



POLK COUNTY

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
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COMMUNITY DEVELOPMENT

AUSTIN MCGUIGAN
Director

MEMORANDUM

TO: Polk County Planning Commission
FROM: Austin McGuigan, Director
DATE: February 18, 2022
RE: Open Space Land Special Property Tax Assessment; Planning File SA 22-01.

March 1, 2021 Public Hearing

ISSUE:

The Confederated Tribes of the Grand Ronde Community of Oregon (Tribe) applied for Special Property Tax Assessment of Open Space Land (as provided by ORS 308A.300 to 308A.330) on 665.1 acres in the Exclusive Farm Use (EFU) Zoning District located at 8375 Steel Bridge Road, Sheridan, Oregon (Assessment Map T6S, R6W, Section 7, Tax Lots 202, 301, and 501; T6S, R6W, Section 8, Tax Lots 502 and 600; T6S, R6W, Section 17, Tax Lots 301 and 302; T6S, R6W, Section 18, Tax Lot 103; and T6, R7W, Section 12, Tax Lot 2801) (Map, Attachment A).

RECOMMENDATION:

Based on the findings and analysis in the Planning Commission memo, staff recommends approval of the request to grant "open space land" special property tax assessment for the subject properties.

NATURE OF REQUEST AND BACKGROUND:

Under Oregon Revised Statutes (ORS) 308A.300 to 308A.330 a property owner may apply to the Polk County Tax Assessor for an "open space land" property tax special assessment. The application must be submitted to the Polk County Planning Commission and governing body and be processed in the same manner as a comprehensive plan amendment.

On January 3, 2022 the Confederated Tribes of the Grand Ronde Community of Oregon (Tribe) submitted an application via email to the Polk County Assessor's Office for special assessment of "open space land" on 665.1 acres composed of 9 tax lots zoned EFU.

ORS 308A.300 defines "open space land" as meaning:

- (a) Any land area so designated by an official comprehensive land use plan adopted by any city or county; or
- (b) Any land area, the preservation of which its present use would:
 - a. Conserve and enhance natural or scenic resources;
 - b. Protect air or streams or water supply;
 - c. Promote conservation of soils, wetlands, beaches or tidal marshes;
 - d. Conserve landscaped area, such as public or private golf courses; which reduce air pollution and enhance the value of abutting or neighboring property;

- e. *Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces;*
- f. *Enhance recreation opportunities;*
- g. *Preserve historic sites;*
- h. *Promote orderly urban or suburban development; or*
- i. *Retain in their natural state tracts of land, on such conditions as may be reasonably required by the legislative body granting the open space classification.*

The subject properties are not designated by the Polk County Comprehensive Plan as open space. Nevertheless, ORS 308A.300(b) allows any land area to be designated as "open space land" if by preserving the land in its present use would meet the conservation values set forth in the law. The application submitted contends that this special assessment would preserve the current use they describe as protecting rare, at-risk native habitat through the conservation of wetland, riparian hardwood forest, oak savanna and grassland habitats.

ORS 308A.309 requires that within 10 days of filing with the Assessor, the Assessor shall refer each application for classification to the Planning Commission of the governing body and to the granting authority, which shall be the county governing body, if the land is in an unincorporated area. ORS 308A.309 further requires that an application shall be acted upon in a county with a comprehensive plan in the same manner in which an amendment to the comprehensive plan is processed.

If the granting authority does not deny an application by April 1 of the year following the year of receipt of the application, ORS 308A.312 provides protection to applicants from the failure of a governing body to meet its obligation under the statute in a timely manner by requiring those applications to be considered land which qualifies under this law.

Since the subject tax lots are located within an unincorporated area, the Assessor forwarded the application that was submitted via email on January 3, 2022 to the Planning Division for processing on the same day. Polk County has a comprehensive plan; therefore, on January 10, 2022 the Polk County Planning Division sent notice of the application to the Polk County Planning Commission and the Polk County Board of Commissioners.

The procedures for a legislative plan amendment can be found in Polk County Zoning Ordinance (PCZO) Chapter 115.040. Specifically, PCZO 115.040(B) requires the Planning Commission to hold a public hearing as prescribed in PCZO Chapter 111 on the complete petition for a plan amendment. After concluding the hearing, the Planning Commission shall submit a recommendation to the Board of Commissioners. Pursuant to PCZO 115.040(C), the Board of Commissioners shall also hold a public hearing on the proposed plan amendment as provided in PCZO Chapter 111.

On February 7, 2022, staff sent notice of both the Planning Commission and Board of Commissioners hearings to surrounding property owners and to government and quasi-government agencies. Notice was posted on the subject properties on or prior to February 9, 2022. Notice of the public hearings appeared in the Polk County Itemizer-Observer Newspaper on February 9, 2022. Notification of these proceedings have been fulfilled pursuant to PCZO Sections 111.240(B), 111.340, 111.350, 111.360 and 111.370.

Comments received as of the writing of this memo are included as Attachment B.

Pursuant to OAR 308A.309 and PCZO 115.040, the Board of Commissioners shall conduct a public hearing, consider the recommendation of the Planning Commission, and make a final local decision.

ANALYSIS:

The subject tax lots contain approximately 665.1 acres zoned EFU and are identified on Assessment Maps T6S, R6W, Section 7, Tax Lots 202, 301, and 501; T6S, R6W, Section 8, Tax Lots 502 and 600; T6S, R6W, Section 17, Tax Lots 301 and 302; T6S, R6W, Section 18, Tax Lot 103; and T6, R7W, Section 12, Tax Lot 2801. These 9 tax lots constitute the entire area of which the applicant is requesting "open space lands" special assessment classification in this application.

The subject tax lots are located approximately 0.7 mile southeast of the city of Willamina along Oregon Highway 18. The tax lots form two separate tracts of contiguous tax lots that are separated by approximately 200 linear feet. The subject properties are part of the foot hills of the Oregon Coast Range and range in elevation from approximately 290 feet at the western tract of tax lots along Oregon Highway 18 to a ridge of approximately 470 feet in the central portion of the eastern tract of tax lots. Staff's reviewed the 2018 aerial photograph of the subject properties utilizing the Polk County Geographic Information System (GIS) and found that the subject properties are composed primarily of hardwood forest, oak savanna and grassland habitats as purported by the applicant. Staff review of the National Wetland Inventory (NWI) GIS map did not reveal any inventoried wetlands. There was no evidence of current agriculture in the aerial photograph. This supports the conclusion that the subject properties are currently predominantly native habitat.

The legislative intent for "open space land" special assessment can be found in ORS 308(A).303. The legislature declared that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and the vegetation thereon to assure continued public health by counteracting pollutants and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declared that it is in the public interest to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land, and that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes.

On January 27, 2022 the Tribe's Tribal Lands Department provided Polk County's Planning Division with additional pertinent information to assist in the determination as to whether the subject properties qualify for the "open space land" classification. According to the applicant, the Tribe acquired the property through a land donation from The Nature Conservancy a District of Columbia Non-Profit Corporation, in association with the Willamette Wildlife Mitigation Program ("WWMP") on June 4, 2019. The WWMP was created as a result of a Memorandum of Agreement between the Bonneville Power Administration ("BPA") and the State of Oregon acting through the Oregon Department of Fish and Wildlife ("ODFW") in which the BPA agreed to fund the acquisition of real property to permanently protect and enhance important fish and wildlife habitat in the Willamette Basin. As part of the WWMP, the BPA funding is contingent upon the purchaser/Tribe executing a Deed of Conservation Easement stating that the Tribe will protect and conserve the properties. The Deed of Conservation Easement for Phase 1 was recorded with Polk County as Polk County Clerk Document 2014-008247. The Deed of Conservation Easement for Phase 2 was recorded with Polk County as Polk County Clerk Document 2016-010816.

According the to the Tribe's Tribal Lands Department Manager, these properties are important to wildlife conservation because there are several rare plant and animal species that have been documented on the properties including western meadow lark, streaked horned lark, and thin leaved peavine, a US Fish and Wildlife plant species "of concern. According to the applicant, the properties are contiguous with two adjacent Wetland Reserve Program conservation easements, creating a relatively larger block of conservation land approximately 900 acres. The applicant states that in the Willamette Valley, a block of habitat this size has significant ecological value for native wildlife species.

According to the applicant, the subject properties comprises 667 acres that include upland prairie, oak savanna, oak woodlands, mixed oak and conifer forest, seasonal perennial creeks with riparian corridors, and habitat important to ESA-listed plant and animal species. The applicant states that the Tribe will maintain the conservation values of the property and seek to restore regionally imperiled habitats like prairie, Oregon white oak savanna, and open oak woodland systems.

Based on these facts, Staff concludes that the subject properties in their entirety could qualify as "open space land" as that term is defined by ORS 308A.300(b), so long as preserving the land in its present "use" would meet the conservation values set forth in the law. The applicant states that they are not proposing a recreational or park type open space use. They state that they will be managing the land to promote native plant and animal species.

After a complete application with all the information necessary to properly classify an area of land as "open space land" has been provided, with a verification of truth, and it has been determined that the subject area meets the definition of "open space land" found in ORS 308A.300, there are three sets of factors that must then be considered when determining whether to approve the request.

The first set of factors is found in ORS 308A.309(1) which is applicable when the subject area is not included in the comprehensive plan as open space. This criterion requires a comparison between the value of preserving the area as open space versus the costs and consequences that could be incurred when extending urban services to or beyond the property or expanding an urban growth boundary to compensate for any reduction in available buildable lands.

In this instance, the subject properties are not designated by the Polk County Comprehensive Plan as open space. Therefore, the granting authority must weigh the requirements of ORS 308A.309(1)(a,b and c):

- (a) The projected costs and other consequences of extending urban services to the affected lot or parcel;*
- (b) The value of preserving the lot or parcel as open space;*
- (c) The projected costs and other consequences, including the projected costs of extending urban services, of expanding the urban growth boundary in other areas if necessary to compensate for any reduction in available buildable lands.*

The subject properties are zoned EFU which does not permit single family dwellings as an outright permitted use. The subject properties are currently predominantly composed of native habitat, contains "threatened" plant species, is situated between a national wildlife refuge and other large conservation properties, is restricted by a conservation easement, and is included as part of a Tribal Lands management strategy. Additionally, the subject properties are located 0.7 mile southeast of the Willamina UGB. Therefore, it is unlikely that urban services would be extended to or beyond the subject properties within the 20 year planning horizon. Based on this information, the costs and consequences related to the extension of urban services and the potential impact to the buildable lands inventory is negligible to nonexistent. Additionally, the properties are subject to a conservation easement that is intended to protect the same conservation values the applicant is proposing qualifies them for "open space lands" special assessment. Therefore, staff concludes that the value of preserving the tax lot as open space outweighs the costs and consequences of extending urban services or expanding the UGB in other areas to compensate for a reduction in available buildable lands.

The second set of factors are found in ORS 308A.309(2) and prevent the request from being denied solely on the fact that there may be a potential loss in revenue, if it is determined that preservation of the current open space use will enhance or protect specific resources.

Specifically, ORS 308A.309(2) states that:

The granting authority shall not deny the application solely because of the potential loss in revenue that may result from granting the application if the granting authority determines that preservation of the current use of the land will:

- (a) Conserve or enhance natural or scenic resources;*
- (b) Protect air or streams or water supplies;*
- (c) Promote conservation of soils, wetlands, beaches or tidal marshes;*
- (d) Conserve landscaped areas, such as public or private golf courses, which enhance the value of abutting or neighboring property;*
- (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces;*
- (f) Enhance recreation opportunities;*
- (g) Preserve historic sites;*
- (h) Promote orderly urban or suburban development; or*
- (i) Affect any other factors relevant to the general welfare of preserving the current use of the property.*

The first task in evaluating this set of factors is to determine the potential loss of property tax revenue that may result from granting the application.

According to the Polk County Tax Assessor, Valerie Patoine, these tax lots include a mix of special assessment deferrals (farm and forest) and a majority of the tax lots do not have any special assessment. In Polk County the specially assessed value (SAV) for "open space land" would be the same as the farm and forest assessed values. If those tax lots that are currently receiving special assessment were to be denied the "open space land" special assessment, they could potentially lose their existing special assessment depending on the terms of the conservation easement that encumbers the properties. If they were to lose their special assessment a new maximum assessed value (MAV) would be created, and either a 5 or 10 year look back would be calculated and posted to the account. It may or may not be collected, depending on whether or not the conservation easement would interfere with the land's ability to be put back under a farm or forest special assessment.

According to the Assessor, the current cumulative annual property tax for the subject properties, with some tax lots receiving farm or forest special assessment, is \$16,307.26. If the tax lots were to lose all special assessment, the cumulative annual property tax would be \$21,154.99.

As noted above, the tax accounts that do not currently receive a special assessment valuation would have a farm potential additional tax liability posted to their account. Currently 399.1 acres do not receive a special assessment valuation. If the application was to be approved, farm potential additional tax would be required to be paid in full prior to rolling those tax lots into "open space land" special assessment. The Assessor calculated the total farm potential additional tax for all accounts in the application to be \$23,449.60.

If the proposed "open space land" property tax special assessment were to be approved, the tax lots that are not currently receiving a special assessment valuation would now be subject to the special assessment valuation. As a result, the current cumulative annual property tax for the subject properties, with only some tax lots receiving farm or forest special assessment, would decrease from \$16,307.26 to \$11,280.96. The County would thereby lose an additional \$5,026.30 in annual tax revenue by adding special assessment to the properties that do not currently have it. In addition, for open space land special assessment the Assessor must add 2/3rd of 1% each month as a lump sum future penalty. This calculation is done manually every year and added to the account in a notation.

Based on the fact that the subject properties are encumbered by a conservation easement that prohibits timber harvesting, livestock grazing and agricultural production; staff believes the subject properties would likely be disqualified from the current farm and forest special assessments on the account regardless of whether or not the application is approved. However, the Assessor notes that a separate analysis would need to be performed at that time in order to determine eligibility. If the

subject properties were to, hypothetically, lose all special assessment the difference in annual tax liability between receiving "open space land" special assessment on all accounts and no special assessment would be \$9,874.03.

Based on these findings staff concludes that because the majority of the subject properties are currently assessed at market value, approval of the application would result a \$5,026.30 net loss in annual property tax revenue for Polk County compared to the current assessment. However, Polk County would receive a total farm potential additional tax of \$23,449.60.

ORS 308A.453 states that land subject to a conservation easement that is held by one or more holders and that is managed in compliance with the terms of the easement, shall receive conservation easement special assessment for ad valorem property tax purposes. However, according to the applicant, they cannot meet the requirements of conservation easement special assessment found in ORS 308A.450 to 465 as the land is held by the Tribe and the easement is held by the Federal government. This is similar to instances where the State of Oregon purchases land subject to a conservation easement for preservation of natural habitat, not for park or recreational development, and it is not eligible for conservation easement special assessment. However, the State of Oregon is eligible for tax exemption in that instance, while the Tribe is not.

Next we must determine whether conservation of the current "use" of the land would achieve the conservation values set forth in the law. The applicant indicates that the "open space land" designation would conserve or enhance natural resources including native birds and wildlife, oak savanna and prairie habitat and since the subject tax lots are situated between other large conservation properties it would also enhance abutting or neighboring forests, wildlife preserves, nature reservations, sanctuaries, and other open spaces. Staff conducts a more in-depth analysis of the current "use" of the land below. The some of the tax lots are currently receiving special assessment primarily as small tract forest land or as farm land. Removing the economic incentives related to farm and forest special assessment may aid in conservation of the current use of the land.

Since the applicant has encumbered all of the subject tax lots with a conservation easement that is intended to protect the same conservation values the applicant has presented in this application and since it is also included within a Tribal Lands management strategy, staff concludes that the "open space land" designation could be appropriate as the designation would aid in the enhancement and preservation of the resources listed above with a small loss in annual property tax revenue to the County.

Finally, the set of factors found in ORS 308A.309(3) must also be considered. Specifically ORS 308A.309(3) states that:

The granting authority may approve the application with respect to only part of the land which is the subject of the application; but if any part of the application is denied, the applicant may withdraw the entire application.

In this instance, all of the 665.1 acres are encumbered with a conservation easement and are included in a Tribal Lands management strategy to enhance natural resources.

If the granting authority determines that the land qualifies for "open space land" special assessment, ORS 308A.312(2) requires the adoption of an order of approval that states the open space use upon which approval was based. The statute does not define "open space use". However, ORS 308A.315(5) provides an example of "open space use" as a park, sanctuary or golf course. ORS 308A.318(1) states that once land has been classified under ORS 308A.300 to 308A.330, it shall remain under such classification and it shall not be applied to any other use than as open space unless withdrawn from classification. For the purpose of the collection of additional taxes, this subsection also requires the owner to notify the Assessor of any change from one open space use to another open space use and provides an example, such as a change from park purposes to golf course land.

When looking at these laws in their entirety, it appears that "open space land" special assessment was created to primarily provide property tax relief for current open space uses that provide both recreational use and natural land function benefits or have been planned and zoned as open space by a local governments comprehensive plan or as part of a residential planned unit development. This makes sense as other types of special assessment such as wildlife habitat special assessment, riparian habitat exemption and conservation easement special assessment may not be applicable in those instances which could thereby discourage the conservation values the Oregon legislature intends to advance.

The requirement to evaluate a current use is unique to the open space land special assessment. Other types of conservation based special assessment do not require a specified "use" of the land. Conservation easement special assessment, for instance, only requires that the land is managed in accordance with the terms of the conservation easement, which is what is occurring in this case and permitted in the EFU zone. Additionally, an exhaustive review process by a planning commission and governing authority is also unique to open space special assessment. This process essentially acts as a type of land use compatibility evaluation before a decision is made by the governing body, not the County Assessor.

In this case, the subject properties are zoned EFU. The uses authorized in EFU zones in non-marginal lands counties, such as Polk County, are generally set out in ORS 215.283. PCZO Chapter 136 incorporates ORS 215 and identifies the uses and activities that are permitted within the EFU zone. The EFU zone does not have a "use" category for "open space". Instead, a County must find parity between the current use of the land and the uses listed in the EFU zone in order to determine if a use is permitted. Creation restoration and enhancement of wetlands is an outright permitted activity in the EFU zone. Parks and golf courses are both uses that could be permitted but would require land use authorization. Counties may not impose additional local barriers to uses allowed outright in EFU zones under ORS 215.283(1) and also may not allow additional uses in the EFU zone that are not allowed by statute (Bechtold v. Jackson County, 42 Or LUBA 204 (2002)).

PCZO 110.585 defines "use" as the purpose of which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied. This application for special assessment of "open space land" identifies the current open space use as "protect rare, at-risk native habitat through the conservation of wetland, riparian, oak savanna, oak woodland, and grassland habitats". While the description constitutes permitted land management activities, staff believes it may fall short of a "use" as that term is intended in the law because the same management activities could apply across an entire category of open space uses. Therefore, staff is uncertain whether this description in the application would allow the Assessor to make a determination as to whether the open space use changes to another use or changes to another open space use, as required by ORS 308A.318 to 327. This determination is necessary for the Assessor to comply with the statute and meet the legal obligation to collect any additional future taxes.

For these reasons it may be appropriate to look at the term open space use, as it is intended in ORS 308A, as a "use" spectrum that can span from no use, to passive uses, all the way to intensive recreational uses as long as the conservation values set forth in the law are met. In the steps along this spectrum an open space use may not be regulated by zoning, may require land use authorization or may not be permitted without a zone change.

In this instance, it appears the use would fall toward the "no use" end of the spectrum for the purpose of evaluating compatibility with ORS 215 and the EFU zone. Staff understanding is that the applicant's intent is straightforward and consists of a plan to protect a native landscape from conversion to commercial forestry and agricultural uses that are permitted in the zone and to conserve and manage the land in its current natural state. Essentially, the applicant is simply maintaining an existing and rare natural seral stage of ecological succession that provides desired ecological benefits. They have not created any type of built environment or developed passive or intensive recreational uses. It is not publically accessible and has not been designed for leisure, play or sport. Raw lands, in their most natural state, that have not been put to a use can and do lawfully exist in the EFU zone. Therefore, staff concludes that the current "open space use", as that term has

meaning in ORS 308A, is not a use that is regulated by the EFU zone or ORS 215 and is, therefore, permitted.

In this application, the land is not necessarily being put to an open space "use" that the "open space land" special assessment was likely initially intended to serve or that ORS 215 was intended to regulate. Nevertheless, this fact may not constitute a reason for denial in this case. Especially since the applicant, a Tribal Nation, has a legitimate government interest in protecting and managing natural habitats and open spaces. The applicant cannot qualify for any other type of special assessment that would prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment at values incompatible with their public interest to preserve the tax lots as open space land. Further, the applicant in this case is not allowing land to simply revert to an unmanaged semi-wild state which could harbor invasive species and potentially conflict with surrounding farm and forest operations. They engage in active professional land management as the result of a conservation easement and have included the properties in a Tribal Land management strategy in an effort maintain important ecological function. For these reasons staff recommends approval of the application. However, if the application is approved, an open space "use" must be identified that would allow the Assessor to meet their obligation to collect any additional future taxes as required by the law. Staff would recommend a term such as Native Habitat Open Space/Non Recreational in order to meet that requirement.

The current open space use is not a "use" that is regulated by the EFU zone or ORS 215 and is, therefore, permitted. The applicant has made it clear that they do not intend to put the land to a use such as a park, or other recreational open space use that would require a land use authorization or zone change. Therefore, in this case, staff recommends that the Board find that the Native Habitat Open Space/Non Recreational use is permitted in the EFU zone and is an open space use for the purpose of ORS 308A.

If the applicant's intent in the future is to develop a park or other recreational open space use, land use authorization would be required at that time. Any change to another open space use or intensification must be permitted and authorized in the EFU zone.

CONCLUSION:

Based on the current use of the properties as described by the applicant and confirmed by 2018 aerial photographs, staff concludes the subject properties meet the definition of "open space land" in ORS 308A.300(b).

ORS 308A.309 requires that Polk County act upon this application in the same manner in which an amendment to the comprehensive plan is processed. The procedures for a legislative plan amendment can be found in PCZO 115.040(B) and (C) which require the Planning Commission and the Board of Commissioners to hold public hearings as prescribed in PCZO Chapter 111. This application is following the legislative plan amendment process and notification of these proceedings have been fulfilled pursuant to PCZO Sections 111.240(B), 111.340, 111.350, 111.360 and 111.370.

In the analysis above, staff concluded that the value of preserving the subject tax lots as open space outweighs the costs and consequences of extending urban services or expanding the UGB in other areas to compensate for a reduction in available buildable lands. This conclusion satisfies the requirements of ORS 308A.309(1)(a),(b), and (c).

The legislative intent of the "open space land" designation is to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land.

Staff found that removing the economic incentives related to farm and forest special assessment may aid in conservation of the current use of the land.

Staff concluded that the entire 665.1 acres are encumbered with a conservation easement and are included in a Tribal Lands management strategy to enhance natural resources and, therefore, the “open space land” special assessment should be applied to all of the subject properties. This conclusion satisfies the requirements of ORS 308A.309(3).

Staff notes that if this application is not denied by April 1 of 2022, ORS 308A.312 mandates that this application is to be considered land which qualifies under this law.

Staff concludes that the existing conservation easement and Tribal Lands management strategy accomplish the objectives of the “open space land” designation by enhancing and maintaining the current rare native ecosystem. Therefore, the application meets the minimum requirements of the law and can be considered an open space use for the purpose of ORS 308A.

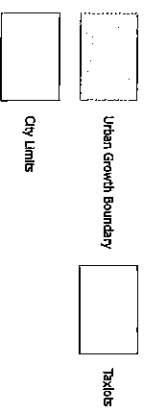
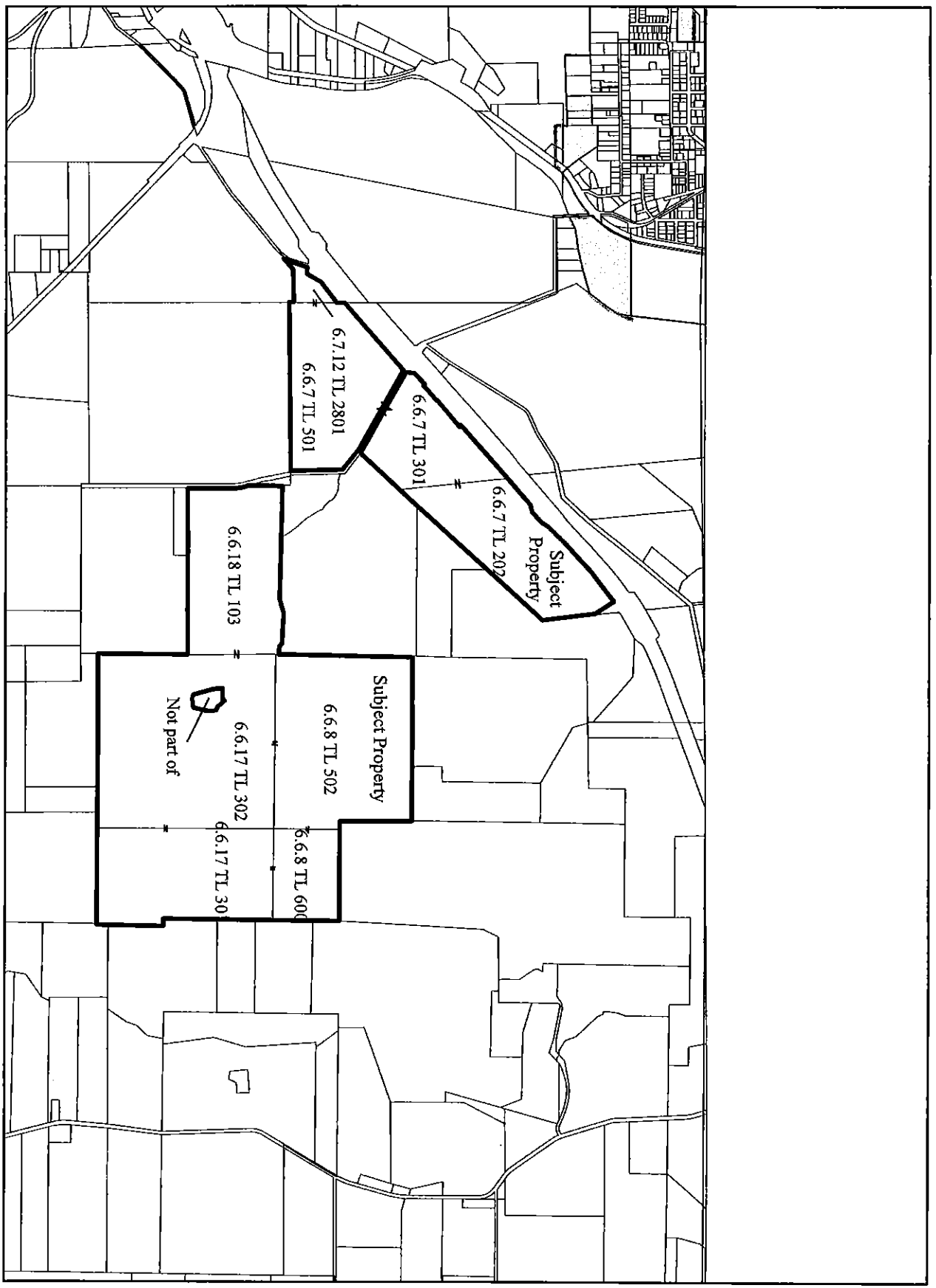
If the application is approved, an open space use must be identified that allows the Assessor to meet their obligation to collect any additional taxes as required by the law. The current open space use is not a “use” that is regulated by the EFU zone or ORS 215 and is, therefore, permitted. The applicant has made it clear that they do not intend to put the land to a use such as a park, or other recreational open space use that would require land use authorization. Therefore, in this case, staff recommends that the Board find that the use is a Native Habitat Open Space/Non Recreational use which is an open space use for the purpose of ORS 308A.

If the applicant’s intent in the future is to develop a park or other recreational open space use, land use authorization would be required. Any change to another open space use or intensification must be permitted and authorized in the EFU zone.

DISCUSSION/ALTERNATIVES:

1. Based on the findings and analysis in the Planning Commission memo, the Planning Commission recommends to the Polk County Board of Commissioners approval of the application to apply an “open space lands” special assessment to the entire 665.1 acres (Assessment Map T6S, R6W, Section 7, Tax Lots 202, 301, and 501; T6S, R6W, Section 8, Tax Lots 502 and 600; T6S, R6W, Section 17, Tax Lots 301 and 302; T6S, R6W, Section 18, Tax Lot 103; and T6, R7W, Section 12, Tax Lot 2801); and
2. Identify the open space use upon which the approval is based on in the adopting order as Native Habitat Open Space/Non Recreational; or
3. Other.

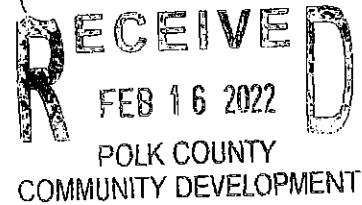
FISCAL IMPACT: Approval of the application would result a net loss in property tax revenue for Polk County compared to the current assessment. Staff concludes that because the majority of the subject properties are currently assessed at market value, approval of the application would result a \$5,026.30 net loss in annual property tax revenue for Polk County compared to the current year assessment. However, Polk County would receive a total farm potential additional tax of \$23,449.60.



Date: 1/10/2022

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

ATTACHMENT B.



February 14, 2022

To Polk County Planning Commission:

Re: Special Property Tax Assessment of Open Space Confederated Tribes of Grand Ronde.

Since it wasn't made real clear to the common person, it looks like the application is asking for erasure of property taxes on the properties SA 22-01 and SA 22-02 by The Confederated Tribes of Grand Ronde. When did the CTGR get involved? We were notified that Bonneville Power bought this property on Harmony Rd. If this is the case (CTGR owners), it is *unacceptable! Why should we have more property taken off the tax lots?* Polk county residents are already tax stressed with the new taxes on the schools (Perrydale).

Farm ground already has tax deferrals (discounts) which makes the handful of people not on a deferral pick up the remaining needed to fulfill the funding. We are retired from the forest industry, meaning, we are **not** millionaires, and are already paying \$4k in property taxes. You excuse this property of taxes you are going to make it even harder for we little people to hang onto our own property which would be a travesty.

Please, don't give these properties any special privileges or tax rate cuts.

Sincerely,

George and Virginia Lux



Mrs. Virginia Lux
6300 Harmony Rd
Sheridan, OR 97378-8600



POLK COUNTY

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237 * FAX (503) 623-6009

COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

MEMORANDUM

TO: Polk County Planning Commission
FROM: Austin McGuigan, Director
DATE: February 22, 2022
RE: Open Space Land Special Property Tax Assessment; Planning File SA 22-02.

March 1, 2021 Public Hearing

ISSUE:

The Confederated Tribes of the Grand Ronde Community of Oregon (Tribe) applied for Special Property Tax Assessment of Open Space Land (as provided by ORS 308A.300 to 308A.330) on 104.0 acres in the Exclusive Farm Use (EFU) Zoning District located at 6440 Harmony Road, Sheridan, Oregon (Assessment Map T6S, R6W, Section 21, Tax Lots 700 and 701; and T6S, R6W, Section 28, Tax Lots 104 and 109) (Map, Attachment A).

RECOMMENDATION:

Based on the findings and analysis in the Planning Commission memo, staff recommends approval of the request to grant "open space land" special property tax assessment for the for the subject property.

NATURE OF REQUEST AND BACKGROUND:

Under Oregon Revised Statutes (ORS) 308A.300 to 308A.330 a property owner may apply to the Polk County Tax Assessor for an "open space land" property tax special assessment. The application must be submitted to the Polk County Planning Commission and governing body and be processed in the same manner as a comprehensive plan amendment.

On January 3, 2022 the Confederated Tribes of the Grand Ronde Community of Oregon (Tribe) submitted an application via email to the Polk County Assessor's Office for special assessment of "open space land" on 104.0 acres composed of 4 tax lots zoned EFU.

ORS 308A.300 defines "open space land" as meaning:

- (a) Any land area so designated by an official comprehensive land use plan adopted by any city or county; or
- (b) Any land area, the preservation of which its present use would:
 - a. Conserve and enhance natural or scenic resources;
 - b. Protect air or streams or water supply;
 - c. Promote conservation of soils, wetlands, beaches or tidal marshes;
 - d. Conserve landscaped area, such as public or private golf courses; which reduce air pollution and enhance the value of abutting or neighboring property;

- e. *Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces;*
- f. *Enhance recreation opportunities;*
- g. *Preserve historic sites;*
- h. *Promote orderly urban or suburban development; or*
- i. *Retain in their natural state tracts of land, on such conditions as may be reasonably required by the legislative body granting the open space classification.*

The subject property is not designated by the Polk County Comprehensive Plan as open space. Nevertheless, ORS 308A.300(b) allows any land area to be designated as "open space land" if by preserving the land in its present use would meet the conservation values set forth in the law. The application submitted contends that this special assessment would preserve the current use they describe as protecting rare, at-risk native habitat through the conservation of wetland, riparian hardwood forest, oak savanna and grassland habitats.

ORS 308A.309 requires that within 10 days of filing with the Assessor, the Assessor shall refer each application for classification to the Planning Commission of the governing body and to the granting authority, which shall be the county governing body, if the land is in an unincorporated area. ORS 308A.309 further requires that an application shall be acted upon in a county with a comprehensive plan in the same manner in which an amendment to the comprehensive plan is processed.

If the granting authority does not deny an application by April 1 of the year following the year of receipt of the application, ORS 308A.312 provides protection to applicants from the failure of a governing body to meet its obligation under the statute in a timely manner by requiring those applications to be considered land which qualifies under this law.

Since the subject tax lots are located within an unincorporated area, the Assessor forwarded the application that was submitted via email on January 3, 2022 to the Planning Division for processing on the same day. Polk County has a comprehensive plan; therefore, on January 10, 2022 the Polk County Planning Division sent notice of the application to the Polk County Planning Commission and the Polk County Board of Commissioners.

The procedures for a legislative plan amendment can be found in Polk County Zoning Ordinance (PCZO) Chapter 115.040. Specifically, PCZO 115.040(B) requires the Planning Commission to hold a public hearing as prescribed in PCZO Chapter 111 on the complete petition for a plan amendment. After concluding the hearing, the Planning Commission shall submit a recommendation to the Board of Commissioners. Pursuant to PCZO 115.040(C), the Board of Commissioners shall also hold a public hearing on the proposed plan amendment as provided in PCZO Chapter 111.

On February 7, 2022, staff sent notice of both the Planning Commission and Board of Commissioners hearings to surrounding property owners and to government and quasi-government agencies. Notice was posted on the subject property on or prior to February 9, 2022. Notice of the public hearings appeared in the Polk County Itemizer-Observer Newspaper on February 9, 2022. Notification of these proceedings have been fulfilled pursuant to PCZO Sections 111.240(B), 111.340, 111.350, 111.360 and 111.370.

Comments received as of the writing of this memo are included as Attachment B.

Pursuant to OAR 308A.309 and PCZO 115.040, the Board of Commissioners shall conduct a public hearing, consider the Planning Commission recommendation, and make a final local decision.

ANALYSIS:

The subject tax lots contain approximately 104.0 acres zoned EFU and are identified on Assessment Map T6S, R6W, Section 21, Tax Lots 700 and 701; and T6S, R6W, Section 28, Tax Lots 104 and 109). These 4 tax lots constitute the entire area of which the applicant is requesting "open space lands" special assessment classification in this application.

The subject tax lots are located approximately 0.25 mile north of the unincorporated community of Buell along Harmony Road. The four tax lots form one tract of contiguous tax lots. The subject property is located in an alluvial floodplain that starts at the southern end between Mill and Gooseneck creeks and ends at their confluence to the north. The property ranges in elevation from approximately 345 feet at the southern end of the property to approximately 315 feet at the northern end of the property where Mill and Gooseneck creeks converge. Staff's reviewed the 2018 aerial photograph of the subject property utilizing the Polk County Geographic Information System (GIS) and found that the subject property is composed primarily of hardwood forest, oak savanna and grassland habitats as purported by the applicant. Staff review of the National Wetland Inventory (NWI) GIS map did reveal many inventoried wetlands, including riparian, emergent, forested/shrub and ponds. There was no evidence of current agriculture in the aerial photograph. This supports the conclusion that the subject property is currently predominantly native habitat.

The legislative intent for "open space land" special assessment can be found in ORS 308(A).303. The legislature declared that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and the vegetation thereon to assure continued public health by counteracting pollutants and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declared that it is in the public interest to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land, and that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes.

On January 27, 2022 the Tribe's Tribal Lands Department provided Polk County's Planning Division with additional pertinent information to assist in the determination as to whether the subject property qualifies for the "open space land" classification. According to the applicant, the Tribe purchased the property from The Rupers Revocable Living Trust, dated January 2, 2017 through the Willamette Wildlife Mitigation Program ("WWMP") on May 14, 2021. The WWMP was created as a result of a Memorandum of Agreement between the Bonneville Power Administration ("BPA") and the State of Oregon acting through the Oregon Department of Fish and Wildlife ("ODFW") in which the BPA agreed to fund the acquisition of real property to permanently protect and enhance important fish and wildlife habitat in the Willamette Basin. As part of the WWMP, the BPA funding is contingent upon the purchaser/Tribe executing a Deed of Conservation Easement stating that the Tribe will protect and conserve the property. The Deed of Conservation Easement was recorded with Polk County as Polk County Clerk Document 2021-008364.

According to the Tribe's Tribal Lands Department Manager, this property is important to wildlife conservation because it contains an array of rare and diverse habitat types including riparian/flowing water, prairie/oak savanna, wetland/pond, Willamette Valley Ponderosa Pine, and mixed deciduous forest. The diverse mix of habitat types on the property support a rich composition of native fish and wildlife species.

According to the applicant, the property has about 39 acres of riparian/flowing water habitat. The habitat directly hosts native fish and wildlife species that include: federally listed threatened upper Willamette winter steelhead, Pacific lamprey, brook lamprey, coastal cutthroat trout, Northern red-

legged frog, Western pond turtle, Pacific tree frog, Northwestern salamander and American beaver. Mill Creek and Gooseneck Creek either bound or flow through the property.

According to the applicant, the property has about 11 acres of pond/wetland habitat. The habitat provides significant nesting and rearing habitat for native amphibian and reptilian species including; Northern red-legged frog, Pacific tree frog, Northwestern salamander, and Western pond turtle. The applicant states that most of the ponds go dry during the summer months, which help limit the colonization of non-native American bull frogs that tend to outcompete native amphibian and reptilian species in the Willamette Valley.

According to the applicant, the property has about 8 acres of rare prairie/savanna habitat. The habitat sustains a rich and complex composition of native grass and forb species including a small population of Kincaid's lupine, which is listed as "threatened" under the Endangered Species Act. Acorn production from large oaks provided resources for Western gray squirrel which have been observed frequently on the property.

Though not identified as a rare habitat type in the Willamette Valley, the mixed deciduous forest and small stands of Willamette Ponderosa Pine add great habitat diversity to the property. According to the applicant, Willamette Ponderosa Pine was much more common historically throughout the valley but have become rarer in recent times.

Based on these facts, Staff concludes that the subject property in its entirety could qualify as "open space land" as that term is defined by ORS 308A.300(b), so long as preserving the land in its present "use" would meet the conservation values set forth in the law. The applicant states that they are not proposing a recreational or park type open space use. They state that they will be managing the land to promote native plant and animal species.

After a complete application with all the information necessary to properly classify an area of land as "open space land" has been provided, with a verification of truth, and it has been determined that the subject area meets the definition of "open space land" found in ORS 308A.300, there are three sets of factors that must then be considered when determining whether to approve the request.

The first set of factors is found in ORS 308A.309(1) which is applicable when the subject area is not included in the comprehensive plan as open space. This criterion requires a comparison between the value of preserving the area as open space versus the costs and consequences that could be incurred when extending urban services to or beyond the property or expanding an urban growth boundary to compensate for any reduction in available buildable lands.

In this instance, the subject property is not designated by the Polk County Comprehensive Plan as open space. Therefore, the granting authority must weigh the requirements of ORS 308A.309(1)(a,b and c):

- (a) The projected costs and other consequences of extending urban services to the affected lot or parcel;*
- (b) The value of preserving the lot or parcel as open space;*
- (c) The projected costs and other consequences, including the projected costs of extending urban services, of expanding the urban growth boundary in other areas if necessary to compensate for any reduction in available buildable lands.*

The subject property is zoned EFU which does not permit single family dwellings as an outright permitted use. The subject property is currently predominantly composed of native habitat, contains "threatened" plant species, is situated between a national wildlife refuge and other large conservation properties, is restricted by a conservation easement, and is included as part of a Tribal Lands management strategy. Additionally, the subject property is located 3.5 linear miles southeast of the Willamina UGB. Therefore, it is unlikely that urban services would be extended to or beyond the subject property. Based on this information, the costs and consequences related to the extension of urban services and the potential impact to the buildable lands inventory is negligible to nonexistent. Additionally, the property is subject to a conservation easement that is intended to

protect the same conservation values the applicant is proposing qualifies them for “open space lands” special assessment. Therefore, staff concludes that the value of preserving the tax lot as open space outweighs the costs and consequences of extending urban services or expanding the UGB in other areas to compensate for a reduction in available buildable lands.

The second set of factors are found in ORS 308A.309(2) and prevent the request from being denied solely on the fact that there may be a potential loss in revenue, if it is determined that preservation of the current open space use will enhance or protect specific resources.

Specifically, ORS 308A.309(2) states that:

The granting authority shall not deny the application solely because of the potential loss in revenue that may result from granting the application if the granting authority determines that preservation of the current use of the land will:

- (a) Conserve or enhance natural or scenic resources;*
- (b) Protect air or streams or water supplies;*
- (c) Promote conservation of soils, wetlands, beaches or tidal marshes;*
- (d) Conserve landscaped areas, such as public or private golf courses, which enhance the value of abutting or neighboring property;*
- (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces;*
- (f) Enhance recreation opportunities;*
- (g) Preserve historic sites;*
- (h) Promote orderly urban or suburban development; or*
- (i) Affect any other factors relevant to the general welfare of preserving the current use of the property.*

The first task in evaluating this set of factors is to determine the potential loss of property tax revenue that may result from granting the application.

According to the Polk County Tax Assessor, Valerie Patoine, these tax lots receive special assessment farm deferral. In Polk County the specially assessed value (SAV) for “open space land” would be the same as the farm assessed values. If subject property were to be denied the “open space land” special assessment, it could potentially lose the existing farm special assessment depending on the terms of the conservation easement that encumbers the property. If they were to lose their special assessment a new maximum assessed value (MAV) would be created, and either a 5 or 10 year look back would be calculated and posted to the account. It may or may not be collected, depending on whether or not the conservation easement would interfere with the land’s ability to be put back under a farm or forest special assessment.

According to the Assessor, the current cumulative annual property tax for the subject property, with all of the tax lots receiving farm special assessment, is \$3,217.51. If all of the tax lots were to lose all special assessment, the cumulative annual property tax would be \$5,011.51. Which is an increase of approximately \$1,794 per year.

If the proposed “open space land” property tax special assessment were to be approved, the current cumulative annual property tax for the subject property would be unchanged. However, for open space land special assessment the Assessor must add 2/3rd of 1% each month as a lump sum future penalty. This calculation is done manually every year and added to the account in a notation.

Based on the fact that the subject property is encumbered by a conservation easement that prohibits timber harvesting, livestock grazing and agricultural production staff believes the subject property would likely be disqualified from the current farm and forest special assessments on the account regardless of whether or not the application is approved. However, the Assessor notes that a separate analysis would need to be performed at that time in order to determine eligibility.

ORS 308A.453 states that land subject to a conservation easement that is held by one or more holders and that is managed in compliance with the terms of the easement, shall receive conservation easement special assessment for ad valorem property tax purposes. However, according to the applicant, they cannot meet the requirements of conservation easement special assessment found in ORS 308A.450 to 465 as the land is held by the Tribe and the easement is held by the Federal government. This is similar to instances where the State of Oregon purchases land subject to a conservation easement for preservation of natural habitat, not for park or recreational development, and it is not eligible for conservation easement special assessment. However, the State of Oregon is eligible for tax exemption in that instance, while the Tribe is not.

Next we must determine whether conservation of the current "use" of the land would achieve the conservation values set forth in the law. The applicant indicates that the "open space land" designation would conserve or enhance natural resources including native birds and wildlife, oak savanna and prairie habitat and since the subject tax lots are situated between other large conservation properties it would also enhance abutting or neighboring forests, wildlife preserves, nature reservations, sanctuaries, and other open spaces. Staff conducts a more in-depth analysis of the current "use" of the land below. The some of the tax lots are currently receiving special assessment primarily as small tract forest land or as farm land. Removing the economic incentives related to farm and forest special assessment may aid in conservation of the current use of the land.

Since the applicant has encumbered all of the subject tax lots with a conservation easement that is intended to protect the same conservation values the applicant has presented in this application and since it is also included within a Tribal Lands management strategy, staff concludes that the "open space land" designation could be appropriate as the designation would aid in the enhancement and preservation of the resources listed above with a small loss in annual property tax revenue to the County.

Finally, the set of factors found in ORS 308A.309(3) must also be considered. Specifically ORS 308A.309(3) states that:

The granting authority may approve the application with respect to only part of the land which is the subject of the application; but if any part of the application is denied, the applicant may withdraw the entire application.

In this instance, all of the 104.0 acres are encumbered with a conservation easement and are included in a Tribal Lands management strategy to enhance natural resources.

If the granting authority determines that the land qualifies for "open space land" special assessment, ORS 308A.312(2) requires the adoption of an order of approval that states the open space use upon which approval was based. The statute does not define "open space use". However, ORS 308A.315(5) provides an example of "open space use" as a park, sanctuary or golf course. ORS 308A.318(1) states that once land has been classified under ORS 308A.300 to 308A.330, it shall remain under such classification and it shall not be applied to any other use than as open space unless withdrawn from classification. For the purpose of the collection of additional taxes, this subsection also requires the owner to notify the Assessor of any change from one open space use to another open space use and provides an example, such as a change from park purposes to golf course land.

When looking at these laws in their entirety, it appears that "open space land" special assessment was created to primarily provide property tax relief for current open space uses that provide both recreational use and natural land function benefits or have been planned and zoned as open space by a local governments comprehensive plan or as part of a residential planned unit development. This makes sense as other types of special assessment such as wildlife habitat special assessment, riparian habitat exemption and conservation easement special assessment may not be applicable in those instances which could thereby discourage the conservation values the Oregon legislature intends to advance.

The requirement to evaluate a current use is unique to the open space land special assessment. Other types of conservation based special assessment do not require a specified "use" of the land. Conservation easement special assessment, for instance, only requires that the land is managed in accordance with the terms of the conservation easement, which is what is occurring in this case and permitted in the EFU zone. Additionally, an exhaustive review process by a planning commission and governing authority is also unique to open space special assessment. This process essentially acts as a type of land use compatibility evaluation before a decision is made by the governing body, not the County Assessor.

In this case, the subject property is zoned EFU. The uses authorized in EFU zones in non-marginal lands counties, such as Polk County, are generally set out in ORS 215.283. PCZO Chapter 136 incorporates ORS 215 and identifies the uses and activities that are permitted within the EFU zone. The EFU zone does not have a "use" category for "open space". Instead, a County must find parity between the current use of the land and the uses listed in the EFU zone in order to determine if a use is permitted. Creation restoration and enhancement of wetlands is an outright permitted activity in the EFU zone. Parks and golf courses are both uses that could be permitted but would require land use authorization. Counties may not impose additional local barriers to uses allowed outright in EFU zones under ORS 215.283(1) and also may not allow additional uses in the EFU zone that are not allowed by statute (Bechtold v. Jackson County, 42 Or LUBA 204 (2002)).

PCZO 110.585 defines "use" as the purpose of which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied. This application for special assessment of "open space land" identifies the current open space use as "protect rare, at-risk native habitat through the conservation of wetland, riparian, oak savanna, oak woodland, and grassland habitats". While the description constitutes permitted land management activities, staff believes it may fall short of a "use" as that term is intended in the law because the same management activities could apply across an entire category of open space uses. Therefore, staff is uncertain whether this description in the application would allow the Assessor to make a determination as to whether the open space use changes to another use or changes to another open space use, as required by ORS 308A.318 to 327. This determination is necessary for the Assessor to comply with the statute and meet the legal obligation to collect any additional future taxes.

For these reasons it may be appropriate to look at the term open space use, as it is intended in ORS 308A, as a "use" spectrum that can span from no use, to passive uses, all the way to intensive recreational uses as long as the conservation values set forth in the law are met. In the steps along this spectrum an open space use may not be regulated by zoning, may require land use authorization or may not be permitted without a zone change.

In this instance, it appears the use would fall toward the "no use" end of the spectrum for the purpose of evaluating compatibility with ORS 215 and the EFU zone. Staff understanding is that the applicant's intent is straightforward and consists of a plan to protect a native landscape from conversion to commercial forestry and agricultural uses that are permitted in the zone and to conserve and manage the land in its current natural state. Essentially, the applicant is simply maintaining an existing and rare natural seral stage of ecological succession that provides desired ecological benefits. They have not created any type of built environment or developed passive or intensive recreational uses. It is not publically accessible and has not been designed for leisure, play or sport. Raw lands, in their most natural state, that have not been put to a use can and do lawfully exist in the EFU zone. Therefore, staff concludes that the current "open space use", as that term has meaning in ORS 308A, is not a use that is regulated by the EFU zone or ORS 215 and is, therefore, permitted.

In this application, the land is not necessarily being put to an open space "use" that the "open space land" special assessment was likely initially intended to serve or that ORS 215 was intended to regulate. Nevertheless, this fact may not constitute a reason for denial in this case. Especially since the applicant, a Tribal Nation, has a legitimate government interest in protecting and managing natural habitats and open spaces. The applicant cannot qualify for any other type of special assessment that would prevent the forced conversion of open space land to more intensive uses as

the result of economic pressures caused by the assessment at values incompatible with their public interest to preserve the tax lot as open space land. Further, the applicant in this case is not allowing land to simply revert to an unmanaged semi-wild state which could harbor invasive species and potentially conflict with surrounding farm and forest operations. They engage in active professional land management as the result of a conservation easement and have included the property in a Tribal Land management strategy in an effort maintain important ecological function. For these reasons staff recommends approval of the application. However, if the application is approved, an open space “use” must be identified that would allow the Assessor to meet their obligation to collect any additional future taxes as required by the law. Staff would recommend a term such as Native Habitat Open Space/Non Recreational in order to meet that requirement.

The current open space use is not a “use” that is regulated by the EFU zone or ORS 215 and is, therefore, permitted. The applicant has made it clear that they do not intend to put the land to a use such as a park, or other recreational open space use that would require a land use authorization or zone change. Therefore, in this case, staff recommends that the Board find that the Native Habitat Open Space/Non Recreational use is permitted in the EFU zone and is an open space use for the purpose of ORS 308A.

If the applicant’s intent in the future is to develop a park or other recreational open space use, land use authorization would be required at that time. Any change to another open space use or intensification must be permitted and authorized in the EFU zone.

CONCLUSION:

Based on the current use of the property as described by the applicant and confirmed by 2018 aerial photographs, staff concludes the subject property meets the definition of “open space land” in ORS 308A.300(b).

ORS 308A.309 requires that Polk County act upon this application in the same manner in which an amendment to the comprehensive plan is processed. The procedures for a legislative plan amendment can be found in PCZO 115.040(B) and (C) which require the Planning Commission and the Board of Commissioners to hold public hearings as prescribed in PCZO Chapter 111. This application is following the legislative plan amendment process and notification of these proceedings have been fulfilled pursuant to PCZO Sections 111.240(B), 111.340, 111.350, 111.360 and 111.370.

In the analysis above, staff concluded that the value of preserving the subject tax lot as open space outweighs the costs and consequences of extending urban services or expanding the UGB in other areas to compensate for a reduction in available buildable lands. This conclusion satisfies the requirements of ORS 308A.309(1)(a),(b), and (c).

The legislative intent of the “open space land” designation is to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land.

Staff found that removing the economic incentives related to farm and forest special assessment may aid in conservation of the current use of the land.

Staff concluded that the entire 104.0 acres are encumbered with a conservation easement and are included in a Tribal Lands management strategy to enhance natural resources and, therefore, the “open space land” special assessment should be applied to the entire subject property. This conclusion satisfies the requirements of ORS 308A.309(3).

Staff notes that if this application is not denied by April 1 of 2022, ORS 308A.312 mandates that this application is to be considered land which qualifies under this law.

Staff concludes that the existing conservation easement and Tribal Lands management strategy accomplish the objectives of the “open space land” designation by enhancing and maintaining the current rare native ecosystem. Therefore, the application meets the minimum requirements of the law and can be considered an open space use for the purpose of ORS 308A.

If the application is approved, an open space use must be identified that allows the Assessor to meet their obligation to collect any additional taxes as required by the law. The current open space use is not a “use” that is regulated by the EFU zone or ORS 215 and is, therefore, permitted. The applicant has made it clear that they do not intend to put the land to a use such as a park, or other recreational open space use that would require land use authorization. Therefore, in this case, staff recommends that the Board find that the use is a Native Habitat Open Space/Non Recreational use which is an open space use for the purpose of ORS 308A.

If the applicant’s intent in the future is to develop a park or other recreational open space use, land use authorization would be required. Any change to another open space use or intensification must be permitted and authorized in the EFU zone.

DISCUSSION/ALTERNATIVES:

1. Based on the findings and analysis in the Planning Commission memo, the Planning Commission recommends to the Polk County Board of Commissioners approval of the application to apply an “open space lands” special assessment to the entire 104.0 acres (Assessment Map T6S, R6W, Section 21, Tax Lots 700 and 701; and T6S, R6W, Section 28, Tax Lots 104 and 109); and
2. Identify the open space use upon which the approval is based on in the adopting order as Native Habitat Open Space/Non Recreational; or
3. Other.

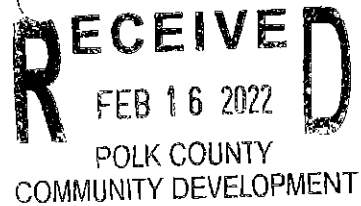
FISCAL IMPACT: Approval of the application would result in no net loss or increase in property tax revenue for Polk County compared to the current assessment. If the application was denied and the subject property lost all special assessment, the county could potentially see a \$1,794.00 increase in annual property tax revenue; however, the Assessor notes that a separate analysis would need to be performed at that time in order to determine continued special assessment eligibility.



Date: 1/10/2022

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)523-0713.

ATTACHMENT B-



February 14, 2022

To Polk County Planning Commission:

Re: Special Property Tax Assessment of Open Space Confederated Tribes of Grand Ronde.

Since it wasn't made real clear to the common person, it looks like the application is asking for erasure of property taxes on the properties SA 22-01 and SA 22-02 by The Confederated Tribes of Grand Ronde. When did the CTGR get involved? We were notified that Bonneville Power bought this property on Harmony Rd. If this is the case (CTGR owners), it is *unacceptable! Why should we have more property taken off the tax lots?* Polk county residents are already tax stressed with the new taxes on the schools (Perrydale).

Farm ground already has tax deferrals (discounts) which makes the handful of people not on a deferral pick up the remaining needed to fulfill the funding. We are retired from the forest industry, meaning, we are **not** millionaires, and are already paying \$4k in property taxes. You excuse this property of taxes you are going to make it even harder for we little people to hang onto our own property which would be a travesty.

Please, don't give these properties any special privileges or tax rate cuts.

Sincerely,

George and Virginia Lux



Mrs. Virginia Lux
6300 Harmony Rd
Sheridan, OR 97378-8600