU)
COMP. PLAN DESIGNATION:	Agriculture
CAC PLANNING AREA:	North Benton (not active)
STAFF CONTACT:	Rebecca Taylor
FILE NUMBER:	LU-19-027

I. BACKGROUND

On May 2, 2019, an application for an accessory farm-help dwelling for a relative of the farm operator was received at the Community Development Department and deemed complete. This application shall be reviewed administratively pursuant to BCC 53.160 and therefore does not require notice of application to surrounding property owners. A request for comments from other Benton County Departments and Divisions was requested on June 3, 2019.

II. COMMENTS

On July 10, 2019, **Gordon Kurtz, Benton County Public Works Department**, stated in an email that subject property fronts and takes access from Christmas Tree Lane, which is a City of Albany facility, and that Benton County Public Works will have no comments or conditions for the proposed land use.

Staff Response: A request for comments from City of Albany Public Works was requested on July 10, 2019. On July 11, 2019, Ron Irish, Transportation Systems Analyst for the City of Albany, responded stating that, "*Albany does not have any issues with the proposal.*"

On July 10, 2019, **Robert Turkisher, Environmental Health Division**, submitted an email stating the following:

"A septic Authorization Notice will be required to consider reconnection to an existing septic system. A Repair or Alteration permit may be required to upgrade the system."

Staff Response: This information is discussed in subsection 9 of section IV — Findings Applying Code Criteria — and included as **Condition 6** in the section VI — Conditions of Approval.

No other written comments had been received at the time this decision was written.

III. FINDINGS OF FACT

1. The subject property is within the Exclusive Farm Use (EFU) Zone. Surrounding land immediately adjacent to the subject property is also zoned EFU. Land to the southwest of the subject property is located within the city limits of the City of Albany. The southeast half of Horseshoe Lake extends approximately 6 acres onto the westerly corner of the subject property.
2. Benton County Assessor records show that the subject property contains a 2002¹ and 1970² manufactured dwelling, and several outbuildings identified as a 1975 lean-to, a 1975 utility shed and a 1970 flat barn.
3. As shown on Benton County Flood Insurance Rate Map Panel No. 41003C 0111G, the entire subject property is located within the designated 100-year floodplain. This information is further discussed in the Advisory Information section of this staff report.
4. According to the United States Fish and Wildlife Service (USFWS) wetland areas have been designated in and around Horseshoe lake. Notice of this application was sent to the Department of State Lands (DSL) was sent on June 5, 2019. On June 25, 2019, DSL responded by email including the statement that, "[a] state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, or other waters." This information is further discussed in the Advisory Information section of this staff report.

IV. FINDINGS APPLYING CODE CRITERIA

The Planning Official, having reviewed all the evidence and testimony, finds as follows. Written testimony from the applicant is included in *italics*.

- 1) **The dwelling will be located on a lawfully established parcel or lot. [BCC 55.120(1)]**

Findings: The legal parcel configuration for the subject property consists of Tax Lot 100 and Tax Lot 205 (T10S R4W, Section 36) as a single 46.4-acre unit of land. This configuration was authorized as the result of a minor land partition approval granted by Planning File LD-90-17. However, deeds recorded in 1990³, as well as the most recent deed recorded in 2015⁴, incorrectly describe Tax Lot 100 and Tax Lot 205 as separate parcels.

Conclusion: Because partition approval to divide the property into two separate parcels has not been obtained, the recording of the above listed deeds constitute an illegal partitioning of the land by deed. As a condition of approval the applicant will be required to record a corrected deed

¹ Permit No. MH020024 (Manufactured Home Replacement), Benton County Community Development.

² Permit No. D0200014 (Decommission of 1970 Manufactured Home), Benton County Community Development.

³ Document Nos. M-126872-90 & M-126873-90, Benton County Deed Records

⁴ Document No. 2015-533160, Benton County Deed Records

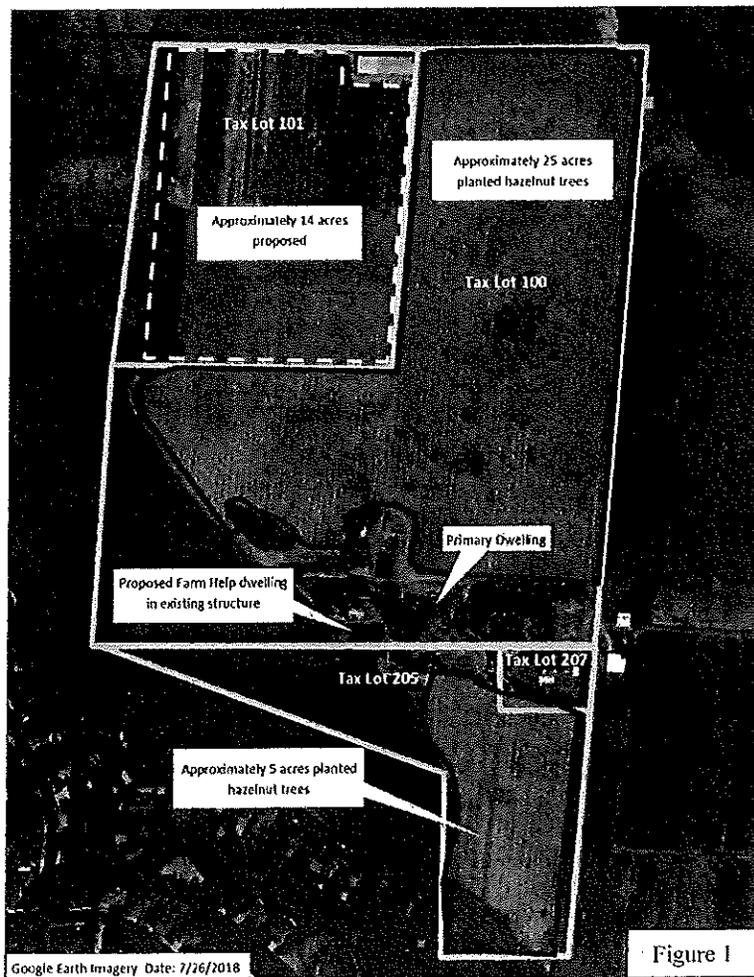
description accurately describing the legal parcel configuration as approved by LD-90-17. This is included as Condition X in the Conditions of Approval section of this staff report. With this condition of approval, this criterion is met.

2) **The dwelling will be located on property used for farm use; [BCC 55.120(1)(a)]**

Applicant's Statement(excerpts): "In 2015 we purchased [the] 47+ acre tract of EFU land and moved out of the city to start Hazelnut Hollow. Multiple years of studying the hazelnut industry equipped me [Hannah K. Fortier] with the knowledge needed to seek out the ideal land. Hazelnuts need a specific soil composition, irrigation volume, topography, and climate to maximize yields and in return, profits. We currently have 30 acres of planted, irrigated hazelnut trees with a proposed 14-acre expansion which would bring the total acreage to 44... Hazelnut Hollow is a 'for profit' farm created with the intention of providing a living for our family." In response to an email requesting clarification about the proposed additional 14-acres, the applicant explained, "Hazelnut Hollow is in the process of trying to buy Allan's [Allen Fechtig's property identified as tax lot 101 see below] 14-acres."

Findings: The applicant is proposing to convert an existing building on Tax Lot 100 (see below) as the farm-help dwelling. As discussed in the Findings Applying Code Criteria subsection 1, Tax Lot 100 and Tax Lot 205 constitute one single parcel. Google Earth aerial imagery dated July 26, 2018 (see right) shows approximately 30 acres of the subject property planted with hazelnuts. The applicant is currently attempting to purchase an additional 14-acres (Tax Lot 101 see right) for hazelnut production. The Benton County Assessor's Office is assessing Tax Lot 100 as Property Class 559, Exclusive Farm Use Deferral – Manufactured Home and Tax Lot 205 as Property Class 550 Exclusive Farm Use Deferral – Bare Land. Based on the applicant's statement above the hazelnut farm on the subject property is a "for profit" operation.

Conclusion: Per BCC 51.020(15) Farm Use means, "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops..." Based on the aerial imagery showing 30



acres of established hazelnut crops, the assessment of the property as qualifying for farm deferral and the applicant's statement describing purpose of the farm to obtain a profit in money by raising, harvesting and selling of crops, staff concludes the dwelling will be located on property used for farm use. This criterion is met.

3) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator; [BCC 55.120(1)(b)]

Applicant's Statement (excerpts): I, Hannah Fortier, am the Farm Operator and the owner of Hazelnut Hollow... At the age of eight, I was diagnosed with a... degenerative disease of the cornea... This disease has progressed to a point where I am now legally blind in both eyes... Blindness, limits my ability to drive thus limiting my ability to work outside of home. Hazelnut Hollow was developed as a solution to provide me with a sustainable, home-based, vocation that will generate enough income to support me and my family... Now entering the 4th year of farming we will harvest our first crop in September. It is clear that I will need help with the day-to-day demands of our hazelnut farm. My parents, Matt and Naomi Strauser, agreed to leave their home of 20 years to come and help work the farm. This opportunity presents a timely, and much needed economic relief. Investing over \$160,000.00 in Hazelnut Hollow we need to save money wherever possible

i. Orchard Tractor	\$35,000
ii. Herbicide & Pesticide Sprayer	\$25,000
iii. Orchard Mower	\$6,000
iv. Nut Harvest Trailer	\$7,000
v. Orchard Marking & Planting	\$30,000
vi. Chemical/Fertilizer/Pruning/Floor Management	\$12,000
vii. Drainage Tile/Land Leveling	\$10,000
vii Automatic Drip Irrigation	\$35,000

Included with the application is a letter dated April 22, 2019, from Lyle Gibbs, Crop Consultant with Nutrien Ag Solutions⁵ along with an attachment entitled Hazelnut Program — 4 Years and Older (see right). In the letter Mr. Gibbs states (excerpts), “I have had the privilege of working with this farm since its inception. As the crop consultant I am responsible to counsel the farm operator on all things pertaining to crop management. I am hired by growers to help maximize yields thus maximizing profits. Hazelnut Hollow has now scaled to a point where it needs additional labor (beyond just the farm operator) to secure maximum crop yields, be as environmentally efficient as possible, and assure the safety of the farm labor... This help will be used for the day-to-day requirements of running this commercial farm. Attached you will find a list of the ongoing demands of Hazelnut Hollow, and you will also note most of the items require 2 or more people.”

Hazelnut Program 4 Years and Older			
Date	Job	Equipment	Area
January	Pruning	2+ people	Every Tree
February	Floor Spray/Weed Control	Sprayer	Whole Orchard
	Paint Trees	2+ people	Every Tree
March	Blight Spray	Airblast	Whole Orchard
April	Granular fertilizer	2 + people	Whole Orchard
	Calcium Nitrate	2 + people	Whole Orchard
	Mowing	Tractor/Mower	Whole Orchard
May	Sucker Control	2+ people	Tree Rows Only
	Insect Control	Airblast	Whole Orchard
	Mowing	Tractor/Mower	Whole Orchard
June	Install Drip Lines	2-4 people	Tree Rows Only
	Sucker Control	2 + people	Tree Rows Only
	Foliar Fertilizer	Airblast	Whole Orchard
	Mowing	Tractor/Mower	Whole Orchard
July	Insect Control	Airblast	Whole Orchard
	Sucker Control	2 + people	Tree Rows Only
	Liquid Fertilizer	Drip System	Tree Rows Only
	Mowing	Tractor/Mower	Whole Orchard
August	Insect Control	Airblast	Whole Orchard
	Sucker Control	2 + people	Tree Rows Only
	Foliar Fertilizer	Airblast	Whole Orchard
	Mowing	Tractor/Mower	Whole Orchard
September	Roll Drip Lines	2-3 people	Tree Rows Only
	Pre - Harvest Mowing	Tractor/Mower	Whole Orchard
	Harvest	2 + people	Whole Orchard
October	Floor Spray/Weed Control	Sprayer	Whole Orchard
November	Winter Fertilizer	2+ people	Whole Orchard
December	Pruning	2+ people	Every Tree

The applicant included a document entitled “Hazelnut Program Explained,” identifying Hannah Fortier as the Farm Operator and Matt Strauser as the Relative of the Farm Operator. In this document the applicant distributes the duties listed in the Hazelnut Program attachment (see above) in to two categories — Primary Labor and Secondary Labor — Primary Labor assigned to the Farm Operator and Secondary Labor assigned to the Relative of the Farm Operator.

Findings: As required by BCC 55.120(1)(b) to be eligible for a Farm Help Dwelling for a Relative an applicant must provide sufficient narrative and supporting documentation to demonstrate that three key conditions are met: a.) The Farm Help Dwelling will be located on the same lot or parcel as the dwelling of the farm operator; b.) The Farm Help Dwelling will be occupied by a relative of the farm operator whose assistance is required; and c.) The farm use on the subject property constitutes an existing commercial farming operation.

a.) **The Farm Help Dwelling will be located on the same lot or parcel as the dwelling:** The most current deed for the subject property is recorded as document number 2015-533160 (Benton County Deed Records). As discussed in subsection I above, the current deed incorrectly describes the property (Tax Lot 100 and Tax Lot 205) as two separate parcels. However, as identified by the applicant the accessory dwelling will be located on Tax Lot 100, the same Tax Lot as the primary residence. With compliance to Condition X this criterion will be met.

b.) **The Farm Help Dwelling will be occupied by a relative of the farm operator whose assistance is required:** As described by the Farm Operator, Hannah Fortier, limitations posed by a health condition requires she receive assistance with the day-to-day operations of the Hazelnut farm. In an email received from Seth Fortier, in response to a request for further clarification regarding the source of income for Seth Fortier (the Farm Operator’s husband) and Hannah Fortier (Farm Operator), Mr. Fortier stated (excerpts), “... Hannah’s

⁵ According to Nutrien Ag Solutions website <https://www.nutrienagsolutions.com/>, “Nutrien Ag Solutions offers a wide range of products and services to clients in the agricultural sector.”

only source of income is from Hazelnut Hollow... I have a career of my own, which is why I will not be operating the farm." Mrs. Fortier's has identified her father, Matt Strauser, as the relative who will both occupy the Farm Help Dwelling and provide the required assistance in the farming operation. Furthermore, according to Lyle Gibbs, Crop Consultant with Nutrien Ag Solutions, and supported by the Hazelnut Program attachment, the majority of duties necessary to operate a profitable hazelnut farm require two or more people. The applicant has identified the management and labor of the hazelnut farm will be distributed between the Farm Operator and the Relative of the Farm Operator.

c.) The farm use on the subject property constitutes an existing commercial farming operation.

Commercial Farming Operation

As concluded in section 2 above, the subject property is used for *farm use* as conditioned by BCC 55.120(1)(a), however BCC 55.120 does not explain what constitutes an *existing commercial farming operation* as condition by BCC 55.120(1)(b). This code section mirrors Oregon Administrative Rule (OAR) 660-033-0130(9), which also does not define the term *commercial farming operation*.

In Land Use Board of Appeals (LUBA) case Harland v. Polk County, 2003, a distinction is made between the terms *farm use* and *commercial farming operation*, "*the relatively minor level of agricultural activity that might qualify a property for preferential agricultural assessment is not necessarily sufficient to qualify as a commercial farm operation within the meaning of OAR 660-033-0130(9)*". Further reading explains, "*that LCDC [Oregon Land Conservation and Development Commission] intended to allow the county some discretion in distinguishing 'hobby' or 'recreational' farms from those farms that rise to the level of a commercial farm operation.*" LUBA concluded that in the Harland case the fact that, "*all of the [Farm Operator's] income is derived from the farm,*" serves as adequate findings that a "*farm use is also a 'commercial farm operation,' as that term is used in OAR 660-033-0130(9).*"

As of the writing of this report the farm operation on the subject property has not generated an income. The applicant has not and cannot — immediately — provide evidence of income from the subject farming operation to base an income comparison to the example provided in Harland v. Polk County. As brought out in subsection (b) above, Hannah Fortier's only source of income will be from the farming operation on the subject property while Seth Fortier's income will be obtained from outside of the farming operation. This is comparable to the factor used in the Harland case in distinguishing a *commercial* farm from a "hobby" or "recreational" farm.

The Harland case provides guidance in distinguishing a "hobby" or "recreational" farm from a *commercial farming operation*, however it does not isolate for analysis what constitutes an *existing* farming operation. The absence of an income (a common metric in determining eligibility for Farm Related Dwellings in the EFU zone⁶), together with the absence of a clear definition of what constitutes an *existing commercial farming operation*, necessitates an interpretation of *existing* as used in OAR 660-033-0130(9). Staff can be guided by the examples provided by Harland v. Polk County, 2003, however more importantly staff must acknowledge "*that LCDC intended to allow the county some discretion.*"

Existing:

⁶ BCC 55.109 (\$80,000 Income Test); BCC 55.112 (\$40,000 Income Test)

In an email dated July 3, 2019 from Teagan Moran, Small Farms Education Program Assistant with OSU Extension Service, responding to a request for information on how OSU Extension Service would define an *Existing Commercial Farming Operation*, she states,

(Excerpt) “...here are some of the reasons that our Small Farms program chooses not to hammer out a definition for Small Farms in Oregon. These factors should be considered when defining a commercial small farm operation.

- Oregon has a diversity of small farm operations and so our program does not define a commercial operation by acreage, crop type, or income.
 - You can reference the following article that was recently published in *Growing: What is a Small Farm?*
<https://extension.oregonstate.edu/sites/default/files/documents/9371/mar-apr-growing-final-web-version.pdf>
- There are “existing commercial operations” that do not see any income for many years if they are investing in fruit trees or other crops that require an establishment period.
- A commercial farm cannot be defined by a ‘sole income’ model – as most small farms are part time, supported by off farm income, or choose to integrate off farm income for benefits such as health insurance and retirement.
- We would view a commercial farm as one that has intent to sell, that in lieu of that farm having product ready to sell or income tax history, a business plan or investment in infrastructure can show this intent...”

According to the applicant, approximately \$160,000 has been invested into the establishment of 30 acres of hazelnut trees. The hazelnut farm is entering its 4th year and the applicant anticipates its first crop in September 2019. Figure 1 above shows there are presently 30 acres of *existing* hazelnut trees on the subject property. As seen in the table (see below) excerpted from Oregon Department of Agricultural 2017 Agripedia, the most recent hazelnut production data available (2016), one acre of hazelnuts trees yielded 1.19 tons of hazelnuts at a price of \$2,700/ton. According to this data, 30 acres of hazelnuts would have the potential to generate up to \$81,000.

year	Utilized Production (tons)	yield per acre ¹ (tons)	Price dollars per ton	Value of Utilized Production 1,000 dollars
2008.....	32,000	1.13	1,620	51,840
2009.....	47,000	1.64	1,690	79,430
2010.....	28,000	0.97	2,410	67,480
2011.....	38,500	1.35	2,330	89,705
2012.....	35,500	1.22	1,830	64,965
2013.....	45,000	1.50	2,680	120,600
2014.....	36,000	1.20	3,600	129,600
2015.....	31,000	0.91	2,800	86,800
2016.....	44,000	1.19	2,700	118,800
2017 ²	36,000	(NA)	(NA)	(NA)

(NA) Not available.
¹ Yield is based on utilized production.
² Forecast.

Hazelnuts like fruit trees require, as described by OSU Extension Service, “an *establishment period*” prior to yielding crops for sale. Hazelnut Hollow has demonstrated through the establishment of 30-acres of hazelnut trees, approximately \$160,000 investment in farming infrastructure/machinery and development of a farm business plan,

that the subject farming operation has been established with the intent to sell crops commercially. Using the data above Hazelnut Hollow would have the potential to earn up \$81,000 in gross annual income, which, as a point of comparison, would satisfy the income requirement for Farm-Related Dwellings approved pursuant to BCC 55.109 and 55.112⁷

As brought out by Mr. Gibbs, Crop Consultant, and discussed earlier, the "*establishment period*" and continued management of a commercial hazelnut farming operation requires a minimum of two people.

Conclusion: The accessory farm-help dwelling will be occupied by a relative of the farm operator (Matt Strauser) and will be placed on the same parcel as the dwelling of the farm operator (Hannah Fortier). The assistance of the farm operator's father is required for the continued management of the farm. Hazelnut Hollow constitutes an *existing commercial farming operation*. This criterion is met.

4) **The farm operator shall continue to play the predominant role in the management and farm use of the farm. For purposes of this section, a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing. [BCC 55.120(3)]**

Applicant's Statement(excerpts): *I, Hannah Fortier, am the Farm Operator and the owner of Hazelnut Hollow... Now entering the 4th year of farming we will harvest our first crop in September. It is clear that I will need help with the day-to-day demands of our hazelnut farm.*

Findings: As the Farm Operator and the owner of Hazelnut Hollow, Hannah Fortier will continue to play the predominant role in the management and farm use of the farm.

Conclusion: This criterion is met.

5) **Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements of the zone, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling ~~the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.~~ Prior conditions of approval for the subject land and dwelling remain in effect. For the purpose of this section, "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).**

Findings: Benton County code requires that no new parcel shall be created from a lot or parcel containing a farm help dwelling for a relative (BCC 55.305(2)(a)). Therefore, except for the foreclosure described in this section, future approval of a land division for the subject property that would separate the accessory farm-help dwelling approved pursuant to BCC 55.120 from the primary dwelling would not be approved unless a secured party foreclosed on the dwelling.

Conclusion: This criterion is met.

6) **BCC 55.405 Siting Standards and Requirements.**

(A) BCC 55.405(1) through (5) Siting Standards.

Findings: The remaining siting standards in BCC 55.405(1) through (5) must be evaluated on the basis of a site-specific development plan, which will occur at the time the applicant submits plans for a building permit. As a condition of approval, the applicant shall site the replacement

⁷ BCC 55.109 (\$80,000 Income Test); BCC 55.112 (\$40,000 Income Test)

dwelling in compliance with the provisions of BCC 55.405(1) through (5), and is included as **Condition 3** in the Conditions of Approval section of this staff report.

Conclusion: With the above condition of approval, this criterion is met.

7) BCC 99.405. General Rule of Frontage.

(1) Every new dwelling and new structure designed for commercial, industrial or public occupancy which is not part of an existing use on a parcel or lot shall be sited on a parcel or lot which has a minimum of twenty-five (25) feet of frontage along an improved public road. [BCC 99.405(1)]

(2) In the alternative to compliance with 99.405(1), a new dwelling may be allowed without the required frontage if: [BCC 99.410(1)]

(a) The parcel or lot has no physical frontage on a public road right-of-way; or

(b) The roadway within the adjoining public road right-of-way has not been constructed to County Secondary Road Standards in BCC 99.515(4); or

(c) The parcel or lot is unable to achieve access to an adjoining right-of-way due to physical constraints such as terrain or water bodies, or due to legal constraints such as restrictions contained within the title records or conditions previously imposed by the County. [BCC 99.410(1)(a) through (c)]

(3) A building permit for a proposed dwelling which qualifies for an exception pursuant to BCC 99.410(1) may be issued if: [BCC 99.410(2)]

(a) The applicant submits evidence of an easement of record which provides for access across private property between the subject property and an improved public roadway; or

(b) If the parcel or lot fronts or obtains access via an unimproved or substandard roadway within a public right-of-way, the applicant causes the roadway to be improved to County Secondary Road Standards in BCC 99.515(4). [BCC 99.410(2)(a) and (b)]

Findings: The subject property has approximately 1,660 feet of frontage along Christmas Tree NW, which is part of the City of Albany's Transportation System. As discussed in the Comments section above, City of Albany has confirmed that they will have no conditions for the proposed development.

Conclusion: This criterion is met.

8) BCC 99.810 Water Well Standards for Building Permit. If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

(1) A well log prepared by a licensed well driller and filed with the State Watermaster indicating the well is a drilled, cased well.

(2) A water quality test prepared by an approved testing laboratory showing that the well meets the Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates. If water quality does not meet the EPA standards, the Benton County Health Department must approve plans for water treatment.

- (3) A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested.

Findings: The applicant request approval for a Farm Help Dwelling for Relative, therefore BCC 99.810 shall apply to the subsequent building permit to authorize the establishment of a dwelling on the property. These requirements are included as **Condition 5**.

Conclusion: With the above conditions, this criterion is met.

- 9) **BCC 99.705. Sewage Disposal.** Each proposed dwelling...shall be served by a sewage disposal system which complies with the requirements of the Oregon Department of Environmental Quality. [BCC 99.705]

Findings: On July 10, 2019, Rob Turkisher, Environmental Health Division, stated in an email that a Septic Authorization Notice will be required for the connection of the Farm Help Dwelling for a Relative to an existing system and that a Repair or Alteration permit may be required to upgrade the system. These requirements are included as **Condition 6**.

Conclusion: With the above conditions, this criterion is met.

V. CONCLUSION

Based on the findings above, as well as information in the file, the Planning Official has determined that the application meets the criteria for an accessory farm-help dwelling for a relative of the farm operator is **approved**, subject to the conditions listed below.

VI. CONDITIONS OF APPROVAL

The Community Development Department will objectively determine compliance with all conditions of approval.

1. This approval shall be valid only for a Farm Help Dwelling for a Relative of the Farm Operator, as allowed by BCC 55.120.
Note: Any future approval of a land division for the subject property that would separate the Farm-Help Dwelling approved pursuant to BCC 55.120 from the primary dwelling shall not be approved unless the Farm-Help Dwelling meets the criteria for a principal farm related dwelling.
2. Pursuant to BCC 55.075(1), this approval shall be *valid for 2 years* from the date of final decision. Pursuant to BCC 55.085, the Planning Official may approve a 1-year extension of this approval if it is requested in writing by the applicant prior to the expiration of the approval period. Failure to apply for required permits within that time, or subsequent failure to maintain active permits until final inspection approval, shall invalidate this approval.
3. The proposed accessory dwelling shall be sited in compliance with the provisions of Benton County Code. The accessory dwelling shall be sited such a way that it complies with the standards set in BCC 55.405, and any other siting standard(s) in effect at the time of construction.
4. If one is not already in place, the landowner shall sign for recording in the County deed records a deed restriction 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. The covenant will be prepared by the Community Development Department. The fee for recording this



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Planning Division

Office: (541) 766-6819

360 SW Avery Ave.
Corvallis, OR 97333
co.benton.or.us/cd

File No. LU-21-065

STAFF REPORT

FARM-HELP DWELLING FOR A RELATIVE

NATURE OF APPLICATION:	Request for a farm-help dwelling for a relative of the farm operator on an approximately 118-acre property.
APPLICABLE CRITERIA:	Benton County Code Sections 55.120, 55.405, 99.405, 99.705, and 99.800.
PROPERTY LOCATION:	9725 Springhill Drive, Albany; property on the northeast corner of Springhill Dr and NW Independence Hwy T10S R4W Section 10, Tax Lot 200
PROPERTY OWNER:	Frank Bricker (Linda C. Bricker is also listed as an owner but she passed away in December of 2020)
ZONE DESIGNATION:	Exclusive Farm Use (EFU)
COMP. PLAN DESIGNATION:	Agriculture
CAC PLANNING AREA:	North Benton (not active)
STAFF CONTACT:	Inga Williams

I. BACKGROUND

On August 26, 2021, an application for an accessory farm-help dwelling for a relative of the farm operator was received at the Community Development Department and deemed complete. This application shall be reviewed administratively pursuant to BCC 53.160. It does not require notice of application to surrounding property owners. A request for comments from other Benton County Departments and Divisions was sent on September 2, 2021.

II. COMMENTS

On September 9, 2021, **Gordon Kurtz, Benton County Public Works Department**, stated in an email that Public Works has no comments or conditions regarding road improvements.

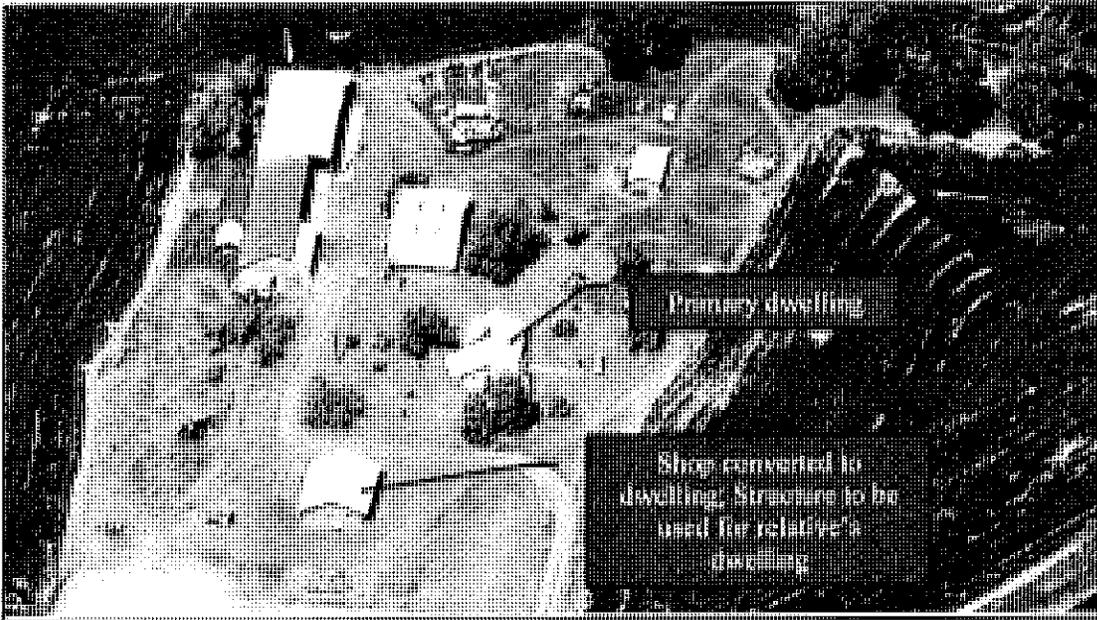
Staff Response: No response needed.

On September 8, 2021, **Ron Dettrich, Building Official**, made the following comment, "Building permits are required for the change of use of the shop to a residence as per R105.1 Oregon Residential Specialty Code. This would include separate permits in addition to the structural permit for alterations to the plumbing, mechanical and electrical systems in the proposed residence."

Staff Response: This is included as a Condition of Approval.

III. FINDINGS OF FACT

1. The subject property is within the Exclusive Farm Use (EFU) Zone. Surrounding land to the north, south, east, and west of the subject property is also zoned EFU. Land to the north of the subject property is located within Polk County.
2. Benton County Assessor records show that the subject property contains an existing dwelling constructed in 1914¹ and a temporary medical hardship dwelling (converted from a shop) placed in 2010², several accessory structures, a septic system, and a well. Access is obtained via the north side of Springhill Drive.



3. A permit for a 1,152 square foot shop/office was submitted in 2008. A covenant was signed by the property owner (a relative of Mr. Bricker) in November of 2008 stating that the accessory building would not be used as a dwelling unit. When submitting this application, the applicant verbally indicated that this shop was renovated into a dwelling unit and used for the temporary medical hardship cited above in #2. However, no building permits to renovate the structure into a dwelling have been found. In addition, the temporary medical hardship approval expired due to inactivity. In order to be used as a dwelling for a relative, new permits and inspections will need to be completed per the requirements of the Building Official.
4. In 2016, a property line adjustment³ was approved that transferred 58.98 acres from the adjacent east property to the subject property, resulting in the current 118.26 acres. This

¹ Benton County Assessor's Records

² The medical hardship approval, LU-11-017, expired on May 10, 2013 because the conditions of approval were never completely met. The applicant states that the medical hardship structure was in use.

³ LU-16-073

property line adjustment also transferred the dwellings and accessory structures from the east property to the subject property.

5. The subject property was determined to be a legal parcel during review of the 2016 property line adjustment, through a deed recorded in 1976⁴. The subject property was part of a larger tract that was bisected by Independence Highway prior to 1989, which is a County owned minor arterial road. County policy follows ORS 92.010 and allows a road right-of-way to legally divide a property if it was bisected by the road and re-described as two distinct parcels in the deed records prior to 1989. The current property configuration was approved through the 2016 property line adjustment.
6. As shown on Benton County Flood Insurance Rate Map Panel No. 41003C0085F⁵, the subject property contains designated 100-year floodplain. All structures visible by aerial review are located outside of the floodplain, this includes the structure to be used as a dwelling by the relative.
7. Soap Creek bends south into northeast corner of the subject property and there are a few small creeks that run through the property. None are close to the dwellings.
8. There are wetlands located on the property but they occur in the northeast corner and follow along the east property line.
9. There are four types of soil on the parcel, all of which are considered prime farmland soils: Awbrig silty clay loam, Waldo silty clay loam, Willamette silt loam, and Woodburn silt loam.

IV. FINDINGS APPLYING CODE CRITERIA

The Planning Official, having reviewed all the evidence and testimony, finds as follows. Written testimony from the applicant is included in *italics*.

CHAPTER 55

BCC 55.120 Farm-Help Dwelling for a Relative of the Farm Operator.

(1) One farm-related dwelling may be permitted on a lawfully established parcel or lot, subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:

(a) The dwelling will be located on property used for farm use;

Findings: The parcel is farmed for grass seed, as evidenced by the receipts submitted with the application. The current grass seed being raised is Kentucky tall fescue. The Benton County Assessor's Office is also assessing this parcel as Property Class SS1, which is Farm, EFU, Improved.

The applicant proposes to use the shop that was converted to a medical hardship dwelling as the dwelling for his son (permits will be needed to ensure that the conversion was done

⁴ M-65307; Benton County Deed Records

⁵ Effective June 2, 2011

according to building code requirements). This shop and the farm use are located on the same parcel.

Conclusion: Per BCC 51.020(15) Farm Use means, *“the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops...”*

Based on the assessment of the property as qualifying for farm deferral and the applicant's receipts for the sale of grass seed, staff concludes the accessory dwelling will be located on property used for farm use. This criterion is met.

- (b) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, step grandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation (not including marijuana) is required by the farm operator;**

Findings: The principal dwelling is occupied by the farm operator, who is the applicant. The applicant states that,

“On our farm I provide the land, the machinery, and all of the operating capital. I decide what crops to plant, when to harvest, it's my responsibility to determine when to sell the crop and at what price. I also do all of the bookkeeping for the farm and the taxes.”

The farm dwelling for a relative will be located within close proximity to and on the same parcel as the primary dwelling. The applicant indicates that the dwelling will be used by his son, whose assistance is required to help operate the farm. One dictionary definition of required⁶ for this purpose is “need for a particular purpose.” The applicant verbally indicated that his son is required more as he is aging and has stated how his son assists him on the farm:

“Steve does 80 to 90% of the repair and maintenance of the farm equipment we trade off combine and truck driving during harvest he drives tractor about half of the time has done all of the weed wiping on the new planting of tall fescue and will do most of the cleaning of our seed next year after we set up a cleaning operation on the farm which he will help to set up and whatever else that comes along.”

The applicant has submitted receipts for the sale of grass seed from the years 2016 (\$76,770), 2018 (\$50,202), 2019 (\$40,406), 2020, and 2021. The year 2020 is the lowest in terms of income, \$24,807. The applicant indicated that the reason for this is that they were transitioning to the Kentucky fescue grass, which increased the farm's income over \$80,000 in 2021. An aerial review on Google Earth shows the parcel being farmed back to at least 1994, which is the earliest aerial available.

⁶ Louks v. Jackson County, 28 Or LUBA 501 (1995) - Where a local code requires that a second farm dwelling be shown “conclusively” to be “necessary for the operation of the commercial farm,” but does not define the term necessary, it is appropriate to use the dictionary definition of the term “necessary.” [Benton County Code utilizes the term “required” in place of necessary, which is the term used in ORS 215.283(d)]

The closest definition of a commercial farming operation is from the Oregon Administrative Rules⁷:

Definitions (2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:

- (A) Contribute in a substantial way to the area's existing agricultural economy; and*
- (B) Help maintain agricultural processors and established farm markets.*

(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

This is a nonspecific definition that has been further developed by a decision in a 2019 Land Use Board of Appeals (LUBA) case, *Richards v. Jefferson County*, 79 Or 171⁸, which outlines various methods that can be used to determine if a farm operation constitutes a commercial farming operation. The scale and intensity of this applicant's farming operation indicates that it can be considered a commercial operation.

Conclusion: The accessory farm-help dwelling will be occupied by a relative of the farm operator (Steve Bricker) and will be placed on the same parcel as the dwelling of the farm operator (Frank Bricker). The farm operator states that Steve Bricker's assistance is

⁷ Hyperlink

https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=h8bGvzDFTI_EDgYSA5xmcB4IMBzfvErEQ8p-GmdU-65FnhowGeT!1684782157?ruleVrsnRsn=176032

⁸ From LUBA's findings in the case: "We here describe the two approaches discussed in *Richards I* and *Harland* as "safe harbors," because they are based on specific and facially more rigorous rule standards that apply to somewhat analogous determinations and uses governed by OAR chapter 660, division 033. The two approaches are based on (1) the OAR 660-033-0020 standards for determining what minimum parcel size is consistent with continuing the "commercial agricultural enterprise" within a local area, and (2) the OAR 660-033-0135 standards for approving a dwelling in conjunction with farm use. The rationale is that if a farm operation meets or exceeds the local thresholds for a "commercial agricultural enterprise," or the farm operation is productive enough to qualify for a primary farm dwelling, then a county could safely conclude, without more analysis, that the farm operation is also a "commercial farming operation" for purposes of approving a "relative farm help dwelling" under OAR 660-033-0130(9). To those two identified "safe harbors," we can add a third. OAR 660-033-0130(24)(b) sets out standards for when a farm operation with a primary farm dwelling qualifies for an accessory farm dwelling, occupied by a nonrelative. Because a relative farm help dwelling is similar in function to an "accessory farm dwelling" allowed under OAR 660-033-0130(24), if the farm operation supporting the primary farm dwelling is sufficient to qualify the property for an accessory farm dwelling under the standards at OAR 660-033-0130(24)(b), we think a county could safely conclude, without more, that the farm operation qualifies as a "commercial farming operation" for purposes of OAR 660-033-0130(9). Of course, the reverse is not true: if the farming operation supporting a proposed relative farm help dwelling did not meet or exceed the relevant standards under any of these three "safe harbors," it would not necessarily mean that the county must conclude that the farming operation at issue is not a "commercial farming operation" for purposes of OAR 660-033-0130(9). It means only that the county must grapple with that issue directly and do the hard work of articulating the thresholds it will apply in determining whether the farm operation at issue qualifies as a "commercial farming operation." ..., we believe that, as a legal matter, what distinguishes an existing "commercial" farming operation from its noncommercial counterparts is largely a matter of scale and intensity. Roughly speaking, we believe a commercial farming operation is one that is of sufficient scale and intensity that would induce and require a reasonable farmer to devote the majority of his or her working hours to operating a farm on the subject property." [emphasis added]

required for the continued management of the farm. The farm constitutes an existing commercial farming operation. This criterion is met.

- (c) The farm operator shall continue to play the predominant role in the management and farm use of the farm. For purposes of this section, a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.**

Findings: As the Farm Operator and the owner of the farm, Frank Bricker will continue to play the predominant role in the management and farm use of the farm, as indicated in the first statement reproduced in (b) above.

Conclusion: This criterion is met.

- (d) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements of the zone, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect. For the purpose of this section, "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).**

Findings: Benton County code requires that no new parcel shall be created from a lot or parcel containing a farm help dwelling for a relative. Therefore, except for the foreclosure described in this section, future approval of a land division for the subject property that would separate the accessory farm-help dwelling approved pursuant to BCC 55.120 from the primary dwelling would not be approved unless a secured party foreclosed on the dwelling.

Conclusion: No conclusion necessary.

- (e) The landowner shall sign a covenant as required by BCC 55.405(6).**

55.405 Siting Standards and Requirements. (6) Approval of any dwelling in the EFU zone shall include a condition of approval requiring the landowner for the dwelling to 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.

Conclusion: With the above requirement as a Condition of Approval, this criterion is met.

- (g) The subject tract is not employed in the growing of a marijuana crop.**

Findings: There is no indication that marijuana is grown on the subject tract. There have been no requests for a Land Use Compatibility Statement for a license to grow marijuana for this parcel.

Conclusion: This criterion is met.

BCC 55.405 Siting Standards and Requirements. All structures allowed in the Exclusive Farm Use Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

BCC 55.405(1) through (5) Siting Standards.

Findings: The remaining siting standards in BCC 55.405(1) through (5) must be evaluated based on a site-specific development plan, which will occur at the time the applicant submits plans for a building permit. The applicant shall site the dwelling in compliance with the provisions of BCC 55.405(1) through (5), and this is included as a Condition of Approval.

Conclusion: With the above as a condition of approval, this criterion is met.

CHAPTER 99

BCC 99.405. General Rule of Frontage.

- (1) Every new dwelling and new structure designed for commercial, industrial or public occupancy which is not part of an existing use on a parcel or lot shall be sited on a parcel or lot which has a minimum of twenty-five (25) feet of frontage along an improved public road.

Findings: The subject property has approximately 950 feet of frontage along Springhill Drive, from which the primary dwelling takes its access. Public Works states that the road approach appears to meet minimum requirements.

Conclusion: This criterion is met.

BCC 99.810 Water Well Standards for Building Permit. If a well is proposed for a dwelling or place of public occupancy, the applicant shall submit the following evidence that the well yields an adequate flow of microbiologically safe water for each dwelling or use:

- (1) A well log prepared by a licensed well driller and filed with the State Watermaster indicating the well is a drilled, cased well.
- (2) A water quality test prepared by an approved testing laboratory showing that the well meets the Environmental Protection Agency (EPA) standards for coliform bacteria and nitrates. If water quality does not meet the EPA standards, the Benton County Health Department must approve plans for water treatment.
- (3) A Minor Pump Test pursuant to BCC 99.845 performed within the past year. However, notwithstanding BCC 99.845(4), wells on other properties need not be tested.

Findings: The applicant requests approval for a Farm Help Dwelling for Relative, therefore BCC 99.810 shall apply to the subsequent building permit to authorize the establishment of a dwelling on the property. These requirements will be included as a Condition of Approval.

Conclusion: With the above requirements included in the conditions of approval, this criterion is met.

BCC 99.705. Sewage Disposal. Each proposed dwelling...shall be served by a sewage disposal system which complies with the requirements of the Oregon Department of Environmental Quality. [BCC 99.705]

Findings: A Septic Authorization Notice will be required for the connection of the Farm Help Dwelling for a Relative to an existing system and a Repair or Alteration permit may be required to upgrade the system. These requirements are included as a Condition of Approval.

Conclusion: With the above requirements included in the conditions of approval, this criterion is met.

V. CONCLUSION

Based on the findings above, as well as information in the file, the Planning Official has determined that the application meets the criteria for an accessory farm-help dwelling for a relative of the farm operator. The application is granted **Preliminary Approval**. Final approval is subject to completion of the conditions listed below.

VI. CONDITIONS OF APPROVAL

The Community Development Department will objectively determine compliance with all conditions of approval.

1. Pursuant to BCC 55.075(1), this preliminary approval shall be valid for 2 years from the date of final decision. Pursuant to BCC 55.085, the Planning Official may approve a 1-year extension of this approval if it is requested in writing by the applicant prior to the expiration of the approval period. Failure to apply for required permits within that time, or subsequent failure to maintain active permits until final inspection approval, shall invalidate this approval.
2. This approval shall be valid only for a Farm-Help Dwelling for a Relative of the Farm Operator, as allowed by BCC 55.120. This dwelling is accessory to a primary dwelling on the same parcel. Based on the applicant's statement, the structure to be used for the dwelling is the 1,152 square foot shop/office constructed in 2008.
3. Neither the shop/office, nor any other structure other than the primary dwelling, shall be lived in until the following conditions are completed. Any indication that any structure other than the primary dwelling is being used as a dwelling prior to these conditions being completed shall void this approval.
 - (a) The applicant shall apply for building permits for the change of use of the shop/office to a residence as per R105.1 Oregon Residential Specialty Code, and complete the process through Final Inspection approval. This includes separate permits, in addition to the structural permit, for alterations to the plumbing, mechanical and electrical systems in the proposed residence.
 - (b) The applicant shall demonstrate that the well serving the new development will meet all applicable standards identified in BCC 99.810. The county shall not issue a building permit prior to the applicant demonstrating that there is sufficient water to serve the dwelling.

- (c) The applicant shall obtain necessary permits from the Benton County Environmental Health Department for septic authorization. The county shall not issue a building permit prior to approval of a septic authorization.
4. The proposed dwelling shall comply with the standards set in BCC 55.405, and any other siting standard(s) in effect at the time of construction. If standards cannot be met, a variance approval shall be required prior to issuance of a building permit.
 5. If one is not already in place, the landowner shall sign for recording in the County deed records a deed restriction 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. The covenant will be prepared by the Community Development Department. The fee for recording this document was included in the application fee for the farm-related dwelling and thus has already been paid by the applicant.

The covenant will read:

The property herein described is situated in the Exclusive Farm Use Zone in Benton County, Oregon. The intent of this zone is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The resource nature of surrounding properties can result in herbicide and pesticide spraying, slash burning, timber cutting, farm operations, crown fires, hunting, use by big-game, bears, and cougar, and other accepted resource management practices. Resource uses are the preferred uses in this zone. Activities by residents may create management difficulties or increased costs for nearby farm or forest operations. Grantee acknowledges the need to avoid activities that negatively impact nearby farm or forest uses.

The grantees, including their heirs, assigns and lessees, by the recording of this declaratory statement, and in return for allowing a dwelling on this property, hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby farm or forest uses. Furthermore, grantee and all successors in interest hereby agree not to pursue 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.

Advisory Information: *Compliance with the following additional requirements will be required prior to issuance of building permits:*

- **Floodplain.** The applicant shall depict the FEMA-designated 100-year floodplain on all construction plans submitted to the County. All development within the 100-year floodplain shall comply with the floodplain development standards identified in Chapter 83 of the Benton County Development Code. At a minimum, compliance with these standards may require submission of one or more elevation certificates for each

proposed structure. Excavation and/or placement of fill in the floodplain is illegal without first obtaining a permit from the Benton County Community Development Department.

- **Wetlands.** The applicant is responsible for identifying any wetlands on the subject property. If wetlands exist on the property, it is the applicant's responsibility to comply with all requirements of the Division of State Lands. This information is further discussed in the Advisory Information section of this staff report.
- **General Development Activities.** All permits required for development activities on the parcel shall be obtained prior to initiating development activity. Such permits may include, but are not necessarily limited to building, electrical, plumbing, septic system, and road approach permits.

Attachments:

- A. Site and Vicinity Maps

From: WILLIAMS Inga <Inga.Williams@Co.Benton.OR.US>
 Subject: RE: Application for Farm Help Dwelling LU-22-021
 Date: April 14, 2022 at 9:35 AM
 To: Paul Spies <spiespaul@gmail.com>



Paul,

The requirement for a certain amount of income is based on case law. #2 below does allow leeway for nut crops but the highlighted area will show that your application based on this is most likely premature.

The ways to do so are:

1. based on income

- The cleanest way to demonstrate a “commercial farming operation” is by showing farm income.
- The amount of farm income needed is not set by rule or code. Based on case law, this subjective amount is:
 - more than merely demonstrating income necessary for farm deferral
 - less than income standard for primary dwelling (\$80,000)
 - set in a way to distinguish between a “hobby or recreational farm” and a “commercial farm.”

See LUBA case Harland v. Polk Co., 2003. While not definitive, it does lay out some guidelines; namely that the level of income to maintain farm deferral is probably not sufficient, and that a situation where all of the applicant’s income is derived from the farm (even if that total income is not large) probably is sufficient.

- Needs to be “existing” income, not speculative or planned

2. Existing commercial farming operation based on investment

Per discussion with DLCD staff, an existing commercial farm operation can potentially be demonstrated prior to generating a commercial level of income if the farm use in question requires multiple years of farming activity and significant investment prior to harvest and sales. Examples are fruit or nut trees, and livestock. A property owner who has made significant investment into establishing a crop or livestock farm operation that would have the potential to produce gross income at a commercial scale could be used to demonstrate an “existing commercial farm operation,” when sale of crop or livestock is projected into the future. An application based on this evidence must analyze:

- Whether the existing farm use and infrastructure (e.g. planted fruit trees, irrigation system, livestock or other farming operations that require long term significant investment to establish prior to yield) have the potential to produce an income at a commercial scale. The farm use must be already established, but income at a commercial level need not have been received.
- Whether the work at this stage requires the assistance of a relative. If the relative’s assistance is really not be needed for several years (e.g., at harvest) then the dwelling application is premature.

Inga

From: Paul Spies <spiespaul@gmail.com>
 Sent: Thursday, April 14, 2022 8:22 AM
 To: WILLIAMS Inga <Inga.Williams@Co.Benton.OR.US>

WILLIAMS Inga

From: WILLIAMS Inga
Sent: Friday, March 29, 2019 1:41 PM
To: 'jill.greenstead@gmail.com'
Subject: RE: Bosmere Farms Dwelling application addendum

You are asking the exact question that we, and the state, have no definitive answer to.

The easiest way to qualify is by income: Because the majority of the soils on the property are identified as high value, the income standard is \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. But that level is for a primary dwelling and doesn't necessarily apply to the farm help dwelling. You will need to demonstrate that your income is more than enough to merely qualify for a farm deferral but can be less than the income standard for a primary dwelling. The state has left a lot of subjectivity in the interpretation of a commercial farm operation to the local jurisdictions for this type of use.

Another key point is that the relative's assistance in the management of the commercial farm operation, once that point is established, **must be required to run the operation.** Since the majority of the income is currently being derived from the marijuana crop, which we can't count, then does the rest of the farm operation rise to a level that, by itself, it requires the farm operator's relatives to live on the property in order to supply help to that farm operation? In your current situation it does not appear to be the case.

Inga

From: Jill James <jill.greenstead@gmail.com>
Sent: Friday, March 29, 2019 12:37 PM
To: WILLIAMS Inga <Inga.Williams@Co.Benton.OR.US>
Subject: Re: Bosmere Farms Dwelling application addendum

Inga, our question now is how much profit, etc. is needed "Once the hemp operation is up and running and making a profit, that new addition may be sufficient to bring your operation up to a level of income and time involvement to justify the dwelling " It would be nice to have a goal in mind so that hopefully we have a good sale this year.

Thanks
 Jill James

On Fri, Mar 29, 2019 at 12:04 PM WILLIAMS Inga <Inga.Williams@co.benton.or.us> wrote:

Jill,

I was able to place the new information you sent in front of the planners and the department director today in our staff meeting. This included the new hemp information. The consensus was that at this time the operation without the marijuana business added in is not sufficient to justify the accessory farm-help dwelling. Once the hemp operation is up and running and making a profit, that new addition may be sufficient to bring your operation up to a level of income and time involvement to justify the dwelling but until it is in production we cannot count it towards this application request.



February 2, 2023

Via email only

Inga.williams@co.benton.or.us

Benton County Board of Commissioners
Inga Williams, Planner
Benton County Community Development
4500 SW Research Way
Corvallis, OR 97333

Re: **Appeal to the Benton County Board of Commissioners | LU-22-023 - Relative Farm Help Dwelling**
Supporting Documents Submitted by Cynthia Crosby & Connie Jordan of Chintimini Ranch

Dear Benton County Board of Commissioners:

Along with attorney Michael Reeder, I represent Cynthia Crosby (the “Farm Operator”) in their application for a Relative Farm Help Dwelling on the Chintimini Ranch located at 31992 Fern Road located in Philomath, Oregon (the “Application”). We also represent Connie Jordan, the “Farm Owner” of the Subject Property. Together, Ms. Crosby and Ms. Jordan are referred to as the “Applicants.”

In addition to the previously submitted documents for the Benton County Planning Commission’s hearing and those documents associated with the Notice of Appeal dated December 19, 2022, please accept the following additional supporting evidence that Chintimini Ranch 1) is a commercial farming operation and that 2) farming assistance is required to conduct farming activities.

Exhibit A: Professional Letters of Support

- From Andrew Altishin, Program Manager, OSU - Oregon Seed Certification
- From Melissa Ferry & Teagan Moran, OSU Extension Service, Small Farms Program

Andree Phelps Law, LLC
Andrée Phelps • Attorney at Law
375 W. 4th Ave, Suite 204 • Eugene, OR 97401
phone: 541.221.1431 • andree@andreephelpslaw.com

Exhibit B: Overview of Farm Use Activities (Note: Although a table listing farm tasks and time allotted to those tasks was presented at the Planning Commission hearing, these attached documents offer more detailed information and remove all tasks related to horse operations. Also note, farm use is not limited to cattle operations, it also includes hay and orchard operations as well as all supporting tasks such as related irrigation.)

- Cattle operation overview of activities by month.
- Yearly cattle and hay operations with approximated dedicated hours per month and per year. (Note: Two jobs have been added to the prior-provided list of farm tasks: hay harvesting (approx. 120 hrs) and selling the excess hay (approx. 150 hrs). These tasks have been added and updated as the Applicants increased their hay yield from 10 tons of hay produced on 20 acres to over 50 tons of hay in 2022.)
- Yearly orchard operation with approximated dedicated hours per month.

Exhibit C: Proof of Soil and Hay Testing

- Results of Hay Testing done in 2022 by Dairy One New York
- Results of Hay Testing by Oregon State University in September of 2022- testing for endophytes (two types of fungus) per suggestion of veterinarian to rule out endophyte toxicity in cattle.
- Results of Soil Testing on two sections of 20 acres used for hay production in May of 2021. Samples submitted to Edge Analytical Laboratory in Corvallis and testing conducted by A&L Western Agricultural Laboratories in Portland.

Exhibit D: Classes and Membership of Farming Programs

- Soil Classes attended by both Applicants in April of 2021. Class taught through the Oregon Pasture Network by Dr. Woody Lane. Six (6) hours of class that included analysis of soil testing results and discussions on improving hay yields.
- Applicants are members of the Oregon Pasture Network (OPN) since Fall of 2022. OPN advocates for small to mi-sized farms to be commercially viable. <https://oregonpasturenetwork.org/new-members-2022/> Membership requires application, site visit, and vetting. A goal of membership is to be listed on website as producer of grass-fed beef on their pastured product guide. (Note: OPN Website is being updated, Chintimini Farms will be added as producer of beef when website upgrade is complete.)
- Applicants are three weeks into an intensive four-month program with Grassfed Marketing (GFM) (www.grassfedmarketing.com) that provides marketing assistance to farms. The Mission Statement of GFM is:

Here at GFM - we specialize in helping local producers scale their current revenue, build the farm of their dreams and leave a lasting legacy for generations with our unique approach to direct-to-consumer marketing. Our strategies

• 3 of 3 •

routinely help our clients to attract higher quality customers that stick and stay and happily pay for a lifetime (without ever having to discount your product or compete with big box grocers). We've helped producers grow from \$0 to \$100K/mo and beyond. And that journey begins right here.

The Applicants goal of participating in this program is to focus on selling beef as well as hay and orchard products. Participation in this program thus far has resulted in a logo, improved social media presence, and the creation of a website.

Exhibit E: Chintimini Ranch Commercial Farm Business Plan

- In particular, please note information provided on pages 13 and 14 which summarize investments and property development to date.

We present the attached evidence in support that the farming activities being conducted on the property raise above those activities conducted on a "hobby farm," and that additional assistance is required to farm the current operations (for instance, see the support letter from Andrew Altishin).

The Applicants respectfully request that the Planning Commission Decision to Deny be reversed, and the Application be approved. The two standards that County staff argue are not met must be clear and objective to be applied, and no evidence has been provided that rebuts the substantial evidence and testimony that the Applicants are using the property as a commercial farming operation and the relative's assistance is required.

Respectfully,



Andree Phelps
Attorney for Applicants, with Michael Reeder

Exhibit A

Professional Letters of Support

January 25, 2023

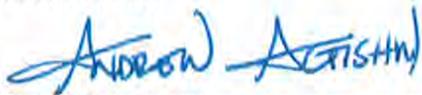
To Whom It May Concern:

My name is Andrew Altishin. I work for the Crop Science Department at Oregon State University. I am the Program Manager for the Oregon Seed Certification Service, managing one of the largest seed certification agencies in the United States. My program employs 21 crop agents through the state of Oregon. I also serve as President of the Board for the Association of Official Seed Certifying Agencies, an international agricultural seed certification agency representing the interests of the other 44 US seed certification agencies and 12 other country agencies throughout the world. I have a BS in Horticulture and an MS in Crop Science. I am also the owner/operator of A & H Family Farms here in Benton County. This is cattle and hay operation. We produce over 150 tons of hay per year, primarily for use by horse owners. We also do some custom hay cutting for a few select farms. Chintimini Ranch, owned and operated by Connie Jordan and Cindy Crosby, is one of these farms. In total, I have over 23 years of farm and agricultural work experience in Oregon.

I have been assisting the owners of Chintimini Ranch for several years in many areas of their operation not limited to but including: the production of their hay operation, field renovation, soil and plant nutrient management, weed control options, farm design and flow, and many other areas of operating a farm based on my extensive background in agriculture. Through this process we have been able to increase their yields by a factor of five. This was on 20% of their land and became a large burden for them to handle, requiring assistance from others. As this farm continues to expand and increase the yields on a much larger portion of their property, they will need additional help to maximize their yields, reduce the impact on the land, ensure that environmentally responsible and sustainable farm practices are followed, and to ensure the safety of their workers. As one of the world's most renown experts in my field, please accept this letter as a professional recommendation that Chintimini Ranch be allowed to bring on permanent, additional help. This help is necessary for the running of the day to day operations of this commercial farm and will enable them to utilize the land for the intended purpose as a farm.

If you have any questions, please feel free to contact me.

Respectfully,



Andrew Altishin
Program Manager
Oregon Seed Certification
Oregon State University
Andrew.altishin@oregonstate.edu
541-760-7167



01/25/2023

To whom it may concern,

This letter is an account of how Chintimini Ranch, Connie Jordan and Cynthia Crosby have worked with the Oregon State University Extension Service's Small Farm Program. They first connected with us in March of 2021 to personalize the management strategies they were introduced to as participants in our Growing Farms: Pasture and Grazing Management online course and learning cohort. This course is based on the premise that as a livestock producer, you are actually a grass and legume farmer, using the forages that you grow as a feed source for your animals. From that perspective, the course guides you through a number of topics and key strategies. As they had completed the course and engaged in the learning cohort, in May of 2021 we conducted a site visit to their farm where we walked their pastures and hayfields. We observed a current cattle operation with appropriate pasture, hayland, and infrastructure. Cattle were on property during the time of the visit. We had discussed opportunities for direct marketing their meat. Since March of 2021 we have consulted on them on the following:

- Fertilizer management to improve yield
- Identified grass species
- Provided information about weed control
- Nutritional value of some plants
- Soil test interpretation including lime and fertilizer applications
- Methods of direct marketing beef in Oregon

If you have any questions about the topics we have discussed with Chintimini Ranch regarding their farming operations, please feel free to contact us.

Sincerely,

Melissa Fery and Teagan Moran

OSU Extension Service, Small Farms Program

Melissa Fery: 541-730-3538

Teagan Moran: 541-713-5011

Melissa.fery@oregonstate.edu

Teagan.moran@oregonstate.edu

Exhibit B

Overview of Farm Use Activities

Chintimini Ranch

General Overview Yearly Calendar of Cattle Operation

Daily	<ul style="list-style-type: none"> - Daily monitor cattle for health and wellness. Feed additional hay when necessary. - Check and clean water tanks; fill with fresh water, fill mineral feeders as needed and feed hay when pastures are not producing. - Rotate pasture grids to maintain health of pasture grids. - Daily check status of electric fencing and repair as needed.
January	<ul style="list-style-type: none"> - Feed extra hay for bedding and break ice on water tanks daily during winter season. - Update cattle inventory for new year and ADCA membership renewal. - Schedule with mobile butcher.
February	<ul style="list-style-type: none"> - Prepare birthing stalls under arena. Clean out old hay, replace with new hay and bedding. - Grease and inspect squeezes. - Move pregnant heifers and cows to pasture by arena and birthing stalls.
March	<ul style="list-style-type: none"> - Calving season: dip cord, SubQ injection of 1mL BO/SE (0-3 days), observe feeding, apply numbered yellow ear tag (left ear) watch for signs of infection, scours, etc. - Decide if going to castrate any little bulls or not. - Monitor new grass growth for rest of herd and rotate pastures for pasture health. - Mag licks added to mineral feeders. - Monitor health of herd and rotate through squeeze to administer Rx for mange as needed.
April	<ul style="list-style-type: none"> - Monitor new calves for growth and watch for any signs of illness, scours, etc. - Feed cows daily grain, oats and milk plus to support lactation. -
May	<ul style="list-style-type: none"> - Annual vaccination of all of herd, except new calves. (Clostridium Vision 8; Cattlemaster Gold 5 and Ocu-guard if needed. Confer with Vet) - Tattoo new calves per ADCA guidelines (left ear); pull tail hair sample if registering. - Apply new fly ear tags to all.
June	<ul style="list-style-type: none"> - Wait 1 month after vaccination before breeding, then put bull back in with breeding heifers and cows, or coordinate with AI specialist. Hopefully conceive in first 21 days; some up to 45 days. Dexters have 9 month gestation period.
July	<ul style="list-style-type: none"> - Move any steers or cows scheduled for the mobile butcher to the upper East pen. - Fit into mobile butcher's schedule.
August	<ul style="list-style-type: none"> - Assess pastures weekly. If dry year, may need to start supplementing hay.
September	<ul style="list-style-type: none"> - 60 - 90 days do pregnancy check on heifers. - Calves: Vet to give Brucellosis of "Bangs" per state law and tattoo (right ear); also 1st vaccine (Clostridium Vision 8 or Vet equivalent).
October	<ul style="list-style-type: none"> - Calves need booster of Clostridium Vision 8. - Wean and move to new pasture. - Remove all fly ear tags.
November	<ul style="list-style-type: none"> - Daily routine of water, fence, mineral and hay. - Assess pastures and rotate to keep cattle as dry as possible and to maintain pasture health.
December	<ul style="list-style-type: none"> - Daily routine of water, fence, mineral and hay. - Assess pastures and rotate to keep cattle as dry as possible.

Updated 1/2023

Chintimini Ranch

Yearly Cattle and Hay Operations

Job	Equipment	Area	Time/month	Approx. time/year
Accounts payable and renewables. Arranging for professional services such as well repair, vet services, mobile butcher services, hay testing, soil testing.	Computer, office supplies, phone	For the 60 acres of cattle and pasture operations	12 hrs.	144 hrs.
Maintaining inventory of livestock supplies	Vaccinations, fly ear tags, calving supplies (obtain BoSE from vet) numbered tags, colostrum, milk plus, feed for lactating cows, minerals and blocks, fly, rodent and pest controls	Arena, fencing room, calving supply room, boarder barn and other AG buildings.	12 hrs.	144 hrs.
Daily feeding and care of livestock	Tractors, quads, hoses, water troughs, feeding bins and troughs, mineral feeders	60 acres of cattle and pasture operations	30 hrs.	360 hrs.
Electric and field fencing maintenance. Daily checks on system where animals are located. Deer will tear off wires and bend rebar. When opening up new grid, wire is rolled up and stretched across previous grid.	T-posts and remover, rebar, insulators, wire, batteries, energizers, multiple types of fence hooks, insulated wires, tools, fence readers, solar powered battery charging stations.	For entire 65 acres. Approx. 18 miles of fence lines.	10 hrs.	120 hrs.
Livestock record keeping. Maintaining animal tracking forms, maintaining American Dexter Cattle Assoc. membership and all protocols around registration, selling, disposition and tracking.	Computer, office supplies, phone. Collecting tail hairs for DNA testing, mailing, and registering.	For the 60 acres of cattle and pasture operations	4 hrs.	48 hrs.
Noxious weed management. Pastures are maintained by limited and targeted spot weed spray, and manual removal of weeds. Rock roads and fence lines are sprayed to maintain investment.	Tank sprayers, back pack sprayers, appropriate chemicals, quads, tractors, dump trailer	For entire 65 acres. Approx. 18 miles of fence lines.	30 hrs.	360 hrs.
Noxious Hare Barley Foxtail weed management. Brought in from purchased hay. Spraying, mowing with sucking mower for seed heads taken to landfill.	Trucks, 14' dump trailer, mowers with attachments, spray tanks, quads,	About half acre total area infected but in spotted locations throughout property.	30 hrs.	360
Fly management involves rotating cattle ear tags every year, spot spraying heavy use areas with fly pesticides, mineral licks with end use pesticide for stable flies, Use fly predators on large biomass horse manure and heavy use cattle areas.	Appropriate ear tags and application tools, cattle squeeze, holding pen, pour on Rx for cattle as needed, fly predators through Spaulding, spray applicators, special feed blocks.	For the 60 acres of cattle and pasture operations	10 hrs	120 hrs.

Job	Equipment	Area	Time/month	Approx. time/ year
Gopher and rodent management. Hired gopher trapper to set and monitor traps on property. Comes to property about five days a week. Set and check rodent traps weekly	Professional gopher trapper, Rodent traps in all AG building where feed is located.	For the entire 65 acres.	10 hrs.	120 hrs.
Biomass waste management. Cattle feeding stations are rotated throughout the seasons. Heavy use areas are scrapped with the tractor and piles are composted. Biomass is turned with the tractor to aid in composting. A large manure spreader is used when the pasture ground is firm enough to allow the equipment to spread it back on the cattle pastures.	Shovels, carts, small and large tractors, 120 cubic feet manure spreader, drag harrow,	For the 60 acres of cattle and pasture operations	60 hrs.	720 hrs.
Farm machinery maintenance includes usual checks each time equipment is used such as fluid levels (oil, fuel, hydraulics), greasing, tire pressure, cutting blades; hiring a professional to do annual on site maintenance; repairing broken equipment, cleaning and tarping or storing equipment in covered AG buildings.	Three tractors, two mowers, two rotary brush mowers, tractor buckets, forks, quads. 2 cattle squeezes Weed eaters, sprayers, seeder, harrows, Diesel and non-ethanol gas cans.	For entire 65 acres.	7 hrs. 16 hrs. annual professional maintenance	84 hrs. 16 hrs. Total 100 hrs.
On site hay production for cattle includes hiring professional pasture manager to fertilize and bale hay.	Special equipment provided by pasture manager twice a year.	20 acres	40 hrs.	480 hrs.
Hay harvesting off the field, storing in arena and on rock bed stacking area.	Hay gripper, tractors, flat bed trailer, quads, hay hooks, large plastic tarping, tie string, friends, neighbors and hired help.	20 acres	120 hrs.	120 hrs.
Selling excess hay to area buyers	Marketing, assisting customers load hay, delivering hay, opening and closing tarping to protect hay from weather and animals	field storage area and arena	150 hrs.	150 hrs.
				Total hrs per year ~ 3346

Updated 1 - 2023

Chintimini Ranch Orchard Program. 30 Orchard trees: apple, pear, nectarine, peach, cherry and plum

Date	Job	Equipment	Area	Time/month
January	Pruning and shaping trees for optimal growth. Most trees planted in 2021 so still small	Orchard ladders, clippers 2+ people	Whole orchard of 30 trees	40 hrs.
	Spray COPPER for disease control. SPRAY OIL for control of aphids, scale insects and mites	Back pack sprayers	Every tree Twice a month	6 hrs.
February	Paint tree trunks for borer pest control	Paint, sponges, 1- 2 persons	Every tree	6 hrs.
	Around <u>President's Day</u> spray MONTEREY COMPLETE and COPPER on all trees-except apricot use CAPTAN	Back pack sprayers	Every tree Twice a month	6 hrs.
March	Bloom stages are used to time spray applications. Varies from year to year. Spray MONTEREY COMPLETE at pink and petal fall	Back pack sprayers	Every tree Twice a month	6 hrs.
Ongoing during growing season	Spray when temperature is correct for each spray (above 40 degrees) and no rain expected for at least 12 hrs. Check, repair and set water irrigation for watering season. Fertilize trees, weed and mow orchard as needed.	Back pack sprayers	Monitor every tree, bloom at different times	50 hrs.
April	Spray MONTEREY COMPLETE at pink and petal fall. Spray stone fruits (cherries, plums, peaches, apricots) for brown rot blossom blight as needed with COPPER	Back pack sprayers	Every tree Twice a month	6 hrs.
Ongoing during fruiting season	Check OSU Ext. office for when to use control methods for codling moth	Pheremone traps and Neem spray	Monitor every tree, bloom at different times	6 hrs.
May	Around <u>Memorial Day</u> spray NEEM for cherry fruit fly. Spray PYRETHRIN for apple maggot	Back pack sprayers	Cherry, Apple Trees Every tree Twice a month	6 hrs.
June	Spray MONTEREY COMPLETE at pink and petal fall. Spray stone fruits (cherries, plums, peaches, apricots) for brown rot blossom blight as needed with COPPER	Back pack sprayers	Every tree Twice a month	6 hrs.
	Late season pruning for suckers and thinning if too many fruit	Orchard ladders, clippers 2+ people	Monitor every tree	6 hrs.
July	Apply PYRETHRIN on tree trunks in <u>early July</u> and again in late July/Early August for borer control. Do not spray on fruit	Back pack sprayers	Every tree Twice a month	6 hrs.
Ongoing during harvest	Harvest months Monitor all trees for disease	Orchard ladders 2+ people	When fruit is ready	40 hrs.
August	Apricot trees, spray with CAPTAN every two weeks before harvest.	Back pack sprayers	Apricot trees	6 hrs.
September	Use COPPER after harvest for disease control, before heavy rains set in	Back pack sprayers	Every Tree Twice a month	6 hrs.
November	Use spray oil at winter dormant dilution for control of aphids, scale insects and mites	Back pack sprayers	Every Tree Twice a month	6 hrs.
December	Spray COPPER mid-December for disease control, Can be applied multiple times until late January, early February	Back pack sprayers	Every Tree Twice a month	6 hrs.

Total hrs. per year ~ 220

Exhibit C
Proof of Soil and Hay Testing

A & L WESTERN AGRICULTURAL LABORATORIES

10220 S.W. NIMBUS AVE | BUILDING K-9 | PORTLAND, OREGON 97223 | (503) 968-9225 | FAX (503) 596-7702

REPORT NUMBER: 21-127-013

CLIENT NO: 99999

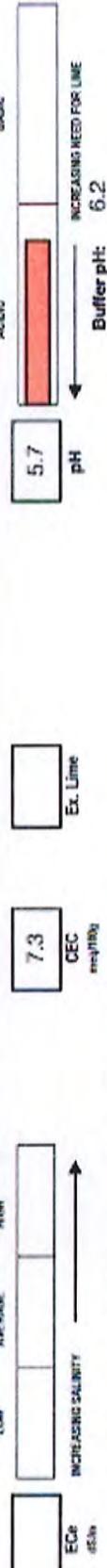
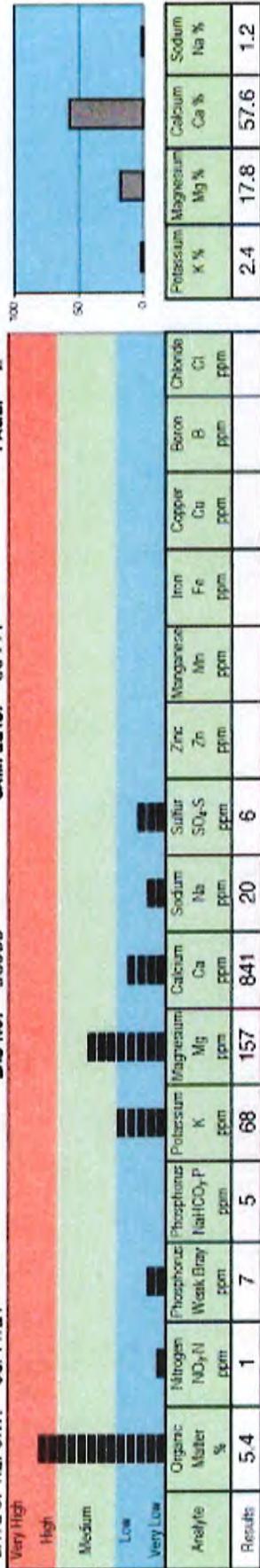
SEND TO: EDGE ANALYTICAL LAB
1100 NE CIRCLE BLVD, STE 130
CORVALLIS, OR 97330

GROWER: 21-15871 JORDAN

SUBMITTED BY: SARAH MILLER

Graphical Soil Analysis Report

DATE OF REPORT: 05/11/21 LAB NO: 58055 SAMPLE ID: 30444 PAGE: 2



NaHCO₃-P unreliable at this soil pH
CROP: ^{LOW} HORSE PASTURE - Upper East 20 acres

Soil Fertility Guidelines

	Lime	Gypsum	Elemental Sulfur	Nitrogen	Phosphate	Potash	Magnesium	Sulfur	Zinc	Manganese	Iron	Copper	Boron
	(100 score)	(100 score)		N	P ₂ O ₅	K ₂ O	Mg	SO ₄ -S	Zn	Mn	Fe	Cu	B
Rate	4000			170	200	180	15						

C O M M E N T S
POTASH REMOVAL: Keep an eye on potash requirements if removing ALL the above-ground portion of the crop from the field. Large quantities of potash may be removed each year.
SULFATE-SULFUR: Low soil levels may cause yellowing and lack of vigor. Maintain above 15 to 20 ppm to guard against deficiencies. Although, sulfates may have leached below sampling depth.
IF growth is not satisfactory, consider other likely causes such as waterlogging, light and temperature, herbicide residues, soil micronutrients, nematodes or other pests, diseases, & soluble salt.
PLEASE REFER to previous comments for remaining report.

*Our reports and letters are for the exclusive and confidential use of our clients, and may not be reproduced in whole or in part, nor may any reference be made to the work, the result or the company in any advertising, news release, or other public announcement, without obtaining our prior written authorization. * The yield of any crop is controlled by many factors in addition to nutrition. While these recommendations are based on agronomic research and experience, they DO NOT GUARANTEE the achievement of satisfactory performance. © Copyright 1994 A & L WESTERN LABORATORIES, INC.

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10220 S.W. NIMBUS AVE | BUILDING K-9 | PORTLAND, OREGON 97223 | (503) 968-9225 | FAX (503) 598-7702

REPORT NUMBER: 21-127-013

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SEND TO: EDGE ANALYTICAL LAB
1100 NE CIRCLE BLVD, STE 130
CORVALLIS, OR 97330-

GROWER: 21-15871 JORDAN

SUBMITTED BY: SARAH MILLER

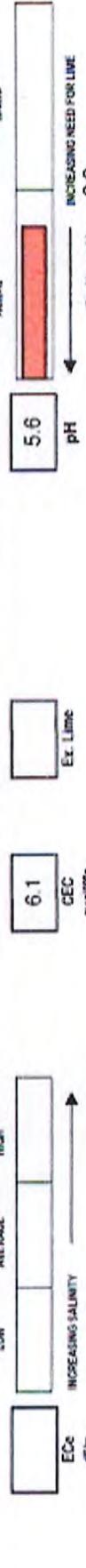
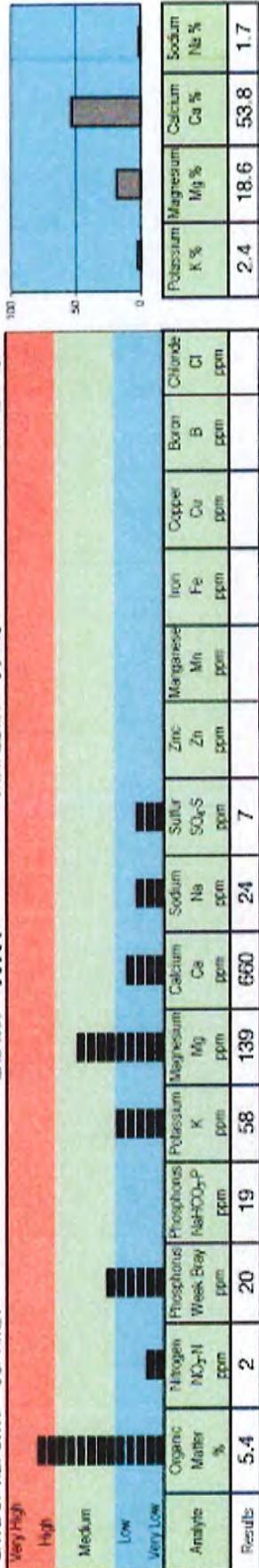
Graphical Soil Analysis Report

DATE OF REPORT: 05/11/21

LAB NO: 58056

SAMPLE ID: 30445

PAGE: 3



NaHCO3-P unreliable at this soil pH

Soil Fertility Guidelines

CROP: HORSE PASTURE - Lower West 20 acres

Rate	Lime (100 score)	Gypsum	Elemental Sulfur	Nitrogen N	Phosphate P_2O_5	Potash K_2O	Sulfur SO_4-S	Zinc Zn	Manganese Mn	Iron Fe	Copper Cu	Boron B
6000				170	70	210	15					

COMMENTS

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Rogell Roggins, CCA, PCA
A & L WESTERN LABORATORIES, INC



730 Warren Road • Ithaca, NY 14850
P: 607-375-9962 • forage@dairyone.com
www.dairyone.com

Forage Sample Submission Form v.3.0

Please use a separate sheet for each farm.

An analysis is only as good as the sample submitted. For sampling instructions, policies and a full list of analytical services, visit our web site at www.dairyone.com

All prices (USD) are per sample. Prices and services are subject to change without notice.

Name/Company: Connie Jordan Account No.: _____

Street: 31992 Fern Rd. County (NY only): _____

City: Philomath State: OR Zip: 97370 Country: USA

Email: brhajordie@hotmail.com Phone: (602) 622-9004 Fax (area code): _____

Farm email: _____ Results sent by email. I'd also like to receive copies by fax

CRM Customer ID: _____

Farm name: Chintimini Ranch Account No.: _____

Street: 31992 Fern Rd. County (NY Only): -

City: Philomath State: OR Zip: 97370 Country: USA

Shipping and Labels (Domestic Only)

- I use my own carrier Dairy One Single Sample Mailer \$6.00 UPS Label - Ground \$7.00 UPS Label - Next Day (AIR) \$27.00
 Dairy One Multiple Sample Mailer \$13.00 UPS Label - 2-Day (AIR) \$20.00

To order UPS shipping labels or sampling kits, visit dairyone.com/shop or email supply@dairyone.com.

CALIBRATE® contract holder: Customer Name: _____

Herd name: _____ CALIBRATE® No.: _____

Payment

Bill my account Please be sure your account no. is listed at the top of this form.

Check enclosed Check No.: #380 ck #1292

mailed 9/27/2022
Each international sample is charged a \$7.00 international handling fee.

Bill my credit card: Visa Mastercard American Express

Name on credit card: _____ Card No.: _____

Signature: _____ Exp. Date: _____

Policies

1. An analysis is only as good as the sample submitted. Every effort should be made to ensure that a good representative sample is taken. Upon arrival at the lab, half of the sample will be used for analysis and half will be saved as a back-up.
2. Proper payment must accompany all samples at the time of submittal. Failure to provide payment will result in analyses being held until proper payment is received.
3. All results pass through an "edit system". The edit system contains expected ranges for most feed types. If any component of an analysis falls outside of the typical range, the results are flagged, evaluated and subject to retesting.
4. If you are unsure of any result that you receive, you may call the lab at 607-375-9962 and request that the component in question be reanalyzed to confirm the original result. Retest requests made within 7 days of the "Date Printed" on the report will be performed free of charge.
5. All pricing is USD per sample. Prices and services subject to change without notification.
6. Any samples exceeding recommended sample sizes may be assessed the handling fee at our discretion and without notice. This also applies to other atypical samples. Visit our website for more information on sampling or call prior to submitting your samples.
7. By providing your email you are authorizing Dairy One and its email provider, Constant Contact, to send you future electronic communications including analytical results, newsletters, and service announcements. You may unsubscribe at any time by emailing us at foragelab-news@dairyone.com or clicking the SAFE UNSUBSCRIBE link located at the bottom of all Constant Contact email communications.
8. There will be a \$3.00 charge for incomplete paperwork.
9. Grind all sample request will be subject to a minimum \$10.00 per sample charge.

*Please note sample retention times: Wet samples are retained for one week, dry ground samples retained for two weeks.

ITHACA, NEW YORK 14850
607-257-1272 (fax 607-257-1350)

VALLEY GRASS HAY produced at 31992 Fern Rd.

Sampled | Recvd | Printed | ST | CO
09/27/22 | 09/29/22 | 09/29/22 | |

Analysis Results

CONNIE JORDAN
CONNIE JORDAN
31992 FERN RD
PHILOMATH, OR 97370

Components	As Fed	DM
% Moisture	7.9	
% Dry Matter	92.1	
% Crude Protein	5.9	6.4
% Available Protein	5.0	5.5
% ADICP	.9	.9
% Adjusted Crude Protein	5.9	6.4
Soluble Protein % CP		40
Degradable Protein % CP		66
% NDICP	1.7	1.9
% ADF	35.5	38.6
% aNDF	54.0	58.6
% Lignin	3.9	4.2
% NFC	25.1	27.3
% Starch	.0	.0
% WSC (Water Sol. Carbs.)	16.2	17.5
% ESC (Simple Sugars)	6.3	6.8
% Crude Fat	1.6	1.8
% Ash	5.48	5.95
% TDN	56	61
NEL, Mcal/Lb	.51	.56
NEM, Mcal/Lb	.52	.56
NEG, Mcal/Lb	.28	.31
Relative Feed Value		93
% Calcium	.36	.39
% Phosphorus	.16	.17
% Magnesium	.15	.16
% Potassium	1.06	1.15
% Sulfur	.15	.16
% Chloride Ion	.42	.46
% Lysine	.20	.22
% Methionine	.08	.08
Horse DE, Mcal/Lb	.94	1.02

90% USDA 19N average

NSC 18.5%
7.7% should be < 11% if horse has Cushing's

ENERGY TABLE - NRC 2001

	Mcal/Lb	Mcal/Kg
DE, 1X	1.20	2.64
ME, 1X	1.00	2.21
NEL, 3X	0.57	1.25
NEM, 3X	0.59	1.30
NEG, 3X	0.33	0.73
TDN1X, %	61	

iteOre

Endophyte Service Laboratory
139 Oak Creek Building
Corvallis, OR, 97331 USA

Dr. Jennifer Durringer, Director
 Email: Jennifer.Durringer@oregonstate.edu
 Lab phone: (541) 737-2872

Ergovaline

Endophyte Alkaloid Analysis Results

Laboratory Method: ESL-SOP-ATM-003.02

Submitted by: Cindy Crosby

Lab Accession #: 11259

Sample type: Grass hay of unknown variety

Date received: September 27, 2022

Sample ID #: Valley Grass

VALUE <100 ppb

Ergovaline concentration in parts per billion

NOTE: With the scientific knowledge available as of 2014, toxicosis is induced in livestock as follows:

Horses	300-500 ppb
Cattle	400-750 ppb
Sheep	500-800 ppb

If you have any questions or need assistance with interpretation, please call our laboratory.

Laboratory Director Authorization

19 October 2022

Issued Date

Disclaimer: The analysis of the sample material provided by the client has been conducted following OSU Endophyte Service Laboratory Standard Operating Procedures and the Quality Assurance Manual. The responsibility for safe use of this material rests solely with the client.



**Endophyte Service Laboratory
139 Oak Creek Building
Corvallis, OR, 97331 USA**

Dr. Jennifer Durringer, Director
Email: Jennifer.Durringer@oregonstate.edu
Lab phone: (541) 737-2872

Lolitrein B
Endophyte Alkaloid Analysis Results
Laboratory Method: ESL-SOP-ATM-004.02

Submitted by: Cindy Crosby
Lab Accession #: 11259
Sample type: Grass hay of unknown variety
Date received: September 27, 2022
Sample ID #: Valley Grass

VALUE 267 ppb

Lolitrein B concentration in parts per billion

NOTE: From published data, clinical signs of toxicosis will be seen at ~1800-2000 ppb and above. Sensitive animals may show clinical signs at lower levels.

If you have any questions or need assistance with interpretation, please call our laboratory.

Laboratory Director Authorization

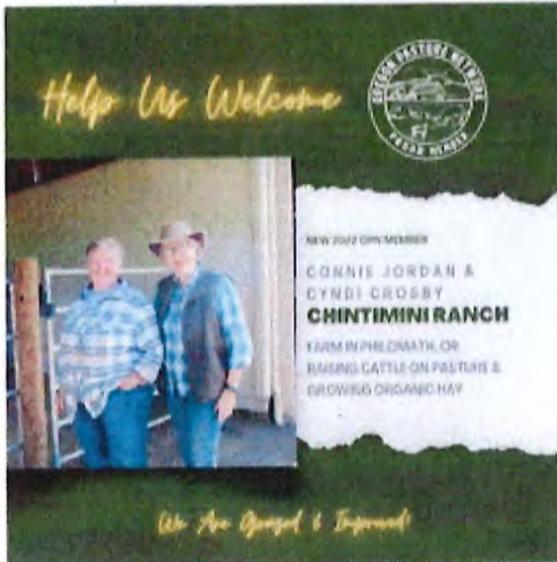
19 October 2022

Issued Date

Disclaimer: The analysis of the sample material provided by the client has been conducted following OSU Endophyte Service Laboratory Standard Operating Procedures and the Quality Assurance Manual. The responsibility for safe use of this material rests solely with the client.

C LINE #62029
RECYCLED TOPPER

Exhibit D
Classes and Membership of Farming
Programs



Chintimini Ranch in Philomath, OR

Welcome to the Oregon Pasture Network Chintimini Ranch (<https://www.facebook.com/Chintimini-Ranch-105439695664051/>)! Retired educators Cindy Crosby and Connie Jordan have gone back to their farming roots. Chintimini Ranch in Philomath is 65 acres of pure beauty. They are currently raising dexter cattle and pasturing horses on their property, as well as producing organic hay. With sustainability in mind they have taken steps to "go green" by implementing solar and wind power to generate electricity for their fencing. Last, but not least is their orchard of 35 trees that will be a great addition to their well rounded farm. Visit their facebook page to learn more about them and to keep up to date!



(<https://friendsoffamilyfarmers.org/>)

Pasture Network Pledge

The OPN has many "Pasture Partners": farmers, ranchers, retail stores, chefs and restaurateurs joining together to practice and promote agricultural practices that put a high value on family farms, animal welfare, public health, the planet and our local rural economies.

To be an official Pasture Partner, farmers and ranchers fill out an application, take the Pasture Network Pledge, and receive a farm visit from our staff. For more details on how this process works, visit our [OPN Application \(/opn-application/\)](#) page.

The Pledge for Farmers & Ranchers

We are engaged in animal agricultural practices that are humane, ecologically beneficial and provide animals with a high quality of life. Through our animal husbandry practices, we strive to enhance the local environment, protect public health, and treat our animals humanely. Our business is committed to operating on a scale that is appropriate to our land and to use practices that allow our animals to live a high-quality life

on pasture. We make operational decisions intended to foster the long-term viability of the land, air, and water of our local community. We are committed to furthering public education about humane and pasture-based animal husbandry, and act as mentors to peers who are looking to transition to pasture based and humane production systems.

To take the pledge and become a **Pasture Network Partner**,

(https://www.oregonpasturenetwork.org/?select=&lp_s_loc=&lp_s_tag=&lp_s_cat=&s=home&post_type=listing) please see our **OPN Application page (/opn-application/)** for instructions.

PO BOX 751

Junction City, OR 97448

info@friendsoffamilyfarmers.org

Friends of Family Farmers works daily to promote and protect socially responsible agriculture in Oregon.

We were founded in the summer of 2005 and have been advocating for small to mid-sized farms ever since.



3,406
FARMERS



Administered almost \$1.5M in disaster relief to 108 farmers through the OCFSN.

521 Survey Responses



Our 2022 Family Farm Survey garnered responses from all over the state. These included farmers, farm service providers, and community members.

80 Farmers in 12 Listening Sessions



Farmers from across the state and through 5 culturally specific partner groups attended Listening Sessions discussed their barriers and opportunities in depth, and explored ways to make change.

2 Legislative Concepts



Using lessons learned in the survey and Listening Sessions, we developed 2 Legislative Concepts for the 2023 session that help expand opportunities for farmers: [Farm Direct Marketing Improvements](#) and [Expansion of Raw Milk Sales](#)



Oregon Farm Link had 287 new listings in 2022: 107 land holder listings and 187 landseeker listings.



Over 1,600 messages were exchanged on the Farm Link site in 2022



The Oregon Farm Link Navigate Program (launched in 2021) served 18 farmers and 7 found land security through the program

OPN REPRESENTS 9,500 ACRES IN PRODUCTION

8 new Oregon Pasture Network members brought the OPN to a total of 83 members and 9,500 acres in production.

This represents membership growth of 11% and total acreage increase of 12% over 2021.



OPN hosted 6 pastured producer classes with 120 total registrations

84% of OPN members registered for a class



(<https://oregonpasturenetwork.org/>)

Home (<https://oregonpasturenetwork.org/>) Resources (<https://oregonpasturenetwork.org/resources/>)

About Us (<https://oregonpasturenetwork.org/about-oregon-pasture-network/>) Join (<https://oregonpasturenetwork.org/join/>)

Mentorship (<https://oregonpasturenetwork.org/mentorship/>) Contact (<https://oregonpasturenetwork.org/contact-us/>)

Product Guide

What

 Search

Use our search to find the best pasture-raised Oregon products!

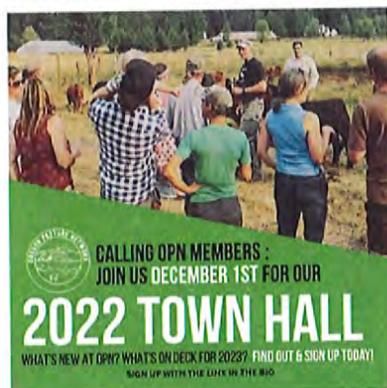
Welcome to the Oregon Pasture Network

The **Oregon Pasture Network (OPN)** is a program of **Friends of Family Farmers** (<http://www.friendsoffamilyfarmers.org/>), designed to support the growth of pasture-based farming in our state. OPN is a community of farmers, ranchers, food business owners and consumers who believe that sustainable, humane, pasture-raised, animal agriculture is the best way to produce animal products.

When farmers fill out an application and take the **Pasture Network Pledge** (<https://www.friendsoffamilyfarmers.org/opn/pasture-pledge/>), they become a member of the Friends of Family Farmers community and together work to practice and promote agricultural practices that put a high value on family farms, animal welfare, public health, the planet and our local rural economies.



Pasture based agriculture cares for the animals and the planet. Our member farms and ranches are committed to bringing the highest quality meat, eggs, dairy and other animal products directly to their communities. **Browse our listings to learn more about our farmers and their stories.** (https://www.oregonpasturenetwork.org/?select=&lp_s_loc=&lp_s_tag=&lp_s_cat=&s=home&post_type=listing) Support your local farmers and their families and find farmers in your area today!



**SAVE THE DATE – Thursday,
December 1, 2022 @ 1pm**

Join us for our upcoming virtual Town Hall Meeting on Thursday, December 1st from 1p-2:30p. We want to hear from OPN members and this is THE moment to give us your valued (and appreciated) feedback! We've got lots to share about our amazing year and what great things are coming in 2023, so click **HERE** (https://secure.everyaction.com/Rm7Fax66l0yzT8U_wlhw2) to register for free and attend this virtual event (there will be an awesome giveaway too). We look forward to seeing you there!

Become an OPN Member

Membership for farmers and ranchers is free at this time, and those accepted receive benefits that connect them to their fellow pastured producers, connect them to existing resources and help promote their farm businesses. Some examples of these benefits are our quarterly newsletter, a producer-only listserve, inclusion in Oregon's first-ever, statewide pastured producer directory, branding tools and customized farm profiles on our website.



OPN Winter Classes are HERE...

It's time to sign up for one or all of the 2023 OPN Winter Education Classes!

From January through March, on Thursdays, we are bringing advanced education and technical resources to our members and to the general public community of pasture based farmers!

The Winter Class Series begins Thursday, January 19, 2023 and concludes on Thursday, March 9, 2023!

In this year's Oregon Pasture Network Winter Classes Education Series, we're addressing some of our farmers' most pressing issues!

Take advantage of EARLY BIRD PRICING (from Nov 1st- Nov 30th) and sign up for the CLASS BUNDLE to save!

If you are a producer and are interested in becoming an official Pasture Partner, please visit our **OPN Application page** (<http://www.friendsoffamilyfarmers.org/opn-application/>) for directions. If you are an "aggregator" (you sell pasture-raised products produced by others) then you will need to fill out the **OPN Aggregator Application** (<http://www.friendsoffamilyfarmers.org/opn-aggregator-membership/>). For more information, visit our **Frequently Asked Questions** (<http://www.friendsoffamilyfarmers.org/opn/faqs-opn/>) page.

CHECK OUT THE LINE UP!
(<https://oregonpasturenetwork.org/winter-classes/>)

Join Our Email List

We'd love to stay in touch with you. The Barnyard e-Newsletter comes to you roughly once per month. We also send 1-2 additional emails per month, but we know how much email folks get, and we are very careful not to add too much to your inbox.

SUBSCRIBE TO STAY CONNECTED! (<https://friendsoffamilyfarmers.salsalabs.org/barnyard>)

In The News...

Lately, there's been a lot of conversation about livestock, farmers, drought and wildfires.

Here's what we're focused on.

[All](#) [Blog](#) [News](#)

(<https://oregonpasturenetwork.org/new-members-2022/>)

(<https://oregonpasturenetwork.org/combating-climate-change-through-forage-plant-diversification/>)

(<https://oregonpasturenetwork.org/ip13-update-what-happens-next/>)

Welcome New Oregon Pasture Network Members for 2022

Help Us Welcome New Oregon Pasture Network Members for 2022. Every year, we welcome new livestock farmers from across the state who are raising animals on pasture, to the Oregon Pasture Network. These farmers are the life of our program that produce pastured products for local communities where they live and farm. All of our [...]

Read more
(<https://oregonpasturenetwork.org/new-members-2022/>)

Combating Climate Change Through Forage Plant Diversification

Together, we can combat climate change through forage plant diversification! The OPN team had an amazing opportunity to attend the second of two Novel Forage Field Tours held at the NRCS Plant Materials Center (PMC) in Corvallis on August 3rd. We learned about forage varieties that could be the future of warm weather farming in [...]

Read more
(<https://oregonpasturenetwork.org/combating-climate-change-through-forage-plant-diversification/>)

IPI3 Update & What Happens Next?

If you're wondering...here's the IP13 update and what happens next.... The Initiative Proposal 13 (aka IP13) is apparently "dead in the water". Oregon farmers, fishers, hunters and those of us who support them can at least breathe a little bit for now, or at least until 2024 because the proponents of the Initiative Petition 13 [...]

Read more
(<https://oregonpasturenetwork.org/ip13-update-what-happens-next/>)

We Hear YOU! Farmer Voices on IP-13

Lately, there's been a lot of talk in the farming community about the proposed ballot initiative called IP-13. This new threat that would put thousands of small scale, sustainable, and ethical farms out of business in Oregon. IP-13 is an Oregon ballot initiative that would effectively criminalize farming of food animals in the state by classifying their slaughter as aggravated assault. The initiative also redefines artificial insemination and castration as sexual assault. The petition would remove farmer exemptions from existing laws barring animal cruelty and target practices used for breeding livestock. **We urge you NOT to sign the petition to put this measure on the ballot** and tell your networks to do the same. Feel free to share the videos we've created by talking to pastured producers (like you).

Farmer Xavier Explains His Conce...



Check out what Farmer Xavier has to say about how the proposed IP-13 initiative could impact his life, family and work!

(<https://www.facebook.com/OregonPastureNetwork/>) (@oregonpasturenetwork)

(https://www.youtube.com/channel/UCDsC1r-Zc_mmiYxs9NVMOHQ)

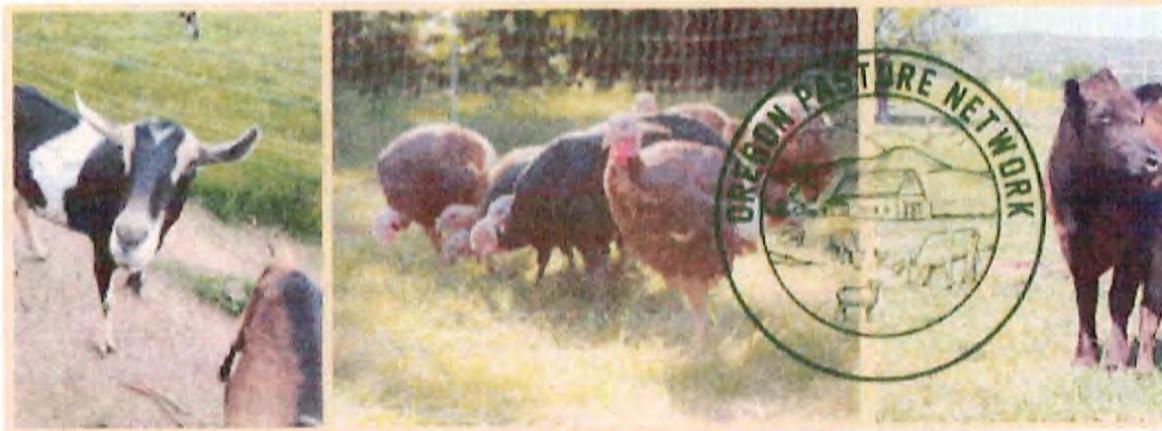
If you are experiencing any problems with this site, please make sure your browser is up to date.

Oregon Pasture Network <opn@friendsoffamilyfarmers.org>

3/29/2021 6:09 PM

Thank you registering for Soil Health and Soil Tests: the Parctical Skills on April 13th

To cynrosby@comcast.net



Thanks for signing up, Cynthia!

Soil Health and Soil Tests: The Practical Skills, April 2020

Your Tickets

	Level	Quantity	Price Each
	Single class entrance	1	\$35.00
	Subtotal		\$35.00

Additional Contribution

\$0.00

When

Tuesday, April 13, 2021
6:00 PM to 9:00 PM

Zoom Information

Join Zoom Meeting: <https://zoom.us/j/95869761297?pwd=OWowcEdUZk43TDBrV2tsQ05LYzBWZz09>

Meeting ID: 958 6976 1297

Passcode: 197695

One tap mobile

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+13462487799,,95869761297#,,,,*197695# US (Houston)

Dial by your location

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+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)
Meeting ID: 958 6976 1297
Passcode: 197695

Your Receipt

Cynthia Crosby
76977306
03/29/2021 9:09 PM Eastern Daylight Time
Total: \$35.00



Oregon Pasture Network

A Program of Friends of Family Farmers

opn@friendsoffamilyfarmers.org

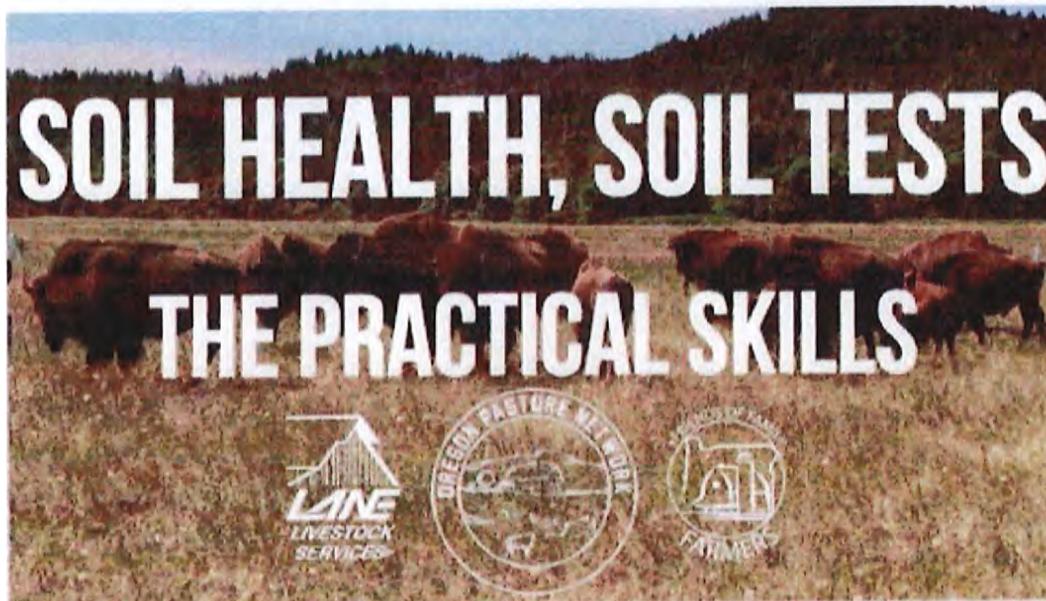
(503) 581-7124

Oregon Pasture Network <opn@friendsoffamilyfarmers.org>

4/12/2021 5:21 PM

Class Materials - Soil Health and Soil Tests: The Practical Skills

To Cynthia Crosby <cyncrosby@comcast.net>



Soil Health and Soil Tests: The Practical Skills

First session - Tuesday April 13th, 6-9pm

Hello soil class registrants! Thank you for joining OPN and Dr. Woody Lane for the first night of Soil Health and Soil Tests: The Practical Skills. The first night of the course will be a classroom style session to teach you the ins and outs of soil health and how to see it, how to make sure your testing practice is giving you accurate results, and how to operationalize that information into choices for your land, animals, and bottom line. **Please note that this session will be recorded and the link will be available to registrants by the end of the week.**

There are some materials to review for tomorrow's session that Dr. Lane will be referencing. Download the course handouts using the button below.

[Download the Handouts Here](#)

We are so happy to have you all joining us via zoom tomorrow. We will open the zoom room at 5:50pm tomorrow evening to help make sure folks can work out any technical difficulties and fully participate in the

course. This is a meeting, not a webinar, so you will be able to ask questions directly if you choose.

Here is the zoom information for the session tomorrow night. This should match the link you received when you registered, but just to bring it to the top of your inbox, here are the details:

Join Zoom Meeting

<https://us06web.zoom.us/j/95869761297?pwd=QW9wcEdUZk43TDBrV2tsQ05LYzBhVWZz09>

Meeting ID: 958 6976 1297

Passcode: 197695

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+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

Meeting ID: 958 6976 1297

Passcode: 197695

Please note that this course will have a lot of visual components, so please make sure you have a computer connected to the meeting to watch the presentation, a webcam to show your face is not required, but encouraged.

See you all tomorrow evening!



Donate



Woody Lane <woody@woodylane.com>

4/14/2021 4:37 PM

Websites from the OPN Soils Workshop, 4/13/2021

Copy Alice Morrison <alice@friendsoffamilyfarmers.org>

Hi Everyone,

Thanks so much for attending last night's OPN workshop *Soil Health, Soil Tests -- The Practical Skills*. Zoom is indeed a bit strange, and everyone sat patiently in their boxes for 3 hours. But I do hope you enjoyed it and gained some good information that will be useful on your property.

During the session, I mentioned a few websites. Here are the URLs of these and a couple of others that may be useful.

In any case, enjoy the explorations. I will send you some additional material in the next couple of days, including a Doodle poll for our next session.

Best regards,

Woody

--

Woody Lane, Ph.D.
Lane Livestock Services
240 Crystal Springs Lane, Roseburg, OR 97471
cell: 541-556-0054
<http://www.woodylane.com>
woody@woodylane.com

Soil Health, Soil Tests Workshop (OPN)

<https://secure.everyaction.com/SgGhZ7UzEmb9QrLqibOQ2>

About Me (Woody Lane, PhD)

<https://www.woodylane.com/about/>

OSU T-SUM 200 calculations

T-Sum 200 Forage Management - Degree Day Models from OSU - version 5.6
from Oregon State University

<http://uspest.org/cgi-bin/ddmodel.us?sta=D6983&mdt=oth&spq=aats&cal=A&tlow=32&thi=130&stm=1&std=1&styr=19&enm=12&end=31&cel=1&fcast=1&spyr=0&shd=1&mkt=0&mkg=1&loc=1&evnts=3>

This webpage is a bit quirky, but play with it. Always check that the temperature is in Celsius. Also check that the year is the current one. Sometimes when you change the location, those variables revert to their defaults.

USDA Soil Surveys

<https://www.nrcs.usda.gov/wps/portal/nrcs/site/soils/home/>

Soil Surveys by State

https://www.nrcs.usda.gov/wps/portal/nrcs/soil_survey/soils/survey/state/

You can spend a lot of time in this website. These are the classic soil surveys of each county. Fascinating info.

**"Lunch With Forages" Thursday, April 22, noon -- free (must register first)
Oregon Forage and Grassland Council**

<https://www.oregonforage.org/events/reed-anderson2021/>

Join us for a session. Some very interesting conversation and perspectives. I will host the next one on 4/22.

My Books for Sale (signed)

<https://woodylane.square.site/>

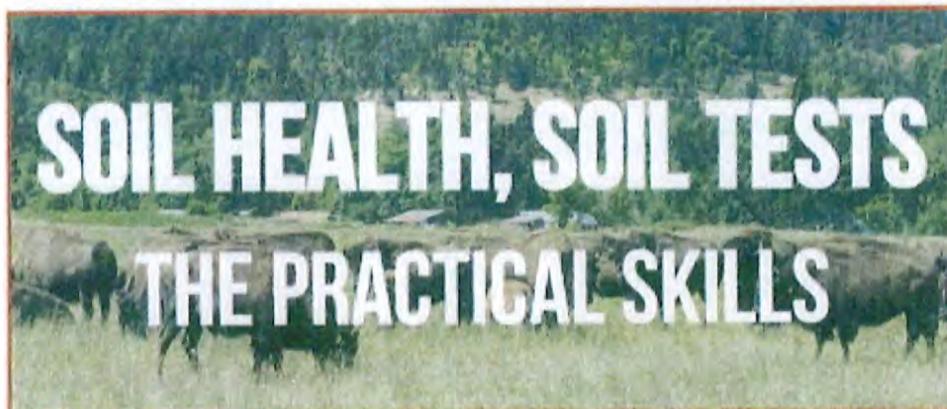
My two books are also available on Amazon and other places. But if you get them here, the order comes directly to me, and I will sign the books before I send them to you. FYI, this webpage is secure for credit card purchases, as it is run through the Square system.

Oregon Pasture Network <opn@friendsoffamilyfarmers.org>

6/1/2021 10:32 AM

TONIGHT - Part 2 of Soil Health and Soil Tests: The Practical Skills

To Oregon Pasture Network <opn@friendsoffamilyfarmers.org> Blind copy cyn Crosby@comcast.net



See you tonight at 6:00pm!

Looking forward to seeing you all tonight for the final session of our 2-part course Soil Health and Soil Tests: The Practical Skills. Just a reminder, because of the personal nature of some of the land management and business discussions that will take place in tonight's soil test review session **this session will NOT be recorded**, so please plan to attend.

This session will last from 6:00pm to 9:00pm and we will be going over the soil tests that class participants sent to Dr. Lane and discussing what they mean for land management and business decisions. Even if you didn't send in a soil test for review, you are highly encouraged to attend and learn from others' results. Here is the zoom info for tonight's meeting:

Topic: Session 2 - Soil Health and Soil Tests: The Practical Skills

Time: Jun 1, 2021 06:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/82987093398?pwd=eDJad2wvaEivOGcrNidRSINDV1BCUjT09>

Meeting ID: 829 8709 3398

Passcode: 364845

One tap mobile

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+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)
Meeting ID: 829 8709 3398
Passcode: 364845

As a reminder, here is the folder with all the handouts from this session and the previous meeting back in April.

Please reach out if you have any questions or concerns about tonight's class, see you at 6!

Alice Morrison

OPN Program Manager
aam@friendsoffamilyfarmers.org
c. (502) 640-9256
Pronouns: She, hers
www.oregonpasturenetwork.org

- December Soil Class banner.png (2 MB)

Exhibit E
Chintimini Ranch Commercial Farm
Business Plan

Chintimini Ranch Commercial Farm Business Plan

31992 Fern Road, Philomath, Oregon 97370

Vision

We envision a future where Chintimini Ranch produces healthy beef responsibly and ethically by investing in the animals and land with values that nourish the food supply chain, including or well-informed and loyal customers.

Mission

To resiliently raise healthy animals while nourishing the land they graze.

Location and Structures

65 acres of pristine wholesome grass pastures with natural thick root biomass systems; located in the beautiful Willamette Valley, 40 miles from the Oregon Pacific Coast and fifteen minutes from the Coastal Range. Beautiful Rural property 4 miles southwest of Philomath and 20 minutes from downtown Corvallis.

The structures on the property are: Ag buildings for grain, hay and machine storage; stalls for birthing calves and weather shelter for cows; a 6 stall boarder barn and 10 stall pole barn for horses and horse boarding; an arena for hay storage; orchard of 30 fruit trees; vegetable garden with green house and hoop houses; pond with fish, turtles and various forms of wildlife and the owner's residence.

Description of the Business

Chintimini Ranch is focused on maintaining healthy soils and grass for agriculture and food production. Grass pastures with thick root biomass have not been tilled or turned for over a decade. Weed control is hand targeted. No broad insect or growth enhancement chemicals have been used for over 15 years. Because all fields are managed to produce clean and healthy grasses, the shares of beef are pristine. Our Dexter cows and steers begin life on this soil with large pastures, clean water and daily eyes-on care. The herd is moved through pasture grids to encourage added grass growth, soil health and continuous fresh forage for grazing.

Our company maintains clean and natural grazing environments, free of unnatural stress, from pasture to table. We run small herds to ensure proper care and controlled nourishment of each animal. We purposefully bale and feed our own hay to ensure what is eaten is 100% bred and raised from our ranch to your table without chance of unnecessary stress, herbicides or GMO additives being introduced.

Orchards are tended and managed using biologics and all natural products for insect protection. Agricultural produce of vegetables and fruits are of the highest quality for eye appeal and freshness.

Once each year we harvest and bale the same blended grasses so the herd's entire dietary intake is derived from the same natural soils.

Grass hay is sold on a private basis to others who wish to control the nutritional intake of their animals. Due to the nature of our business, daily schedules are work intensive in order to maintain natural and healthy care of all production areas.

Preparation of Business Operations

Formulation of goals and timelines were established to enable the property and business development over an extended time. The long term goal of becoming a farm that produced registered cattle for cow sales and quality beef for local Willamette Valley consumers; as well as, enlargement of original garden beds for vegetable produce and increase numbers of orchard trees for wider varieties of plums, apples, peaches and pears.

The property has history of grass production. It was found there was a lack of lime in the soil and certain weed populations needed control for pristine hay production. Our goal was that hay could be used for all varieties of livestock and show animals. We projected two to three years for preparation of the land and pastures.

As we began to understand the property trends and learned more about the local commercial development possibilities; a preliminary growth projection plan was formed. This projection included purchases of new Ag buildings, fencing, road development, power sources, water sources, implements, hand tools, specialized tools, cow health and management tools.

Joining organizations such as 'Oregon Pasture Network' (a subsidiary of Friends of Family Farmers), "American Dexter Cattle Association" and "Grass Fed Marketing" for marketing support, information and tracking trends within this sector of agricultural business, have been a great source of learning and networking.

The end goal was to enable the business to expand sustainably while maintaining financial stability.

Preparation and Learning Points

a. Formal Registration of Dexter Cattle

All formal registration was completed for the Dexter cows from the original herd, with the American Dexter Cattle Association. Of the original 27 Dexter cows purchased, only the bull and a few of our cow producers had proper registration papers. Texas A&M and UC Davis universities were contacted for DNA tracing. We confirmed DNA throughout the herd, and the stock we could not confirm, for both the dam and sire sides, were culled from the herd and sold as individuals, cow/calf pairs, or as beef shares.

b. Adjusting to Natural Cycles

Learned and familiarized ourselves to Oregon weather patterns – This continues to be an ongoing learning phase.

c. Tested and Prepared Soil with Correct Nutrients

After soil testing, we were advised on what cover crops could be used to nourish the soil and also the amount of lime that should be applied for better grass growth.

d. Tested Pasture Grasses

Specialists from OSU were contacted to conduct this testing for us. Suggestions were made to introduce other forms of grasses that do well without irrigation and how to nurture the many types that were present.

e. Researched Oregon Beef Production and Sales

Became familiar with federal and state laws surrounding beef production. Researched local slaughtering styles and availabilities to find a method to reduce anxiousness with hauling or stress of dry lot delays, possible changes in consumption of feeds, timeliness or delays on dry lot slaughter locations, and locating the most humane practices.

f. Researched Oregon Hay Production and Sales

We assessed the price points for different types of hay and what types of growth would demand the least amounts of soil additives for growth and development. The highest consumer price point was Teff hay; the lowest was blended grass hay. The first experimental crop was Teff. We found Teff hay was not hardy enough to withstand arid conditions without pasture irrigation.

Although grass hay was the lowest consumer price point, it was the highest yielding product. We tested the hay and found protein contents to be very satisfactory. All lower fields had a natural root biomass to guarantee pure blended grass production. This understanding changed our focus from the value of commercial 'bulk' to the value of commercial products, with a focus on maintaining healthy consumption by animals for healthier meats; which is then passed on through the food chain to customers who desire to eat a natural and pure lean beef, robust with healthy qualities and unaffected by additives. We believe Oregonians have a strong desire for humane practices, transparency in food production and an availability of naturally healthy beef.

First grass hay production was tested. The result showed adequate levels of protein with a wonderful percent of dry matter at 92.1. USDA average shows an acceptable percentage of dry matter at 90.

Product and Services

- a. Live Cow and Beef Shares Sales
- b. Hay Sales
- c. Garden and Orchard Produce Sales
- d. Composting Horse Manure

Competitive Advantages

- a. Having a beautiful 65- acre property that has been maintained with natural values and humane practices.
- b. All infrastructure is in place and all necessary farm machines have been purchased.
- c. Savings and retirements that sustain our lifestyle and needs.
- d. A desire to invest work, time and attention to details of the business.
- e. Niche market of grass fed and finished beef.
- f. Low production cost and service fulfillment by selling beef shares, orchard produce and grass hay sales.
- g. Food sources are an essential necessity.
- h. Ranch is mortgage and debt free.
- i. Extensive entrepreneurial experience in business development
- j. Health and nutritional experience with an MSN in Nursing Education.
- k. Gentle and generally easier calving.
- l. Thrive being solely grass fed.

Competitive Disadvantages

- a. Current owner and manager advanced ages.
- b. Natural Regenerative and rotational farming methods are demanding, hands on and labor intensive.
- c. Possible impacts from climate change causing ground-water supply issues, increased fire hazards and severity of storms.
- d. Lack of county approval and resulting appeal processes, for a farm assistance dwelling, preventing family members to live on the property and assist with efforts for farming.
- e. Smaller breed of cattle with longer duration of time to full maturity.

History

The property was originally a forest of pine, oak and apple trees. The trees were harvested; however, a few original trees remain on the property randomly scattered throughout the ranch and at the pasture edges.

It has been told that local Indian tribes would camp on this beautiful land for rest and ceremony. We tend to hold that as truth when we view the beauty of the old oaks, or a western view of Mary's Peak (originally called 'Chintimini' in Native languages), the stunning sunrises and sunsets, rainbows that may be seen in any of the four directions after a shower, or an evening sky filled with stars. You can literally sense the uniquely quiet peace that abides at the ranch.

Property Owners

During early years the west end of the property was know as Skipton Draw. In the 1980s a dairy was located on the property with a house, milking barn and silos. The owners sold to the Stokes family and the barn and silos were destroyed.

After a few years the Stokes sold the land to the Moss family who built a new house, barn and arena. They used the location for many years as a Morgan Horse Facility, owning, showing, breeding and selling Morgan horses. During that time the property was used strictly for horse pasture.

At the turn of the century, the Cunningham's purchased the property. The Cunningham's introduced a more targeted and purposeful organic concept of sustainable and regenerative farming; influenced by Joel Salatin's concepts through grass fed beef, free range poultry and horse boarding. During the 8 years under Cunningham's management, Mr Salatin mentored and made a personal visit to the property.

Jordan purchased the property in 2015. The herd of Dexter Cattle, including one bull, was purchased from the Cunningham's. Jordan and Crosby were friends for over 40 years. They moved to the ranch to enjoy a rural life. Both came from professional careers - Ms Jordan from Education Administration and Ms Crosby from Nursing and with an MSN in Health Education. Ms Crosby became manager of the ranch.

It was decided to move the ranch toward a commercial business model, so they took some months to get to know the land and become familiar with the weather and growth cycles. Soil testing was completed. Community neighbors offered guidance on growth cycles and soil types. Small Farm and Pasture Specialists from OSU were called in to identify noxious weeds and grass types that were present throughout the property. A seed specialist was called in to share knowledge regarding grasses that were present and give guidance on how to naturally nourish existing soils and foliage growth.

From the 2015, purchase of the property, attention was focused on our soil, orchard care, grass and weed types and varmint knowing this would be the key to sustaining clean hay production, the herd of cows and understanding what managing techniques would work best for the property and animals. We researched learning sources and became involved online with OSU pasture classes; and professional services to network with others and identify contaminants, toxins and types of foliage and soils. Tree specialists were called for guidance on best practices for pollination and care, as fruit trees were added to the orchard.

The following information contains a timeline of the original investment and development stages of the cattle operation, the orchard, grass production, machine purchases and infrastructure projected and completed from 2015-2022, for the development of the 65 acre Commercial Farm Operation, located at 31992 Fern Road, Philomath, OR. 97370.

Commercial Farm Business - Projection Plan 2015 - Present

Year 1 – 2015

Investment and Property Development

- Purchased 65 acre ranch – 31992 Fern Road, Philomath, Oregon 97370 – September 2015
- Assumed ownership of Dexter Cattle herd of 27 cows, including heifers, steers and 1 bull
- Secured ranch titles: “Chintimini Farm” and “Chintimini Ranch LLC, through Oregon Secretary of State, for business and marketing identity

Getting to Know the Property for Development of Cattle and Hay Sales; Meat Shares; Horse Boarding

- Soil Testing to understand soil type change throughout the property for proper cover crops and divisions of pastures and grass qualities
- Foliage testing throughout the property to define and recognize grass types
- Research nutritional values of grass types for proper feeding and responsible hay sales
- Define and recognize weed types
- Research natural weed control methods to maintain the established biomass root systems in the soil
- Define and recognize noxious weeds to protect the health of the Dexter Cattle herd and hay content
- Research natural weed eradication to protect the cows from consuming harmful contaminants that could be harmful to animal health or during human meat consumption
- Hired pasture consultant and attended online classes through OSU.

Implementation of the Land Use Plan – Infrastructure and Development

- New Pole Barn construction - 8,400sq. ft. built east of the house at the northeast area of the property. Currently used for owner’s retired horses. As this generation of horses pass away, the barn will become additional boarding stalls and paddocks available for rental.
- Boarder Barn renovation – 6 stalls available. This barn is currently available for horse boarding
- Two Ag Buildings for storage of seed, hay and farm equipment were built. Building A is 1,728 Sq. Ft. and Building B is 1,512 sq. ft.
- The original horse arena 5,600sq.ft. was changed to a hay storage area and farm implement staging area
- Property rock roads and lanes were designed and completed for ease of reaching all storage entrances, horse boarding areas and for convenient delivery truck unloading and exiting. Field rock roads were established and formed in 2015 for field accessibility and mud control
- Boundaries and field fencing types for containment as well as moving cows from lower western pasture areas and grazing grids to upper eastern grazing pastures and birthing stalls
- Electric fencing to surround and divide all pasture grazing areas
- Field Fence was replaced and repaired to surround the entire property on all sides. Field Fence to divide all cow grazing pastures.
- Field Fence and old wooden posts bordering the hay pasture area were replaced and repaired.
- T posts and rebar were used for electric fence fortification around cow pastures and rotational grazing grid divisions.
- Manure collection area 80ft. x 20ft. was built using 14x6x20 treated lumber for manure containment
- Manure composting area was established for the development and use of natural fertilization distribution to all pastures
- Dedicate burn pile location
- Orchard – expand and increased fruit tree numbers

6

- Create additional water sources for livestock
- Create additional water sources for garden and orchard irrigation
- Build new underground irrigation and water sprinkling system for orchard fruit trees and garden
- Build new cattle holding pen for health maintenance and observation
- Build new cattle birthing pens
- Confirm all Dexter Cattle DNA and Registration with American Dexter Cattle Association, to maintain proper registration on each member of the Dexter herd

Investment Purchases of New Farm Implements and Machines

- JD 5055 Field Tractor with PTO; 3 pt Hitch; Hydraulic Front Loader
Bucket, Forks, Scraper
- JD XUV825i Gator with dump bed
- Carson 16ft Flatbed Trailer

Commercial Farm Business - Projection Plan 2015 - Present

At the beginning of 2016, Connie Jordan experienced health challenges with congestive heart failure due to Mitral Valve damage from childhood illnesses. Jordan was bedfast much of the year and had open-heart surgery in July, 2016. Recovery continued through the remaining half of that year, so projected investments and property projections were delayed. The lack of project completions in 2016, will reflect this situation.

Year 2 – 2016

Investment and Property Development

- Soil Testing to define improvements or deterioration in soil qualities
- Foliage testing
 - Define and recognize continuous presence or changes in grass types
 - Define and recognize continuous presence or changes in weed types
 - Research natural weed control methods and begin application
 - Define and recognize continuous presence or changes in noxious weeds
 - Research natural weed eradication methods and apply to noxious weeds
- Intensive Noxious weed eradication in all pasture areas through spring, summer and fall using targeted methods
- Broadcast topical seeding of grass seed blends throughout all pastures

Investment Purchases of New Farm Implements and Machines

- JD MX6 Rotary Cutter
- JD X590 Tractor
- 54in Mower Deck
- Broadcast Spreader

Commercial Farm Business - Projection Plan 2015 - Present

We were notified, through DNA testing, that several of the Dexter Cows, in our herd of 27, could not provide a proof of parentage and therefore could not be registered with the American Dexter Cattle Association. After full confirmation, a plan for culling the herd was made. The final outcome resulted in every member of the herd being registered.

This effort extended over a few years as we sold cows or cow/calf pairs, beefed out cows for personal consumption and sold beef shares to interested friends or neighbors. Cow breeding continued only for cows with confirmed parentage. At present all producers in the herd hold certification with ADCA.

Year 3 – 2017

Investment and Property Development

- Soil Testing on upper and lower pasture areas
- Field Lime – 67.1 Tons of Lime was spread on all cow and hay pastures throughout the property to improve soil quality
- Begin formal DNA registration of all Dexter Cows

Implementation of the Land Use Plan – Commercial Business Infrastructure and Development

- Cross fencing in upper pastures No-Climb Fence was used to cross fence in upper pastures that are shared by cattle and horses. Electric Fence runs along the tops of all No-Climb fencing.
- Round holding pen was created in upper pasture area
- Pole barn completed
- Pasture roads extended and rocked to bottom pasture
- New rocked turnaround area created at arena area
- Rocked all lane roads – mud control
- Rocked all gate entrances – mud control
- Rocked cattle holding pen to create platform for the cattle squeeze
- Recreated the cattle holding pen with internal holding area and runs leading to squeeze
- Fenced holding pen with new posts and field fence
- Electric wire runs on top of the field fence
- Created new frost free faucet water source for field pastures
- Added 15 new metal walk through gates

Investment Purchases of New Farm Implements and Machines

- Powder River cattle squeeze
- Drag harrow

Commercial Farm Business - Projection Plan 2015 - Present

In 2018, we found commercial hay producers considering Teff hay. Teff hay is used for animals so that sugar levels can be consumed at a lower rate. It is rather an experimental phase for this hay in Oregon and is difficult to grow. However, Teff hay is desired by many people and the price is high because it is fairly difficult to locate. A neighbor approached us with a mutual desire to try growing Teff hay in our area. Even though we found Teff seed to be an expensive purchase; the hay sales price point was far above average, due to the demand and qualities of the hay. Teff was planted in our hay field as a cooperative effort with our neighbor farmer. However, due to the arid spring and summer months of 2018, the yield was lacking. Teff hay showed a low tolerance for growth on unirrigated pastures. We began to refocus and research grasses that had high tolerance to arid climates.

Year 4 – 2018

Investment and Property Development

- Fence panels for birthing pens and holding stalls
- Small cattle squeeze for milking, pregnancy and wellness checks
- 16 new metal panel field gates
- Continue culling the Dexter Cattle herd

Implementation of the Land Use Plan – Commercial Business Infrastructure and Development

- Solar Power for all ranch structures was installed
 - Solar 24.6 kW DC grid connect Photovoltaic system
 - Installed 82 solar 300 watt panels
 - 2 Solar Edge panels
 - 82 P320 Optimizers
 - 9 – 20ft metal Solar light poles with full inventoriable materials to generate electric power and light to all priority areas on the property
 - 9 – wind turbines to generate electric current
 - Connections from solar battery energizer to power all electric fencing throughout the property.
- Arena addition building for Ag storage 1,728sq. ft.
- Boarder barn addition building for Ag storage 1,512sq. ft.

Investment Purchases of New Farm Implements and Machines

- CJ Stock Trailer

Commercial Farm Business - Projection Plan 2015 - Present

In 2019, we continued our weed and varmint control, but the pastures were rested and used for rotational grazing. Attention was placed on orchard development, irrigation systems and hay production.

Year 5 – 2019

Investment and Property Development

- French Drains around all barns for mud and water management
- Boarder barn renovated
- 12 new metal walk through gates at boarder barn
- Hot water heater for hot water on demand at boarder barn
- Replaced, extended and repaired all stall dividers
- Continue culling Dexter herd

Implementation of the Land Use Plan – Commercial Business Infrastructure and Development

- Garden irrigation system for hoop house and garden bed
- 3 new frost free faucets added at hoop house, garden bed and greenhouse.
- 8 fruit trees added to Orchard

Investment Purchases of New Farm Implements and Machines

- Hay grappler
- PJ 14ft. Hydraulic dump trailer

Commercial Farm Business - Projection Plan 2015 - Present

In 2020, continued work with targeted weed and pest control was done in the fields, while more research was done regarding hay production in the western/central region of Oregon. Covid's arrival became an interruption to our development. However, time of confinement was used to research and join several on-line agricultural classes to further our learning. Our land offered a special pure and natural quality since it had not been violated by exposing the root systems to plowing nor had broad sprayed chemicals been used for well over a decade. A business model with emphasis on controlled and unsullied nutrition from our land to our animals, creates a meat availability that could be presented in full transparency. Natural untainted foliage that is consumed by the cows produces a lean meat that is free of chemical or enhancement additives of any sort. Pasture fed – pasture finished untainted protein. This knowledge added value to our cow sales and beef shares. .

Year 6 – 2020

Investment and Property Development

- Boarder barn 30 amp electric service added
- Rock and grade paddocks for mud management
- Gate locks for paddocks
- Wooden posts to support fence panels
- Lime lower pastures
- Weed and varmint management

Implementation of the Land Use Plan – Commercial Business Infrastructure and Development

- 5 New grazing grids divided by electric fencing
- Orchard underground irrigation system with sprinklers installed
- Water control timing system installed
- Created additional water source – Well #4
- Pump and 5,000 gal. water holding tank
- Revive old Well #2 and add pump and pressure tank
- Install pvc water pipe from Well #2 to cattle herd water tanks
- Install pvc water pipe from Well #2 to orchard and garden irrigation systems
- Continue culling Dexter herd

Investment Purchases of New Farm Implements and Machines

- Emergency Generator Power Supply- Predator 9000watt for Well #4

Commercial Farm Business - Projection Plan 2015 - Present

Rather than introduce new grass types in 2021, we chose to watch the natural bed of grass in the hay field grow and mature for baling. No fertilizer was used, so we could realize the results of an un-grazed normal grass growth cycle. The 15 acre hay field was cut and baled with a moderate yield of 10 ton. However, the protein and sugar levels were quite satisfactory and the dry matter percentage was at a good range.

This outcome was exactly what we wanted and would enable our cows to freely forage and also receive exactly the same grass, for controlled consumption, in their supplemental feedings during the winter and hot summer months. Our pasture and seed advisor from OSU stepped in to analyze our needs and began personally assisting in developing plans for a higher yield for 2022.

Year 7 – 2021

Investment and Property Development for Commercial Farming Business

- Enlarged Orchard and added 25 new fruit trees
- Grass hay baled – 20 acres Yield 10 Ton

Implementation of the Land Use Plan – Commercial Business Infrastructure and Development

- Constructed well house for Well #2
- Designated slaughter pen for beef shares business
- Design and fence in additional shared pasture
- Culling out Dexter herd
- Breed 1

Investment Purchases of New Farm Implements and Machines

- 14 point field disk
- Pallet Jack
- 12 ft. Weighted Field Roller
- 120 cu. ft. Manure Spreader
- Husqvarna mower/bagger for weed control

Commercial Farm Business - Projection Plan 2015 - Present

Our pasture and seed advisor from OSU continues visiting the ranch to observe grass types and growth progress of the pastures and hay fields. He is directing us regarding our soil quality, seed choice and ways of gaining higher hay yields. Under Mr. Altishin's guidance, our focus is on our natural blend of grasses. The soil has not been disturbed for over 15 years, so the root mass is thick and healthy throughout the entire property. In the summer of 2021 the hay pasture produced 10 ton of grass hay. However, in 2022, under Mr. Altishin's guidance, the same 20 acre pasture was baled with a yield of 50 ton; 5x that of 2021. The projection for 2023 will be to enlarge the baled area to 30 acres with a yield of 100 Ton. We believe this is well within the scope of possible growth in our steps to commercial hay production.

Year 8 – 2022

Investment and Property Development

- Hay field expansion to 30 acres
- Weed and rodent control measures

Implementation of the Land Use Plan – Commercial Business Infrastructure and Development

- Arena Door enlargement for hay storage and equipment movement
- All Dexter cows have formal American Dexter Cattle Association Registration
- Research AI breeding for Dexter cows

Investment Purchases of New Farm Implements and Machines

- Emergency Generator – Honda 7000 watt for barn and Well #2
- Kubota Field Tractor 2450 with PTO; 3 pt Hitch; Hydraulic Front Loader
 - Front Forks, Bucket

New Agricultural Buildings, Infrastructure And Machinery Purchased from 2015 - Present

(* = New)

Machinery

*John Deere 5055 Field Tractor
 * w/ PTO, Hydraulic 3pt Hitch, Front Loader
 * bucket, scraper, front forks
 *Kubota 2450 Field Tractor
 * w/ PTO, Hydraulic 3pt Hitch, Front Loader
 * bucket, scraper, front forks
 *John Deer MX6 Rotary Cutter
 *John Deere XUV825i Gator w/ Dump bed
 *John Deere X590 Utility Tractor
 *54" Mower Deck
 *Broadcast Spreader
 *Drag Harrow
 CJ Stock Trailer
 Carson 16' Flatbed Trailer
 *PJ 14' Hydraulic Dump Trailer
 Hay Grappler
 *Powder River Cattle Squeeze
 *14 pt Field Disk
 12 ft Weighted Field Roller
 120 cu. ft. New Holland Manure Spreader
 *Pallet Jack
 Husqvarna Field Mower w/Bagger (for weed control)

Agricultural Buildings

*Pole Barn 70'x60' – two story 4,200 sq. ft.
 *Arena Addition for Ag Storage 1,728 sq. ft.
 *Boarder Barn Addition for Ag Storage 1,512 sq. ft.
 Boarder Barn Renovation

Infrastructure, Pasture Roads and Fencing

*Cattle Holding Pen
 *Calf Birthing Pens
 *Rocked Field Roads
 *Rocked Ag Yard Roads, Turnarounds and Parking Areas
 *5 Pasture Grazing Grids
 *8 Holding Pastures
 *16 Field Gates
 *15 Walkthrough Gates
 *Added Active Water Source – Well #4
 Pump And Holding Tank
 Rejuvenated Well #2 For Orchard And Animal Water
 *Irrigation Lines To Fields & Orchard From Well #2
 *Solar Power For All Ranch Structures
 *Solar Power For All Field Fencing
 *9 - 14' Metal Light Poles With Solar Lights & Turbines
 *20 New Fruit Trees Add To Orchard
 *Rocked Pasture Entrances For Mud Management
 *French Drains Around The Barns
 *Perimeter And Field Cross Fencing

Commercial Farm Business - Future Projection Plan

Investment and Property Development

All necessary machinery has been purchased, infrastructure is in place, water sources have been doubled, the fruit orchard has been enlarged to 30 trees, the Dexter cattle are ADCA registered and irrigation systems are installed.

Our farm land, machines and infrastructure additions hold no indebtedness.

Water supply for the orchard is abundant. We anticipate a continued planting of new fruit trees and to extend the orchard into the surrounding pasture in the next five years for a total of 90 fruit trees. The added burden with pruning and orchard care will become burdensome without family assistance.

We believe in our abilities as experienced entrepreneurs, that our business plan and projections are attainable.

Joining organizations such as "Oregon Pasture Network" (a subsidiary of Friends of Family Farmers), "American Dexter Cattle Association" and "Grass Fed Marketing" for marketing support, information and tracking trends within this sector of agricultural business, have been a great source of learning and networking.

The land has been prepared for quality yields of grass hay, equipment and infrastructure are in place to expand with sustainably; while maintaining financial stability.

The Dexter Cattle herd have been culled, so all cows remaining on the property are DNA tested and registered with the American Dexter Cattle Association, ensuring quality breeding and high value sales of live cows and calves. Dexters are known for their lean meat and simple grazing for nutritional needs.

Our marketing strategy entails mostly direct marketing avenues; however, we are developing a social media presence and a website, along with monthly newsletters, to broaden our potential client base.

Marketing strategies are developed around clients who have an interest in healthy eating, pure and solely grass fed meats and fresh produce; parents who want no additives or chemical contamination in their family diet; sports enthusiasts; back yard grillers who desire quality beef without a single package of meat that may contain multiple cow contributions.

We project 8 cows will be used for the purchase live beef shares in 2024. The cut and packaged weight of a Dexter cow is estimated between 300-500lbs. We estimate each cow will yield a value of \$3,000-\$5,000, for a gross cow shares income of \$30,000 – \$50,000.

Our hay production is for two purposes. First to supplement our herd with the same nutritional cleanliness and quality as they enjoy in our pastures. We want to control their food source rather than bring possible contaminants into their diets from outside vendors.

We anticipate hay yields in 2024 to be 125 ton. With quality grass hay, price points are between \$290-\$300 per ton. We estimate our herd count in 2024 to be 19 head. Each cow will consume an average of 2,000 pounds of supplemental hay per year. Therefore the entire herd will consume about 19 ton. In 2024, we estimate our hay sales gross income to range between \$30,000-\$35,000.

 DeweyStokesPublicTestimonyLU22023.pdf 229 KB
 GaryLukensPublicTestimonyLU22023.pdf 602 KB

I checked with Joe about adding these to the already-published Meeting Packet. He says he is comfortable as long as you are aware of these comments and approve/authorize the addition to the packet.

Thank you!

-Amanda

From: WILLIAMS Inga <Inga.Williams@Co.Benton.OR.US>

Sent: Thursday, February 16, 2023 11:28 AM

To: MAKEPEACE Amanda <amanda.makepeace@Co.Benton.OR.US>

Subject: RE: EMAIL 1 of 2: 230221 Meeting Packet: Main Section

Amanda,

I just received two written public comments on the Jordan/Crosby appeal. Please add to my agenda item.

Inga

date February 14, 2023

Page 358 of 384

Dewey Stokes

project File Number LU-22-023

25287 Stokes Lane

page 1 of 2

Philomath, OR 97370

I am Dewey Stokes and I am an adjacent land owner to this property. We are located only 2 miles from the town of Philomath at about 5 to 10 minutes travel time. There are a lot of homes all the way to town and around Philomath for their relatives to live close enough to help on the farm. There are also 5 lots with homes on Fern Road directly adjacent to this farm.

The Property Owner, Connie Jordan owned one of these homes marked on the Map on Page 2 for farm help. The people who worked for her lived in the house and took care of the animals. She sold the house and property prior to filing for this application for a house on this Property. Connie now has a neighbor next door to her driveway who walks in and feeds the horses and cows daily.

Connie Jordan had all her horses brought in from Arizona. The new barn she built was for these horses. They are her pets. She bought equipment for moving and spreading the horse manure. She only has about 6 cows, 1 calf and a small bull.

The Property has 4 wells through the years - some don't produce water and others produce a marginal amount for now. Another house would only create more problems for water. There are no good areas for a house to be built to meet all regulations with all the wet surface areas through-out the Property. The proposed home site does not have enough room with the Drainfield of Gary Lukens Easement in that small pasture area.

In conclusion, the Exclusive Farm Use Property does not require another house. It is not like we are way out in the country to travel. There are plenty of houses on property already developed as Residential Areas for farm help right next door and close to town. I see this Application as a scam to try to change the existing zoning for their own personal gain. I went Benton County to deny this appeal, based on all the facts for EFU areas.

task list:

Thank You

Dewey Stokes

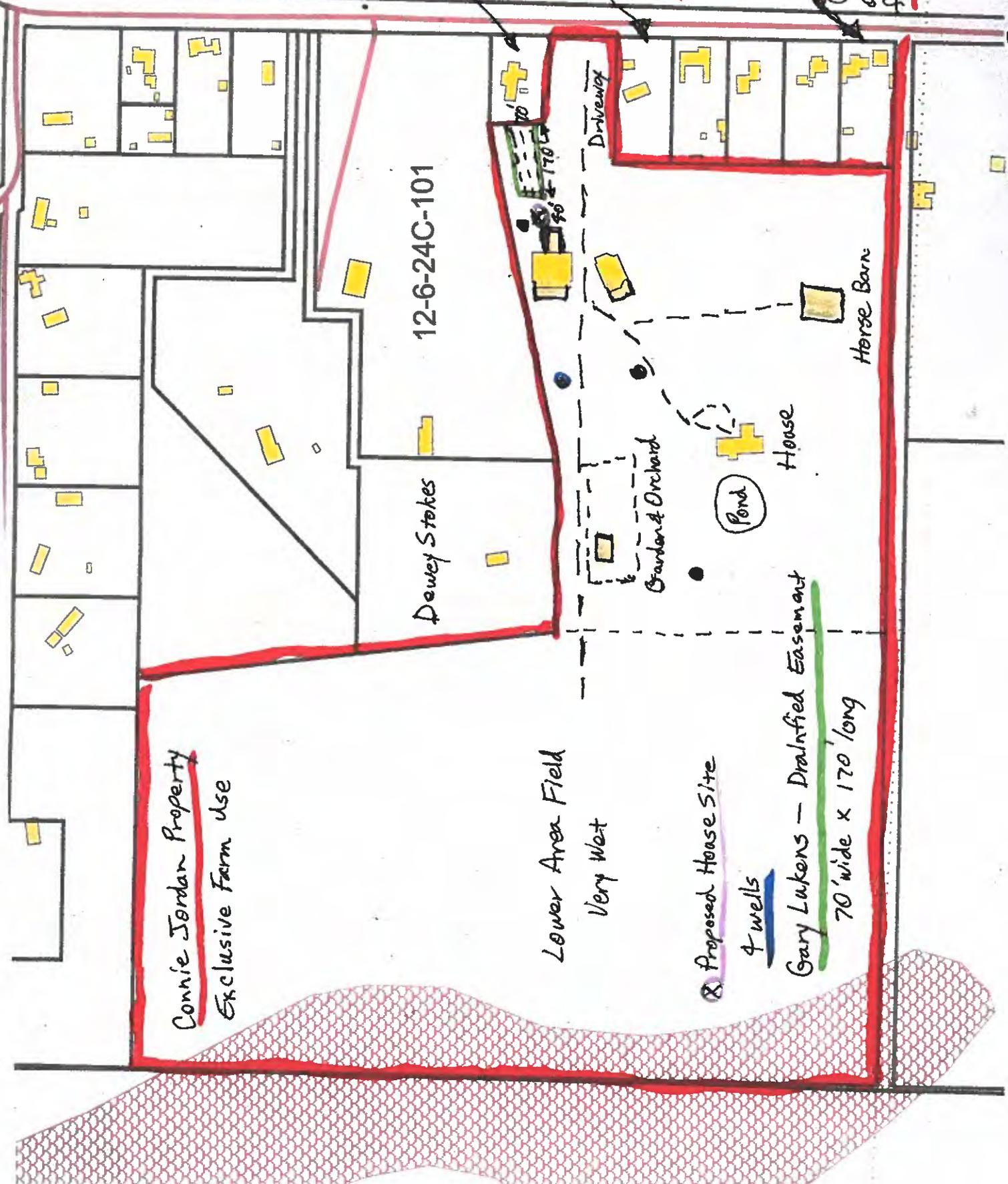
Map of Property
File Number
LU-22-023

Gary Lukens House

Farm helper NDW

Connie Jordan owned this for farm workers

Copy



Connie Jordan Property
Exclusive Farm Use

12-6-24C-101

Dewey Stokes

Lower Area Field
Very Wet

X Proposed House Site
4 wells

Gary Lukens - Drained Easement
70' wide x 170' long

Driveway

Garden & Orchard

Pond

House

Horse Barn

I Gary Lukens am an existing land owner.
I have enclosed a copy of my drain field.
My observation of my neighbor is, Jake
who lives next door to me, feeds the cows
and horses for the use of 2 acres.
Every thing else hired. they had a house
next to their land & sold out. As far
as a new house, it is not needed and
definitely should not go in the field
where my drain field is |

As far as a working ° farm goes,
It's had three owner's.

First one: It was a hobby farm.

Second one: tryed to make it a working
farm and failed.

third one: Connie: they dont have the
experience to make it a
working farm. Animals,
equipment, etc.

Mary Sabus

32008 FERN Rd.
Philomath OR
Zip 97370



www.prempro.com

M-54310-83

EASEMENT FOR DRAINFIELD

We, RONALD D. STOKES, DEWEY STOKES, JR. and ALFRED DUANE STOKES, known as STOKES BROTHERS PARTNERSHIP, located at 316 Beaver Creek Road, Philomath, Benton County, Oregon 97370, in consideration of one dollar, receipt of which is acknowledged, and the prospective benefits to be derived by reason of locating, establishing, constructing and maintaining a certain septic drainfield under the supervision of the Benton County Health Department, Environmental Health Department, as hereinafter described, do hereby convey and release to GARY LUKENS, and his heir and assigns forever, an easement and right of way for certain septic drainfield, hereinafter more particularly designated and described, over and across the land owned by us situated in the County of Benton, State of Oregon and more particularly described as follows:

See attached Exhibit "A"

The right of way hereby conveyed and released is for the sole purposes of locating, establishing, constructing and maintaining over and across the above described land a certain septic drainfield, petition for which was made in writing to the Benton County Health Department by Stokes Brothers Partnership on May 17, 1983, and the need for such additional drainfield was determined by the County Health Department, Environmental Health Section, Sanitarian Ron Smith on July 25, 1983. Such drain being described as follows:

Three (3) one hundred and twenty-five (125) foot long drain lines, twelve (12) inches deep, ten (10) feet wide, for a total space to include maintenance of the drainfield to be one hundred and seventy (170) feet long by seventy (70) feet wide.

PARCEL "A": Beginning at a point 5 chains South of the Northwest corner of the James M. Chisham Donation Land Claim No. 54 in Sections 24 and 25, Township 12 South, Range 6 West, of the Willamette Meridian in Benton County, Oregon, said point also being on the West line of the tract described by deed recorded in Book 149, page 82, Benton County Deed Records; thence East, parallel to the North line of said claim, 29.14 chains to a point 9 chains West of the East line of said claim; thence South, parallel to said East line 5 chains; thence East, parallel to said North line, 9 chains to a point on said East line; thence South, along said East line, 11.823 chains to a point 21.823 chains South of the Northeast corner of said claim; thence along the lines of said tract West 5 chains, South 10 chains to the most Southerly Southeast corner, West 33.14 chains to the Southwest corner, and North 26.823 chains to the point of beginning. Containing 92.80 acres, more or less.

Except the County Road Right of Way along the easterly most line thereof, being 30.00 feet wide and 11.823 chains long. Except also the following parcel: Beginning at a point on the North line of the above described parcel, said point being South 5.00 chains and East 14.14 chains from the Northwest corner of the James M. Chisham Donation Land Claim No. 54; thence South 89°53'23" East, 464.53 feet; thence North 89°57'02" East, 261.65 feet; thence North 89°58'00" East, 264.14 feet; thence South 00°03'00" West, 330.92 feet; thence North 89°58'30" East, 563.63 feet; thence South 75.00 feet; thence South 89°58'30" West, 663.63 feet; thence South 110.00 feet; thence South 89°58'30" West, 351.00 feet; thence South 470.00 feet; thence South 89°58'30" West, 408.62 feet; thence North 07°31'40" West, 995.39 feet to the point of beginning. Also Excepting: Parcel "B" as described below. The total area of Parcel "A" described herein, being 74.81 acres, more or less.

PARCEL "B": Beginning at a 5/8" iron rod on the West right of way line of Benton County Road No. 26250 (Philomath Road), said 5/8" iron rod being South 89°58'30" West, 30.00 feet and South 1140.20 feet from the Northeast corner of the James Chisham Donation Land Claim No. 54 in Township 12 South, Range 6 West, Willamette Meridian, Benton County, Oregon; thence West, 214.50 feet to a 5/8" iron rod; thence South 01°18'20" East, 128.68 feet to a 5/8" iron rod; thence North 89°38'42" East, 49.41 feet to a 5/8" iron rod; thence South 72°06'22" East, 38.70 feet to a 5/8" iron rod; thence South 88°57'52" East, 125.34 feet to a 5/8" iron rod on said West right of way line; thence North 142.50 feet to the point of beginning. Containing 0.67 acres, more or less.

STATE OF OREGON } ss. 47947
 County of Benton }

I hereby certify that the within instrument was received for record

3 DEC 28 AM 10:35

and assigned No 54310 1983

In the Microfilm records of said county
 Witness My Hand and Seal of County Affixed

DANIEL G. BURK

DIRECTOR OF RECORDS & ELECTIONS

By *Margaret Clancy*
 Secretary

NEW BUSINESS

BOC Agenda Checklist Master

Agenda Placement and Contacts

Suggested Agenda Date 03/07/23

View [Agenda Tracker](#)

Suggested Placement * BOC Tuesday Meeting

Department * Finance

Contact Name * Rick Crager

Phone Extension * 6246

Meeting Attendee Name * Rick Crager

Agenda Item Details

Item Title * Resolution R2023-003 Authorizing a Financing of Real and Personal Property in a Principal Amount Not to Exceed \$36,000,000 and Related Matters

- Item Involves *** Check all that apply
- Appointments
 - Budget
 - Contract/Agreement
 - Discussion and Action
 - Discussion Only
 - Document Recording
 - Employment
 - Notice of Intent
 - Order/Resolution
 - Ordinance/Public Hearing 1st Reading
 - Ordinance/Public Hearing 2nd Reading
 - Proclamation
 - Project/Committee Update
 - Public Comment
 - Special Report
 - Other

Estimated Time * 20 minutes

Board/Committee Involvement * Yes No

Advertisement*

Yes

No

Issues and Fiscal Impact

Item Issues and Description

Identified Salient Issues *

The Board is presented with a resolution to authorize the County Administrator and Chief Financial Officer to negotiate, execute, and deliver a financing agreement that will provide up to \$36,000,000 of county resources for the development and construction of a new County courthouse and District Attorney Office. Proceeds from the agreement will cover 100% of the determined cost of the District Attorney's Office, and 50% of the determined cost for the new Courthouse. The other 50% of the Courthouse cost will be provided by the State of Oregon Judicial Department.

In addition, the Resolution authorizes the appointment of Hawkins Delafield & Wood LLP as Special Counsel for the Financing Agreement.

Options *

Option 1 - Approve the Resolution as proposed.
Option 2 - Approve the Resolution with amendments.
Option 3 - Reject the Resolution.

Fiscal Impact *

Yes
 No

Fiscal Impact Description *

This resolution will have a biennial fiscal impact to the County General Fund from increased Debt Service costs related to liquidating the financing agreement over its financial negotiated term.

2040 Thriving Communities Initiative

Mandated Service? * Yes No

2040 Thriving Communities Initiative

Describe how this agenda checklist advances the core values or focus areas of 2040, or supports a strategy of a departmental goal.

To review the initiative, visit the website [HERE](#).

Values and Focus Areas

Check boxes that reflect each applicable value or focus area and explain how they will be advanced.

Core Values *

Select all that apply.

- Vibrant, Livable Communities
- Supportive People Resources
- High Quality Environment and Access
- Diverse Economy that Fits
- Community Resilience
- Equity for Everyone
- Health in All Actions
- N/A

Explain Core Values Selections *

Provides funding to support better justice services for the community through a more efficient, safe, and accessible facility.

Focus Areas and Vision *

Select all that apply.

- Community Safety
- Emergency Preparedness
- Outdoor Recreation
- Prosperous Economy
- Environment and Natural Resources
- Mobility and Transportation
- Housing and Growth
- Arts, Entertainment, Culture, and History
- Food and Agriculture
- Lifelong Learning and Education
- N/A

Explain Focus Areas and Vision Selection *

Provides needed improvements to existing facilities and infrastructure that supports safety and accountability.

Recommendations and Motions

Item Recommendations and Motions

Staff

Staff recommends approval of the Resolution as proposed.

Recommendations*

Meeting Motions*

I move to ...

...approve Resolution R2023-003 authorizing a financing of Real and Personal Property in a Principal Amount Not to Exceed \$36,000,000.

Attachments, Comments, and Submission

Item Comments and Attachments

Attachments

Upload any attachments to be included in the agenda, preferably as PDF files. If more than one attachment / exhibit, please indicate "1", "2", "3" or "A", "B", "C" on the documents.

Authorizing Resolution (Benton County Financing Agreement 2023) - Revised.DOCX 29.21KB

Comments (optional) If you have any questions, please call ext.6800

Department Approver RICHARD CRAGER

1.

Department Approval

Comments

Signature

Rick Crager

2.

Counsel Approval

Comments

Signature

Vance H. Croney

3.

County Administrator Approval

Comments

Signature

Joseph Kerby

4.

BOC Final Approval

Comments

Signature

Amanda Makepeace

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE STATE OF OREGON, FOR THE COUNTY OF BENTON

**A Resolution Authorizing a Financing of Real)
and Personal Property in a Principal Amount) RESOLUTION NO. R2023-003
Not to Exceed \$36,000,000 and Related Matters)**

WHEREAS, Benton County, Oregon (the “County”) is authorized by Oregon Revised Statutes (“ORS”) Section 271.390 to enter into financing agreements to finance real or personal property that the Board of County Commissioners (the “Board”) determines is needed so long as the estimated weighted average life of the financing agreement does not exceed the estimated dollar weighted average life of the property that is financed; and

WHEREAS, the County is authorized by ORS 287A.105 to incur bonded indebtedness within the meaning of Section 10, Article XI of the Oregon Constitution in an amount not to exceed one percent of the real market value of the taxable property in the County in the form of a financing agreement, and to commit the County’s full faith and credit and taxing power pursuant to ORS 287A.315 to pay the amounts due under the financing agreement; and

WHEREAS, it is desirable to obtain financing for the construction of a facility that will include both a new County courthouse and district attorney offices (collectively the “Project”). The financing will be used to provide resources for the construction of the district attorney offices, and a match (up to 50%) to the State of Oregon’s contribution for a new County courthouse in an aggregate principal amount of not more than \$36,000,000 pursuant to ORS Sections 271.390 and ORS 287A.105, and other applicable provisions of ORS Chapter 287A.

WHEREAS, the Project constitutes real or personal property, and the Board hereby determines the Project is needed.

WHEREAS, the estimated weighted average life of the financing agreement shall not exceed the estimated dollar weighted average life of the Project.

NOW, THEREFORE be it hereby resolved:

SECTION 1. AUTHORIZATION.

The County is hereby authorized to finance its contribution to the Project under the authority of ORS Sections 271.390 and ORS 287A.105, and other applicable provisions of ORS Chapter 287A, by entering into one or more financing agreements, loan agreements, credit facilities, or other financing documents in an aggregate principal amount of not more than \$36,000,000 (the “Financing Agreements”). The County may also pay costs associated with the Financing Agreements and any associated Obligations (as defined below) with proceeds of the Financing Agreements.

SECTION 2. DELEGATION.

The County Administrator, the Chief Financial Officer or the person authorized to act on behalf of the County Administrator or the Chief Finance Officer (each of whom is referred to as a “County Official”) is hereby authorized, on behalf of the County and without further action by the Board, to:

1) Negotiate, execute, and deliver one or more Financing Agreements to accomplish the financing authorized in this Resolution. Subject to the limitations of this Resolution, the Financing Agreements may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

2) Negotiate, execute and deliver one or more escrow agreements or similar documents (the “Escrow Agreements”) that provide for the issuance of one or more series of “full faith and credit obligations” (the “Obligations”) that represent ownership interests in the principal and interest payments due from the County under the Financing Agreements. Subject to the limitations of this Resolution, the Escrow Agreements and each series of Obligations may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

3) Deem final and authorize the distribution of a preliminary official statement for each series of Obligations and authorize the preparation and distribution of a final official statement or other disclosure document for each series of Obligations.

4) Undertake to provide continuing disclosure for each series of Obligations in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.

5) Apply for ratings for each series of Obligations, determine whether to purchase municipal bond insurance or obtain other forms of credit enhancements for each series of Obligations, enter into agreements with the providers of credit enhancement, and execute and deliver related documents.

6) Enter into additional covenants for the benefit of the purchasers of the Financing Agreements or Obligations that the County Official determines are desirable to obtain more favorable terms for the Financing Agreements.

7) Appoint and enter into agreements with service providers whose services are desirable for the financing, including municipal advisor, paying agent, and escrow agent.

8) Determine the final principal amount of each Financing Agreement, the interest rate or rates that each Financing Agreement and each series of Obligations shall bear, the County’s prepayment rights, and other terms of each Financing Agreement and each series of Obligations.

9) Solicit competitive bids for the purchase of the Obligations and award the sale to the bidders offering the most favorable terms to the County, select underwriters to purchase the Obligations and negotiate the terms of the sale of those Obligations with the underwriters, or place any Financing Agreement directly with a commercial bank or other lender.

10) Issue any qualifying Financing Agreement as a “tax-exempt bond” bearing interest that is excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), designate any Financing Agreement as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code, if applicable, and enter into covenants to maintain the excludability of interest on those Financing Agreements from gross income under the Code.

11) Issue any Financing Agreement as a “taxable bond” bearing interest that is includable in gross income under the Code.

12) Execute and deliver any other certificates or documents and take any other actions that the County Official determines are desirable to carry out this Resolution.

SECTION 3. SECURITY.

The Financing Agreements shall constitute unconditional obligations of the County, which are payable from all legally available funds of the County. Pursuant to ORS 287A.315, the County Official may pledge the County’s full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution, and any and all of the County’s legally available funds, to make the payments due under the Financing Agreements. The Financing Agreements may also be secured by any unspent proceeds of the Financing Agreements.

SECTION 4. SELECTION OF SPECIAL COUNSEL.

The County appoints Hawkins Delafield & Wood LLP as Special Counsel for the Financing Agreements.

SECTION 5. EFFECTIVE DATE.

This Resolution shall take effect immediately upon its adoption.

Adopted this 7th day of March, 2023.

Signed this 7th day of March, 2023.

BENTON COUNTY BOARD OF COMMISSIONERS

Pat Malone, Chair

Xanthippe Augerot, Vice Chair

Nancy Wyse, Commissioner

Approved as to Form:

Vance Croney, County Counsel

BOC Agenda Checklist Master

Agenda Placement and Contacts

Suggested Agenda Date 03/07/23

View [Agenda Tracker](#)

Suggested Placement * BOC Tuesday Meeting

Department * Board of Commissioners

Contact Name * Amanda Makepeace

Phone Extension * 6461

Meeting Attendee Name * Joe Kerby, County Administrator

Agenda Item Details

Item Title * Letter of Support for Corvallis Housing First's Grant Application to Oregon Housing and Community Services

Item Involves * Check all that apply

- Appointments
- Budget
- Contract/Agreement
- Discussion and Action
- Discussion Only
- Document Recording
- Employment
- Notice of Intent
- Order/Resolution
- Ordinance/Public Hearing 1st Reading
- Ordinance/Public Hearing 2nd Reading
- Proclamation
- Project/Committee Update
- Public Comment
- Special Report
- Other

Estimated Time * 5

Board/Committee Involvement * Yes
 No

Advertisement*

Yes

No

Issues and Fiscal Impact

Item Issues and Description

Identified Salient Issues*

Addressing homelessness is crucial across the county; this letter is to support Corvallis Housing First's (CHF's) grant application to Oregon Housing and Community Services to permanently fund 46 safe and affordable housing units at Third Street Commons.

Options*

Approve issuing the letter of support for Corvallis Housing First's grant application.

Decline to approve the letter of support for Corvallis Housing First's grant application.

Fiscal Impact*

- Yes
- No

2040 Thriving Communities Initiative

Mandated Service? * Yes No

2040 Thriving Communities Initiative

Describe how this agenda checklist advances the core values or focus areas of 2040, or supports a strategy of a departmental goal.

To review the initiative, visit the website [HERE](#).

Values and Focus Areas

Check boxes that reflect each applicable value or focus area and explain how they will be advanced.

Core Values *

Select all that apply.

- Vibrant, Livable Communities
- Supportive People Resources
- High Quality Environment and Access
- Diverse Economy that Fits
- Community Resilience
- Equity for Everyone
- Health in All Actions
- N/A

Explain Core Values Selections *

Creation of 46 safe and affordable housing units is an investment in the community and will serve to improve the health, safety, and welfare for those housed there.

Focus Areas and Vision *

Select all that apply.

- Community Safety
- Emergency Preparedness
- Outdoor Recreation
- Prosperous Economy
- Environment and Natural Resources
- Mobility and Transportation
- Housing and Growth
- Arts, Entertainment, Culture, and History
- Food and Agriculture
- Lifelong Learning and Education
- N/A

Explain Focus Areas and Vision Selection *

Fair and equitable housing is a continuing issue in Oregon and Benton County; this is an effort to make housing available to individuals most at risk of homelessness.

Recommendations and Motions

Item Recommendations and Motions

Staff

Recommendations *

Staff recommends approval of the letter of support for Corvallis Housing First's grant application to Oregon Housing and Community Services to permanently fund 46 safe and affordable housing units at Third Street Commons.

Meeting Motions *

I move to ...

...approve issuing the letter of support for Corvallis Housing First's grant application to Oregon Housing and Community Services to permanently fund 46 safe and affordable housing units at Third Street Commons.

OR

... decline to approve the letter of support for Corvallis Housing First's grant application to Oregon Housing and Community Services to permanently fund 46 safe and affordable housing units at Third Street Commons.

Attachments, Comments, and Submission

Item Comments and Attachments

Attachments

Upload any attachments to be included in the agenda, preferably as PDF files. If more than one attachment / exhibit, please indicate "1", "2", "3" or "A", "B", "C" on the documents.

5.1 Third St Commons Support Letter.docx 67.83KB

Comments (optional)

If you have any questions, please call ext.6800

**Department
Approver**

MAURA KWIATKOWSKI

1.

Department Approval

Comments

Signature

Hanna Kwiattowski

2.

Counsel Approval

Comments

Signature

Vance H. Choney

3.

County Administrator Approval

Comments

Signature

Hanna Kwiattowski

4.

BOC Final Approval

Comments

Signature

Amarda Makepeace



Board of Commissioners

Office: (541) 766-6800
Fax: (541) 766-6893

4500 SW Research Way
Corvallis, OR 97333

co.benton.or.us

March 7, 2023

Andrea Myhre, Executive Director
Corvallis Housing First
2311 NW Van Buren Avenue
Corvallis, Oregon 97330

Re: Letter of Support for Third Street Commons and Funding Requested by Corvallis Housing First

Dear Ms. Myhre:

The Benton County Board of Commissioners is pleased to provide this letter supporting Third Street Commons and Corvallis Housing First's application to Oregon Housing and Community Services (OHCS) for Permanent Supportive Housing funding. Third Street Commons will provide 46 safe and affordable housing units for our community's most vulnerable.

Benton County is a partner along with the City of Corvallis in creating the Home, Opportunity, Planning and Equity (HOPE) Advisory Board. The HOPE Advisory Board is a joint effort between Benton County and the City of Corvallis to facilitate a comprehensive, coordinated response from the county, cities, and diverse community partners, leaders, and persons experiencing homelessness. A HOPE Advisory Board's policy recommendation is to increase units for permanent supportive housing. Third Street Commons is squarely aligned with our goals.

Homelessness in Benton County is increasing. Post-pandemic impacts on vulnerable people, steady upward trends in real estate costs, and gaps in critical support systems contribute to this increase. Benton County is committed to improvements in our local support systems that contribute to addressing homelessness. Corvallis Housing First is an essential partner in this significant effort to impact our community positively.

Developing Third Street Commons is an important project within our community's systematic response to homelessness. Benton County is partnering with CHF to bring about this project. We

Ms. Andrea Myhre

Re: Letter of Support for Third Street Commons and Funding

Requested by Corvallis Housing First

March 7, 2023

Page 2

encourage OHCS to support Corvallis Housing First's application for permanent supportive housing funding.

Sincerely,

BENTON COUNTY BOARD OF COMMISSIONERS

Pat Malone
Chair

Xanthippe Augerot
Vice Chair

Nancy Wyse
Commissioner

BCTT Workplan

Feb. - Apr. 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
February 26	27 SUBS Meet to Refine F&Rs for Draft 5	28 SUBS Meet to Refine F&Rs for Draft 5	March 1 SUBS Meet to Refine F&Rs for Draft 5	2	3	4
5	6 SUBS Meet to Refine F&Rs and Create Draft 5	BOC Update 7 SUBS Meet to Refine F&Rs and Create Draft 5	8 SUBS Meet to Refine F&Rs and Create Draft 5	9 Sustainability Coalition Fair (Topic: BCTT Process and SMMP) Fair: (5-7) Town Hall: (7-9)	10	11
12	13 SUBS Meet for Final Revisions	14 SUBS Meet for Final Revisions	15 Draft 5 Issued W/O Appendix Robust Multi-Channel Outreach: 3/15 – 4/11	16 Public Survey on Draft Recs Opens at Noon WG Meeting 1:30 to 7:30 Two Comment Periods: 1:45 - 2:15 5:00 - 5:30	17 Public Survey Open	18 Public Survey Open
19 Public Survey Open	20 Public Survey Open Final Draft (6) w/ Appendix WG Informal Poll Opens at Noon	BOC Update 21 Public Survey Open WG Informal Poll Open	22 Noon Close: Public Survey & WG Informal Polling PM: Both Survey Results Distributed	23 Final WG Meeting & Formal Polling* 1:30 to 7:30 Two Comment Periods: 1:45 - 2:15 5:00 - 5:30	24	25 * On Body of the WG Report, Not on the Appendix, which contains SUB working papers, etc. The Appendix SUB sections will be approved by the Subcommittees, but not the full Workgroup. While linked to the findings and recommendations for ease of reference, they are for background purposes only.
26	27 SUBS Avail for Clarification on Appendix Only	28 SUBS Avail for Clarification on Appendix Only	29 SUBS Avail for Clarification on Appendix Only	30 SUBS Avail for Clarification on Appendix Only	31 WG/SUB* Statements Due @ Noon	April 1 *Current & Past Members Invited
2	3 Final Report to Board & Public (Word Version)	Publisher 4 OPEN HOUSE Virtual (5 to 7 PM)	Publisher 5 Report Public Comment Period Opens (Input Survey by Topic)	Publisher 6 Comment Period	Publisher 7 Comment Period	8 Comment Period Facilitator Format Rev Only
9 Comment Period Fac. Format Review Only	10 Comment Period At Publisher	11 "Coffee Table" Version of Report to BOC Comment Period	12 Comment Period	13 Comment Period	14 Noon: Public Comment Period Closes 5 PM: Packet to BOC	15
16	17	18 BOC Meeting (AFT/PM) BCTT Presents Public Comm. BOC Discussion BCTT Recognition	TBD BOC-Sponsored Public Involvement Under Development			

March 7, 2023

Testimony before BC BOC regarding Landfill Franchise Agreement

Good Morning - My name is Mark Yeager, I am a resident of Benton County.

I am here today to raise public awareness regarding the current landfill franchise agreement between Benton County and Valley Landfills.

That 20-year agreement was signed in December 2020 and it has several key sections that cause BC residents concern.

I could find no record of any public involvement in this process except the Code required public hearing, that was held virtually, on December 15th, 2020, just prior to adoption. Not surprisingly, no one testified because no one knew about it.

First, Sections 4(c) and 5(b) of the FA state that VLI intends to apply to expand the landfill south of Coffin Butte Road by 2024.

Coincidentally, per the franchise agreement, the FF monies paid to the County jump by over \$1.4M per year in 2024, and the Host Fee jumps by \$1 per ton. The landfill receives more than 1M tons per year.

The staff reported to the BOC that those increased revenues were dependent on Republic gaining approval from the County for an expansion of the landfill.

The agreement also says that if the County does not approve the expansion request by 2025, the FF revenue gets reduced by \$1M per year and the Host Fee is reduced by \$0.56 per ton.

With these financial incentives built into an agreement signed by the BOC, how can the public be assured that the Planning Commission and the BOCs will make an unbiased decision regarding expanding the landfill?

Next, Section 6 requires a \$10M pollution liability insurance policy designed to defend VLI and Benton County from environmental lawsuits. While the policy limit is very low given the environmental risks at the landfill and costs of cleanups these days, it's better than nothing, maybe.

However, the liability insurance requirement in the agreement has a 30-day notice escape clause. It states "If pollution liability insurance is not available or not available at a reasonable cost, Franchisee will give County notice of this event and Franchisee will not be in default of this agreement." This does not seem like any real financial protection for the County and its residents.

In sum, the FA language regarding financial incentives to approve an expansion south of CBR, and the very weak pollution liability clauses are concerns for Benton County residents.

Neither of these topics have been discussed as part of the BCTT and they deserve meaningful public discussion regarding the future of the landfill.

Thank you for your time.