

**SUBMISSION ON PROPOSED PLAN CHANGE 114 TO THE
WHANGAREI DISTRICT PLAN**



TO: Whangarei District Council
SUBMISSION ON: Proposed Plan Change 114 Landscape
NAME: Horticulture New Zealand
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1. Horticulture New Zealand's submission, and the decisions sought, are detailed in the attached schedules:

Schedule One: Overall comments on Plan Change 114
Schedule Two: Specific submissions on Plan Change 114

2. Horticulture New Zealand wishes to be heard in support of this submission.

3. Background to Horticulture New Zealand and its RMA involvement:

3.1 Horticulture New Zealand was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

3.2 On behalf of its 5,600 active grower members Horticulture New Zealand takes a detailed involvement in resource management planning processes as part of its National Environmental Policies. Horticulture New Zealand works to raise growers' awareness of the RMA to ensure effective grower involvement under the Act, whether in the planning process or through resource consent applications. The principles that Horticulture New Zealand considers in assessing the implementation of the Resource Management Act 1991 (RMA) include:

- The effects based purpose of the Resource Management Act,
- Non-regulatory methods should be employed by councils;
- Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
- Early consultation of land users in plan preparation;
- Ensuring that RMA plans work in the growers interests both in an environmental and sustainable economic production sense.

Thank you for the opportunity to submit on the Proposed Plan Change 114.

A handwritten signature in blue ink, appearing to read "A Halliday", is written over a light blue horizontal line.

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Schedule One: Overall Comments

- 1.1 Whangarei District Council is required to give effect to the Northland Regional Policy Statement (RPS), which includes Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF).

While the areas are stipulated in the RPS the actual rules that will apply are determined by the district council.

Horticulture NZ is concerned that areas which are important to rural production are included as Outstanding Natural Landscapes and Outstanding Natural Features and seek provisions to ensure that rural production activities are able to continue in the Rural Area.

The RPS also has provisions that seek that economic wellbeing is provided for and that rural production is enabled. Therefore there is a need for a balance between competing objectives in the RPS.

- 1.2 The comments in this schedule provide an overview and context for the specific changes sought in Schedule 2, including comments on the Regional Policy Statement and the s32 Report.
- 1.3 Regional Policy Statement

The Regional Policy Statement provides the overall framework for ONL's and ONF's in Objective 3.14:

Identify and protect from inappropriate subdivision, use and development;

(a) ...

(b) The qualities and characteristics that make up outstanding natural features and outstanding natural landscapes.

The Explanation to the objective notes:

The objective does not seek absolute protection in all cases, as in many circumstances individual elements of these resources can accommodate a degree of modification. The level of protection will depend on the values of these areas.

Policy 4.6.1 (2) implements the objective:

Outside the coastal environment avoid significant adverse effects and avoid, remedy or mitigate other adverse effects (including cumulative adverse effects) of subdivision, use and development on the characteristics and qualities of outstanding natural features and outstanding natural landscapes and the natural character of freshwater bodies.

Methods which may achieve this include:

b) In outstanding natural features, requiring that the scale and intensity of earthworks and built development is appropriate taking into account the scale, form and vulnerability to modification of the feature;

Method 4.6.3 in the RPS requires:

Regional and district plans shall be amended to the extent necessary to include objectives, policies and methods (and rules where necessary) to give effect to Policy 4.6.1 and 4.6.2:

- (1) *Methods in district plans shall include control of:*
- (i) *The location, intensity and form of subdivision;*
 - (ii) *The location, scale and form of buildings and structures (outside freshwater bodies and the coastal marine area);*
 - (iii) *The location and scale of earthworks and indigenous vegetation removal (outside wetlands and the beds of lakes, rivers and the coastal marine area); and*

The method also requires that in implementing the policy Council must:

- (ii) *Not unduly restrict existing authorised use of land or render land incapable of reasonable use.*

The method also includes that *in determining the character, intensity and scale of the adverse effects:*

- b) *Recognise that many areas contain ongoing use and development that:*
 - *Were present when the area was identified as high or outstanding or have subsequently been lawfully established.*

The Explanation to the Method states:

Control does not necessarily mean a resource consent is required.

And:

The method also states that in exercising control, council must allow the maintenance of established authorised activities and not render land incapable of reasonable use as these are provided for in section 10 and section 85 of the RMA respectively.

Therefore in putting in place rules in the District Plan there are a range of matters that the Council must undertake:

- Identify the qualities and characteristics that make up an ONF
- Identify how those qualities can be protected from inappropriate subdivision, use and development;
- Identify what activities may cause *significant adverse effects that need to be avoided*
- Identify what activities may cause *adverse effects that need to be avoided remedied or mitigated*

Special consideration needs to be given to:

- requiring that the scale and intensity of earthworks and built development is appropriate taking into account the scale, form and vulnerability to modification of the feature;
- The location, scale and form of buildings and structures
- The location and scale of earthworks and indigenous vegetation removal
- Not unduly restricting existing authorised use of land or render land incapable of reasonable use
- Recognising that many areas contain ongoing use and development that were present when the area was identified as high or outstanding or have subsequently been lawfully established

Therefore the approach the Council needs to take has to take into account and balance a range of factors.

The Outstanding Natural Features Mapping Methodology Report for the RPS identifies that a 'one size fits all' approach is not appropriate.

"The intent is to manage outstanding natural features on the basis of their values and the risk of those values being compromised (as opposed to a "one size fits all" approach) (Pg 1) NRC Decisions Version Feb 2014.

This is particularly relevant given the range of ONL's and ONF's that are identified in the RPS and brought through into PC 114.

1.4 Characteristics and qualities

A key component in implementing the RPS is that the specific characteristics and qualities of ONL's and ONF's are identified because it is those characteristics and qualities which are to be protected, not the feature or landscape per se.

PC114 includes LAN8.4 which provides a description of the ONF's but does not clearly state the specific values that are important for each feature. The ONF's identified in LAN8.4 only include a description, location and significance of the feature. It does not give the characteristics and qualities. These are important to identify because it is those characteristics and qualities that the Plan Change should focus on. The absence of the characteristics and qualities therefore makes implementing the RPS difficult and the approach is more general rather than appropriate for the range of features and landscapes that are identified.

Determining what is 'inappropriate subdivision use and development' is contingent on a clear understanding of the characteristics and qualities.

The s32 Report (Para 97) identifies that there needs to be clear identification of the characteristics and qualities that make ONF's and ONL's individually outstanding and that require protection.

And at 129

In order to provide clarity to WDP users and to meet Council's statutory requirement's proposed Policy LAN.1.3.2 provides for the inclusion of information about the characteristics and qualities of individual outstanding natural features and landscapes so that protection efforts can be specifically targeted toward those collective natural elements that make the feature of landscape 'outstanding'.

The existing land use is part of the characteristics and qualities of the environment and in many cases has contributed to the quality of the landscape or feature.

1.5 Large landforms

Of specific interest to Horticulture NZ is the Whatatiri shield volcano which is classified as a 'large landform'.

Large landforms are described in the Outstanding Natural Features: Mapping Methodology report NRC Feb 2014:

These are landforms that are large and robust. The values of such features typically relate to the underlying geology which tells of the history of their formation and the resulting outstanding large scale landforms, rather than or in addition to their visual amenity or landscape type factors. They can typically withstand moderate scale earthworks or constructions without significant impact. However major multi-storey developments, intense urban and industrial subdivisions or large scale earthworks (commercial quarry or major motorway cuttings) can significantly detract from the integrity of these landforms and their geological features.

Note: WDC have quoted the same descriptor in PC 114 (LAN 8.3 A Pg 20) but without the example of large scale earthworks being commercial quarry or major motorway cuttings.

From this description it is apparent that such large landforms can withstand moderate modification without causing significant adverse effects. Therefore the level of protection provided for large landforms should be linked to the scale of activity and potential for effects.

The section Report 32 (151) considers that a generally permissive approach is taken in respect of large landforms and comments on the ability of large landforms to absorb change. But it then sets out controls that include:

- Buildings over 5.5m in height
- General earthworks greater than 500m³ other than for specified purposes.

500m³ is considered to be a very low threshold for a landform that can absorb change and is identified in the RPS as being able to withstand moderate earthworks.

In addition, a building height limitation of 5.5m is not consistent with the description in the RPS that moderate scale development is acceptable, with the focus on major multi-storey developments, intense urban and industrial subdivisions or large scale earthworks detracting from the integrity of the areas.

The s32 Report (133) states that the effects of these activities must not reduce the main defining characteristics of features, namely overall form, integrity and areal extent.

However, as discussed below, the thresholds in the plan are generally broad brushed and do not reflect the diversity of identified features and individual characteristics. Such an approach means that unnecessary regulation is proposed for some areas.

The purpose of the Plan is to determine what are inappropriate activities that will affect the protection of a feature. Horticulture NZ considers that the thresholds set in the plan are not necessary to ensure that the integrity of large landforms is maintained.

1.5 Whatatiri shield volcano

Of particular concern to Horticulture NZ and growers is the Whatatiri shield volcano west of Maungatapere, which is classed as a large landform.

Unlike a number of ONF's Whatatiri shield volcano is not a discrete single point. Rather it covers a significant area, so regulation affects a large number of land owners.

There are substantial areas of orchard on the slope, because of the soil, climate and access to water that are available in that area. This provides a unique combination of attributes that are suitable for horticultural production.

The total area of the Whatatiri shield volcano is 9477362 m² or 947ha with the area of 'Orchard, Vineyard or Other Perennial Crop' from the land cover database V4 in that area is 481ha which corresponds to 50.1%.

Of the orchard land 349 ha is planted in avocado trees, with 52 growers. The attraction for growing on Whatatiri is the volcanic soil, the access to water, the climate and available infrastructure. All are necessary components for a production system.

Kiwifruit and other tropical fruits, such as tamarillo and passionfruit, are also grown in the area due to the favourable climatic conditions.

The economic contribution from the avocados grown within the identified area is

approximately \$12.5M FOB.

The framework to protect the characteristics and values of the Whatatiri shield volcano need to take into account the existing land use that is already established in the area. It is considered that the proposed plan framework for Whatatiri shield volcano ONF will limit the ability of growers to undertake their existing activities, particularly relating to land preparation, earthworks and buildings.

As part of growing on a slope and to help avoid root rot problems growers cultivate and mound the soil to help protect the tree roots. The proposed definition of land preparation will mean that such 'mounding' would not be a permitted activity in the large landform ONF.

In addition growers may use artificial crop protection structures to protect crops from wind damage. Construction of such structures is over 5.5m in height so will be a restricted discretionary activity, even though they are a recognised part of 'farming' activity as defined in PC 85.

In PC114 the Whatatiri shield volcano is described as follows:

Name	Category	Significance	Description	Location	Impt	Vuln	Map no
Whatitiri shield volcano	A	Only example of a large (4.4 cubic km), almost concentric shield volcano with gentle slopes in Northland. Best example in New Zealand of a small shield volcano.	A large concentric shield volcano with very gentle slopes and a diameter of 5-6 km; not breached. Reaches a maximum height of 351 m (ASL) and stands 154 m above the surrounding landscape. Completely covered by farming and forested areas. Several houses and farm roads, but no quarries. The Titoki lava flows originate from this centre. They follow a valley to the N and then to the SW.	3.5 km WNW of Maungatapere Mountain, approximately 5 km WSW of Maungatapere township.	B	2	

It is understood that this description is dated 1995 and so does not reflect the current land use of the Whatatiri shield volcano. For instance there is no mention of the extensive area in horticultural production within the ONF. The Plan should be based on up to date and accurate information.

This description does not adequately describe the characteristics and qualities that are important to protect.

In email communication with Bruce Hayward, the author of background reports on which the Council relies, Mr Hayward identified that “the profile and distant views that are most significant to protect an appreciation of this valuable heritage landform.” This is consistent with the large landform description which identifies large scale earthworks and construction as being the issues of concern.

Therefore in assessing what would be an appropriate regulatory regime to protect the Whatatiri shield volcano the approach should be to ensure that the profile and distant views are maintained.

The land preparation and artificial crop protection that is undertaken by the growers will not affect either the profile or distant views. They are not inappropriate activities that need to be regulated to protect the characteristics and qualities of the ONF.

Therefore Horticulture NZ seeks that PC114 is amended to enable existing land uses in Whatatiri shield volcano to continue as permitted activity with the focus of regulation on large scale earthworks and construction.

Decisions sought:

- Amend PC114 as sought in the following specific submissions to enable existing land use on the Whatatiri shield volcano to continue.
- Make consequential amendments as a result of changes sought in this submission.

Schedule Two: Specific submissions:

Plan provision	Support Oppose Amend	Reason	Decision sought
LAN.1.2.2 Objective 2	Amend	The objective seeks to protect characteristics and qualities of identified ONF's. The ONF's identified in LAN8.4 only include a description, location and significance of the feature. It does not give the characteristics and qualities. These are important to identify because it is those characteristics and qualities that the Plan Change should focus on.	Include characteristics and qualities for ONF's in LAN8.4 and re-notify Plan Change so people can submit on the identified characteristics and qualities. Include the existing land use and development as part of the characteristics and qualities of the ONF's.
LAN.1.2.5. Objective 5	Support in part	The objective seeks to recognise that existing land use and development form part of the characteristics and qualities of the environment where they are located in or on an ONF. This is supported but the plan needs to clearly identify the existing land use and development as part of the ONF.	Identify the existing land use and development as part of the characteristics and qualities of the ONF's. In the Whatatiri Shield Volcano the existing land use includes significant areas of avocado orchard and ancillary infrastructure and activities. Ensure that existing land use and development can continue as a permitted activity.
LAN.1.3.1 Policy 1	Oppose	The policy seeks to identify the location and extent of ONF's which are sensitive to the effects of subdivision use and development. The Whatatiri Shield Volcano takes in a significant area but there is no discussion that the whole area is sensitive to the effects of subdivision use and development.	Ensure that the mapped areas only include areas which are sensitive to the effects of subdivision use and development.
LAN.1.3.2 Policy 2	Oppose	The policy seeks to protect the individual characteristics and qualities of ONF's identified in Schedule LAN.8. The ONF's identified in LAN8.4 only include a description, location and significance of the feature. It does not give the characteristics and qualities. These are important to identify because it is those characteristics and qualities that the Plan Change should focus on.	Include characteristics and qualities for ONF's in LAN8.4 and re-notify Plan Change so people can submit on the identified characteristics and qualities. Include the existing land use and development as part of the characteristics and qualities of the ONF's.

Plan provision	Support Oppose Amend	Reason	Decision sought
LAN.1.3.4 Policy 4	Oppose	The policy seeks to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of subdivision, use and development on the characteristics and qualities of ONF's. As stated above the characteristics and qualities of the ONF's that are to be protected are not clear so it is difficult to determine how the policy can be achieved.	Include characteristics and qualities for ONF's in LAN8.4 and re-notify Plan Change so people can submit on the identified characteristics and qualities. Include the existing land use and development as part of the characteristics and qualities of the ONF's.
LAN 1.3.6 Policy 6	Oppose in part	The policy sets out the matters that will be considered in assessing the scale and significance of adverse effects of subdivision use and development on ONL's and ONF's. The matters do not include the existing land use which is a contributing factor to the current state of the ONL or ONF. This is important in terms of achieving the RPS policy of recognising existing uses in these areas.	Include an additional point in LAN 1.3.6: vii) the existing use of the area
LAN 1.3.7 Policy	Oppose in part	The policy sets out that in ONF's the overall form, integrity and extent of the feature will not be reduced and take into account the vulnerability of the feature to modification. There is no recognition of the existing land use which is a contributing factor to the current state of the ONF. This is important in terms of achieving the RPS policy of recognising existing uses in these areas.	Amend LAN 1.3.7 by adding 'and the existing use of the area'.
LAN 1.3.8 Policy 8 and LAN 1.3.9 Policy 9	Support	Policy 9 provides for buildings and structures associated with regionally significant infrastructure in ONF's and ONL's. Policy 8 is limited to ONL's. Therefore there is no policy framework for limiting buildings and structures in ONF's apart from regionally significant infrastructure.	Retain LAN 1.3 Policies 8 and 9 as notified.
LAN 1.3.10 Policy 10	Amend	Policy 10 seeks to avoid 'large scale' earthworks in ONF's and ONL's. This is supported. However the threshold as to what constitutes 'large scale' is a concern. 500m ³ is not considered to be a threshold for	Retain LAN 1.3.10 but amend thresholds for 'large scale' earthworks in the rules.

Plan provision	Support Oppose Amend	Reason	Decision sought
		what is 'large scale'. The threshold should also vary to reflect the range of landscapes and features. It is not a 'one size fits all'.	
LAN 1.3.11 Policy 11	Amend	Policy 11 seeks to avoid the adverse visual effects of earthworks in ONF's and ONL's. However the potential visual effects will vary across the range of landscapes and features as some are able to absorb development to a greater extent or the visual effects are of lesser importance. It is not a 'one size fits all'. In addition the focus should be on visibility from a public place. An amendment is sought to provide a policy framework to recognise the diversity in the landscapes.	Amend LAN 1.3.11 as follows: To avoid, to the greatest extent practicable, the adverse visual effects of earthworks including accessway and building platform creation within ONF and ONL <u>relevant to the particular ONF or ONL when visible from a public place and the ability to absorb development:</u> a) <u>Consideration of the vulnerability of the ONF or ONL</u>
LAN 1.3.16	Support in part	Policy 16 sets out an approach to promote active management of ONF's and ONL's that involves landowners. Co-operation of landowners is essential for the policy to be effective. To obtain such co-operation there needs to be a regulatory framework which encourages landowners to participate in non-regulatory approaches. Ensuring that landowners are not unfairly compromised through the regulatory framework is essential for the policy to be effective.	Ensure that the policy framework in the Plan does not penalise or unfairly compromise landowners so that they are prepared to co-operate with active management.
LAN 1.3.17 Policy 17	Oppose in part	Policy 17 sets out a framework to recognise existing land use within ONF's and ONL's. This is necessary to give effect to the RPS and the RMA. However the policy seeks to limit the existing use rights in a manner not anticipated in the RMA and is not appropriate.	Amend Policy LAN1.3.7 as follows: To recognise that identified Outstanding Natural Features and Outstanding Natural Landscapes may contain existing and/or authorised subdivision, use and development, including infrastructure and rural production activity such as farming, forestry and horticulture, and provide for the continuation of such activities. as far as is consistent with the overall protection of Outstanding Natural Features or Outstanding Natural Landscapes.

Plan provision	Support Oppose Amend	Reason	Decision sought
LAN 1.3.18 Policy 18	Support in part	Policy 18 sets out a framework to provide for maintenance of existing land use within ONF's and ONL's. This is necessary to give effect to the RPS and the RMA. However the policy seeks to limit such maintenance and does not take account of the wide range of ONF's and ONL's and the ability to absorb development.	Amend LAN 1.3.18 by adding: To allow adverse effects arising from the maintenance and minor upgrading of existing authorised landuse and development in or on Outstanding Natural Features or Outstanding Natural Landscapes, wherever it is located, <u>taking into account the ability to absorb development:</u>
LAN 3.1 Permitted activities	Amend	There needs to be explicit recognition of farming and rural production activities within ONF's and ONL's. It should be provided as a permitted activity.	Amend LAN 3.1 by adding a new rule: Farming and rural production activities are permitted.
LAN 5.1 Status of activities in ONF's LAN 5.Table 1 Line 3	Amend	The policy framework for ONF's does not include a policy relating to buildings in ONF's, other than regionally significant infrastructure. Therefore there is no policy framework to support the limitation of buildings greater than 5.5m in height in ONF's.	Amend LAN.5 Table 1 Line 3 New buildings and structures incl. network utilities <u>for regionally significant infrastructure</u>
LAN 5.1 Status of activities in ONF's LAN 5.Table 1 Lines 4 and 5 Large landforms	Oppose	There is no policy framework for a limitation of building in the large landform ONF's to 5.5m as a permitted activity. Deletion of the provisions in the Large landforms is sought so that the underlying zoning provisions apply (10 m in Rural Production Environment and 8m in the Rural Living Environment).	Delete P and RD for buildings in Large landforms and rely on the underlying zoning provisions

Plan provision	Support Oppose Amend	Reason	Decision sought
LAN 5.1 Status of activities in ONF's LAN 5.Table 1 Lines 7,8 and 9	Oppose in part	The activity table includes provision for some specific activities that are part of farming or rural production activities. It is unclear, given the structure of the Plan, whether farming and rural production activities are permitted in the Large landform areas. Forestry harvesting and replanting and new forestry planting is specifically listed and provided for as a Permitted activity. It needs to be clear that farming and rural production activities can also continue in these ONF's.	Add a new line to LAN.5 Table 1 Farming and rural production activities. Large landforms – P
LAN 5.1 Status of activities in ONF's LAN 5.Table 1 Lines 14 and 15 Earthworks	Oppose	As stated above the large landform ONF's are able to absorb moderate scale of development. A threshold of 500m ³ does not reflect a moderate scale of development. It is also unclear whether the quantity applies per year/ per hectare or per property. In terms of large landforms the concerns relate to maintaining the profile and distant view. Therefore the earthworks of concern would be those that would affect the profile – i.e. near the top of the feature and cuts that may be visible from a distance. Therefore amendments are sought for large landforms to better reflect the ability of the features to absorb change.	Amend LAN.5.1 Table 1 by: Deleting P and D in rows 14 and 15 for large landforms. Add a new row: Cut faces visible from public places less than 1.5 metres in height - P Cut faces visible from public places greater than 1.5 m in height - C

Plan provision	Support Oppose Amend	Reason	Decision sought
LAN 5.1 Status of activities in ONF's LAN 5. Table 1 Lines 16 Land preparation	Oppose in part	The provision of land preparation is contingent on the definition which is proposed as a consequential amendment to the Plan. The proposed definition is taken from the Operative Regional Water and Soil Plan but is likely to be changed to a definition for cultivation in the Draft Regional Plan. The definition of land preparation does not adequately provide for the normal land preparation that is undertaken on horticultural properties so an amendment to the definition is sought. The effects of mounding under trees is not an activity that will compromise the integrity of the Whatatiri shield volcano and should be provided for.	Amend the definition of land preparation by deleting 'but does not include sod sowing, ripping with mounding or direct drilling.' Land preparation: Means the disturbance of soil by machinery in preparation for planting or replanting crops or pasture grasses or trees, and includes blading, contour ploughing and ripping, but does not include sod sowing, ripping with mounding or direct drilling.
LAN 5.2 RDA Matters of discretion	Support in part	The matters of discretion should include the ability of the ONF to absorb the development or use and visibility from public places.	Amend LAN 5.2 by adding: f) the ability of the ONF to absorb development and visibility from public places.
LAN 7.1 Assessment Criteria	Support in part	LAN.7 includes assessment criteria for both ONF's and ONL's. Some criteria are specific to either and ONL or and ONF. For clarity the list of criteria should be grouped according to: ONF, ONL or ONL and ONF.	Amend LAN.7.1 to group according to: - Both ONF and ONL - ONL - ONF
LAN 7.1 Assessment Criteria	Amend	The criteria do not take into account existing land use of the ONL or ONF. Given the policies that support the existing land use it is important that this is identified as a specific assessment criteria.	Add an additional criteria: Existing land use activities

Plan provision	Support Oppose Amend	Reason	Decision sought
LAN 8.4 Identified ONF's by category	Amend	The table of the Identified ONF's should clearly include the specific characteristics and qualities that make the feature outstanding. While the general description is useful it does not identify values that need to be considered for protection.	Amend LAN8.4 to include specific characteristics and qualities for each ONF and re-notify the Plan Change so submitters can comment on the proposed changes. Amend the descriptions to ensure that they are up-to date and reflect current land uses, particularly Whatatiri shield volcano.
Consequential amendments Ch 4 Meaning of words Definition land preparation	Amend	The definition of land preparation does not adequately provide for the normal land preparation that is undertaken on horticultural properties so an amendment to the definition is sought. The effects of mounding under trees is important for drainage but is not an activity that will compromise the integrity of the Whatatiri shield volcano and should be provided for.	Amend the definition of land preparation by deleting 'but does not include sod sowing, ripping with mounding or direct drilling.' Land preparation: Means the disturbance of soil by machinery in preparation for planting or replanting crops or pasture grasses or trees, and includes blading, contour ploughing and ripping, but does not include sod sowing, ripping with mounding or direct drilling.