Exhibit B

BEFORE THE BOARD OF COMMISSIONERS
FOR
POLK COUNTY, OREGON

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COMMUNITY DEVELOPMENT

In the Matter of the Application of:	
SIMMONS FAMILY PROPERTIES, LLC, CHRISTOPHER and KIMBERLY GRAY, KEVIN STONE, and JONATHAN E. and TAMARA E. PUGMIRE,	Case No. CPA 18-01 ZC 18-02
For an amendment to the Polk County Comprehensive Plan Map Designation from Agriculture to Rural Lands, and taking an Exception to Goals 3 and 4, and changing the zone from Exclusive Farm Use (EFU) to Agriculture and Forestry with a 10 acre minimum lot size (AF-10) on seven contiguous parcels adjacent to Best Road, Salem, consisting of a total of 228 acres comprised of Tax Lots 601, 602, 603, 604 and 605 on Map 7.4.14, and Tax Lots 100 and 101 on Map 7.4.23	APPLICANT'S RESPONSE TO THE RECOMMENDATION OF THE HEARINGS OFFICER

COMES NOW the above named applicants, by and through Wallace W. Lien, of Wallace W. Lien, PC, and does hereby present to this Board their Response to the Recommendation of the Polk County Hearings Officer.

What follows is the Applicants response to factual and legal errors made in the Recommendation. It must be recognized that the Recommendation finds compliance with nearly all of the approval criteria applicable to this case, including goal compliance, determinations that water is available and that septic systems may be lawfully installed, and that there are no transportation issues involved here. This Response deals only with specific issues that the Applicants believe were either factually incorrect, or legally deficient in the Recommendation.

1. Response to Factual Issues Raised

This Section of Response deals with erroneous factual assertions and unsupported findings and conclusions that exist in the Recommendation.

A. Surrounding Area Continues to Develop - At the outset of the Recommendation is the determination that the land use characteristics of the area surrounding the subject property have not been sufficiently changed to satisfy the first criteria to allow for a plan amendment. However, a few

pages later in the Recommendation, it is recognized that there has been significant changes in the conditions in the area. Compare page 15 of the Recommendation with page 24 for this inconsistency.

It is hard to imagine that the changes that have occurred in this area over the last several decades can not rise to the level of changed conditions sufficient to satisfy even the straight forward concept of a change in conditions. This analysis is not well conceived and not consistent with later findings, and appear to use Exception theories and analysis to make the determination, when Exception analysis has no place in the determination of whether or not the facts of the surrounding area have changed over the years. This criteria is a simple and straight forward look at what has happened to the land uses over a period of time. If the area has changed, the first criteria for a plan amendment is met and you move on to consider the remaining criteria.

The Eola Hills area is one of the areas in Polk County that have dramatically changed over the last several decades, and changes continue to occur. An example of this dramatic change can be seen along the southeast border of the Subject Property. Land previously owned by Mr. Curtright, and shown in the Land Use Study as by him has been sold to developers by Mr. Curtright's Estate. A copy of the deed that covers Tax Lots 1000, 1003, 1004 and 1005 on Map 7.4W.23 immediately to the south and contiguous with the Subject Property, and Tax Lots 303, 304, 305, 307, 308, 310 and 311 on Map 7.4W.24 which are immediately to the east of the Subject Property is attached hereto as Exhibit A.[1]

These 11 parcels were previously vacant, but now are in the process of being fully developed for rural residential, non-resource dwellings. The price listed for this sale is $1,070,000 for the 11 lots, for an average of just under $100,000 per undeveloped bare land lot. It is understood that the plan is to construct homes on each of the lots that will range from $1,000,000 in value up to $1,500,000 in value. Site development is underway on the project, it is believed that home construction may start as early as August of this year. Several photographs of the site development going on right now are attached hereto as Exhibit B, as well as a map showing the relative location of this new development to the Subject Property, which is Exhibit C. Applicants are advised by the new owners/developers that the current lots will be lot lined and partitioned to result in up to 20 parcels of 5 acres each.

In addition, the Eola Hills Winery, which is adjacent to the Subject Property has developed its property just in the last 3 years, with plans for a large Event Center, Outdoor Amphitheater and a Bed & Breakfast Resort Hotel. A copy of the Eola Hills Winery Master Site Plan is attached here as Exhibit D. Note that the new winery and the Bed & Breakfast Resort Hotel are planned to be constructed along the common property boundary with the Subject Property.

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[1]The changes in the Eola Hills area include the establishment of the Eola Hills Winery, significant clearing and development occurring on the South side adjacent to Highway 22, not to mention all of the housing being constructed along Doaks Ferry Road.

This is a classic example of a dramatic change in the land use characteristics that is indicative of how this area is changing into rural residential homesites and moving away from vacant lands and resource uses on these side hills where history has shown agriculture and forestry uses are not practicable.

The Applicants assert the area has been changing for decades, and this new 11 parcel homesite project simply confirms the changes and provides justification that in fact the agriculture plan designation is no longer suitable for the adjoining Subject Property.

B. Hatchette Property Analysis - At pages 15 and 64 of the Recommendation, the applicants are chided for failure to properly determine parcel sizes on the Hatchette ownership. Specifically, the assertion that there are missing and unaccounted for land owned by Hatchette that changes the parcel sizing and averages.

The Recommendation first cites to Tax Lot 901 on Map 7.4W.11, and indicates that it should have been included in the analysis of the Hatchette property. This is not accurate, as Map 7.4W.11 is not within the Study Area, and therefore never came under consideration of the land use characteristics of the area. The fact that the land use study involved all parcels on the seven listed maps was clearly pointed out in the Applicant's materials, and Map 7.4W.11 was not included. Given that the Recommendation asserted the Study Area was too large as constituted by the Applicants, it is inconsistent to then find that parcels outside the Study Area should have been included thereby making the Study Area even larger.

The Recommendation then cites to Tax Lot 202 on Map 7.4W.14 indicating that it should have been included with Tax Lot 114 which is contiguous for parcel sizing purposes. It should be noted that Tax Lot 202 was included in the Inventory Table which is Exhibit V, and supported by its Property Profile from the Assessor's Office. There is no evidence in this Record that Tax Lot 202 is merged with Tax Lot 114. However, it is understood the parcels are contiguous and both are in the EFU zone and should have been considered as one parcel. The Applicants referred to Tax Lot 202 as follows:

> *His (Hatchette) TL202 is similarly a stand alone parcel, and it is only 3.11 acres in size in any event. Given the parcel locations, and the intermittent ownerships, the Hatchette ownerships do not constitute, nor have the ability to be combined into a cohesive farm unit.*

The only problem here is that it appears Tax Lot 202 is contiguous to Tax Lot 114 and is not otherwise a stand alone parcel, a very minor detail at most.

It is fascinating that of over 200 parcels studied in significant detail in this case, the Recommendation found one small parcel error, and based on that one single error, have determined that the entire Land Use Study is not credible and should not be relied on. That kind of approach to land use planning, especially in a case this large and complex and involving so many details on so many parcels, should not be condoned. Mistakes happen, and in this case the mistake was a very

small one involving one parcel that was otherwise listed on the inventory and all the property information was submitted in the Property Profile sheet from the Assessor. Tax Lot 202 is only 3.11 acres in size, and 75% of it is encumbered by the powerline easement (see Map 7.4W.14, Exhibit M) which makes the land under the easement unsuitable as a matter of law for timber production due to the height limitations of the easement. The Land Use Study combined the Hatchette ownerships that were contiguous and within the identified Study Area as being 42.98 acres. Adding in the 3.11 acres of Tax Lot 202 raises that combined acreage to 46.09 acres of combined ownership. When doing the math on the overall acreage studied for this application, the impact is so small as to hardly register. It is also important to remember that the Hatchette property, combined or otherwise are not currently employed in farm use, so how big it is has no bearing on the end analysis

The Recommendation's approach to this analysis and the resulting calculations is too stringent to be used by Polk County, and should be rejected. The remaining information in the Land Use Study has been double checked and is completely accurate, and should be considered an accurate analysis of the surrounding area, one that is not impacted by the omission of one 3.11 acre parcel.

C. Reliance on Permit Applications to Establish a Farm Use Existed is Wrong - In reviewing and evaluating evidence, it is important that all the facts and arguments are examined before findings and conclusions are made. In fact LUBA has repeatedly held that where an issue is raised by a party that is relevant to the approval criteria, the local government has an obligation to address the evidence and arguments in its findings and explain why the evidence and arguments do not support the proposition they are offered for.

This case is a classic example of why this LUBA rule is in place, as it assures that all sides of a position are considered before findings and conclusions are made. The Recommendation here found that there were farm uses taking place on the subject property based on the submission by staff (not any opponent, only by staff) of two farm structure building permit applications. Those permits are relied on, without ever addressing the actual facts surrounding those applications, as primary evidence of farm use taking place on the land in order to find several different approval criteria are not met. See reliance on those permits at pages 23, 36 and 98 of the Recommendation.

To begin this analysis it must be remembered that the documents relied on are only **applications** for building permits. Here neither structure that was applied for was ever constructed, making the permits moot and the information contained in the application worthless.

Each permit application relied on was addressed in detail by the Applicants during the hearings process, but was never addressed or refuted in the Recommendation. For clarity and to provide the most complete information on these applications, detailed information on both permits is repeated here.

Tax Lot 602 - This parcel is 45 acres in size. It was created, and the house was built, pursuant to Measure 37/49. The property is subject to an Option that would require sale of just over 25 acres of the parcel, leaving the net effective size of this parcel at just under 20 acres. The

presence of the Option limits the long term investment in the land, as the owner may have to sell in the future. The house on the property is valued by the Polk County Assessor at $1,178,360 and it occupies over an acre of land itself.[2]

This property has not generated gross income from farming. The "primary intent" of the planting that has been going on is to obtain farm tax deferral taxation status, and not for generating gross income from the enterprise. A letter from Lafayette who has done some planting on the property, and which is relied on in the Recommendation, does not include any evidence showing gross income generated from the subject property, nor does his letter even refer to the generation of money. It must also be noted that Lafayette pays no rent to this property owner for his activities, a further indication that the plantings are not a "farm use." In furtherance of their position that no farm uses have been employed on the subject property, the Applicants provided the following additional facts:

- In 2016 there was planted an unsuccessful crop of fine fescue. The crop failed, and there was no harvest, primarily because the ground is too dry. Without irrigation, or a different location that gets more moisture, fine fescue will not grow.

- In 2017 there was planted an unsuccessful crop of spring wheat. This crop also failed. This failure was also attributed to the ground being too dry, and no irrigation being available.

- In 2018 there was planted an unsuccessful crop of orchard grass. This crop also failed due to the infestation of volunteer spring wheat planted the prior year. Since the orchard grass was not pure enough, it could not be sold.

- 2019 there was again planted an unsuccessful crop of orchard grass. This crop also failed. While the infestation of spring wheat was resolved, there remained insufficient moisture to grow a saleable crop. There were many dead plants, and those that lived had very poor seed heads.

The permit application states that they have fescue planted but are switching to orchard grass. From there the application becomes an exercise in interpretation. The application uses the less than symbol (≤) before writing $10,000 for what appears to be 2016. The only logical interpretation for this is that the applicant is saying the land generated less than $10,000 in 2016. There is no evidence of what the uses are for any year after 2016, and no credible information that the property actually generated any income at all in 2016, and nothing at all about what has or will happen in 2017 or after. The Recommendation wrongly interpreted these words to mean that the property was currently generating more than $10,000 in gross income, when that is not at all what the words and symbol

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[2]Mr. Lafayette indicates that he plants on a total of 45 acres of land owned by Gray (TL602), Pugmire (TL603) and Lathen (TL600). It must be noted that the Lathen property is not a part of the properties subject to this application. Since Mr. Lafayette does not specify how many acres he has planted on each tax lot, there is a serious disconnect to his submittal.

means.

To qualify for farm use, a site has to have the intention of making a profit in money, and generate at least some amount of gross income. This permit application satisfies neither of these critical elements of the definition. To reiterate, there is no evidence in this Record that any of the subject property has generated any gross income from any activities on the land. Without such evidence, there can be no lawful finding that a farm use is taking place there.

It should also be noted that in order for the County to approve an agricultural building, staff requires a statement on the application that the owner has earned $10,000 or more on the land. Based on that criteria alone, this application should have been denied. Instead it was approved, however the land does not produce any gross income which lead the owner to abandon plans to build this building. As of July 1, 2020, no building has been constructed using this permit approval.

Based on all of the credible evidence in this Record, Tax Lot 602 has not been engaged in "farm use" as that term is defined in Oregon law, at any time since it has been owned by one of the applicants here. Reliance on this singular permit application to establish the land was currently employed for the purpose of making a profit, and has earn some gross income from the effort, is wrong. To simply ignore all this evidence in the Recommendation is worse than wrong, and fails to comply with the LUBA mandates for evaluation of evidence and arguments.

Tax Lot 603 - This parcel is 43.66 acres in size, and was also created and the house was built pursuant to Measure 37/49. The property is subject to an Option that would require sale of just under 25 acres of the parcel, leaving the effective size of this parcel at under 20 acres. The presence of the Option limits the long term investment in the land, as the owner may have to sell in the future. The house on the property is valued by the Polk County Assessor at $1,127,500 and it together with the outbuildings occupies over an acre of land itself.

To the extent the Lafayette letter refers to farming on this property, that evidence fails for the same reasons pointed out as to TL602.

Similarly, the agriculture building application relating to TL603 provides no evidence of the actual use or income generation on the subject property. On this application, the owner clearly states the have "estimated" the gross income **that might be earned in the future**. There is no evidence here at all the this property has ever earned any gross income from farm activities.

It also must be remembered that at the time this application was made, there were no farm uses being currently employed on the land. The application expects to earn income once the horse arena is constructed from boarding horses and giving riding lessons. There is nothing in this application that states the owner has the land currently employed in any farm uses, everything is expected to be done in the future, and was never actually carried out.

While the horse barn and arena have been built, no farm uses have been activated on this

property as the boarding of horses is prohibited by the CC&R's.[3] The horse arena is currently used only for the personal use of the owners.

The owners of this parcel are also applicants here, and have provided an affidavit that withdraws all evidence related to their employing their property in farm use, and stating they fully support this application, for which they are a party.

It is of note that the only evidence relied on in the Recommendation are the two application pages. There is no proof here of current employment, or the generation of gross income. There has been no tax returns, sales receipts or any other direct evidence of a generation of gross income from either property submitted to the Record. The only credible evidence in this case is that all attempts at farming the subject properties have failed and no money for the property owner has been earned.

Based on all of the credible evidence in this Record, Tax Lot 603 has not been engaged in "farm use" as that term is defined in Oregon law, at any time since it has been owned by one of the applicants here. Reliance on this singular permit application to establish the land was currently employed for the purpose of making a profit, and has earn some gross income from the effort, is wrong. To simply ignore all this evidence in the Record is worse than wrong, and fails to comply with the LUBA mandates for evaluation of evidence and arguments.

The end result of the Recommendation's reliance on these two application pages is the finding that the subject property is capable of crop production, and the resulting conclusion that the Exception to Goal 3 can not be granted. The finding is factually wrong, as demonstrated above, and the conclusion is not the correct application of the rules for granting Exceptions.

The Recommendation's concept that if the subject property can produce crops, it automatically means no Exception can be granted is much too stringent a standard, and is contrary to the law of Exceptions.

This application is designed to shrink the parcel sizes to a point where the land can be used for rural residential living with a small bit of acreage for hobby farms that provide food for the family and/or some excess for sale at farmer's markets or other small outlets to supplement the income of the family.

The Recommendation finds no practicality in the land use system for such small parcel rural residential living with agricultural asides. First the Recommendation blindly finds that agricultural

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[3]At the same time the Recommendation finds the Tax Lot 603 permit application demonstrates that farm uses are currently employed on the property, it states skepticism of the plan for small unit farms because of the CC&R's against horse boarding. This is a blatantly inconsistent statement. On the one hand the permit application demonstrates the land can be profitably farmed, but on the other the CC&R's make that impossible to do. Such inconsistency in application of the facts and law should not be tolerated.

uses would be totally lost if this application were approved, when in fact agricultural uses would most likely be enhanced as owner occupants could actually manage and maintain small acreage uses, that a large acreage farmer could not undertake economically.

The Recommendation exacerbates the flaw in logic by arguing that small parcels could not be farmed because the house and driveway and septic system and outbuildings would eliminate the underlying land from its ability to be farmed. Of course such a position is wrong, as almost every farm parcel has a farm dwelling that removes the same amount of land, and that fact is simply a generally accepted fact of life for a farmer in our land use system. Even the Assessor takes this norm into account and parses out a acre of the land for the dwelling from the remaining farm ground. There is no part of this Recommendation's argument that makes sense or justifies the ultimate conclusion that the subject property should remain in the Agriculture plan designation.

The Recommendation speculates that the subject property is part of a larger farm operation, and therefore it is assumed that the farm activity qualifies within the definition of "farm use." Of course there is no evidence to support this speculative assumption, and in fact the notion is simply wrong. The owners of Tax Lots 602 and 603 (which are the only two parcels in the subject property where this argument even applies and that land comprises far less than 50% of the total acreage in this application) are not farmers. Each are professionals with full time practices in Salem. Neither owner has other land under their ownership, and there is no amalgamation of farming activities on multiple parcels to comprise one larger farm unit.

It is not appropriate for a decision maker to speculate or assume. Land use cases by law have to be based on substantial evidence in the Record. This is a classic example where an assumption is used to prove a point, and the assumption is wrong. Where there happens, the assumption finding and the resulting conclusion must be rejected out of hand.

D. Reliance on a Single Aerial Photo as Evidence of Farming is Wrong - During the hearings process staff submitted an aerial photograph that was referred to as a 2018 photo, however the face of the photograph says "Date: 10/3/2019". It is unknown if that date was the date the photo was printed or if that is the date the photo was taken. In either event use of this photograph for the purpose of establishing that there was a lawful farm use taking place on the subject property is wrong, and the Recommendation repeats this mistake at many different points in this Recommendation and to establish a factual basis for several legal propositions. See pages 14, 24, 36 and 75 of the Recommendation.

The law relating to the definition of a "farm use" in Oregon is that the owner must have the "intent" to make a profit in money, and that the land actually produces "gross income" from the farming activity. This aerial photograph is not evidence of either requirement, yet the Recommendation relies on it and the aforementioned and debunked permit applications to find and conclude that "farm uses" have and can take place on the subject property.

It is not contested by any party that the owners of the subject property have attempted on many different occasions to obtain a gross income from attempts at crop production. See the above

discussion of the attempts made on Tax Lot 602 to find a crop that will work. Yet, there is no evidence of money ever being produced from these efforts. As noted earlier, the primary intent of the planting is to qualify for farm tax deferral to save money on property taxes, and not to make a profit off the farming. In fact, in order to entice the contract farmer to try the planting, the owner had to offer the land up free of rent.

The fact that this aerial photograph shows the attempts at planting is not evidence of intent, or generation of gross income, and therefore alone can not be used to singularly find the subject property is capable of "farm uses" such that the Agriculture plan designation should not be changed and that no Exception should be granted.

E. The Subject Property is Not Suitable as Forestry Land - the Subject Property is not forest land, and despite some soil classifications, the expert forestry information in this Record unequivocally finds that timber production is not practicable on this land.

At the outset it is important to remember the law here is not that trees can grow on the land, but that the planting and management of the trees on this land is not practicable. So trees may grow, but if it is not economical for any forester to obtain this land for that purpose, then the Exception can be granted. On this property one needs to look no further than the economics of the forestry industry. The rule of thumb is that the highest a forester will pay for forest land is $1,000 per acre. The value of the subject property, as determined by the Polk County Assessor, is between $2,000 and $6,000 per acre. This is between twice and three times what any forester would pay for timberland. The economics alone make the Subject Property impracticable for use as a commercial forest.

There are two geographic elements to the Subject Property. The land to the west which is very steep and comprising nearly 60% of the land, and the top land that consists of rolling hills. Applicants submitted a Forestry Suitability Report from Cliff Barnes of Stuntzner Engineering & Forestry stating the impracticability of forestry uses, primarily focusing on the steep western slopes because the top land had residential uses, with no history of forestry uses only attempts at agricultural uses.[4]

During the hearing, additional information with regard to the forestry capabilities on the top land was requested, and an Addendum report by Stuntzner Engineering & Forestry was submitted indicating that land was also not practicable for forestry uses. The Addendum to Forestland Suitability Analysis determined:

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[4]It remains the Applicants' position that by taking the Exception to Goal 4, Forest Lands, the application has pre-empted any further consideration of forest land issues. Once it is determined that Goal 4 does not apply to a proposal, it is thereby determined that the land is not available for forest uses. When a proposal qualifies for an Exception to Goal 4, that negates the need for further consideration of any and all forest use issues, including addressing the Forest Land Goals and Policies in the Polk County Comprehensive Plan.

1. The upland area of 105.8 acres has a total of 14 acres committed to development such as dwelling and roads, leaving the net acreage for review at 91.8 acres, not all of which is contiguous, and most are comprised of small sections divided by roads and houses and outbuildings.

2. The land has been committed to non-forestry uses since at least 1935.

3. Conversion of this upland area would require some effort and cost in the application of herbicides in order to even consider it for planting timber.

4. The land is not financially viable for forestry production based on the same issues raised in the original report for the western slopes.

5. Given climate change, and the proliferation of fires along the West Coast, and since 2017 in Oregon, the risk of fire to timber, especially in areas with many dwellings, has risen dramatically.

6. The subject property has a high voltage power line traversing it, and it is located in the middle of an area that has a large number of dwellings nearby. These are factors that contribute heavily to the increased fire risk, making timber production unrealistic.

7. Given the dramatic rise in fire risk, liability insurers have stepped away from this market making it nearly impossible and financially unfeasible for small lot forest ownerships to obtain insurance. Without insurance, no reasonable timber company would invest in this kind of development.

Based on these factors, it is the considered opinion of the expert forester that even the uplands are not generally suitable for forest use as that term is used in the law, and that the subject property is irrevocably committed to non-forestry use due to the surrounding developments together with the other above recited factors.[5]

It is important to note that no one submitted any conflicting evidence with regard to the practicability of forestry uses on the Subject Property. There was no expert evidence submitted, only the limited information obtained from the NRCS report and the testimony of a neighbor who does not have the credentials or the access to the Subject Property that the Stuntzner group did. In addition, it must be remembered that the NRCS report specifically proclaims the caveat that the information contained in the report should not be used for site specific planning.

The Subject Property is not suitable for forestry uses, and the inability to institute forestry uses is shown in over 80 years of activity on the Subject Property by the Simmons family without

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[5]A third supplemental forestry report from Stuntzner Engineering & Forestry will be submitted under separate cover.

ever even considering forestry uses due to the thin and rocky soil, the slopes and wind affect from the Van Duzer Corridor to the West. In addition, the Forestry Suitability Analysis performed by an independent expert firm, demonstrates how the Subject Property is impracticable for forestry uses.

The Exception to Goal 4 is well supported and should be approved. Once the Exception is approved, there is no longer any need to address the Polk County Forestry Goals and Policies. Nevertheless, the Applicant has submitted complete justification for compliance with the County rules in their Supplemental Justification.

In the matter of proof in a land use case the burden on the Applicants is one of a preponderance of the evidence. This means that if evidence is in the Record that a normal person would feel comfortable relying on in the course of their business or every day lives, it satisfies the the burden of proof. Here the submission of an expert witness on the issue of forestry certainly satisfies the Applicants burden of proof.

Where there is conflicting testimony, the evidence is weighed using credentials, training, experience, and accurate assertion of facts. While the Stuntzner Engineering & Forestry report is uncontested, one area resident, whose name will not be mentioned, asserted her opinion that she could employ forestry uses on her property and therefore the Applicants should be able to do so as well. This logic is flawed and should not be adopted for the following reasons:

1. The lady has no credentials or training, and certainly nothing that compares to the experts at Stuntzner Engineering & Forestry.

2. The lady has no access to the Subject Property, so she has never walked the land or had first hand experience with the slopes, the soil or the trees and vegetation on the site. Compare this to Stuntzner Engineering & Forestry who made several site visits to the site and walked nearly the entire property.

3. She testified she has a friend (un-named) that does both backpack and helicopter spraying and asserts there is very little cost difference between the two. This assertion is not backed up with names or data, and very little weight can be given to such statements when compared to the detailed analysis of Stuntzner Engineering & Forestry.

4. She has never heard of small forestland owners using helicopters to spray. What difference does it make what she has heard or not. No weight whatsoever should be given to such a statement.

5. She alleges knowledge of the conversion of a 5 acre portion of a 35 acre parcel from grass seed to Doug Fir (presumably she is referring to Christmas Trees) production. Again, no names are given. No address or location for this mystery property is provided, and the apparent attempt at deception in not clarifying that the trees planted are most likely Christmas trees all make it clear that no weight should be given to this statement.

6. The same failures regarding allegations of statements attributed to the Dallas ODF office, where no names are given. Such information is simply not reliable when being weighed against the two detailed reports submitted by Stuntzner Engineering & Forestry.

7. This lady asserted that her liability insurance rates have not gone up, however she failed to provide any evidence by way of billings or payments to support that assertion. Further, she fails to mention that her property has no major electrical power line traversing it, and no where near the residential proximity as does the Subject Property. Such a statement should be given no weight in considering the forestry capability of the Subject Property.

The Recommendation takes the position, contrary to the uncontested testimony of Stuntzner Engineering & Forestry that at least the top land could be planted to forestry uses. She never addresses, and does not take into account the existence of the electrical power line, the presence of nearby housing, the economics of not being able to purchase high value land best suited for rural residential uses. Note the sale of the curtright property of less than 50 acres for over a $1M. The only reliable and credible evidence in this Record supports the proposition that the entirety of the Subject Property is not forest land, and the forestry uses are impracticable.

At one point the Recommendation indicated that other non-commercial uses might be practical and for that reason the Exception could not be granted. This is speculation at its worst. The Recommendation simply throws out a concept without any specifics or how such relates, and then determines since there is no evidence on these "ghost uses", the application must be denied. This is terrible planning, and is well outside how land use decisions are supposed to be made.

The Subject Property is zoned EFU, where the primary uses allowed are related to farming. PCZO 136.010. Uses allowed include resource uses[6], certain residential uses, certain commercial uses, mineral and aggregate uses, transportation facilities, utility facilities and parks. PCZO 136.030-136.050. At no time during this proceeding has anyone alleged that any of the listed uses could be practicably employed on the Subject Property. An Applicant certainly is not charged with analyzing each and every one of the 79 listed uses the EFU zone, and to hold otherwise is an unlawful interpretation of the approval criteria.

The Recommendation's findings and conclusions that the Subject Property can be practicably used for forestry production is not based on substantial evidence in this Record, is based on an erroneous interpretation of the law, and gives more weight to the lay testimony of an area resident that to the expert and complete analysis of Stuntzner Engineering & Forestry.

F. <u>The Subject Property is Not Suitable for Vineyard Land</u> - The Recommendation, again

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[6]The Recommendation also appears to require the applicant to evaluate all the potential uses that would be allowed in the forest zones. Why such a requirement is imposed is never explained, and cannot be justified given the fact that the property is zoned EFU, not FF or TC or any other timber related zone. It is only the EFU zone that is to be considered in this application.

using speculation and assumptions, made findings and conclusions that the subject property was suitable for vineyard production. In doing so, it ignored the uncontested reports submitted by two long time industry professionals. A continuing theme in the Recommendation is the lack of evidentiary support for findings made and conclusions reached.

The only testimony that even suggested the subject property might be suitable for vineyards was given by Ms. Casteel, representing Bethel Heights Winery who said she would like to see as much Polk County land as possible retained for vineyard production. She provided no expert credentials, only that her family owns the winery and she works there. While she did not come out and specifically say that the Subject Property is suitable for vineyard production, her appearance was in opposition to this application.

In order to evaluate her testimony, the Applicants did some research on the Bethel Heights Winery and vineyards, most of which was taken directly from the Bethel Heights Winery Webpage.

Bethel Heights is located at 6060 Bethel Heights Road NW, several miles north of the subject property. Bethel Heights Vineyard is located between 480 feet and 620 feet in elevation, much lower than the subject property which extends to upwards of 1000 feet in elevation. Justice Vineyard is adjacent to Bethel Heights Vineyard and is located even lower, at between 400 feet and 480 feet in elevation. Both vineyards are sited on south-facing benches and slopes, where the Subject Property is located on a westerly slope facing directly into the coastal winds coming through the Van Duzer Corridor.

The soils at Bethel and Justice Vineyards are completely different, and better for vineyards than the subject property. According to the Bethel website, the Bethel Vineyard site is on Nekia soil over basalt, and Justice Vineyard is on marine subsoil with minor red soil over it.

There is absolutely no similarity between the grape production at Bethel Heights and what the Subject Property is capable of. The differences in elevation, aspect and soil are too great for comparison. The Subject Property simply is not vineyard land. The evidence submitted by experts in the wine industry on behalf of the Applicants have much more factual information and credibility than the testimony provided by Ms. Casteel.

Nevertheless, despite the expert testimony to the contrary, the Recommendation determined that slopes and microclimates, elevations and temperatures should not control over the basic soil classification. In other words she would have Polk County ignore the basic elements of vineyard production, including elevation, temperature, south facing slopes and steepness as well as depth of soil and availability of irrigation. Such a myopic view must be rejected, and the whole of the vineyard industry considered in determining if a site is suitable to produce grapes.

No one will ever buy the subject property for the purposes of creating a vineyard. While there are many reasons for this, the first and foremost would be elevation. The subject property varies from 900 feet to over a 1000 feet, and grapes simply can not produce saleable fruit at that elevation, and here that is aggravated by the west facing slope, the steepness of the side hill and the

winds from the Van Duzer Corridor. It further does not matter if one is considering planting of Pinot Noir, Pinot Gris, Reisling or any other variety that is grown locally. It is well settled that this is Pinot Noir country. 90% plus of the acres planted in Polk County are in Pinot Noir, and focusing the analysis on that variety is perfectly appropriate. That a grape vine might grow a grape is not the point, the issue is whether or not the land is suitable for the property owner to expend upwards of $10,000 per acre to plant the vineyard originally, and the money to keep the vines alive for years until grapes come into being, only to have so few of a such a low quality that if they can be sold at all, the money reaped would be minuscule compared to the costs of creating the vineyard in the first place.[7]

The result of the elevation is lower temperatures that adversely impact the ability of vines to produce saleable fruit. At the request of Mr. Gallagher, the vineyard expert, and Mr. McLain, the vineyard siting expert, Wayne Simmons purchased temperature recording devices and placed one at the 900 foot elevation, and a second one at the 1,065 foot elevation.

The growing degree days (GDD) is the index used by vintners to gauge site suitability for growing grapes. According to the handbook on vineyard site selection, Oregon Viticulture[8], the Willamette Valley is Oregon's coolest wine grape region where:

> *Heat accumulation is probably the single most important site selection criteria, with average degree-day (GDD) accumulations at favorable sites generally ranging from 2000 to 2200.*

The higher the elevation, the cooler the temperatures, and therefore the fewer growing days are available for the fruit to ripen. According to this handbook, for a site to be suitable for vineyard land, the number of growing degree days index needs to be over 2000, and preferably up to 2200.

The temperatures at the 900 foot elevation on the Subject Property produced a GDD index figure of 1671, while at the 1,065 foot elevation the GDD index number dropped to 1486. Both GDD index figures are far below the benchmark of 2000 established in the Oregon Viticulture handbook, providing scientific facts that the subject property is not suitable for vineyard production.[9]

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[7]According to joint report of the Oregon and Washington Wine Growers Association, the average cost of establishing a vineyard, without taking into account the cost of the land, is $9,028.13. Year Two production costs are $3,143.03 per acre. The Year Three production costs are $3,709.24 per acre. From Year Four and after the per acre costs of the vineyard level out at $3,617.89 per acre. A copy of the Cost of Production Calculator is attached hereto as Exhibit E.

[8]Oregon Viticulture, Edited by Edward Hellman, authored by Jones, McLain and Hendricks, 2003, the quoted passage is from Chapter 4.

[9]There is more information on the GDD index process contained in the Gallagher Report which was submitted with this application (Exhibit Y), which confirms the unsuitability of the Subject Property for vineyards.

The second critical element is slope. To be viable, vineyard ground must be at less than 30% slope. The vast majority of the property alleged to be vineyard land is steeper than 30%.

No one in the wine industry looks at soil reports alone in making vineyard siting decisions, and the Recommendation's singular reliance on the soil report, and assumptions that are contrary to the testimony of experts, is wrong and not supported by the evidence in this Record and should not be adopted by Polk County as the method for determining if a property is suitable for a vineyard.

The Recommendation seems to put considerable weight on the fact that the top land would be suitable for vineyards. However it ignores the fact that the top land is the highest elevation on the entire subject property and therefore is the absolute worst area for planting a vineyard. In addition, the top land is rolling and does not contain the south facing slopes that are needed for proper vineyard construction. There is no evidence in this Record to support the findings and conclusions that a vineyard can be established on lands that are at the high elevations of the Subject Property, and those findings and conclusions actually conflict with the reports of the experts.

G. Study Area Information is Accurate - The Recommendation has basically rejected the Land Use Inventory submitted by the Applicant because it does not believe it to be accurate. See pages 94-96 of the Recommendation. However, the only error that has ever been pointed to is the one mistake in not including the 3.18 acre Hatchette property with the contiguous parcel.[10]

It is important to note that no party to this proceeding, either in writing or at the hearing, has challenged any of the information submitted. It was only staff that discovered the Hatchette mistake, and offered it to the Record as if they were opponents to the application. Because there is no conflicting evidence, nor any opposing arguments regarding the accuracy of the Land Use Study, it is not appropriate for the Recommendation to take it upon itself to make up issues. The job of the Recommendation is to evaluate the material submitted, not to act as an opponent and create opposing arguments when none were raised by the actual opponents.

One self-created argument made in the Recommendation is that the Land Use Study used tax lots as the basis for the presentation of evidence as to each parcel in the study area. Tax Lots are the means by which information on land is made available to the public. The Property Profiles created by the Assessor include an abundance of information including size, zoning, taxation, structures and dwellings, ownership, property location and mapping information. In addition to the Property Profiles, that are included in this Record for each parcel in the study area, the Assessor website includes floor plans, photographs, and links to older Assessment Cards that show the origin of parcels and their historic parcelization and divisions. Both in written and oral materials it was pointed out that all of these public records were consulted, and all relevant material was included.

During the course of the hearings process, the Applicants were asked to provide additional

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[10]The discussion of this Hatchette mistake is provided above, and at most should be considered a very minor error that does not justify disregarding the remainder of the Study.

information on parcelization, that is to point out in the study tax lots that were in the EFU zone and were contiguous, and therefore should be considered to be one parcel tract for planning purposes. In response, it was pointed out that the study did in fact note in the Comments column when one person owned more than one parcel so that it was clear that ownerships might include more than one parcel. In a follow up, the Applicants submitted additional detailed information on combined tracts in the EFU zone that were contiguous, and used the combined figures in evaluating the ownership pattern and parcel sizing in the study area. The only error found in all of this material was the one Hatchette 3 acre parcel, that had no impact on the overall findings and conclusions reached in the study that the vast majority of parcels were non-resource dwelling parcels of a size less than what is being proposed here (10 acre minimum).

Typical of the mistaken analysis in this Recommendation are the comments on Page 95 regarding several tax lots that are asserted needed to be combined to form one farm "tract" because they are contiguous. The analysis first fails because the Recommendation names tax lot numbers but does not indicate which of the seven Assessor Maps the tax lots are on. She asserts that Tax Lots 1004 and 1003 are contiguous with Tax Lots 303 and 1010 and therefore should be considered as one large tract for doing the inventory math for average parcel sizing.

In reviewing this assertion it was discovered that Tax Lots 1004, 1003 and 1010 were on Map 7.4W.23, while Tax Lot 303 was on Map 7.4W.24. It was also discovered that all four of these tax lots are zoned AR-5, not EFU, so the combination rules into a contiguous "tract" do not apply. In the AR-5 zone, each tax lot is an individual lawful parcel for planning purposes and contiguous land under the same ownership has no meaning whatsoever.

This is a critical mistake in analysis in the Recommendation, one that is inexcusable given that the Table of Parcels included in this Record as Exhibit V, clearly show at page 8 all of the details of Tax Lots 1004, 1003 and 1010, including that they are zoned AR-5 and that they are contiguous under one ownership. The same is true for Tax Lot 303, the details of which are shown on page 11 of the Table of Parcels. Further, use of the word "tract" for the combined contiguous lands of one owner is well known to only have application in the resource zones.

The end result of the Recommendation's incorrect analysis of combined parcels was that it again discredited the Land Use Inventory findings and conclusions. This result is worse than throwing the baby out with the bath water as occurred with the minor mistake made in Hatchette situation. Here, the Recommendation threw the baby out based on its own mistake and not any error in the material submitted.

The Land Use Study is accurate and fully detailed and takes into account all land use planning guidelines, and does in fact justify the granting of the Exception in this case.

2. Response to Legal Issues Raised

This Section of this Response deals with erroneous legal interpretations that exist in the Recommendation.

A. The Definition of what is a Hobby Farm - The Applicants have relied on the federal law definition of when a parcel is classified as a hobby farm and not a farm in commercial crop production. In fact the federal definition, which comes out of the IRS regulations, is the only definition that is currently available anywhere.

Further, the IRS definition makes total sense, and is based on solid logic and legal justification because it looks at both intent and capital contribution.

Where a parcel has a higher assessed value for structures than for the underlying land, that parcel is defined by the IRS as a "hobby farm". The definition assumes the income produced from the farming activities on the parcel would not be sufficient to support the costs of dwellings and other structural improvements on those lands. Therefore, capital derived from sources other than farm income, such as full time employment off-site, is necessary to construct and maintain the dwellings and structures. The conclusion to be reached from this circumstance is that any agricultural activities thereon are ancillary to the residential uses.

In addition, in these circumstances (where full time employment off-site, or some other method of capitalization such as inheritance or gifting is needed to underwrite the activities on the land)[11] it is deemed that the intention of the land owner is to obtain and retain tax deferral status, rather than intending to make a profit from the agricultural activities taking place on the property.

The IRS definition, is the law of the land, and it makes perfect sense even when viewed in the course of a land use proceeding. Given that no one has offered a legally adopted different definition, the IRS definition must be used to evaluate the parcels in the Study Area.

Nevertheless, the Recommendation ignores, and in fact contradicts the IRS definition in order to classify hobby farms as real farm use endeavors. The Recommendation ignores the two critical elements of the definition of farm use, that of intent and generation of gross income, in determining that hobby farms are farm uses. This error is then compounded when the Recommendation recites that property owners may own more than one property and farm them together thereby constituting a farm use. However, there is no evidence in this Record that any of the Applicants, or owners of surrounding properties for that matter, own more than one parcel, or farm multiple other parcels. The evidence here is the owners own the one parcel, and in fact are not farmers themselves at all. Each owner is either retired or a professional that works full time in offices in Salem. While the concept of multiple parcels making up one farm unit is itself a valid principle, there is no evidence in this Record to support that this principle applies to the facts of this case.

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[11]At one point in the Recommendation it opines that the capital used to construct dwellings and outbuildings may come from other sources than from the owner, however that would not change the logic or justification for the qualification of the use as a "hobby farm" because the source of the money still does not come from, or be justified by the ability of the land to provide income from agricultural production. It is a thrown in assessment in the Recommendation that does not change the analysis at all.

B. The Size of the Study Area Is Appropriate and Lawful - The Recommendation is critical of the size of the Study Area selected by the Applicants, and argues that it is too big. To begin with, it must be pointed out that the selection of the study area was made based on surrounding Assessor Maps, not some strategic decision to gain the best result. The Subject Property was placed in the middle of its Assessor Map and the surrounding area was determined by the number of Assessor Maps that surrounded the Subject Property. There was nothing calculated or devious about the establishment of the Study Area, it was simply a choice of selecting adjacent maps.

In determining study areas for land use purposes it is generally accepted that an entire Assessor Map is used, rather than attempting to select certain parcels within a map to create a smaller area. When such parcel selection on maps is undertaken, it is fraught with issues of why one picked one parcel to be in the study and another adjacent parcel to be out of the study. The only way planners have found to avoid this targeted selection is to use the entire map. This way the study takes in all the parcels listed, whether they help the cause or hurt it. There is no way to hide the facts using this method, you take the land as it lays and as it is reported by the Assessor.

Therefore, it is logical and justified to use the study area selected in this case. Further, the concept in any plan amendment case is to take a good look at the neighborhood and surrounding area. There is no benefit in being myopic when trying to determine the natural progression of growth in an area. Further, by using one standardized study area, all the approval criteria can be judged against the same set of data. That is when assessing the land uses in the neighborhood for changes in the character of the area, or when reviewing average parcel size, or parcel usage, the one set of data can and should be applied to the information contained in the Land Use Study.

The Recommendation suffers from the inconsistent and erratic review of the land use patterns in this area. As noted above, in one passage of the Recommendation it finds there has been no change in circumstance, yet in another it finds significant changes have occurred. Some of this disjointed logic can be attributed to not dealing with the standardized study area, and instead picking and choosing geographical areas to apply to the different approval criteria.

When it came time to evaluate the Exception, the Recommendation made findings and concluded that it would only consider the 14 properties that are contiguous to the Subject Property. It is inappropriate and bad land use planning to base plan amendments on such a small and constricted area of analysis, not to mention that it is not what the law mandates.

The Recommendation interpreted the law of Exceptions to only allow consideration of properties that are contiguous to the Subject Property. This interpretation has no merit. The language used for analysis is "adjacent" not contiguous. Adjacent has never been interpreted in any court or LUBA case to mean contiguous. In fact, in all the Exception cases reviewed, including the ones cited in the Recommendation, include a Study Area that interprets "adjacent" as being the surrounding area, and includes a swath of parcels around the target parcel that extends out wide enough to obtain an accurate composite of the nature of the neighborhood, and certainly none constrict the analysis to just those properties that are contiguous.

In *Scott v. Crook County*, 56 OR LUBA 691 (2008), relied on in the Recommendation for the interpretation that only contiguous properties should be considered, does not stand for that proposition at all. This case simply parrots the ORS use of the word "adjacent", but never defines that term to mean contiguous. In fact in that case the Study Area is referred to as "a mile or more radius of the Subject Property." Slip Opinion at page 3. Certainly the "adjacent" properties reviewed and ruled on in *Scott*, being a mile or more radius, could never be interpreted to limit the term "adjacent" to those properties that are contiguous. Also it must be noted that LUBA actually approved the requested Exception in that case, agreeing that field burning smoke, farm noise, Irrigation spill over, pesticide application and damage from trespass are legitimate uses that can conflict with nearby residential uses are sufficient to justify an Exception.

It is a ridiculous argument that "adjacent" means "contiguous" under the current state of the law. Not only is it inappropriate to interpret the words in such a restrictive manner, the argument flies in the face of good planning. In order to properly review an Exception application, it is necessary to take a look at the surrounding neighborhood, not just those parcels that are contiguous.

Polk County, including the staff report in this case, has always taken the approach that the surrounding neighborhood must be analyzed in cases like these, not just the contiguous parcels.

In addition, even if one were to assume that "adjacent" could mean "contiguous", that certainly does not preclude a comprehensive review of the surrounding area, as one of those "other relevant factors" in OAR 660-004-0028(2)(d). The OAR includes many references to the need for review and findings on neighborhood and regional characteristics.

To verify that "adjacent" does not mean "contiguous", the *Lovenger v. Lane County*, LUBA Case No. 2006-202, (Slip Opinion dated March 9, 1999) relied on in the Recommendation included a study area that was 2 miles long and 1/4 mile wide, with the center of the study area being the target parcel. It is also important to note that this large study area was surrounding a target parcel that was only 20 acres in size.

By restricting the analysis and examination of the Exception criteria to only those 14 parcels that surround the Subject Property, the Recommendation has not properly interpreted the law, and reached the conclusion that the Exception is not justified unlawfully. This Board has an obligation to correct this improper interpretation, and when doing so, this Exception, like that in the *Scott v Crook County* case, supra, should be approved.

C. Impact of Approval on the Surrounding Area - The Recommendation determined that if this application is approved it will impact the surrounding properties by encouraging them to also seek an Exception. It is difficult to reconcile such a determination, because if a property qualifies for an Exception, it should be allowed to have that Exception regardless of how or why it was triggered.

Here, the Recommendation again presents an inconsistent position regarding farm practices that may be used to justify the exception. On the one hand the Recommendation makes findings and

enters conclusions that the farm practices in the surrounding area are not sufficient to justify this Exception, while on the other hand it finds those same farm practices done on the Subject Property would be sufficient to justify an Exception on surrounding lands. One can not have it both ways, and in this case the evidence is clear that neither agricultural or forestry uses can be suitably employed on the Subject Property because of the land use characteristics of the area. There is no conflicting evidence on this point, and as pointed out above, the *Scott* case demonstrates that field burning smoke, farm noise, irrigation spill over, pesticide application and damage from trespass are legitimate uses that can conflict with nearby residential uses and are therefore sufficient to justify an Exception. This is the exact situation present here, and the same result of approval of the Exception should be the result.

The Recommendation further fails to recognize that this application will create significantly different parcels from those that surround the Subject Property and justify this Exception. While the surrounding area here demonstrates that 77% of the parcels are under 10 acres in size, the vast majority of which are non-resource parcels with non-farm dwellings. In addition, there are large areas nearby with the AR-5 zoning, meaning parcel sizes are generally only 5 acres in size. That is a much different kind of neighborhood from a project that will have 10 acre minimum lot sizes, that encourage employment of hobby farm techniques. Given the lesser density that the surrounding area, the Recommendation's determination that the increased residential footprint would worsen the fire hazard is simply not supported by logic or the uncontradicted evidence in this Record.

It must be noted here that the only real resource parcel in the entire area is the Legacy Hill Vineyard. That vineyard is to the west at the bottom of the hill, with the current vineyard being some distance to the west of the common property line with the Subject Property which is along the toe of the steep slope where there is only scrub brush and scrub trees on the Subject Property. Given the slopes, and the desire for territorial views, the homesite on any parcel in this area would be located as far up the slope as possible and therefore away from the vineyard. This homesite location would be a long distance from the property line, and even further away from the actual vineyard, and at a completely different elevation. There is no way that creating 10 acre parcels along that slope would have any impact whatsoever on the vineyard land below.

The Recommendation makes findings that there are 199.5 acres to the Northwest receiving forest deferral, and from that finding concludes that this property is in forestry use, and further that the Subject Property would be suitable for forestry use. This finding is not explained. There is no citation to a tax lot or map number to support the finding. A review of the Table of Properties in the study area reveals no property of that size. This finding is inadequate to explain what is being found as it is impossible to identify what property or properties are referred to. Further, it has to be understood that despite some properties being granted a forest deferral, there are no timber zones in the Eola Hills area, a clear indication that forestry is not predominate nor to be encouraged.

Only one person spoke in opposition to the forestry analysis in this application, which was Ms. Deumling. She asserted that she operates Zena Forest, LLC and that the work she is doing on her property would work for forestry purposes on the Subject Property. A review of the Study Area, and its inventory reveals no properties owned either by Ms. Deumling or by Zena Forest, LLC. In

her submittals to this case, the tax lot and map number of property she owns and or controls for forestry uses is not disclosed. It is not appropriate to give any weight or credibility to her testimony when the location of her property is not disclosed. See the further discussion of Ms. Deumling's testimony above under the forestry topic.

When all the evidence in this case is carefully reviewed it is clear that approval of this project would have not adverse impacts on surrounding properties, nor would these findings support the conclusion that the Subject Property is suitable for farm or forest uses.

D. Activities that Justify the Exception - The Recommendation recognized that the surrounding properties conflict with potential agriculture and forestry uses on the property, but did not find them sufficient to warrant granting the Exception in this case.

Applicants disagree with the Recommendation, and assert even the cases relied on in the Recommendation do not support its findings and conclusions on this topic. As noted above, in *Scott v. Crook County*, 56 OR LUBA 691 (2008), LUBA approved the requested Exception, finding that field burning smoke, farm noise, irrigation spill over, pesticide application and damage from trespass are legitimate uses that can conflict with nearby residential uses are sufficient to justify an Exception.

Each of those listed activities, which warrant granting an Exception, are present in this case., and the LUBA that the Recommendation relies on for support for her Recommendation makes this very clear. In this case, not only are the above listed activities are, or can be present on the Subject Property, there are the fire dangers that come with the location of the high voltage power line that traverses the Subject Property, and the high winds that come from the Van Duzer corridor that potentially could quickly spread to surround homesites.

These activities that justify granting this Exception are even more important to consider now when the 11 Curtright parcels that were vacant, are now becoming rural residential homesites very close to the Subject Property.

E. Measure 37 Parcels Must be Considered - In evaluating the Land Use Study in order to determine if the surrounding uses have irrevocably committed the Subject Property to non-resource use, the Recommendation refused to recognize parcels created by Measure 37, especially those development rights that exist but have not yet been exercised. See pages 25 and 64 of the Recommendation.

As with many of the criticisms the Applicants have with this Recommendation, the Recommendation makes bold findings and conclusions but fails to explain the rationale or provide any legal support for the determination. Applicants pointed out that Measure 37 development rights exist, and parcels have been created and land divisions have been approved using those rights. In addition, there are several parcels that have valid Measure 37 approvals that can be exercised at any given point in time to create additional rural residential parcels with non-resource dwellings. The whole of Measure 37 must be considered when looking at the over-all land use characteristics of the surrounding area. It is not good planning to ignore these rights, it would be as ridiculous as ignoring

the potential partition of a 10 acre parcel in an AR-5 zone. The land use impact from these identical situations is the potential, even likelihood, that lawful land division and dwelling placements will occur at some time in the near future, and consideration for these future developments has to be taken into consideration in evaluating any plan amendment.

Despite point all of this basic planning theory, the Recommendation simply ignored the argument raised and provided no explanation or legal justification for not taking Measure 37 rights into account.

F. County Forestry Policies Do Not Apply When there is an Exception - When taking an Exception to a Goal, in this case Goal 4, the concept is that an Applicant has proven that the land is committed to a non-forest use, and the mandates of Goal 4 no longer apply. Polk County's Comprehensive Plan's Goals and Policies with regard to forest lands are all based on the premise that Goal 4 applies to that land. When Goal 4 no longer applies, the Goal 4 local plan Goals and Policies no longer apply either. Simply from a common sense standpoint, if one qualifies for an Exception to Goal 4, the local forestry policies are simply become moot and there is nothing left to protect.

Nevertheless, the Recommendation concluded that the Polk County Forestry Plan Policies had to be addressed in this case. As is typical of this Recommendation, this pronouncement is not supported or justified with any logic, reason or legal authority. This cavalier approach to land use planning, that ignores common sense, and throws up road blocks for applicants without as much as an explanation should not be tolerated.

Think of it this way. If the Exception is approved, Goal 4 does not apply and forestry plan policies are moot. If the Exception is not approved, no development will take place regardless of compliance with any local policies. It is simply incorrect to require compliance with the forestry policies in this case regardless of the outcome.

It should be noted that while the Applicants have continually asserted that compliance with Polk County Forestry Policies is not required, a courtesy compliance statement was submitted showing how these policies were complied with.

G. Land Use Study Justifies Granting the Exception - At the heart of this case is the determination of surrounding land uses and how they irrevocably commit the Subject Property to non-resource uses. As the Recommendation pointed out, there is nothing "intrinsically wrong" with the end result being proposed in this application. Instead the Recommendation casts its lot with the technocrats to make it "extremely difficult" to rezone land from a resource use. It is this attitude that brings a bad name to land use planning. Our system was designed to be a long term approach to planning, which requires the necessity for flexibility in implementation. That is the very reason the Exception process exists, to allow the planning program to adapt to the changes that occur over time. Approval criteria should not be applied stridently and without some recognition of the changing times and circumstances.

The Recommendation's approach to evaluation of the surrounding lands is a classic example of viewing the criteria in the light most favorable for a denial instead of an approval. As noted above, the Recommendation for this purpose incorrectly limited its evaluation to those 14 properties that are "contiguous" to the Subject Property.[12] When viewed properly, and according to the law, this application satisfies all of the Exception criteria and should be approved.

There are two ways to look at how the Subject Property became irrevocably committed to non-resource use. The first is by looking at the historical record, and determining how parcels and developments in the adjacent area came into being. The second is by looking at the current record to determine if parcels and developments came into being by application of land use regulations. This analysis is set forth in OAR 660-004-0028(5)(A), which is as follows:

> *Consideration of parcel size and ownership patterns under subsection (6c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.*

From this language it is clear that the analysis regarding the historical record, that is "how the existing development pattern came about" has to include both the historical record and the current record where land use regulations were applied. Historical facts may not be definitive, but are an important part of the two prong analysis.

The original Inventory Study (Exhibit V) pointed out where County records indicated when a house was constructed, and when partitions were used to create new parcels. That Study also identified where there were multiple properties in the name of the same owner. This information, covering 215 useable tax lots, demonstrated a significant circle of development that surrounds the Subject Property. This Study covers in all aspects the second prong of analysis by showing parcels that were approved, and houses permitted pursuant to land use regulations.

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[12]Note that for other approval criteria, the Recommendation was not limited to the contiguous parcels, which creates a terrible inconsistency in the findings made and the conclusions reached in this Recommendation.

The Applicants were then asked to provide detailed information on the parcels in the Study Area to determine which of those were created and developed before the advent of land use regulations. During the Open Record period, the Applicant took considerable time in reviewing the deed records, the Assessment records and the building permit records to determine when houses were built, and when a parcel was first referenced in its current configuration in the County records.

This information revealed that within the Study Area, there are 51 houses that were constructed without the application of any land use regulation, or in the alternative that M37/49 prohibited the application of land use regulations. In addition, the rights granted under M37/49, provide for the siting of an additional 10 dwellings for a total dwelling development done without any application of land use regulations of 61. These dwellings account for 40% of the total 153 houses in the entire Study Area.

Putting this information in the context of the two ways to analyze this case, using the historical record, 40% of the houses were constructed without application of land use regulations (that is before 1970), and 60% were constructed after 1970 by obtaining some land use approval. This is nearly an even split in the Study Area, and confirms that historically, there have been small parcels and non-resource dwellings all around the Subject Property, and further, that the land use program for this area continued to zone areas and approve small parcels and non-resource uses thereby committing this area to non-resource uses. These properties encircle the Subject Property and have by their very existence, irrevocably committed the Subject Property to non-resource uses.

Looking just at the parcels, without regard for development, there are 46 parcels that were created, and have not changed boundaries to this date, before the application of land use regulations (1970). An additional 10 parcels are authorized under M37/49, which means they can be partitioned without application of land use regulations. There was one parcel Mr. Simmons was not able to determine when it was created, but he believes based on his long time personal knowledge of the area that it was created prior to 1970. Not counting that parcel, there is a total of 56 parcels within the Study Area that were created without the application of any land use regulations. This is 26% of the 215 parcels in the Study Area.

Again using the two pronged analysis of the historical record and the current implementation, 26% of the parcels in the Study Area were created prior to land use regulations, and have not changed in any way since, with the remaining 74% of the parcels having had their boundaries changed in some way since 1970.

Therefore the Subject Property qualifies for this Exception whether one looks at the historical record of parcelization and development, or one looks at the progression of land use regulations and zoning since 1970 that has arisen to encircle the Subject Property with non-resource parcels and dwellings.

The Applicants have already pointed out the error in restricting the Exception analysis to just the 14 contiguous parcels, nevertheless, the applicants provided significant detailed information in their Land Use Study (Exhibit V) and then supplemented that during the open record period with

additional requested information. However, all that detailed information about the 14 contiguous parcels was not enough to satisfy the Recommendation even using its erroneously restricted analysis.

The Recommendation relied on *Johnson v Lane County*, 31 OR LUBA 454 (Slip Opinion issued on August 19, 1996) in eliminating parcels from consideration in the Exception evaluation. However, the *Johnson* case does not support exclusion of all past land divisions, or land divisions done only before a certain date. At pages 10-11 of the Slip Opinion in *Johnson*, LUBA found:

> *This rule [OAR 660-04-028(6)(c)(A)] permits consideration of past land divisions as one factor in the analysis of whether a committed exception should be allowed if the manner of development on the resulting parcels or other factors makes resource use unsuitable on those parcels or on nearby lands.*

Exclusion of parcels due to land divisions that occurred even under the auspices of the land use regulations is legal error that must be corrected.

The *Johnson* case goes on to determine that the analysis for an irrevocably committed exception, is a function of all the uses established on adjacent lands. Slip Opinion Page 16. There is no qualification or limitation to what uses on adjacent lands can be used to determine if the Exception should be granted or not. The Recommendation's troubling determination that only 1 of the 14 parcels that are contiguous to the Subject Property qualify to be assessed against the Exception criteria violates the very LUBA case cited to support such an unqualified restriction in analysis.

It is the responsibility of this Board to rectify these errors in the application of the law, and when doing so, it will become clear this Exception should be granted.

3. General Comments and Observations

This Section of Response deals with minor observations and comments on the state of the Recommendation, and why that Recommendation should not be adopted by this Board.

A. The Value of Credentials - When evaluating evidence, particularly in testimony during a land use proceeding where there are no evidentiary rules, it is important for the decision maker to carefully review the testimony given. Often lay persons offer opinion on topics, which testimony must not be confused with expert opinions given by qualified individuals with the education, licensing or certifications necessary to prove their ability to offer the opinion.

Where there is a forestry report done by one of the most outstanding foresters in Oregon[13],

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[13]Mr. Barnhart has a BS degree in Forest Engineering, with multiple continuing education credits. He has 33 years experience in the field, and has been the Past National President of the Association of Consulting Foresters of America (ACF), the Past Western Regional Director of ACF, as

that expert opinion has to be selected over conflicting opinions of area land owners, even those with some forestry experience, but no training or education.

The same rules for evaluating evidence and the credentials of those offering opinions applies throughout this case from testimony regarding agriculture, and school capacity, to transportation and even layman offering legal opinions.

In this Recommendation, the findings and conclusions are often based on speculation and invalid assumptions or erroneous interpretations of the law that contradict expert testimony and reports. This is especially true in the review of the Subject Property for forestry and vineyard operations. The opinion of the experts must be given credibility and weight, and not disregarded or picked apart in the Recommendation.

B. Misunderstood Legal Theory of Exceptions - Much of the Recommendation is based on the Recommendation's opinion that the Subject Property can be productive farm or forest land. When evaluating an irrevocably committed exception, the legal focus is on the surrounding lands and how the activities on those surrounding lands adversely impact the Subject Property to the extent that farm or forest uses, that may otherwise take place, have become impracticable because of the intrusion of non-resource activities, such as trespass, complaints about farm noise, spraying, etc.

The fact that some farm or forest uses might be able to take place to some degree on the Subject Property is not the point, the point is have those potential activities become impracticable because of the growth in developments around the Subject Property. This entire concept seems to have been overlooked in the Recommendation that takes the stand that if the Subject Property can be planted to any crop or any tree, then the Exception can not be granted. That simply is not the law. Everyone understands that this is Oregon, plants can grow regardless of most any condition, so the legal concept is if farm uses can take place given the pressures from the surrounding lands. The Applicants have asserted from the beginning that is not the case. Traditional farm activities such as burning, the dust generated from planting and harvesting, the impact of the water supply from irrigation, the crop loss due to trespass, are all such that the Subject Property has become impracticable to employ either farm or forest uses. That situation is being exacerbated right now with the conversion of the formerly vacant Curtright property into what is planned to be up to 20 new five acre million dollar plus non-resource home sites.

C. Catch 22 Logic in Determining When Houses Justify an Exception - The Applicants are frustrated at the inconsistent and often contradictory findings in the Recommendation. Examples of such are addressed above. At page 95 of the Recommendation there is a passage declaring that dwellings constructed prior to 1970 can not be used to justify an Exception because they have been around too long. The Recommendation then also indicates that newer dwellings that were sited under the land use system can not be used to Justify the Exception because there are too new. As pointed out above, the legal conclusions here are not supported by law, and are actually contradictory

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well as Past Chair of the local ACF Chapter. He is also a member of the Council on Forest Engineering.

to the *Johnson* case quoted above, but internally the Recommendation has created Catch 22 logic. The Recommendation won't use any dwellings that are recent because they were approved under the land use system, and you can't use anything old that was done before the land use system because those dwelling are too old. Obviously this logic leaves nothing in between, and no way to ever be able to justify an Exception because there are no dwellings that can be considered. The Exception rules are not a trap, but a way out, and the trap this logic sets is not what the law is.

D. Speculation Has No Place Here - Throughout the Recommendation, there are assumptions made and speculation given on critical facts. Assumptions and speculation have no place in a land use proceeding that requires substantial evidence that leads to findings of fact to justify a decision.

Speculation is often stated in terms of fact, when it really is just a guess or assumption. For example, the finding is made that new houses on the Subject Property could commit the nearby forest land to non-resource use. Such a statement is not based on any facts. No facts are even referred to. The statement does not add any facts or even examples that support the speculation.

Land use cases are required to be factually driven. Unless a statement is factually based, it should be considered for what it is, nothing more than the opinion of the person making the assertion made without any supporting facts or justification.

E. Establishing A Reasonable Threshold for Profitability - It is understood that the standard for determination of an existing farm use is if there is the requisite intent and the land has generated gross income. There is no evidence in this Record of the generation of any gross income on the Subject Property. No tax returns, no invoices or sales documents. Nothing that factually shows the land generated any gross income at all. Without that the findings and conclusions made in the Recommendation fail, and should not be adopted.

In *Lovenger v Lane County*, LUBA Case No. 98-085 (Slip Opinion dated March 9,1999), LUBA recognized that local governments have the right to establish a reasonable threshold level of profitability in defining farm uses for Exception purposes, instead of the basic court standard of any gross income.

This is not a real issue in this case because there is no evidence in this Record that the Subject Property has generated any gross income. Nevertheless, given the arbitrary and often unfair case law standard of "any gross income equals farm use", Polk County is urged in this case to recognize that even if some gross income were generated from the Subject Property, it would clearly not rise to the level of a real farm use.

Polk County uses the amount of $10,000 in evaluating whether or not an agricultural building should be approved. That sum is also an important threshold in obtaining and retaining farm tax deferral in Polk County. The Applicants urge that this case be used to establish the principal that a reasonable threshold for determining if a property is in farm use is not the generation of any gross income (which ridiculously could be $1.00), but the generation of at least $10,000 during any one calendar year. That threshold could then be applied here to find and conclude that the Subject

Property has not been in farm use.

Establishment of this threshold would make a huge difference in the clarity needed for owners who apply for development, and for planners as well as the public in understanding what it means to be a real farmer with the intent to make a profit, and in fact generates at least $10,000 in gross income from the land. It is bright line marker that makes sense and should be adopted.

F. Assurance of Future Use of New Parcels - One of the distinct advantages present in this case is the ability under the AF-10 zone for owners to develop "hobby farms" which would fill the need for rural residential housing, while still employing the land in a productive manner. The Recommendation finds there are no assurances that the new parcels will be so employed. However, that is pure speculation that is not based on any facts, and as noted above should not be adopted as a finding here. What is factual is that the proposed AF-10 zone allows the opportunity for an owner to engage in farm uses as an outright permitted use. PCZO 128.810B.

There obviously are no guarantees as to what a new owner might do with their land, so the appropriate analysis is what is allowed for the new owner to do in the applicable zone. A careful look at the facts set forth in the Inventory study show that in most cases, small lot owners buy that kind of property in order to engage in some hobby uses. Typically that is horses, or other animals, or gardens (flower or veggie) to use for their own enjoyment, or as an income supplement at farmer's markets or craft fairs. Based on these facts, it is safe to assume that any purchaser of a 10 acre tract of land will use a couple of acres for a house and landscaping, and the remainder of the tract will be put to some use that is personal and enjoyable for the owner. Otherwise, there is no reason to buy an acreage tract, when an urban lot in the city would better serve the owner's purposes.

G. Lack of Conflicting Evidence - It is important to note the lack of evidence submitted by those that have spoken in opposition to this application. While opponents take cracks at the approval criteria, none of their arguments are backed up by credible factual evidence. The lack of conflicting evidence in this case is telling, and the Recommendation falls into the trap of making findings based on assumptions, speculation and statements that are irrelevant.

The Applicants have spent considerable time and money putting this application together. They have submitted expert reports on water, traffic, agriculture and forestry. The Land Use Inventory presented detailed information on every property in the surrounding area. When that was deemed to be not enough, the Applicants dug through county assessment and deed records to provide even more detailed information as to parcel creation and when homes were constructed. None of this expert testimony has been contradicted. No conflicting experts have been submitted by opponents. No conflicting evidence on any of these topics has been submitted to this Record. In fact, there has not even been a challenge to any of the information submitted by the Applicants.

This lack of conflicting evidence is critical in the analysis of this case. Under Oregon land use law, where evidence is submitted and not contradicted, it is entitled to be considered a finding of fact and sufficient to meet the Applicants burden of proof. Any reasonable person reviewing the evidence submitted by the Applicants would believe it and adopt it as factually correct.

In the process of deciding this case, it is imperative that the entire Record of this proceeding be considered, and when doing so, it is clear that all of the facts support approval of this application.

H. Expectations of Rural Residential Homeowners - The Recommendation at page 84 cites to *Prentice v DLCD*, 71 Or App 394, 403 (1984) to support the finding and conclusion that normal agricultural activities on nearby farmland are to be expected and therefore those activities can not be used to justify an Exception.[14] The Recommendation quotes a passage from the *Prentice* case to support its conclusion, but takes that language out of context by deleting the words immediately before it. The complete passage from page 403 of the *Prentice* case is as follows:

> *... although problems such as spray drift, field burning smoke and plowing dust may be a factor in showing that agricultural use is impractical, they are not conclusive. Rather, "people who build houses in an agricultural area must expect some discomforts to accompany the perceived advantages of a rural location. Emphasis supplied.*

The line is not drawn where the Recommendation asserts it is. Prentice clearly recognized and understood that spray drift, field burning smoke and plowing dust are factors that can be used to determine that resource uses are not impractical. Remember also that in the *Scott v Crook County* case cited above, LUBA approved an Exception, finding that field burning smoke, farm noise, irrigation spill over, pesticide application and damage from trespass are legitimate uses that can conflict with nearby residential uses, and which are sufficient to justify an Exception, thereby agreeing with that portion of the *Prentice* quote that was left off from the Recommendation.

It must be noted that the *Prentice* case was an acknowledgment case, and not a quasi-judicial site specific application review as was the situation in the *Scott* case. Further, *Prentice* was decided in 1984, where the *Scott* case was decided in 2008. The bottom line is that the *Scott* and *Prentice* cases both stand for the proposition that there are activities in the farming community that can not be tolerated by the surrounding areas, and which making farming impracticable, and which therefore justify approval of an Exception, not denial as cited in the Recommendation.

I. The CC&R's Promote Hobby Farming - The Subject Property is encumbered by a standard set of rural residential covenants and conditions. These covenants are intended to promote and encourage hobby farm use as accessory to the dwelling. The Recommendation makes the statement that the CC&R's present contradictory evidence to the Applicants stated purpose of allowing small farm and forestry uses, finding that the CC&R's restrict those uses. This finding and conclusion is not based on evidence in this Record, as the CC&R's were not part of the Record. How such a

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[14]Please note the inconsistency in the findings and conclusions in this Recommendation, where here it is determined that farm practices on the Subject Property have to be tolerated by the neighbors and can not be used to justify and Exception, while in prior findings those same farm practices are so intrusive that they would cause other adjoining properties to then qualify for an Exception as well. This inconsistency is palpable, and can not be allowed to stand.

finding can be made without having the base document to fully review is a mystery.

Sections 5.1 and 5.7 of the CC&R's sets forth the relevant provisions regarding the primary and secondary uses allowed on the land. Section 5.1 reads in full as follows:

> *All parcels shall be used for farm use and/or single family dwellings and buildings directly related to farm use or single family dwellings only. No other commercial activities of any kind shall be carried on in any Parcel or in any portion of the Development. However, the right of owners to use their Parcels for farm use shall not include the raising of livestock, with the exception of horses, without DCC approval. Furthermore, this provision shall not be construed so as to prevent or prohibit an Owner from activities which may e allowed as a home occupation as defined below, from maintaining the Owner's professional personal library, keeping personal business or professional records of account, handling professional business or professional telephone calls, or occasionally conferring with business or professional associates in the Owner's single family dwelling unit. This provision shall also not prohibit Declarant, its agents or representations, from operation a model home or sales office on any Parcel or within any building in the Development.*

Section 5.7 reads as follows:

> *No animals of any kind shall be raised, bred or kept in the Development without the DCC approval, except horses, dogs, cats or other household pets may be kept so long as they are not bred, maintained or kept for commercial purposes.*

These provisions require parcels to be used for farm use and/or single family dwellings. Outbuildings that relate to farm use are allowed outright. The raising and breeding of livestock are the only farm uses that are restricted, and even horses may be kept and bred so long as they are for personal use and not for commercial sale.

The restriction against raising livestock was put in place in order to protect the project's infrastructure such as roads, fences, wells and septic, which can be adversely impacted by livestock operations. Otherwise, all farm uses are allowed by these CC&R's.

The Recommendation never explains why these CC&R's would detract from the ability of land owners to engage in hobby farming. It would appear that the Recommendation seized on the issue of the restriction against livestock and then expanded that speculation to include all farm uses, and as we have pointed out repeatedly here, such assumptions are not warranted and here are not supported by any evidence in the Record.

It must also be noted that horses are an exception to the livestock prohibition, and can be kept and bred so long as it is for the owner's personal use and not for commercial use. The Recommendation casts aside the notion that owners of a 10 acre rural parcel will use that land for both residential and farm uses. Again that is speculation that has no place in land use planning.

The entire concept behind the AR-10 zoning is to provide an area where an owner can live and pursue a few acres of crops or orchard or flowers as a hobby or side gig. According to the purpose section of the AR-10 zone (128.810), the goal of the zone is to

> *(B) Provide larger acreage homesites while at the same time providing the maximum opportunity for agriculture and forestry related operations that could result in rural employment for the residents of Polk County;*

This AR-10 purpose statement is ignored in the Recommendation, and in fact the conclusions drawn there fully contradict the language of the zone proposed. This is a serious matter of drawing wrong conclusions without consideration of the facts or the purpose and intent of the zone requested.

4. Conclusion

This application qualifies in all respects for an Exception to Goals 3 and 4 due to the Subject Property being irrevocably committed to non-resource uses. Farming and forestry are impracticable due to the pressures and activities of surrounding properties, where trespass, complaints about spraying, farm noise and dust, all contribute to the impracticability of engaging in resource uses.

It is important to carefully review this Record. Reasons given in the Recommendation for denial are not based facts, are assumptions, speculation or an erroneous interpretation of the law. The Applicants have produced an extensive inventory of every parcel on 8 Assessor Maps; a significant hydrogeology study; vineyard information; a Forestry Study; and a transportation analysis. This information is coupled with the expert testimony of Wayne Simmons, who has been working the Subject Property for the better part of 70 years.

This Record clearly demonstrates that the Eola Hills are best suited to rural residential living. The AR-5 zone and subsequent partitions, as well as the historic nature of parcelization and development demonstrate the County has focuses on this area to fulfill the need for rural residential housing. Allowing this Exception is just the next step in that process, as the sale and current development of the 11 vacant Curtright parcels into up to 20 new five acre parcels attest.

These Applicants satisfy each and every approval criteria for an Exception to Goals 3 and 4, and for a change in the Polk County Comprehensive Plan from Agriculture to Rural Lands, and thereafter changing the zone from Exclusive Farm Use to AF-10, and this application should be approved.

If the logic and interpretation of the law set forth in this Recommendation is adopted by this Board, it will effectively mean a moratorium against any plan changes in Polk County. Should the Recommendation stand, there is no way any owner will ever be able to comply with all these rules as the Recommendation, and the County's rural planning program will go stagnant.

In closing, the Recommendation points out that there is really nothing wrong with the proposed development, it is only the strict and sometime strident technical interpretation of the rules

that stand in the way. A more reasoned and careful analysis of the facts and law in this case would show that not only is there nothing wrong with this proposal, it does in fact meet all of the approval criteria and should be approved.

Respectfully submitted this 9th day of July, 2020.

Wallace W. Lien, OSB No. 793011
Of Wallace W. Lien, PC
Attorney for Simmons Family Properties, LLC

ATTACHMENTS:

Exhibit A	A copy of the deed covering the Curtright sale
Exhibit B	Photographs of the site development on the former Curtright property
Exhibit C	Map showing the relative location of this new development to the Subject Property.
Exhibit D	Eola Hills Winery Master Plan
Exhibit E	Vineyard Cost of Production Calculator

RECORDING COVER SHEET
ALL TRANSACTIONS, PER ORS 205.234

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

This Space For County recording Use Only

RECORDED IN POLK COUNTY
Valerie Unger, County Clerk

2020-003173

03/06/2020 09:09:59 AM

REC-COR Cnt=1 Stn=3 C. STECKLEY
$25.00 $11.00 $10.00 $60.00 $5.00

$111.00

AFTER RECORDING RETURN TO
(Name and address of the person authorized to receive the Instrument after recording, as required by ORS 205.180(4) and ORS 205.238)

Firas, Yacoub and Mark Wildfang
550 50th Avenue NW
Salem, OR 97304

1. **NAME(S) OF THE TRANSACTION(S),** *described in the attached instrument and required by ORS 205.234(a). (i.e Warranty Deed)*
   Note: Transaction as defined by ORS 205.010 " means any action required or permitted by state law or rule or federal law or regulation to be recorded including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property."

   Personal Representative's Deed

2. **DIRECT PARTY,** *name(s) of the person(s) described in ORS 205.125(1)(b) or* **GRANTOR,** *as described in ORS 205.160.*

   Dama L Curtright, the duly appointed, qualified and acting personal representative of the estate of William Ames Curtright, deceased, pursuant to proceedings filed in Circuit Court for Polk County, Oregon, Case No. 19PB03518

3. **INDIRECT PARTY,** *name(s) of the person(s) described in ORS 205.125(1)(a) or* **GRANTEE,** *as described in ORS 205.160.*

   Yacoub Firas, as to an undivided 60 percent interest, and Mark Wildfang, as to an undivided 40 percent interest, as tenants in common

4. **TRUE AND ACTUAL CONSIDERATION PAID** *for instruments conveying or contracting to convey fee title to any real-estate and all memoranda of such instruments, reference ORS 93.030.*

   $1,070,000.00

5. **UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING ADDRESS** *for instruments conveying or contracting to convey fee title to any real estate, reference ORS 93.260.*

   Firas Yacoub
   550 50th Avenue NW
   Salem, OR 97304

6. **RERECORDED AT THE REQUEST OF** Ticor Title **TO CORRECT** mistake in the legal description **PREVIOUSLY RECORDED IN BOOK AND PAGE OR FEE NUMBER** 2020-000925.

TICOR TITLE 471819037908

EXHIBIT A

TICOR TITLE 471819

Total Consideration: $1,070,000.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PERSONAL REPRESENTATIVE'S DEED

Dama L. Curtright, the duly appointed, qualified and acting personal representative of the estate of William Ames Curtright, deceased, pursuant to proceedings filed in Circuit Court for Polk County, Oregon, Case No. **19PB03518,** Grantor, conveys to **Yacoub Firas, as to an undivided 60 percent interest, and Mark Wildfang, as to an undivided 40 percent interest, as tenants in common,** Grantee, all the estate, right and interest of the above named deceased at the time of the deceased's death, and all the right, title and interest that the above named estate of the deceased by operation of law or otherwise may have acquired afterwards, in and to the following described real property:

Parcel 1: (For informational purposes only: 225058/074230001000; 367938/074230001005; 367925/074230001004 and 367912/074230001003)

Lots 1, 2, 3 and 4, THE MCNARY ORCHARD, in the County of Polk and State of Oregon.

SAVE AND EXCEPT that portion lying within public roadways.

Parcel 2: (For informational purposes only: 269760/074240000303; 269773/074240000304 and 349718/074240000307)

Beginning at the Northwest corner of Section 24, in Township 7 South, Range 4 West of the Willamette Meridian in Polk County, Oregon; thence South 00°22'00" West along the West line of said Section 586.93 feet; thence South 89°38'00" East 806.73 feet to a point on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract, 853.20 feet to an iron pipe marking an angle in said Westerly line; thence North 19°43'26" West 63.88 feet to an iron pipe marking an angle in said Westerly line; thence North 9°58'26" West along said Westerly line 132.75 feet to an iron pipe; thence South 74°56'55" West 329.40 feet to an iron pipe on the West line of Section 13, said point being 245.00 feet North 00°22'00" East from the point of beginning; thence South 00°22'00" West 245.00 feet to the point of beginning.

Parcel 3: (For informational purposes only: 368287/074240000310)

Beginning at a point on the West line of Section 24, Township 7 South, Range 4 West of the Willamette Meridian in Polk County, Oregon, which bears South 00°22'00" West 586.93 feet from the Northwest corner of said Section 24; thence South 00°22'00" West along said West line 247.00 feet; thence South 89°38'00" East 956.99 feet to a point on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract 289.11 feet; thence North 89°38'00" West 806.73 feet to the point of beginning.

Parcel 4: (For informational purposes only: 368290/074240000311)

Beginning at an iron pipe on the West line of Section 24, Township 7 South, Range 4 West of the Willamette Meridian in Polk County, Oregon, which bears South 00°22'00" West 1047.13 feet from the Northwest corner of said Section 24; thence South 89°38'00" East 1086.69 feet to an iron pipe on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract 249.55 feet; thence North 89°38'00" West 956.99 feet to a point on the West line of said Section 24; thence South 00°22'00" West along said West line 213.20 feet to the point of beginning.

Parcel 5: (For informational purposes only: 368315/074240000308)

Beginning at an iron pipe on the West line of Section 24, Township 7 South, Range 4 West of the Willamette Meridian, Polk County, Oregon, which bears South 00°22'00" West 1047.13 feet from the Northwest corner of said Section 24; thence South 00°22'00" West along said West line 689.18 feet to an iron pipe marking the Northwest corner of a tract of land conveyed to Walter L. Brown by deed recorded in Volume 190, Page 296, Polk County Record of Deeds; thence South 81°47'26" East along the Northerly line of said Brown Tract 541.36 feet; thence North 00°22'00" East parallel with the West line of said Section 24 a distance of 117.66 feet; thence South 89°38'00" East 943.00 feet to a point on the Westerly

feet; thence North 89°38'00" West 753.60 feet; thence North 00°22'00" East parallel with the West line of said Section 24, a distance of 334.04 feet to the point of beginning.

Parcel 7:

(For informational purposes only: 269786/074240000305)

Beginning at a point on the Northerly line of a tract of land conveyed to Walter L. Brown by deed recorded in Volume 190, Page 296, Polk County Record of Deeds, which point bears South 00°22'00" West 1736.31 feet and South 81°47'26" East 541.36 feet from the Northwest corner of Section 24, Township 7 South, Range 4 West of the Willamette Meridian, Polk County, Oregon; thence South 81°47'26" East along the Northerly line of said Brown Tract 89.22 feet to an iron pipe marking the most Northerly Northeast corner thereof; thence South 00°37'50" East 57.93 feet to an iron pipe marking the Northwest corner of that tract of land described in Volume 198, Page 377, Polk County Record of Deeds; thence South 85°28'52" East along the Northerly boundary of said tract of land . described in Volume 198, Page 377, 1015.22 feet to an iron pipe on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract, 306.82 feet; thence North 89°38'00" West 943.00 feet; thence South 00°22'00" West parallel with the West line of said Section 24, a distance of 117.66 feet to the point of beginning.

The true consideration for this conveyance is One Million Seventy Thousand And No/100 Dollars **($1,070,000.00)**.

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.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Estate of William **Ames Curtright

By Dama L Curtright PR — 01-22-2020
Dama L. Curtright, Personal Representative — Date

State of Oregon
County of Marion

This instrument was acknowledged before me on January 22, 2020, by Dama L. Curtright, as Personal Representative of the Estate of William Ames Curtright, on behalf of the estate.

Notary Public - State of Oregon
My Commission Expires: 11/12/21

OFFICIAL STAMP
DELLA JEAN SENEY
NOTARY PUBLIC - OREGON
COMMISSION NO. 968677
MY COMMISSION EXPIRES NOVEMBER 12, 2021

Deed (Personal Representative's) Legal
ORD1357.doc / Updated: 10.10.19

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL
VALERIE UNGER, Polk County Clerk
By

POLK COUNTY CLERK

Printed: 01.22.20 @ 09:21 AM by DS
OR-TT-FKTW-02743.471920-471619087908

EXHIBIT A

Order No.: 471819087908

Parcel 1:

(For informational purposes only: 225056/074230001000; 367938/074230001005; 367925/074230001004 and 367912/074230001003)

Lots 1, 2, 3 and 4, THE McNARY ORCHARD, aka McNARY ORCHARD TRACTS, in the County of Polk and State of Oregon.

SAVE AND EXCEPT that portion lying within public roadways.

Parcel 2:

(For informational purposes only: 269760/074240000303; 269773/074240000304 and 349718/074240000307)

Beginning at the Northwest corner of Section 24, in Township 7 South, Range 4 West of the Willamette Meridian in Polk County, Oregon; thence South 00°22'00" West along the West line of said Section 586.93 feet; thence South 89°38'00" East 806.73 feet to a point on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract, 853.20 feet to an iron pipe marking an angle in said Westerly line; thence North 19°43'26" West 63.88 feet to an iron pipe marking an angle in said Westerly line; thence North 9°58'26" West along said Westerly line 132.75 feet to an iron pipe; thence South 74°56'55" West 329.40 feet to an iron pipe on the West line of Section 13, said point being 245.00 feet North 00°22'00" East from the point of beginning; thence South 00°22'00" West 245.00 feet to the point of beginning.

Parcel 3:

(For informational purposes only: 368287/074240000310)

Beginning at a point on the West line of Section 24, Township 7 South, Range 4 West of the Willamette Meridian in Polk County, Oregon, which bears South 00°22'00" West 586.93 feet from the Northwest corner of said Section 24; thence South 00°22'00" West along said West line 247.00 feet; thence South 89°38'00" East 956.99 feet to a point on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract 289.11 feet; thence North 89°38'00" West 806.73 feet to the point of beginning.

Parcel 4:

(For informational purposes only: 368290/074240000311)

Beginning at an iron pipe on the West line of Section 24, Township 7 South, Range 4 West of the Willamette Meridian in Polk County, Oregon, which bears South 00°22'00" West 1047.13 feet from the Northwest corner of said Section 24; thence South 89°38'00" East 1086.69 feet to an iron pipe on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract 249.55 feet; thence North 89°38'00" West 956.99 feet to a point on the West line of said Section

EXHIBIT A
(continued)

24; thence South 00°22'00" West along said West line 213.20 feet to the point of beginning.

Parcel 5:

(For informational purposes only: 368315/074240000308)

Beginning at an iron pipe on the West line of Section 24, Township 7 South, Range 4 West of the Willamette Meridian, Polk County, Oregon, which bears South 00°22'00" West 1047.13 feet from the Northwest corner of said Section 24; thence South 00°22'00" West along said West line 689.18 feet to an iron pipe marking the Northwest corner of a tract of land conveyed to Walter L. Brown by deed recorded in Volume 190, Page 296, Polk County Record of Deeds; thence South 81°47'26" East along the Northerly line of said Brown Tract 541.36 feet; thence North 00°22'00" East parallel with the West line of said Section 24 a distance of 117.66 feet; thence South 89°38'00" East 943.00 feet to a point on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'39" West along the Westerly line of said Polk County Tract, 364.44 feet; thence North 89°38'00" West 753.60 feet, thence North 00°22'00" East parallel with the West line of said Section 24, a distance of 334.04 feet; thence North 89°38'00" West 536.30 feet to the point of beginning.

Parcel 6:

(For informational purposes only: 368328/074240000309)

Beginning at a point which bears South 00°22'00" West 1047.13 feet and South 89°38'00" East 536.30 feet from the Northwest corner of Section 24, Township 7 South, Range 4 West of the Willamette Meridian, Polk County, Oregon; thence South 89°38'00" East 550.39 feet to an iron pipe on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence South 30°56'49" East along the Westerly line of said Polk County Tract 390.99 feet; thence North 89°38'00" West 753.60 feet; thence North 00°22'00" East parallel with the West line of said Section 24, a distance of 334.04 feet to the point of beginning.

Parcel 7:

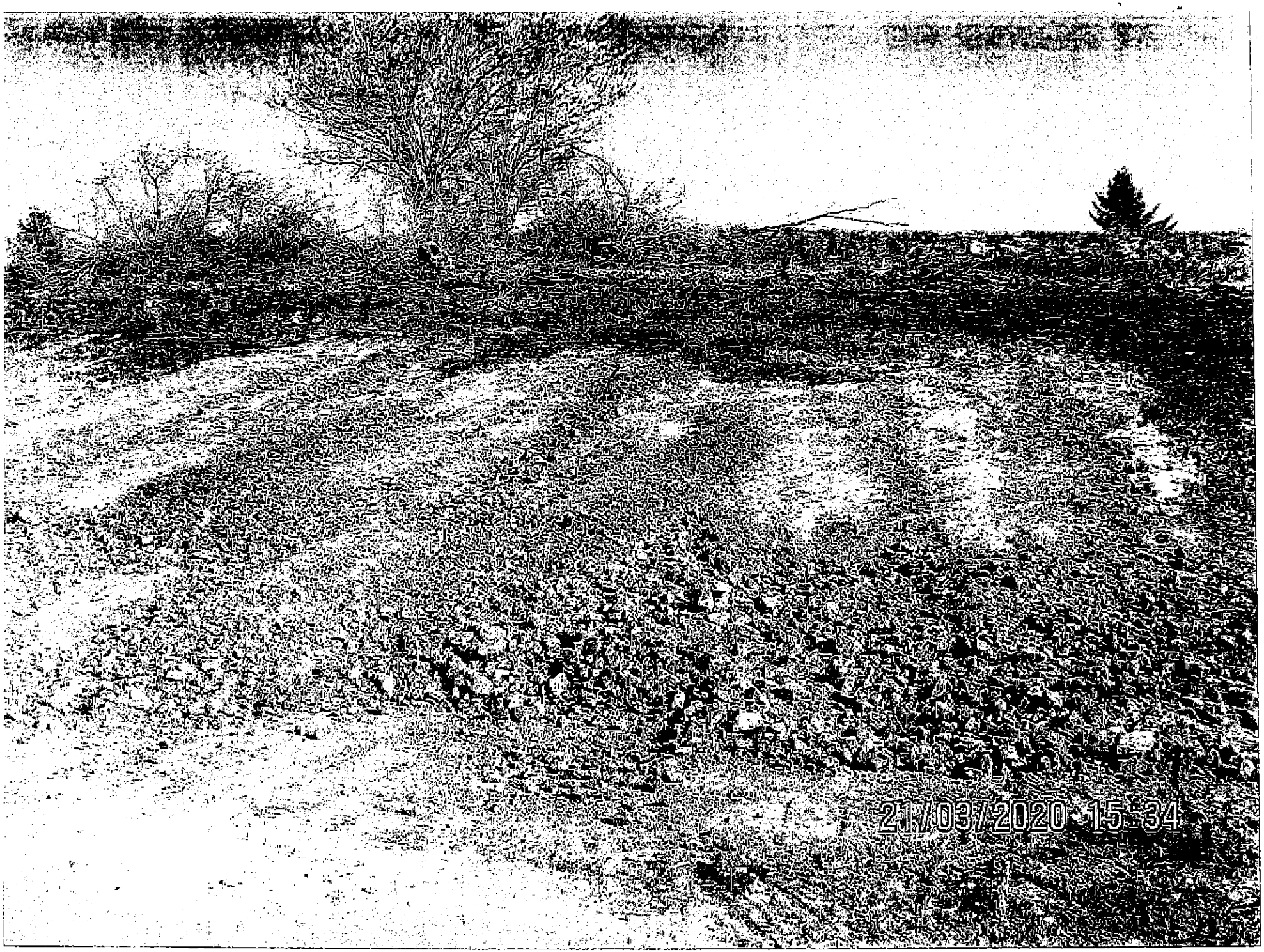
(For informational purposes only: 269786/074240000305)

Beginning at a point on the Northerly line of a tract of land conveyed to Walter L. Brown by deed recorded in Volume 190, Page 296, Polk County Record of Deeds, which point bears South 00°22'00" West 1736.31 feet and South 81°47'26" East 541.36 feet from the Northwest corner of Section 24, Township 7 South, Range 4 West of the Willamette Meridian, Polk County, Oregon; thence South 81°47'26" East along the Northerly line of said Brown Tract 89.22 feet to an iron pipe marking the most Northerly Northeast corner thereof; thence South 00°37'50" East 57.93 feet to an iron pipe marking the Northwest corner of that tract of land described in Volume 198, Page 377, Polk County Record of Deeds; thence South 85°28'52" East along the Northerly boundary of said tract of land . described in Volume 198, Page 377, 1015.22 feet to an iron pipe on the Westerly line of a tract of land conveyed to Polk County by deed recorded in Volume 189, Page 322, Polk County Record of Deeds; thence North 30°56'49" West along the Westerly line of said Polk County Tract, 305.82 feet; thence North 89°38'00" West 943.00 feet; thence South 00°22'00" West parallel with the West line of said Section 24, a distance of 117.66 feet to the point of beginning.

EXHIBIT
B


21/03/2020 15:25


21/03/2020 15:34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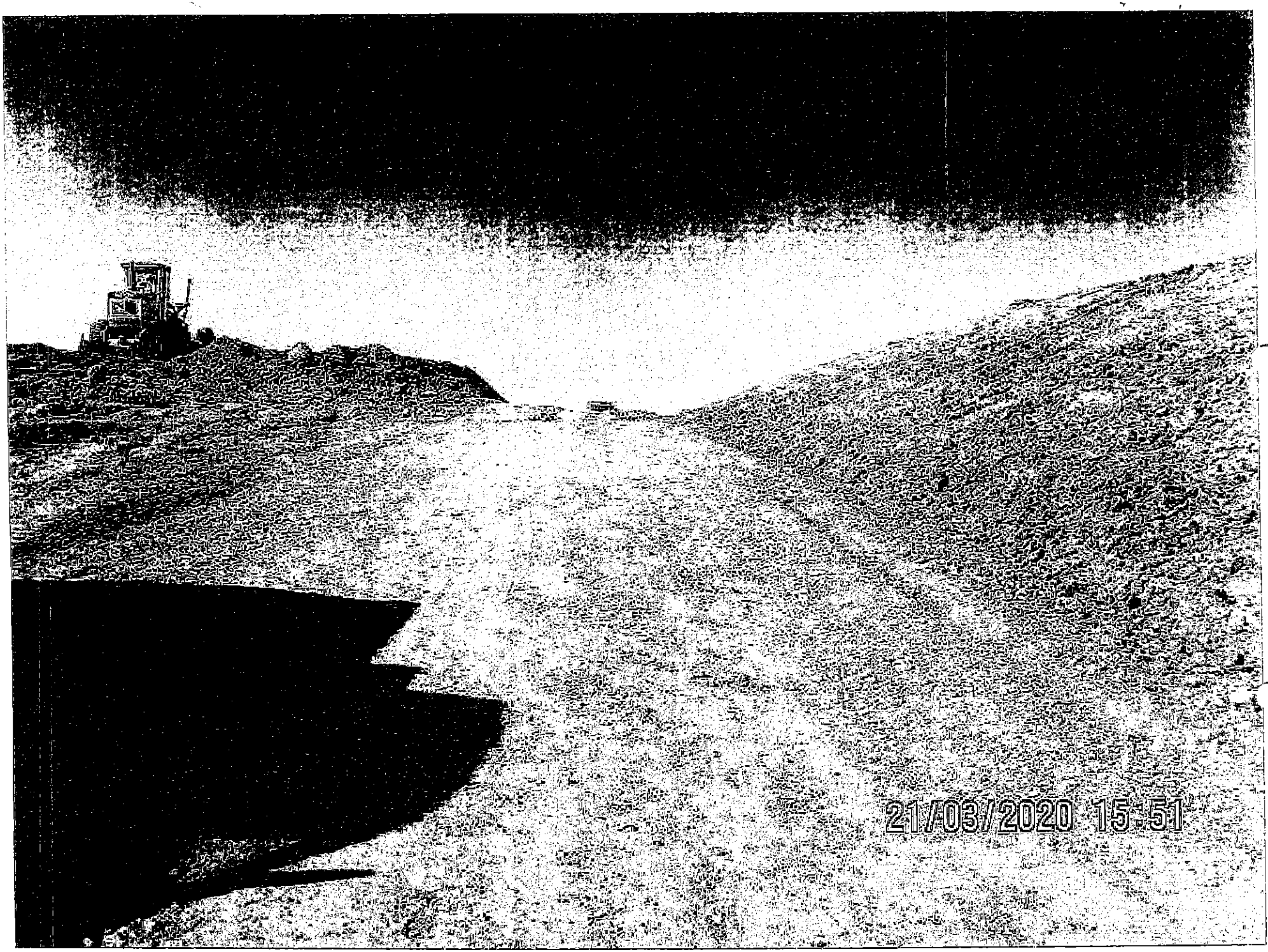
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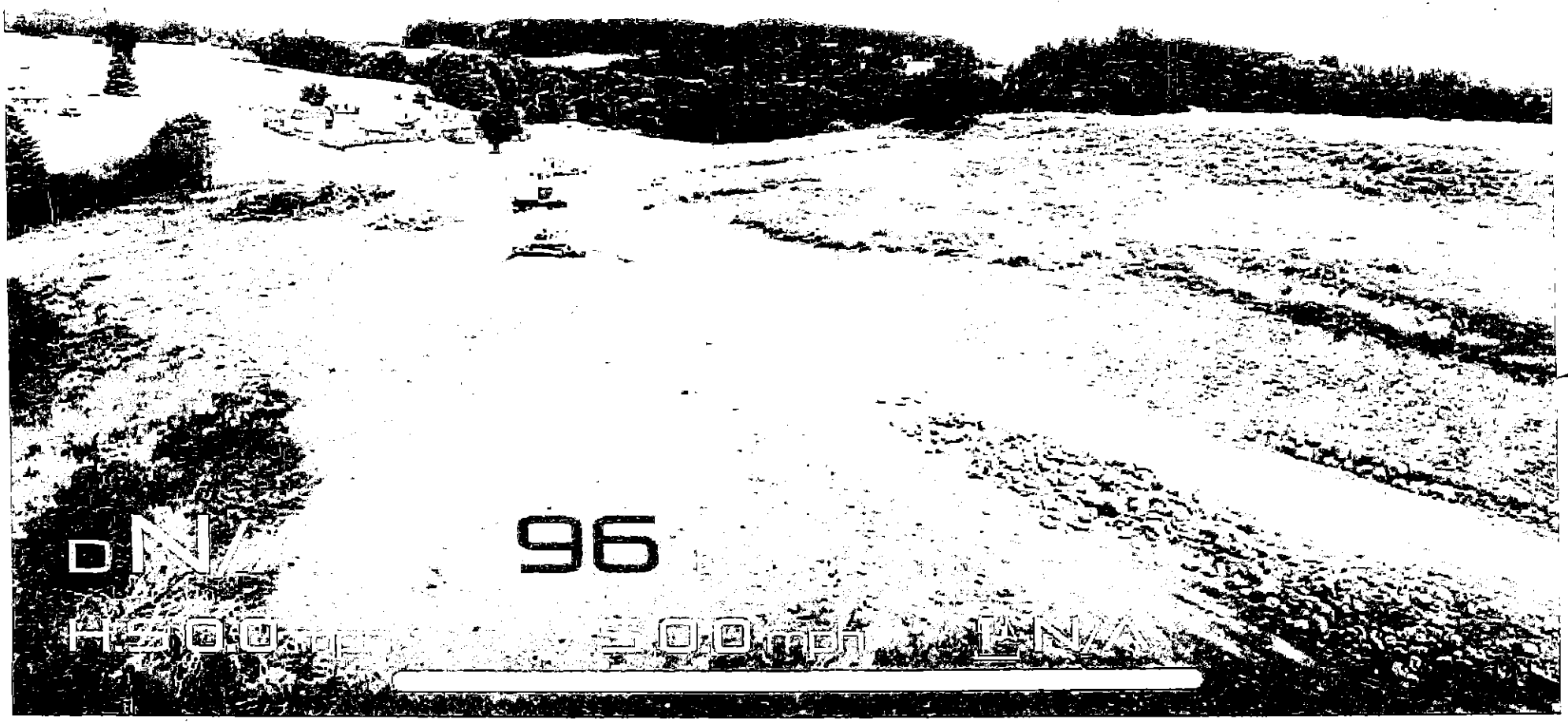
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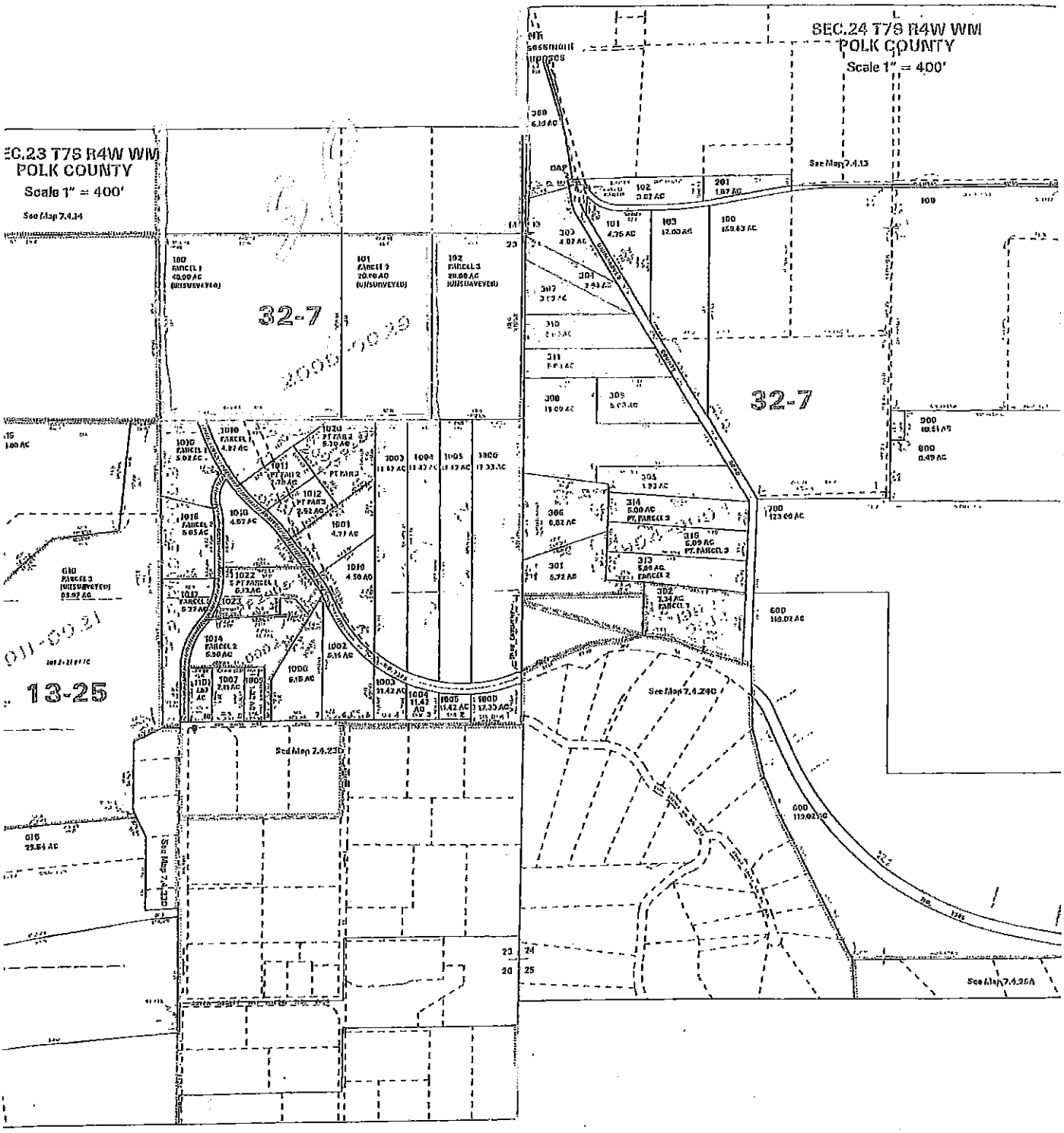

SEC.24 T7S R4W WM
POLK COUNTY
Scale 1" = 400'
SEC.23 T7S R4W WM
POLK COUNTY
Scale 1" = 400'
32-7
32-7
13-25
See Map 7.4.13
See Map 7.4.14
See Map 7.4.23D
See Map 7.4.24C
See Map 7.4.25A

EXHIBIT

C

05/24/2014

EXHIBIT

D

Northwest Grapes Cost-Of-Production Calculator

Vineyard Name:
Vineyard Block: Establishment - Year 1
Wine Grapes - Conventional Production [redacted]
Plants Per Acre: **908** Rows Per Acre: **9**
End Posts Per Acre: **18** Line Posts Per Acre: **247**

Description	Labor	Machinery	Materials	Services	Total Cost
Site/Field Preparation					
Land Preparation (rip, plow, etc.)				200.00	**$ 200.00**
Soil Test				8.00	**$ 8.00**
Survey and mark	35.15	5.46	2.70		**$ 43.31**
Install Irrigation System					
Drip irrigation system			1,300.00		**$ 1,300.00**
Plant Vines					
Plant nursery stock	31.35		1,816.00	38.00	**$ 1,885.35**
Trellis System					
Spread posts and anchors	24.23	8.74	1,365.60		**$ 1,398.57**
Install line posts	199.50	131.16			**$ 330.66**
Install end posts	76.00	51.92			**$ 127.92**
String wire	62.23		529.73		**$ 591.96**
Install anchors	47.22	24.59	137.34		**$ 209.15**
Grow tubes					
Install grow tubes	152.00		463.08		**$ 615.08**
Remove grow tubes before winter	47.50				**$ 47.50**
Irrigation					
Irrigation April-October	64.13		130.00		**$ 194.13**
Fertilizer					
Nitrogen			6.00		**$ 6.00**
Herbicides					
Surflan AS	6.88	5.03	20.00		**$ 31.91**
Gramoxone	2.25	1.64	10.00		**$ 13.89**
Fungicides					
Insecticides					
Plant Cover crop					
Plant cover crop (fall)	8.63	6.23	17.30	10.00	**$ 42.16**
Cultivation					
Disc	50.00	39.35			**$ 89.35**
Pickup and ATV Fuel					
Pickup and ATV		91.62			**$ 91.62**
Machinery Maintenance/Repairs					
Tractor and Equipment repairs		145.94			**$ 145.94**
Miscellaneous and overhead					
Overhead				250.00	**$ 250.00**
Additional Activities					
Interest on Operating Capital					
Operating Interest				123.87	**$ 123.87**
Total Operating Costs					**$ 7,746.37**

Fixed Costs

Description	Unit	Amount
Cash Costs		

EXHIBIT

[1]Machinery and equipment insurance	acre	$ 8.49
[1]Machine and equipment taxes	acre	$ 19.82
Loan Interest (establishment, equipment, land, etc.)	acre	$ 341.87
Management fee	acre	$ 275.00
Property Insurance	acre	$ 30.00
Real Estate Taxes	acre	$ 60.00
Other	acre	$ 0.00
Other	acre	$ 0.00
Total Cash Costs		**$ 735.18**
Non-Cash Costs		
Depreciation	acre	$ 156.81
Machinery and equipment interest	acre	$ 141.59
Housing	acre	$ 14.16
Interest on Investment (Opportunity Cost)	acre	$ 234.02
Total Non-Cash Costs		**$ 546.58**
Total Fixed Costs		**$ 1,281.76**
Total Cost Per Acre		**$ 9,028.13**

WASHINGTON wine industry FOUNDATION

USDA United States Department of Agriculture Risk Management Agency

The Northwest Grapes Cost-Of-Production Calculators is an online resource for Washington, Oregon and Idaho wine and juice grape growers to automatically calculate the costs of producing grapes. The calculators include versions for wine and juice grapes, and conventional and organic growing practices. Each calculator includes versions for vineyard ages from Year 1, Year 2, Year 3 and Years 4+. The Calculator was made possible with funds from a partnership grant between the Washington Wine Industry Foundation and the United States Department of Agriculture (USDA) Federal Crop Insurance Corporation (FCIC), through the Risk Management Agency (RMA) titled: Grower Decision-Making Tools for Grapes and Tree Fruit.

For more information about Washington Association of Wine Grape Growers, visit www.wawgg.org or call 1-877-88WAWGG or email info@wawgg.org. To learn more about the calculators, visit www.nwgrapescalculators.org.

The Northwest Grapes Cost-Of-Production Calculators Washington Association of Winegrape Growers P.O. Box 716 Cashmere, WA 98815 USA 509-782-8234 or 1-877-88WAWGG www.wawgg.org info@wawgg.org

Northwest Grapes Cost-Of-Production Calculator

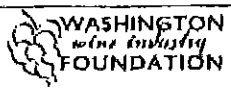
Vineyard Name:
Vineyard Block:
Wine Grapes - Conventional Prod [redacted] Year 2
Plants Per Acre: **908** Rows Per Acre: **9**
End Posts Per Acre: **18** Line Posts Per Acre: **247**

Description	Labor	Machinery	Materials	Services	Total Cost
Prune Vines					
Hand Pruning	133.00				**$ 133.00**
Plant Vines					
Replant (3%) nursery stock	43.23	5.03	54.48		**$ 102.74**
Canopy Management					
Suckering	47.50				**$ 47.50**
Summer Training	332.50		46.48		**$ 378.98**
Irrigation					
Irrigation April-October	64.13		130.00		**$ 194.13**
Fertilizer					
Nitrogen			6.00		**$ 6.00**
Herbicides					
Surflan AS	6.88	5.03	20.00		**$ 31.91**
Gramoxone	2.25	1.64	10.00		**$ 13.89**
Fungicides					
Rally	6.88	5.03	20.15		**$ 32.06**
Insecticides					
Mow Cover Crop					
Mow cover crop	22.13	16.07			**$ 38.20**
Pickup and ATV Fuel					
Pickup and ATV		91.62			**$ 91.62**
Machinery Maintenance/Repairs					
Tractor and Equipment repairs		62.99			**$ 62.99**
Frost Protection					
Wind machine spring and fall	38.00		154.00		**$ 192.00**
Miscellaneous and overhead					
Overhead				250.00	**$ 250.00**
Additional Activities					
Move drip line to wire	85.50		54.45		**$ 139.95**
Interest on Operating Capital					
Operating Interest				27.87	**$ 27.87**
Total Operating Costs					**$ 1,742.84**

Fixed Costs

Description	Unit	Amount
Cash Costs		
[1]Machinery and equipment insurance	acre	$ 9.85
[1]Machine and equipment taxes	acre	$ 9.85
Loan interest (establishment, equipment, land, etc.)	acre	$ 431.23
Management fee	acre	$ 275.00
Property insurance	acre	$ 30.00
Real Estate Taxes	acre	$ 60.00
Other	acre	$ 0.00
Other	acre	$ 0.00

Total Cash Costs		**$ 815.93**
Non-Cash Costs		
Depreciation	acre	$ 111.78
Machinery and equipment interest	acre	$ 164.18
Housing	acre	$ 3.42
Interest on Investment (Opportunity Cost)	acre	$ 304.88
Total Non-Cash Costs		**$ 584.26**
Total Fixed Costs		**$ 1,400.19**
Total Cost Per Acre		**$ 3,143.03**



United States Department of Agriculture
Risk Management Agency

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Northwest Grapes Cost-Of-Production Calculator

Vineyard Name:
Vineyard Block: [redacted] Year 3
Wine Grapes - Conventional Production
Plants Per Acre: **908** Rows Per Acre: **9**
End Posts Per Acre: **18** Line Posts Per Acre: **247**

Description	Labor	Machinery	Materials	Services	Total Cost
Prune Vines					
Pruning	142.50				**$ 142.50**
Trellis System					
Install catch wire	62.23	5.03	203.28		**$ 270.54**
Canopy Management					
Suckering	95.00				**$ 95.00**
Tie trunks and cordon to wire	76.00		21.73		**$ 97.73**
Summer Training	180.50				**$ 180.50**
Irrigation					
Irrigation April-October	64.13		130.00		**$ 194.13**
Fertilizer					
Nitrogen			6.00		**$ 6.00**
Herbicides					
Surflan AS	6.88	5.03	20.00		**$ 31.91**
Gramoxone	2.25	1.64	10.00		**$ 13.89**
Fungicides					
Rally	20.63	15.08	60.45		**$ 96.16**
Insecticides					
Provado	6.88	5.03	2.05		**$ 13.96**
Mow Cover Crop					
Mow cover crop	22.13	16.07			**$ 38.20**
Bird Control					
Balloons, streamers, labor, etc				20.00	**$ 20.00**
Harvest					
Wine grape harvest				262.50	**$ 262.50**
Pickup and ATV Fuel					
Pickup and ATV		91.62			**$ 91.62**
Machinery Maintenance/Repairs					
Tractor and Equipment repairs		100.10			**$ 100.10**
Frost Protection					
Wind machine spring and fall	38.00		154.00		**$ 192.00**
Miscellaneous and overhead					
Overhead				250.00	**$ 250.00**
Additional Activities					
Interest on Operating Capital					
Operating Interest				34.07	**$ 34.07**
Total Operating Costs					**$ 2,130.81**

Fixed Costs

Description	Unit	Amount
Cash Costs		
[1]Machinery and equipment insurance	acre	$ 10.87
[1]Machine and equipment taxes	acre	$ 25.35
Loan Interest (establishment, equipment, land, etc.)	acre	$ 537.58

Management fee	acre	$ 275.00
Property Insurance	acre	$ 30.00
Real Estate Taxes	acre	$ 60.00
Other	acre	$ 0.00
Other	acre	$ 0.00
Total Cash Costs		**$ 938.80**
Non-Cash Costs		
Depreciation	acre	$ 133.56
Machinery and equipment interest	acre	$ 181.09
Housing	acre	$ 5.10
Interest on Investment (Opportunity Cost)	acre	$ 319.88
Total Non-Cash Costs		**$ 639.63**
Total Fixed Costs		**$ 1,578.43**
Total Cost Per Acre		**$ 3,709.24**

WASHINGTON wine industry FOUNDATION

USDA United States Department of Agriculture Risk Management Agency

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Northwest Grapes Cost-Of-Production Calculator

Vineyard Name:
Vineyard Block: [redacted] Year 4+
Wine Grapes - Conventional Production
Plants Per Acre: **908** Rows Per Acre: **9**
End Posts Per Acre: **18** Line Posts Per Acre: **247**

Description	Labor	Machinery	Materials	Services	Total Cost
Prune Vines					
Pruning	114.00			45.00	**$ 159.00**
Canopy Management					
Suckering	95.00				**$ 95.00**
Tie trunks and cordon to wire	47.50		15.52		**$ 63.02**
Summer Training	180.50				**$ 180.50**
Irrigation					
Irrigation April-October	64.13		130.00		**$ 194.13**
Fertilizer					
Nitrogen			6.00		**$ 6.00**
Herbicides					
Surflan AS	6.88	5.03	20.00		**$ 31.91**
Gramoxone	2.25	1.64	10.00		**$ 13.89**
Fungicides					
Rally	20.63	15.08	60.45		**$ 96.16**
Insecticides					
Provado	6.88	5.03	2.05		**$ 13.96**
Mow Cover Crop					
Mow cover crop	22.13	16.07			**$ 38.20**
Bird Control					
Balloons, streamers, labor, etc				20.00	**$ 20.00**
Harvest					
Wine grape harvest				420.00	**$ 420.00**
Pickup and ATV Fuel					
Pickup and ATV		91.62			**$ 91.62**
Machinery Maintenance/Repairs					
Tractor and Equipment repairs		97.91			**$ 97.91**
Frost Protection					
Wind machine spring and fall	38.00		154.00		**$ 192.00**
Miscellaneous and overhead					
Overhead				250.00	**$ 250.00**
Additional Activities					
Interest on Operating Capital					
Operating Interest				31.90	**$ 31.90**
Total Operating Costs					**$ 1,995.20**

Fixed Costs

Description	Unit	Amount
Cash Costs		
[1]Machinery and equipment insurance	acre	$ 10.72
[1]Machine and equipment taxes	acre	$ 25.00
Loan interest (establishment, equipment, land, etc.)	acre	$ 537.58
Management fee	acre	$ 275.00
Property insurance	acre	$ 30.00

Real Estate Taxes	acre	$ 110.00
Other	acre	$ 0.00
Other	acre	$ 0.00
Total Cash Costs		**$ 988.30**
Non-Cash Costs		
Depreciation	acre	$ 131.04
Machinery and equipment interest	acre	$ 178.61
Housing	acre	$ 4.86
Interest on Investment (Opportunity Cost)	acre	$ 319.88
Total Non-Cash Costs		**$ 634.39**
Total Fixed Costs		**$ 1,622.69**
Total Cost Per Acre		**$ 3,617.89**

WASHINGTON wine industry FOUNDATION

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