



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

February 14, 2007

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Umatilla County Plan Amendment
DLCD File Number 007-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 27, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

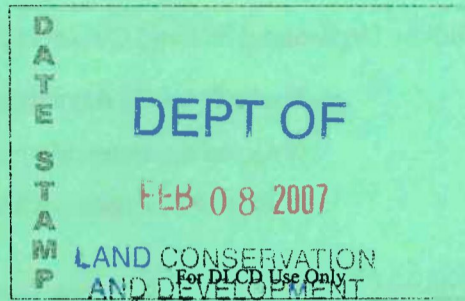
Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Ron Eber, DLCD Farm/Forest Specialist
Tamra Mabbott, Umatilla County

<paa> ya/

FOR

2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Umatilla County Local file number: P-088; Z-287
 Date of Adoption: February 2, 2007 12-14-06 Date Mailed: February 6, 2007
 Date original Notice of Proposed Amendment was mailed to DLCD: July 6, 2006

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: _____ |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Adopt an exception to Goal 3. Approve a
Plan Amendment and Zone Change. Property
is now zoned Rural Residential 10-acre
minimum lot size.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

SAME, w/ additional Findings.

Plan Map Changed from: N/S County Ag to: Rural Residential
 Zone Map Changed from: EFU to: RR-10
 Location: east of Hermiston Acres Involved: ~100 Ac.
 Specify Density: Previous: 160 New: 10
 Applicable Statewide Planning Goals: 3, 14
 Was an Exception Adopted? YES NO

DLCD File No.: 007-06(15364)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? *NA* Yes No

If no, did Emergency Circumstances require immediate adoption? *NA* Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

DLCD, Stanfield Irrigation District, City of Hermiston

Local Contact: Tamra Webbott Phone: 541-278-6246 Extension: ---

Address: 216 SE 4th St City: Pendleton

Zip Code + 4: 97844 Email Address: tamra@co.umatilla.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

RECEIVED

DEC 14 2006 THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY
RECORDS

STATE OF OREGON

In the Matter of Amending)
Comprehensive Plan to include) ORDINANCE NO. 2006-19
Goal 3 Exception and)
Comprehensive Plan Map)
for Residential Use for Leon)
Kennedy, and Daniel and Debora)
Wood)

WHEREAS the Board of Commissioners has adopted a Comprehensive Plan for Umatilla County and also has ordained Ordinance No. 83-04, adopting the County Land Development Ordinance, codified in Chapter 152 of the Umatilla County Code of Ordinances;

WHEREAS an application was received from Leon Kennedy, and Daniel and Debora Wood, requesting Umatilla County to allow the rezoning of Exclusive Farm Use property to allow for residential use, which would require an exception to Goal 3, on the property known as Umatilla County Tax Lots 4N29-07A-600 and 4N29-07C-900 (Kennedy), and Tax Lots 4N29-07B-800 and -900 (Wood), located in the North Half and the Southwest Quarter of Section 7, Township 4 North, Range 29, East of Willamette Meridian, Umatilla County, Oregon;

WHEREAS the Umatilla County Planning Commission held a public hearing on August 24, 2006 to review the application and the proposed amendment to the plan and recommended that the Board of Commissioners adopt the amendment;

WHEREAS the Board of Commissions held a public hearing on October 4, 2006, continued to October 10, 2006, and December 12, 2006, to consider the proposed amendment, and voted to adopt the amendment.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Umatilla County Comprehensive Plan, adopted May 9, 1983, be further amended as follows:

I. The Comprehensive Planning Map, including Comprehensive Plan Map A, is amended to change the designation of the subject property from North/South County Agriculture (resource lands) to Rural Residential (non-resource lands).

II. (To be inserted after section for Goal Exceptions Statement for Rural Residential, East County Developed/Committed Exceptions, Pg XVIII-321)

Area: Kennedy/Woods Area
Total Acres: 103.98

Finding:

The county previously has found an insufficient number of parcels available for rural residential use in Umatilla County based on the percentage of land within each rural land classification. Similarly, the addition of the Kennedy/Woods 104 acres will allow for an additional ten, 10 acre lots, which neither significantly add to the supply of large rural residential lots, nor diminish the supply of farm land.

The Kennedy/Woods property is unique in that it has physical constraints that make it ill suited for productive agricultural use. It is constrained on four sides by the physical boundaries of Ott Road to the west, the "A" line canal on the north, Canal Road on the east and the railroad tracks and associated right-of-way on the south. As a result the site is very narrow ranging in width from approximately 50 feet where the site fronts on Canal Road to 800 feet at its widest point. Approximately 50% of the length of the site is less than 700 feet wide. The property is on a hillside and in some places is too steep for machinery. In other places, there are natural springs which create runoff and standing water, causing problems for equipment.

According to the former owners of the property, the current owners of the property, an area farmer who has been approached to farm the site, and others, most of the subject property is unsuitable for farming. The lack of an adequate water supply for irrigation is also an issue.

The site is bounded on approximately about 75% of the site by residential exception lands that are committed to non-resource uses. Locating rural residential areas adjacent to areas where commercial farming is not planned, will allow the continuation of the most economic management practices for resource production.

Finding:

The land inside the UGB's whether or not it is Hermiston, Pendleton or other cities in Umatilla County are not designed to accommodate larger lot rural residential development and are discouraged by

administrative regulations. The 10 acre lot is considered by the State to be a rural level of development and should not be placed inside the Urban Growth Boundaries where land has been relied upon to serve eventual urban needs.

Finding:

Exception areas were created when Comprehensive Plans were being adopted statewide and there were areas at the fringe of cities that were not being planned for urbanization, agriculture, open space or forest use. In Umatilla County these areas were primarily built and committed to non-resource land uses and serve as rural communities and rural services centers. The exception areas are highly parcelized and occupied with single family homes.

There are five residential exception areas within 1 mile of the Hermiston UGB. The commercial and industrial exception areas were excluded because conversion of them to rural residential use would have resulted in the need for a Goal 9 exception and a loss of employment opportunity. Therefore commercial and industrial exception areas should not be considered as alternatives and have not been analyzed. The average parcel size would require assembly of multiple lots, and the removal of homes to accommodate the desired 10 acre lots. When the exception areas were acknowledged, they were created because of their inability to contribute to either the urban land base or the resource base. Since their initial identification and designation, further parcelization has occurred making their suitability for development even less likely. Finally, the density of uses on the existing rural residential subdivisions cannot be increased without taking a Goal 14 exception.

Finding:

The subject site is not productive farm land, whereas other irrigated and more isolated land is more appropriate for the EFU designation. Moreover, no land zoned EFU in Umatilla County can be rezoned RR - 10 without also receiving approval for an exception. The subject site was selected due to its size, low agricultural productive value, proximity to developed rural residential lands and to avoid disrupting large parcels of productive farm ground located in remote areas away from incorporated areas and existing developed and committed areas.

Finding:

The other areas that would require an exception are other resource areas. Because this site is a very low productivity resource farming site, the impacts of converting it to a non-resource use are less than at other farming locations

Environmental: One of the reasons that the site is not appropriate for farming is because of the close proximity to a significant number of homes. The ability to use the site for farming is limited, in part, because of the potential objections by nearby residents of the use of fertilizers, potential dust and noise pollution. By converting the site to ten acre homesites, the potential for impacts related to commercial farming are reduced.

The proposed rezone and Goal 3 exception within the Stage Gulch CGWA will not significantly impact groundwater on the property or on nearby properties for the reasons discussed below. The surface waters presently available on the properties may be better applied to help the overall surface and groundwater supplies by better application of the existing surface water availability which will help enhance overall water supplies.

Some of the property has a relatively high water level resulting from onsite springs and seepage from up-gradient sources. While the exact origin is unknown, the source is most likely a result of up-gradient irrigation between Hermiston and Stanfield, seepage from the USBR canal, and other natural flows of water within the Cold Springs drain of the Umatilla Basin.

The small quantities of water used for a domestic well will not significantly affect the existing surface water rights. The Kennedy proposed Water Certificate allows for approximately 253 acre feet per year. On the assumption that a domestic well would use .7 acre feet per year that quantity could support approximately 360 homesites. The development in this area of six to ten domestic wells, even if all shallow, would not have a significant impact on the surface water rights. The use of small groundwater based supply systems for individual household wells, spread out on minimum ten acres lot sizes increases the water resource base and provides the greatest opportunity for minimum environmental impact on all aquifers.

The availability of surface waters on the Kennedy and Wood property are somewhat unique to the Hermiston rural area and make the properties one of the far better candidates for rural residential

development by keeping within the goals of the rural residential zone as well as the other county goals and policies for residential development by minimizing impacts to the existing water base.

Economic Impacts: Because the site has been demonstrated to be unsuitable for commercial farming activities there are no adverse impacts on the economy.

Finding:

The rural residential use proposed for the property is compatible with the rural residential uses located to the south and a portion of the northern properties which are also used for rural residential uses. In fact, the proposed rural residential use is more compatible with these uses than the existing EFU use for the reasons stated above. As no public services are necessary to serve the proposed use, the impacts to adjacent properties are minimal.

Finding:

The proposed residential development is necessary to satisfy the market demand for housing generated by the economic activity in the area, primarily inside Hermiston. The market demand proven in the record, is not just a market demand for "housing", but a demand for rural uses in farming and livestock on small ten acre parcels in association with housing and residential uses. There is a shortage of properties in the range of ten acres for owners who desire to pursue agricultural uses in conjunction with their residential uses on smaller tracts without making the much larger expenditure necessary for land that is in larger tracts and are better suited for commercial agricultural use.


The term "farm use" in Goal Three allows for a wide spectrum of related farm uses. However, the Comprehensive Plan Statement allows for the weighing of less productive farm land with more productive farm lands, and discourages the needless conversion of valuable farm lands. The property is not high value farmland, and oral and written testimony demonstrates that it is not valuable from a commercial standpoint. The site is surrounded on 75% of its border by property either in the Urban Growth Boundary or/used and zoned as rural residential development. It's narrow and unusual shape, the presence of a high water table and proximity to residential uses, make it less valuable than other high value, more isolated, and more physically appropriate farm land.

DATED this 14th day of December, 2006.

UMATILLA COUNTY BOARD OF COMMISSIONERS



Dennis D. Doherty, Chair



William S. Hansell, Commissioner

ABSENT

Emile M. Holeman, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS



Records Officer



UMATILLA COUNTY, BOARD OF COUNTY COMMISSIONERS
 FINAL FINDINGS AND CONCLUSIONS
 KENNEDY WOOD COMPREHENSIVE PLAN MAP AMENDMENT (File #P-088),
 EXCEPTION TO STATEWIDE PLANNING GOAL 3, and
 ZONING MAP AMENDMENT (File #Z-287) for property located on
 ASSESSOR'S MAP 4N 29 07A, TAX LOT 600 and
 4N 29 07B, TAX LOT 800 & 900 and 4N 29 07C, TAX LOT 900

SUMMARY OF FACTS

Applicants: Daniel and Debora Wood Leon A. Kennedy
 33265 E. Walls Road PO Box 18
 Hermiston, OR 97838 Rattan, OK 74562

Owners: Debora Wood Leon A. Kennedy
 33265 E. Walls Road PO Box 18
 Hermiston, OR 97838 Rattan, OK 74562

Requests: Approval of Umatilla County Comprehensive Plan Map
 Amendment from North/South County Agricultural to Rural
 Residential (non-resource lands)

Approval of Zoning Classification from Exclusive Farm Use to
 Rural Residential (RR-10 acre minimum lot size)

Approval of an amendment to the Umatilla County Comprehensive
 Plan text to include an exception to Statewide Planning Goal 3
 (Agriculture) to change the site designation from resource land to
 non-resource land.

Location: Generally located between Ott and Canal Roads, north of the railroad
 tracks and south of the "A" line irrigation canal.

Tax Maps: Kennedy Wood
 4N 29 07A TL 600 4N 29 07B TL 800
 4N 29 07B TL 900 4N 29 07C TL 900

Size: Kennedy Wood Total
 65.60 acres 38.38 acres 103.98 acres

Zoning: Exclusive Farm Use

I. INTRODUCTION AND REQUEST

The applicants, Mr. Leon Kennedy and Mr. and Mrs. Debora Wood, requested that their respective properties be removed from the County's resource zone and placed into the recently created Rural Residential (RR-10) zone. To achieve this outcome, the following land use changes were requested and by these Findings and Conclusions approved.

A. *Change the Comprehensive Plan designation from North/South County Agriculture to Rural Residential land;*

B. *Change the Zoning Classification from Exclusive Farm Use to Rural Residential (RR-10 acre minimum lot size).*

Land use planning in Oregon is guided by the Statewide Planning Goals. Goal 3 is the State's Agricultural Goal and in order to remove land from a resource category (EFU) and place in a non-resource category, the county must justify why the land should be exempted from Goal 3. Non-resource land, located outside of city boundaries is known as "exception" lands. All exception lands are identified as such within the County's Comprehensive Plan. Therefore, in order to change the designation of land as requested, a third land use change is requested.

C. *Amend the Umatilla County Comprehensive Plan text to include a Goal 3 exception justification to change the designation from resource land to non-resource land.*

Background: Mr. Kennedy owns Tax Lots 600 and 900 which are connected and total approximately 65.60 acres. Mrs. Wood owns Tax Lots 800 and 900 to the west, which lots adjoin and total approximately 38.38 acres. Mr. Kennedy and Mrs. Wood have no arrangement between them regarding any future development of their respective properties. Because they had both been interested in the possibility of some development on their respective properties for a number of years and because of the adjoining nature of their respective properties and uniqueness and similarities they submitted a joint application.

II. SITE CHARACTERISTICS

A. Existing Land Use

1. **Site:** The site is comprised of four parcels:
 - Map T4N R29E Section 07A: Tax Lot 600;
 - Section 07B Tax Lots 800 and 900; and
 - Section 07C Tax Lot 900, for a total of 103.98 acres.

All four parcels are vacant. There has been some seasonal livestock grazing. An eleven acre or so portion of the Kennedy property had been farmed for crop purposes. The crop generally did not cover the cost of farming. At present, and as mentioned below, the properties do not attract area farmers. The site is covered with a mix of poor quality grasses, stands of Russian olive and locust trees. The property also has blackberries and can be overrun rapidly with noxious grass types, as well as bull and Russian thistle.

The parcels have springs located at various points. They do not provide certainty of flow and as a result there is no reliable irrigation quantity. A partial source of the springs is believed to be seepage from uphill farming as well as from the Hermiston Irrigation District's feed canal. The springs are challenging to manage. They would, however, most likely be well-managed if lot sizes were smaller and the landowner devoted the time energy and materials to appropriately channel, use, and apply the spring waters. Other rural residential parcels to the north and west have taken similar steps to channel some of the springs for beneficial uses for small pastures, yard, and garden irrigation.

There is one BPA easement which crosses the western portion of the Wood property. It is 250 feet wide and contains two sets of high voltage lines and towers. With a length through the Wood property of approximately 1,000 feet this creates an approximately five to six acre parcel of land upon which no improvements may be located. This potentially reduces the number of lots the Woods parcels could accommodate.

2. Surrounding Area: The site is bounded on the north by the "A line" Canal, which lies in the center of the United States Bureau of Reclamation (USBR) 100 foot right-of-way, on the east by Canal Road, on the south by the O.W.R.R. & N. Railroad Company right-of-way, and on the west by Ott Road. Ott Road is the City of Hermiston's Urban Growth Boundary.

Land use to the north consists of intermixed farmland, and rural residential land. To the east land use is a similar mixture. The land immediately south is the O.W.R.R. & N. Co railroad including 200 feet of right-of-way.

South of the railroad is in rural residential use whereby a majority of the parcels are 1 – 3 acres in size. They are bordered by another canal that adjoins the airport. To the west inside the Hermiston UGB is a mixture of farmland and rural residential uses.

B. Existing Comprehensive Plan Designations

1. Umatilla County: The site is within Umatilla County's jurisdiction. The County Comprehensive Land Use Plan designates the subject site North/South Agricultural.

The land adjoining the subject site and on the west side of Ott Road is in Umatilla County's jurisdiction, but is also inside Hermiston's UGB. This adjoining area is designated as holding zone by the County for planning purposes and it is zoned Future Urban FU-10 acre minimum. There is a Joint Management Agreement between the County and the City whereby the County has land use authority of "urbanizable", not "urban" designated land outside the City but inside the UGB.

2. City of Hermiston: The subject site is not inside the city limits or the UGB. There is no City Plan designation on the subject site. The plan amendment of the site included notice to the City as provided for in the Joint Management Agreement. The City of Hermiston had no objections to this request.

The site abuts the Hermiston UGB at Ott Road. Land west of Ott Road is within the Hermiston UGB and the City Comprehensive Plan designates that area Future Residential. As mentioned above, the County designates the area FU-10, with a 10 acre minimum.

C. Existing Zoning Designations

Umatilla County Zoning: The subject site is zoned Exclusive Farm Use (EFU).

D. Surrounding Roads

The subject site is bordered by a canal, a railroad and two public roadways. Canal Road (County Road #1203) is located on the east side and provides access to the easternmost parcel. There is currently 66 feet of road right-of-way. Canal Road is designated a local roadway in the County Transportation Plan. Local roads require 60 feet of right-of-way. Canal Road is paved from the entrance to the Kennedy parcel, north to Baxter Road and continuing north to Diagonal Road but is not paved south of the Kennedy parcel to Loop Road. According to the County Road Department, there are no major improvement plans for Canal Road.

Ott Road is unimproved along the frontage of the Wood property south until it connects to Loop Road. Umatilla County recently paved East Hooker Road between Townsend and Ott. Ott was paved from its intersection with Hooker north to Diagonal. These improvements tie into the 2006 \$4.5 million ODOT safety reconfiguration project of the

Townsend/Diagonal/Hooker/Elm intersection which was completed in November of 2006. Both the Kennedy and Wood parcels have easy access north and south to either Diagonal, Baxter, or Loop Roads for travel to and from Hermiston.

Local assessors maps show where Leathers Road, County Road #786, once crossed the canal from the north and historically ran east across the subject site to Canal Road. In 1997 the county vacated the portion of Leathers Road that was on the subject site and the road now terminates at the canal.

E. Access

Direct access to the Kennedy property is available from Canal Road, and to the Wood property from Ott Road. The two interior tax lots depend upon public road access from the aforementioned adjoining parcels.

F. Easements

As mentioned earlier there is a BPA easement on the west end of the site and the USBR easement to the north. Umatilla Electric Co-op has a power line running parallel and west of the BPA easement on the Wood property.

G. Soils

According to the Umatilla County Soil Survey, three soil types are found on the site as shown on Table One. A complete description of the soil types are shown on Table one below. The soils classification types vary from Class II to IV, but the majority of the site is subject to the presence of water and a significant water table due to the seepage of the drainage canal, as indicated by the "w".

Table One - Soil Types

No.	Name and Description from Umatilla Co. NRCS Survey	Capability Classification & Subclassification	Location on Site
3A	Adkins fine sandy loam, wet, 0 to 3% slopes. The wetness is caused by canal seepage. Most areas of this unit are used for irrigated hay and pasture. Wetness limits the choices of plants and the period of cutting or grazing and increases the risk of winterkill. Some areas are used for urban development	II w – Class II soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices. The “w” indicates the presences of water in or on the soil that interferes with plant growth or cultivation.	Western portion of site, excluding small area north of railroad tracks. Adjacent to irrigation canal.
3C	Adkins fine sandy loam, wet 3 to 15% slopes. This unit type is mainly used for irrigated hay and pasture. It is also used for homesite development.	II w – Class II soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices. The “w” indicates the presences of water in or on the soil that interferes with plant growth or cultivation.	Eastern portion of site and area along railroad tracks on western portion of the site. Adjacent to irrigation canal.
1B	Adkins fine sandy loam, 0 to 5% slopes. This unit type is suited to irrigated crops. It is limited mainly by low natural fertility and the moderate hazard of soil blowing.	Non-irrigated – IVe Irrigated – IIe / If irrigated IB soil type has moderate limitations that reduce the choice of plants or require moderate conservation practices. The “e” indicates that the soil is subject to erosion unless close growing plant cover is maintained.	North of railroad tracks along eastern half of site

H. Topography

The site slopes from south to north decreasing in elevation from the railroad north to the canal.

I. Water

The subject site is not served by a local water system. The properties are within the boundaries of the Stanfield Irrigation District but are not assessed and are not entitled to receive water from the Stanfield Irrigation District. A letter from the Stanfield Irrigation District verifying this information was submitted to the record. It is doubtful that the parcels would receive water rights in the future unless the Wood property acquires surface water rights through OWRD procedures.

The previous owner of the Kennedy property, Norman B. Anderson in 1972 applied for and received a surface water permit to irrigate 71.5 acres from four separate springs. On April 14, 2006 OWRD issued a proposed Certificate of Water Right and map authorizing a total of 56.3 acres of water rights on the Kennedy property. Some improvements, including a pond for irrigation pumping has been used historically on the Kennedy property. Because of the steepness of the slope and the cost of attempting to channel and maintain the spring flows an efficient distribution system of the spring waters is not presently in place. Given the low productivity of the land the investment to install an irrigation system for farming could not be justified.

J. Sewer

The subject site is not served by a sanitary sewer system.

K. Fire Protection

The subject site is within the Hermiston Rural Fire Protection District. The nearest fire station is located at Canal and Diagonal Road approximately ½ mile from the eastern boundary of the site.

L. Goal 5

Natural Resources: Except for the fact that the property lies within the Stage Gulch Critical Groundwater Areas, there are no known cultural or natural resources on the subject site that are identified as Goal 5 resources on the Umatilla County Comprehensive Plan.

Groundwater/Surface Water Background: The Kennedy and Wood property lies within the Stage Gulch Critical Groundwater Area (CGWA). Pursuant to OWRD's "Proclamation – Stage Gulch" dated January 31, 1985, and administrative regulations, new groundwater appropriations are not allowed for new irrigation purposes. By the OWRD's Administrative Regulations, exempt wells (i.e., domestic wells) are excluded and remain exempt from permitting requirements.

Much of the property covered within this application has a relatively high water level the result of onsite springs and seepage from up-gradient sources. While the exact origin is unknown, the source is most likely a result of up-gradient irrigation between Hermiston and Stanfield, seepage from the USBR canal, and other natural flows of water within the Cold Springs drain of the Umatilla Basin.

On April 14, 2006, the Kennedy property was issued a proposed Certificate of Water Right by OWRD for 56.3 acres from three on-site springs, tributaries of the Cold Springs drain. A copy of the proposed Certificate of Water Right and water survey map are attached to the Application (Exhibit 1 of the record). It is important to note that these are surface water rights and not groundwater rights. The issuance of the Certificate by OWRD is consistent with the Stage Gulch Critical Groundwater regulations in which no new groundwater rights are issued. These on-site springs and surface waters could be applied on a majority of the Kennedy property. A more even distribution of the surface water could help enhance the water available to off-site down-gradient properties which also use a considerable amount of surface waters for irrigation purposes by spreading the resource base. It should also be noted that down-gradient properties especially along the Diagonal Road area, are frequently developed with alluvial, not basalt, wells for domestic and household purposes.

The Wood property, while it does not presently have a surface water right, has similar springs arising upon the property which generate significant quantities of surface water. Those surface waters are available for beneficial use for irrigation and livestock purposes as well as yard and garden purposes. Portions of the Wood property does have standing water which, like the Kennedy property, could be more efficiently put to beneficial use by more modern water application techniques. This would also help provide a more even distribution of the ground waters which by virtue of the topography move down-gradient to the north.

III. CRITERIA FOR APPROVAL AND FINDINGS

A. Exception to Goal 3

The criteria for approval of Comprehensive Plan Amendment from North/South County Agriculture to Rural Residential land requires taking an exception to the statewide planning Goal 3 – Agricultural Land. Goal 3 is to preserve and maintain agricultural lands. In order to take land out of the Agricultural category, the exception criteria must be met as defined in the Statewide Planning Goal 2 Exception Process, which is interpreted in OAR 660-004-0018 through OAR 660-004-0022. Those criteria are as follows:

1. Reasons why the state policy embodied in the applicable goals should not apply.
2. Areas that do not require a new exception cannot reasonably accommodate the use.
3. The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.
4. The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production.

The following narrative describes how the Kennedy/Woods request is consistent with these criteria. The criteria are shown in bold face type, followed by the findings adopted herein demonstrating compliance with the criteria.

1. Reasons why the state policy embodied in the applicable goals should not apply.

Finding:

When the county approved the Perkins Comprehensive Plan Map Amendment and Exception to Statewide Planning Goal 3, they found that there is an insufficient number of parcels available for rural residential use in Umatilla County based on the percentage of land within each rural land classification. The approval of the Perkins Plan Amendment, Exception and Zoning Map Change resulted in the addition of 50 acres and five, 10 acre lots to the supply. Given that there are nearly a million and a half of privately held rural lands in the Umatilla County, the addition of 50 acres to the inventory, did not materially alter the distribution of land types as shown in the table below. Similarly, the addition of the Kennedy/Woods 104 acres will allow for an additional ten, 10 acre lots, which neither significantly add to the supply of large rural residential lots, nor diminish the supply of farm land.

Table Two
Distribution of Land Classifications within Umatilla County¹
Expressed as Percentage of Private Rural Land

Classification	Before Perkins Amendment		After Perkins Amendment		After Kennedy Woods Amendment	
	Acres	%	Acres	%	Acres	%
RR-2 (Rural Residential)	4,950	.34	4,950	.34	4,950	.34
RR-4 (Rural Residential-4 acres)	4,605	.32	4,605	.32	4,605	.32
RR-10	0	0	50	0	158	0
FR-5 (Forest Residential-5 acres)	4,580	.32	4,580	.32	4,580	.32
MR (Mountain Residential)	604	.04	604	.04	604	.04
MUF (Multiple Use Forest-19 acres)	617	.04	617	.04	617	.04
Commercial	367	.02	367	.02	367	.02
Industrial	3,007	.2	3,007	.2	3,007	.2
UC (Unincorporated Community)	242	.016	242	.016	242	.016
Farm Land	1,423,000	98.68	1,422,950	98.68	1,422,842	98.68
Total Rural Land	1,441,975	100	1,441,975	100	1,441,975	100

The Kennedy/Woods property is unique in that it has physical constraints that make it ill suited for productive agricultural use. It is constrained on four sides by the physical boundaries of Ott Road to the west, the "A" line canal on the north, Canal Road on the east and the railroad tracks and associated right-of-way on the south. As a result the site is very narrow ranging in width from approximately 50 feet where the site fronts on Canal Road to 800 feet at its widest point. Approximately 50% of the length of the site is less than 700 feet wide. The property is on a hillside and in some places is too steep for machinery. In other places, there are natural springs which create runoff and standing water, causing problems for equipment.

According to the former owners of the property, the current owners of the property, an area farmer who has been approached to farm the site, and others, most of the subject property is unsuitable for farming. The following statements are from materials

¹ Taken from Perkins Land Use Application to Umatilla County and modified by Stiven Planning & Development Services, LLC.
Final Findings and Conclusions

submitted by individuals, which are located in the Appendix of the Application (Exhibit 1 of the record):

- ***“Although our land has been classified as having good soil for farming, the actual layout of the property makes it very difficult for that to occur. The whole property is on a hill and in some places too steep for machinery. In other places, we have natural springs which have runoff, which would cause problems for equipment (tractors getting stuck, etc.)”*** – Letter to Umatilla County Planning Department requesting change in zoning from Richard & Kathryn Erz, former owners of the entire site, November, 1996.
- ***(Regarding eastern 2/3 of the site). “The ground has a large layer of hard pan and gravel underneath. Only 15 – 20 acres can be farmed at all as the balance is either alkali or wet. Farmer runs short of spring water which is located on the property that can be used to irrigate for the 15 to 20 acres. The cost of fuel, electricity to run the irrigation pump, equipment and maintenance makes it impossible to make a profit on farming.”*** – Letter to David Hadley from Leon Kennedy, dated November, 2005.
- ***(Regarding western 1/3 of the site). “The property is not suitable for commercial or non-commercial farming on a large or small scale basis. The property does not have water rights, thus making it undesirable and non-profitable for farming of most crops which are grown in this area such as potatoes, onions, melons, orchards, etc. The locally grown crops require a great deal of water in order to make the tilling, planting, cultivating and harvesting of such crops cost effective. Given the location of this property, the transporting of equipment to and from this location is not even cost effective.”*** – Letter from Rachelle and Robert Walchli, area farmers who have been approached to farm the Wood property, dated December, 2005.
- ***“It (the property) is currently overrun with cheat grass, goat heads, Russian thistle, Russian olive, and sage brush. We do not believe that it is cost effective to transport any of our equipment to the site for such a small parcel of property.”*** – Letter from Rachelle and Robert Walchli, area farmers who have been approached to farm the Wood property, dated December, 2005.
- ***“It (the property) is shaped in a manner which makes farming undesirable and prevents conservation practices for soil management.”*** – Letter from Rachelle and Robert Walchli, area farmers who have been approached to farm the Wood property, dated December, 2005.

- ***“Some of the features of this land making it impractical to farm, which is why the tract has not been farmed in its entirety over the last forty years, are listed below:***
 - ***The property is steeply sloped to the northwest. The northern exposure provides minimal warmth in the spring from sunlight. In other words, the snow melts there last. This is not favorable for row crops in our area which need maximum sun during the growing season.***
 - ***The soil types are mixed between sand and hard-pan. The soils are subby (wet) due in part to the springs which are somewhat uncontrollable and unpredictable in volume.***
 - ***The shallow wet soils leads to the rapid and sustained growth of weed especially crab/Bermuda grass. These grasses, under these conditions, are extremely difficult to control and will overtake a planted crop within a few weeks.***
 - ***Some of the areas are quite swampy and caution must be taken when on the property with farm equipment to avoid damage to machinery or having machinery stuck in the muck.***
 - ***The slope of the terrain, combined with spring water as the source of irrigation, makes efficient and mechanical water application difficult. The expense associated with a handline irrigation system as well as the requirement of people to move the equipment is an expense not within the modern day budget of a commercial farming operation. One could exert the time as a hobby farm providing acreage or lot size was smaller, and it was a pure hobby; meaning you spend more money than you make.”***
 – Letter from Mike Christley adjacent farm owner, dated December 29, 2005.
- ***“These are some of the obvious reasons that the property has not and will not be commercially farmed nor a part of the commercial property farm base of the Hermiston area. The property if it was in smaller tracts could be used for rural residential purposes like the majority of property surrounding it. It is a fact that the rural residential owners in our area can take certain marginal/non-profitable land and create an ideal setting for small gardens and pastures for the raising of a couple of horses or cows including 4-H animals. However, the modern day farmer/businessman is unable to make a profit under these kinds of circumstances.”*** – Letter from Mike Christley adjacent farm owner, dated December 29, 2005.

- ***“The only portion of the land that is or that can be farmed is a strip along the railroad track that is approximately 150’ wide by 3,200’ long or about 11 acres. This land has been planted to alfalfa and has been farmed by Skip Walchli. Mr. Walchli told me that he is not interested in continuing to farm the land because the water right is for spring water and that runs out in most years early in the year. The remainder of the property is either rocky or too wet to farm. The wet area is extremely rough.”*** – Communication from Kent Nielson to Leon Kennedy, dated November 14, 2005.

In addition to the poor soil suitability, the small size and the irregular shape of the site makes it ill suited to farming. The lack of an adequate water supply for irrigation is also an issue. As pointed out in the background section of these Findings, there presently are no water rights on the Wood property. There are water rights on the Kennedy property, but as indicated by the Walchlis' above, the size and productivity of the site does not warrant the cost of electricity to operate pumps necessary for irrigation. The Stanfield Irrigation District (SID), which services the area, indicates that the property will never have any water rights from them. According to their letter addressing the entire 104 acre parcel, dated December 14, 2005 the lands are within the SID Boundary but are not watered with any District water. This means that the said land does not have any water rights from SID and will never have any water rights from SID. The letter closes with “This land would have a greater value in small ranches or residential purposes rather than farm income possibilities.” (Letter from Ray Kopacz, District Manager, SID).

The site is bounded on approximately about 75% of the site by residential exception lands that are committed to non-resource uses. To the north of the central portion of the property is an area of approximately 60 acres comprised of 11 lots range in size from less than two acres to approximately 15 acres in size. The average parcel size of this exception area is 5.3 acres; all zoned Rural Residential with a two acre minimum lot size. Running the length of the site and on the other side of the rail tracks is another exception area comprised of 41 lots, zoned RR-2, and 1 acre to 12 acres in size. The vast majority of these lots are in the two acre size range with only 7 of 41 lots exceeding 2.5 acres in size. The average lot size in this area is 3.1 acres. As a result, it is difficult to aggregate the subject property with other property to make it more suitable for farming.

As stated in the Final Findings and Conclusions for the Perkins RR-10 Plan Amendment, dated January 25, 2005, locating rural residential areas adjacent to areas where commercial farming is not planned, will allow the continuation of the most economic management practices for resource production. (See Appendix of Exhibit 1 Application, for Umatilla County, Board of County Commissioners Final Findings and Conclusions, (File # P-080), (File # T-04-018), and (File #2-279). This site is bounded on two sides by rural residential exception areas and on the west by the Hermiston UGB. Development of this site for residential development as opposed to more productive agricultural sites makes the most sense and complements the existing pattern of developed and committed rural residential land use.

For these reasons, the site is not suited for farming and the Goal 3 Agricultural Statewide Planning Goal, should not be applied to this site.

2. Areas that do not require a new exception cannot reasonably accommodate the use.

Finding:

ORS 197.298 sets the priority for types of land to be added to the Urban Growth Boundary and requires that an exception to Statewide Planning Goal 3 be taken in order to amend the UGB to include resource land. In summary the statutes and the administrative rules call for a hierarchy of lands to be brought in to the boundary, based on their contribution to the resource base of the area. The law prioritizes lands for UGB expansion as follows:

1. First priority is those lands inside an Urban Growth Boundary that could accommodate the identified need.

Finding:

The land inside the UGB's whether or not it is Hermiston, Pendleton or other cities in Umatilla County are not designed to accommodate larger lot rural residential development and are discouraged by administrative regulations. Cities have been planned to accommodate urban levels of development. For instance, in Hermiston, whose UGB is adjacent to the subject property, the Future Urban Residential land which is identified as the Urbanizable area, has been planned to ultimately accommodate an urban population. This is designed to prohibit a development pattern that would preclude an urban level of development when the land is added to the city limits. The 10 acre lot is considered by the State (see OAR 660) to be a rural level of development and should not be placed inside the Urban Growth Boundaries where land has been relied upon to serve eventual urban needs. Therefore, the land inside the boundary cannot and should not be used to accommodate the need for rural residential development.

2. Second priority are those lands that are designated Urban Reserve Areas (URA).

Finding:

There are no Urban Reserve Areas in Umatilla County.

3. If no URA land is available, then the next priority are those lands located in designated Exception Areas.

Finding:

Exception areas were created when Comprehensive Plans were being adopted statewide and there were areas at the fringe of cities that were not being planned for urbanization, agriculture, open space or forest use. In Umatilla County these areas were primarily built and committed to non-resource land uses and serve as rural communities and rural services centers. Where the proposed exception is adjacent to the Hermiston Urban Growth Boundary, only residential exception areas located within one mile of the Hermiston UGB were analyzed for the alternative sites analysis. However, it should be

noted that by definition, existing exception areas within one mile of the city were identified as such when the Comprehensive Plan for Umatilla County was developed because they were areas built and committed to non resource uses. Typically, as will be demonstrated by the table below, the exception areas are highly parcelized and occupied with single family homes.

There are five residential exception areas within 1 mile of the Hermiston UGB. The commercial and industrial exception areas were excluded because conversion of them to rural residential use would have resulted in the need for a Goal 9 exception and a loss of employment opportunity. Therefore commercial and industrial exception areas should not be considered as alternatives and have not been analyzed.

The table below illustrates the five residential exception areas that are located within one mile of the Hermiston UGB, the size and average parcel size within each as of the date of the Comprehensive Plan adoption and an estimate of the number of lots today. As illustrated the average parcel size would require assembly of multiple lots, and the removal of homes to accommodate the desired 10 acre lots.

Table Three
Summary of Exception Areas Within 1 Mile of the Hermiston UGB

Area	Size	1986		2006	
		# of Parcels	Avg. Parcel Size	# of Parcels	Avg. Parcel Size
Cooney & Joy	990	182	5.3	220	4.5
Westland	985	229	4.3	240	4.1
Columbia & Diagonal	4,549	824	5.5	875	5.2
Minnehaha	637	105	6	114	5.6
Loop Road	116	28	4.1	41	2.8

This table illustrates that when the exception areas were acknowledged, they were created because of their inability to contribute to either the urban land base or the resource base. Since their initial identification and designation, further parcelization has occurred making their suitability for development even less likely. Finally, the density of uses on the existing rural residential subdivisions cannot be increased without taking a Goal 14 exception. Therefore, none of the exception areas within one-mile of the Hermiston UGB are appropriate for development as 10 acre home sites.

4. If no land inside the UGB, the URA's or the Exception Areas are available, then the next priority are lands designated Marginal Lands.

Finding:

Umatilla County is not a Marginal Land County. Therefore, there are no lands in this category.

5. *If none of the above described lands are available, then the fourth priority is other lands designated for agricultural and/or forestry uses.*

Finding:

None of the land inside the Hermiston UGB, or exception areas can accommodate the proposed ten acre sites. Therefore, according to the hierarchy of lands in Goal 2, resource land can be considered. The subject site is not productive farm land, whereas other irrigated and more isolated land is more appropriate for the EFU designation. Moreover, no land zoned EFU in Umatilla County can be rezoned RR – 10 without also receiving approval for an exception. The subject site was selected due to its size, low agricultural productive value, proximity to developed rural residential lands and to avoid disrupting large parcels of productive farm ground located in remote areas away from incorporated areas and existing developed and committed areas.

3. *The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.*

Finding:

The other areas that would require an exception are other resource areas. Because this site is a very low productivity resource farming site, the impacts of converting it to a non-resource use are less than at other farming locations

Environmental: One of the reasons that the site is not appropriate for farming is because of the close proximity to a significant number of homes. The ability to use the site for farming is limited, in part, because of the potential objections by nearby residents of the use of fertilizers, potential dust and noise pollution. By converting the site to ten acre homesites, the potential for impacts related to commercial farming are reduced.

Each of the sites will have on-site septic systems and on-site wells. No house will be built on a lot that cannot be developed with an on-site septic system and on-site well that meets the local, state and federal regulations. When the Perkins Exception was approved (File #T-04-018), the County found that “As neighboring rural residential development has occurred without the provision of a public facility, it would seem reasonable that the limited amount of residential development that could occur with the proposed zoning could also be accommodated by individual on-site septic systems and wells.” Given the adjacent rural residential development, this is true at this location as well.

The proposed rezone and Goal 3 exception within the Stage Gulch CGWA will not significantly impact groundwater on the property or on nearby properties for the reasons discussed below. The surface waters presently available on the properties may be better applied to help the overall surface and groundwater

supplies by better application of the existing surface water availability which will help enhance overall water supplies.

Some of the property covered within this application has a relatively high water level resulting from onsite springs and seepage from up-gradient sources. While the exact origin is unknown, the source is most likely a result of up-gradient irrigation between Hermiston and Stanfield, seepage from the USBR canal, and other natural flows of water within the Cold Springs drain of the Umatilla Basin.

The RR-10 zone indicates in its Purpose that "lots need to be sufficiently large to accommodate private wells and sewage disposal systems as well as gardens and farm animals." With a ten acre minimum lot size equaling 435,600 square feet adequate room does exist for development of on-site septic systems and a system for domestic water. The ten acre lot size has been evaluated in the context of properties lying within a CGWA. In the April 2, 1976 Findings, Conclusions, and Order of the OWRD regarding a determination of a CGWA in the Ordnance Critical Groundwater Area, Paragraph 19 recommended that construction of additional wells should be limited to lots sizes of ten acres or more within the Ordnance Critical Groundwater Area for stock watering purposes and single-family domestic purposes.

The county notes comments contained in a report prepared by Mr. Mark A. Norton of OWRD in March of 1999 entitled "Minimum Tax Lot Size Based on Water Availability for Basalt Aquifers in Morrow and Umatilla Counties." The report sought to address what density of development, based on exiting groundwater resources for domestic purposes would result in a sustainable water supply and meet estimated sustainable annual yields (SAY). Among the recommendations was the following "based on an analysis of groundwater level and pumpage data from basalt aquifers in the Buttercreek and Stage Gulch Critical Groundwater Areas, the department recommends that Morrow and Umatilla County Planning Commissions move toward an average minimum lot size of seven acres."

The report further notes that "if surface water is available for irrigation and groundwater is limited to domestic uses, the minimum lot size could be reduced." Again, because the Kennedy and Wood properties have quantities of surface water available any use of groundwater for domestic purposes could well be accommodated, in a sustainable manner, with a ten acres minimum lot size.

The small quantities of water used for a domestic well will not significantly affect the existing surface water rights. The Kennedy proposed Water Certificate allows for approximately 253 acre feet per year. On the assumption that a domestic well would use .7 acre feet per year that quantity could support approximately 360 homesites. The development in this area of six to ten domestic wells, even if all shallow, would not have a significant impact on the surface water rights. The use of small groundwater based supply systems for individual household wells, spread

out on minimum ten acres lot sizes increases the water resource base and provides the greatest opportunity for minimum environmental impact on all aquifers.

The availability of surface waters on the Kennedy and Wood property are somewhat unique to the Hermiston rural area and make the properties one of the far better candidates for rural residential development by keeping within the goals of the rural residential zone as well as the other county goals and policies for residential development by minimizing impacts to the existing water base.

Economic Impacts: Because the site has been demonstrated to be unsuitable for commercial farming activities there are no adverse impacts on the economy. As a result of a change in zoning from EFU to RR-10 there is the potential for a few dwellings to be built upon the parcels. The dwellings, outbuildings, and other improvements will be placed on the property tax rolls at their current market value. The owners, as with most rural residential zones in Umatilla County, may be eligible to continue a portion of the property that is farmed or pastured under the farm deferred tax program. It is also possible that some owners may wish to have the property removed from farm deferred tax program.

Social Impacts: Rural residential lots are a desired lifestyle preference for many people living in Eastern Oregon where it is necessary for many to own a few farm animals and raise specialty crops – the small farm. The location of the potential homesites, adjacent to the Hermiston UGB, will serve people who work in Hermiston or at the other large employment centers in Western Umatilla County, such as the Hinkle Rail Yard, Simplot, or the Wal-Mart Distribution Center. The surrounding rural residential area to the north and south of the site, and the Urbanizable area of Hermiston to the west, are all compatible with the proposed rural residential use.

Energy Impacts: There are no known negative impacts related to energy.

4. The proposed uses are compatible with other adjacent uses or will be so rendered through measure designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production.

Finding:

The rural residential use proposed for the property is compatible with the rural residential uses located to the south and a portion of the northern properties which are also used for rural residential uses. In fact, the proposed rural residential use is more compatible with these uses than the existing EFU use for the reasons stated above.

The surrounding road system forms boundaries on three sides of the road and will function as buffers to uses on adjoining properties. The railroad tracks that are located

along the southern edge of the project also create additional buffer area of 200 feet from the properties to the south of the site.

All of the property to the north is separated from the subject property by the irrigation canal, which is contained within a 100 right-of-way. To the north, the proposed uses are compatible with the existing rural residential uses. Therefore, the proposed uses are not anticipated to have adverse affect on the surrounding property to the north.

The property to the west is separated by the 66 foot right-of-way of Ott Road. All of the property to the west is within Hermiston's Urban Growth Boundary and is reserved for future urban development.

As no public services are necessary to serve the proposed use, the impacts to adjacent properties are minimal.

IV. ADDITIONAL FINDINGS ON GOAL 3 AND APPROVAL CRITERIA AND FINDINGS ON GOALS 5, 9, AND 11

A. GOAL 3 ANALYSIS, FINDINGS, AND CONCLUSIONS

The purpose of Goal 3 is to preserve and maintain agricultural lands. The exception process allows an exception to Goal Three when certain criteria are met. The first of the criteria as specified in OAR 660-004-0022 is that is that there are reasons why the state policy embodied in the applicable goals should not apply. The following additional findings demonstrate additional reasons why Goal Three does not apply to this site. The applicants' narrative submitted June 5, 2006 relied upon following "reasons" that there should be an exception to Goal Three for the subject property.

1. There is an unmet demand for residential uses of the type allowed by the RR-10 zoning.

OAR 660-004-0022(2) states in part the following: "*Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing, except as provided for in this section of the rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. ...A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area*". (Emphasis added).

Finding:

In the case of the Kennedy/Wood property, the proposed residential development is necessary to satisfy the market demand for housing generated by the economic activity in the area, primarily inside Hermiston. The market demand proven in the record, is not just a market demand for "housing", but a demand for rural uses in

farming and livestock on small ten acre parcels in association with housing and residential uses. According to oral testimony presented to the Planning Commission on August 24 and to the County Board of Commissioners on October 4 by Realtor Virginia Miller of Miller Realty, and Jim Brooks of American West Properties, there is evidence that there is a shortage of properties in the range of ten acres for owners who desire to pursue agricultural uses in conjunction with their residential uses on smaller tracts without making the much larger expenditure necessary for land that is in larger tracts and are better suited for commercial agricultural use. The Board found this to be true in the adoption of the RR-10 zoning for 51 acres in Umatilla County (File Nos. P-080, T-04-018 and Z-279), the Perkins Exception. The demand that the Board found to exist when approving the Perkins Exception still exists and as demonstrated by Table Two in the Kennedy Wood June 5, 2006 Land Use Application, the addition of the Perkins land to the supply of RR-10 land did not materially change the supply of land available for 10 acre rural residential lots within Umatilla County. In fact, even with the Kennedy/Woods PA and ZC, the amount of land designated as EFU or RR-10 does significantly change, but additional lots will be provided by the approval of the requested land use changes, helping to satisfy demand.

Other economic activity in the area that justifies conversion of the property to Rural Residential is as follows:

- 75 percent of the uses surrounding the property are either rural residential uses and include exception areas committed to non-farm uses or are within the Urban Growth Boundary (UGB) of Hermiston.
- The subject property is unique given its proximity to the UGB, proximity to rural residential uses, its proximity to roads, utilities and other public services and its relative uselessness for commercial agricultural use due to soil type, location, size and presence of a high water table.

2. The Goal Exception is supported by the following statement in the County's Comprehensive Plan (Technical Report), p B-31

"Lands near suburban and rural residential areas experience accelerated development pressures. Special measures are employed to lessen the burden on normal farming practices near residential development... Identified rural residential designations should also aid in stopping needless conversion of valuable farm lands. Lot size minimums in rural residential areas should also compliment agricultural operation, generally requiring large lot minimums. In addition, less productive farm lands should be the first areas converted to rural residential development".

Finding:

There is substantial evidence in the record about the commercial productivity or value of the subject farm land and concern that the term "farm use" in Goal Three allows

for a wide spectrum of related farm uses. However, this Comprehensive Plan Statement allows for the weighing of less productive farm land with more productive farm lands, and discourages the needless conversion of valuable farm lands. The record indicates that this property is not high value farmland, and oral and written testimony demonstrates that it is not valuable from a commercial standpoint. The site is surrounded on 75% of its border by property either in the Urban Growth Boundary or/used and zoned as rural residential development. It's narrow and unusual shape, the presence of a high water table and proximity to residential uses, make it less valuable than other high value, more isolated, and more physically appropriate farm land. Therefore, the proposed Goal Exception, Plan Amendment and Zone Change will allow rural residential uses on less productive farm land and will thereby serve to ease the pressure to convert valuable farm lands to residential uses.

Commissioner Doherty has raised these additional concerns under Goal 3.

- **He is concerned that approval of the Kennedy/Wood PA and ZC will foster speculation based on the low profitability of existing farm land.**

Finding:

The County approved the RR-10 zoning district in 2004. Since then only two requests have been made to the County for the conversion of EFU land to RR-10 on a total of approximately 160 acres of land. Each application must be weighed on its own merits and as pointed out by Commissioner Doherty, the burden of proof on the part of the applicant is high. In the case of the Kennedy/Wood request, the low profitability of the farm land is only one factor among many that warrants approval. It is the balance of the conversion of this site with other factors such as its unique location next to Hermiston, close proximity to existing rural residential development, the physical characteristics of the property, the lack of suitable alternative sites within the area that all warrant its conversion. Denying this application because it may lead to other requests is speculative in and of itself and is not a reason for denial.

- **Highest and best use is not a standard acknowledged by the Statewide Land Use System.**

Finding:

The concept of highest and best use was introduced by Virginia Miller who testified in support of this application. This application has not relied on the premise that the residential use is the highest and best use. Commissioner Doherty is correct in stating that the Oregon Land Use system seeks to protect other values, one of which is that we need land for a wide variety of purposes including open space, where only farming can occur and where wildlife can flourish. Oregon protects these areas through zoning, through the use of the Goal 5 inventories and other techniques. Goal 5 protects wildlife corridors, scenic view corridors and significant vegetative areas and open space. None of these resources have been identified in the Goal 5 inventory or has any evidence been

presented that the Kennedy/Wood site contains these resources other than the groundwater area discussed below. Additionally, the exception process allows the conversion of land from EFU to residential uses under prescribed circumstances of which one is that there are reasons that the resource zone should not apply. The applicant has provided significant reasons why the resource zone should not apply to this site, and has not relied exclusively on the fact that residential use may be the highest and best use.

B. GOAL 5 ANALYSIS, FINDINGS, AND CONCLUSIONS

1. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces: Goal 5 directs that local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. Among the specific resources to be protected include groundwater resources. The purpose and intent as defined in the Administrative Rules establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources.
2. Groundwater Resource: “Protect significant groundwater resources” means to adopt land use “programs” to help insure that reliable groundwater is available to areas planned for development and to provide a reasonable level of certainty of the carrying capacity of groundwater resources will not be exceeded. (OAR 660-023-0140(1) (c). Critical groundwater areas (CGWA’s) are considered to be a significant Goal 5 resource. The OAR implies that local governments shall develop programs to protect the significant Goal 5 groundwater resource. Further the programs developed by local government are to be adopted as part of the Comprehensive Plan. Local plans require that such areas that are significant groundwater resources shall develop “programs” to protect the significant groundwater resource.
3. Goal 5 Implementation Process: Goal 5 requires the inventorying of Goal 5 resources. The regime as set forth in OAR 660-023, after the inventory process, includes provisions for the local government to follow the ESEE Decision Process. The steps and the standard ESEE process are as follows:
 - a. Identify Conflicting Uses;
 - b. Determine the Impact Areas;
 - c. Analysis the ESEE Consequences; and
 - d. Develop a Program to Achieve Goal 5.

It is important to note that “Goal 5 and the implementing rule are not satisfied by a case-by-case implementation approach, but require a jurisdiction-wide planning, program selection, and regulatory process.” Ramsey v. City of Portland, 23OrLUBA 291, aff’d, 115 Or App 20, 23, (1992).

4. Programs to Achieve Goal 5: When a local government has decided to protect a Goal 5 resource such programs shall contain “clear and objective” standards. The program shall also require the necessary notice and landowner involvement prior to adoption of the program.
5. Stage Gulch Critical Groundwater Area: The Stage Critical Groundwater Area is by definition in the OAR a Goal 5 resource. As a result, the county is expected to adopt a program to help insure that reliable groundwater is available to areas planned for development and to provide a reasonable level of certainty that the carrying capacity of groundwater resources will not be exceeded.

The Stage Gulch Critical Groundwater Area is already subject to Umatilla Basin Rules. OAR 690-507-0750. The protection of the Goal 5 resource pertaining to groundwater is unique because, in effect, the Basin Rules referred to above have already set forth a “program.” Although the program set forth in the Umatilla Basin Rules has not been formally adopted as part of the County Comprehensive Plan it has the same regulatory effect as a land use regulation.

6. County Program: Umatilla County presently has not adopted as specified in the Administrative Rule guidelines a land use program for the Stage Gulch Critical Groundwater Area. The County had begun implementation of one Goal 5 program by considering a “partial moratorium on rural residential development.” That proposed program and ordinance was turned down by the Planning Commission. The Umatilla County Board of Commissioners have appointed a task force to study the groundwater situation and develop a 2050 Plan for a sustainable water supply. The task force for over two years has been evaluating groundwater uses in the Umatilla Basin and is in the process of writing the 2050 Plan.
7. Oregon Water Resource Department (OWRD) Regulations: OWRD has adopted, by Administrative Regulation, OAR 690-507-0750, et seq, describing methods for determining and distributing the sustainable annual yield of the basalt groundwater reservoir by subarea for the Stage Gulch Critical Groundwater Area. That regulation is in force and effect since May 15, 1991. A copy is attached to Exhibit 22 of the record. One of the important restrictions is that OWRD will not accept new applications for appropriation of water from the basalt groundwater reservoir within the Stage Gulch Critical Groundwater Area. However, certain uses, specifically exempt domestic wells, are expressly allowed. OWRD’s August 21, 2006 letter, submitted in response to this application states: “Domestic uses and irrigation of up to ½ acre of lawn or non-commercial garden are allowed by statute as exempt uses.” (Exhibit 11 of record).
8. OWRD Exemption: The OWRD regulations in the Stage Gulch Critical Groundwater Area expressly exempt water users exempt under the provisions of ORS 537.545 pertaining to exempt or what is commonly referred to as domestic wells (OAR 690-507-0775). The construction of domestic wells for residential

purposes, livestock watering, and limited commercial purposes are expressly allowed within the Stage Gulch Critical Groundwater Area covering the Kennedy/Wood parcels.

9. County Exempt Well Resolution BCC 2007-17: The Task Force recognized that work on the 2050 Plan would take some time, the Task Force therefore recommended the County approve a resolution relating to exempt domestic wells, in the interim. As a result, the Board of Commissioners adopted Order No. BCC 2007-17, which remains in effect, pertaining to the construction of exempt wells. The complete Order and Resolution are a part of the Planning Department's Staff Memo of August 16, 2006. The exempt well resolution includes the following recital:

“Whereas on January 6, 2005, the Umatilla County Critical Groundwater Task Force adopted a resolution and recommendation to deal with the immediate domestic water use issue and to provide security and clear and objective standards for Umatilla County citizens to develop domestic water supplies as allowed by law; . . .”

The resolution adopted by the Task Force and Board of Commissioners contains a thorough analysis and detailed background on the use and impact of exempt wells and concludes that the quantities of water used by exempt domestic wells is of such a small quantity that the county has elected to impose no regulation of such wells until a 2050 plan has been adopted. It is important to note that such 2050 plan may not necessarily limit or restrict exempt wells, however, exempt wells are, as with all other critical groundwater resources, being reviewed. The Task Force's resolution presently in effect emphasizes that domestic and other exempt uses of water consume relatively little of the alluvial and basalt aquifer waters in the critical areas as compared to nonexempt uses such as that used for municipal, industrial, and agricultural purposes. The Task Force's recommendation as adopted by the Board of Commissioner's Resolution states as follows:

“In so far as the county is required to adopted findings to approve land use permits, the county will rely on this document to defend the assumption that new exempt wells do not make a significant adverse impact on the groundwater resources. The county will assume exempt wells are appropriate and permissible.”

10. Current County Policy: In the January 25, 2005 BCC Perkins Amendment and Final Findings, involving a plan and zone change similar to the applicants the BOC did not restrict, limit, or condition in any manner the installation of exempt domestic wells on the property subject to the zoning change. In the April 24, 2006 BCC Findings and Conclusions for Seven Hills Property, LLC adoption of minimum parcel sizes below Oregon's statutory requirements found that

“currently the State of Oregon does not regulate domestic wells on rural lands; wells are “exempt” from water permits and allowed outright. There will be a maximum of 20 new exempt wells on the tract, which is not likely to create an impact to neighboring properties.” Rural residential development in Umatilla County for both partitions and subdivisions has fallen under the BCC exempt well resolution and as a result such domestic wells have been allowed, until such time as the county or state law changes.

11. Preemption of State Law: The county recognizes that OWRD has the sole and exclusive right to regulate waters for public purposes within the State of Oregon. As a result, Umatilla County may not adopt an ordinance or regulation or impose a condition in conflict with the present state law. Present state law allows the construction of exempt/domestic wells. As mentioned above, while OWRD has adopted regulations in the Stage Gulch Critical Groundwater Area, those regulations do not regulate the construction of exempt domestic wells and expressly provide for an exemption for such wells. The applicant is aware that such regulations are subject to change by OWRD or by legislative process, but at present both state law and OWRD regulations clearly authorize exempt wells within the Stage Gulch Critical Groundwater Area.
12. Application to Kennedy/Wood Plan and Zone Change: The Kennedy/Wood application at pages 19 through 22 focus on the fact that a Goal 5 analysis indicates that there may be little impact on the existing basalt groundwater resources because of the potential availability of alluvial water sources which presently exist on the property in the nature of free flowing springs and further taking into consideration the large number of domestic wells surrounding this property which receive domestic water above the Goal 5 basalt groundwater reservoir.

The applicants comply with the Basin Rule which in effect is the “program” in place. As noted in the exempt well Resolution, and as noted by Commissioner Doherty, exempt wells in the CGWA’s have a “diminimus” impact to the overall resource, that is, ten additional wells would further be diminimus, upon approval of the Kennedy/Wood application.

Because there is no indication that the applicants have not complied with Goal 5 provisions and because the applicants have demonstrated that impacts if any are negligible and because the applicants proposed water development is expressly allowed by law the applicants are in compliance with Goal 5. Further, because the Basin Rules adopted and implemented by the OWRD, are in effect, land use regulations and because exempt wells are expressly provided for in the recent rules, the County finds that there is a Goal 5 Program to protect the groundwater resource and that this application complies with the Goal 5 Program.

C. **GOAL 9 ANALYSIS, FINDINGS, AND CONCLUSIONS**

1. Goal 9: Economic Development: “To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”

Goal 9's preamble statement includes that comprehensive plans and policies “shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost; labor market factors; educational and technical training programs; availability of key public facilities; necessary support facilities; current market forces; location relative to markets; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.”

2. Applicability of Goal 9: Establishing opportunities in Umatilla County for small farm purposes and rural residential development is an important component for economic development. It is even considered vital to the health, welfare, and prosperity of Umatilla County citizens. It is a well known fact that “housing starts” remain one of the nation’s leading economic indicators. Commercial and industrial growth often occurs, and is located near a population base adequate to provide the necessary employment and resources to conduct successful community, commercial, and industrial development. A growing residential community provides and complements a market for future businesses.

In particular, large rural residential tracts can be, and often are put to more intensified agricultural use. This is evidenced by many publications designed to aid small farms and developed by agencies such as USDA, OSU Extension Services, and soil and water conservation districts. It is reasonable to consider the “economic potentials” of small rural tracts, suitable for certain farming or agricultural purposes rather than to think of them only as a “house in the country.” Umatilla County’s economic base has always been strengthened by rural opportunities and those opportunities are considered in this application.

An excellent summary of how “small-farm operations develop economic vitality” throughout the State and in Umatilla County is shown on page 15 of Oregon State University Extension Service’s publication, within its Oregon Small Farms series, entitled What Can I Do with my Small Farm? Attached to and a part of Exhibit 22 of the record.

DLCD’s letter of August 18, 2006 indicates that the primary argument for the Kennedy/Wood’s rezoning is “a demand for rural residential opportunities in Umatilla County” The Kennedy/Wood application has not relied upon Goal 9 nor rural residential opportunities as a primary basis for requesting the Goal 3 exception. The application discusses independently all criteria for a Goal 3 exception. The application, as well as supporting documents, show--

independently of a demand for rural housing--that an exception is justified. Regardless, small farm/rural residential housing is in demand and for a variety of reasons is important to the continued success and prosperity of Umatilla County and its citizens.

The county finds that new housing, even on a small scale such as Kennedy/Wood application, which may develop with up to nine home sites, generates significant expenditures of funds within the community. The materials purchased for construction, as well as job opportunities for local contractors in all trades, together with the acquisition of household furnishings and appliances generate economic opportunity for the providers of those goods and services. Once the home site, together with any accessory buildings and other uses are in place, those owners continue to support the local economy in many financial ways for the benefit of the community.

3. Cost of Community Service Studies (COCS): DLCD's August 18, 2006 letter further discusses a methodology created by the American Farm Land Trust (AFT) for calculating the net fiscal contribution of different types of land uses. The information contained in DLCD's letter refers to COCS studies in a variety of communities outside of Oregon. The position expressed is that "residential" (not small farm rural residential) has a negative effect on local tax bases.

The county is unaware of any COCS study having been conducted by the AFT in Oregon, let alone Umatilla County. It is also important to note that Oregon's land use system and Oregon's method of property taxation, especially the preferred and reduced rates under the farm and forest deferral programs, make Oregon unique to the extent that Umatilla County will cautiously consider out-of-state studies on residential lots as opposed to small farm/rural residential uses.

An assumption that residential land uses cost more than other land uses in Umatilla County should not be made absent peer reviewed empirical study and research on the whole county. Caution should be taken when reading, let alone acting or relying on out-of-state studies, especially in such a localized (surrounded by other residential development) area like the subject property.

There are limitations to AFT's method of conducting COCS studies. Some of the limitations pointed out by the applicant and others, such as the Mackinac Center for Public Policy, are as follows:

- a. COCS studies are static and do not incorporate the dynamics of the land market.
- b. COCS studies ignore non-land use-based revenue sources.
- c. COCS studies are not grounded in a concept of development.
- d. COCS studies ignore alternative service delivery possibilities.
- e. COCS studies treat land uses as independent.

Suggesting that residential uses cost local communities more than other uses such as open space or commercial or industrial land uses does not add to what is apparent. If the COCS studies are devoted to determining the lowest cost to government land uses then, if one were to operate on that assumption alone, the “optimal” economic development policy, or land use policy, should result in a community full of large farms, commercial, and manufacturing developments and no residents. This is inconsistent with the opportunities to be allowed for Umatilla County citizens.

Some of COCS studies limitations are pointed out in a recent study entitled “The Impact of Alternative Economic Development and Land Use Options: A Case Study Using the Wisconsin Economic Impact Modeling System,” prepared by Steven C. Deller, Professor and Community Development Specialist Department of Agricultural and Applied Economics, University of Wisconsin-Madison/Extension, Madison, WI 53706. A copy is attached to Exhibit 22 of the record. Further limitations have been pointed out by the “Mackinac Center for Public Policy” which has, among other things, expressly discussed COCS’s limitations as enumerated above.

The County finds that COCS studies, in other states and counties outside of Oregon, are not relevant to this application absent a showing that the study evaluates large rural residential/small farm tracts instead of small residential lots. Further, the county finds the COCS study and conclusion does not apply to the specific and unique circumstance of the subject property.

4. Rural Residential Opportunities: DLCD’s letter further states that “rural residential opportunities are not needed housing units.” The County finds that Umatilla County’s adoption of the RR-10 zone indicates that county citizens desire, and do in fact, need the uses available in the RR-10 zone; which was adopted after careful review and evaluation by the county of the needs of its citizens. Those needs and purposes are clearly expressed in Section 152.160 (Purpose) of the Umatilla County Zoning Code. The purpose is set forth below.

“The RR-10 Rural Residential Zone is designed to provide lands to enhance the value of rural living and maintain a rural residential atmosphere while accommodating the demand for rural residences. Lots need to be sufficiently large to accommodate private wells and sewage disposal systems as well as gardens and farm animals. Standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources are provided. The zone is applied to areas committed to non-resource use or needed for rural residential land use as provided for in the Comprehensive Plan.”

The County adopted this RR-10 zone Ordinance as 2004-13. The State of Oregon DLCD was presented the DLCD Notice of Proposed Amendment on June 10,

2004. DLCD did not object to the RR-10 zone which implies that the RR-10 zoning is appropriate for Umatilla County, and is needed. The Kennedy/Wood application is an example of the ordinance being used for its intended purpose. It is speculation to suggest that the Kennedy/Wood application “could spark a series of similar proposals from other property owners in the area to the detriment of the county’s resource land base.” Umatilla County’s two year history, with the Kennedy/Wood application being only the second RR-10 rezoning, does not suggest excessive use of the RR-10 zone. The County is well aware of the rigorous state and county criteria which must be strictly followed as evidenced by this application. The county intended, however, with the adoption of the RR-10 zone that some areas in Umatilla County are appropriate for this needed zone type.

D. GOAL 11 – PUBLIC FACILITIES ANALYSIS, FINDINGS, AND CONCLUSIONS

Commissioner Doherty has stated that he believes that the application has not fully addressed and acknowledged that there is a cost associated with the provision of public facilities and services that are demanded by people and that there is a relationship between land use decisions and those demands.

The purpose of Goal 11 is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served.

The subject property can be supported by the appropriate level and types of services. The following services will be necessary to serve the development that will result from the Goal Exception, Plan Amendment and Zone Change that is requested for the subject property.

Sewer – Sanitary sewer service will be provided by individual septic systems. According to Mr. Bernie Duffy, with Oregon DEQ, it is the responsibility of each landowner to acquire DEQ approval for a septic system before building. The ten acre minimum lot size will provide adequate room for both the septic system and drainfield requirements. Building permits can only be issued after the appropriate site evaluation and testing has occurred. Therefore, no building will occur unless the appropriate permits are received indicating that the site can be served. All on-site septic systems will be constructed, operated and maintained at the homeowner’s expense, thereby minimizing costs to the public.

Water – Each site will be served by a private well system, subject to the rules of the State of Oregon. Each well will be constructed, maintained and operated at the owner’s expense, thereby causing no cost to the public.

Police – The site lies within the Umatilla County Sheriff’s jurisdiction. A conversation with Undersheriff Terry Rowan in the Umatilla County Sheriff’s office indicated that the ten homes that could potentially exist as a result of approval of the PA and Zone Change and the subsequent subdivision or partitions, would not create a change in the level of services to rural residents. The Umatilla County Sheriff currently serves the areas surrounding the Kennedy/Wood parcel. Officer Rowan indicated in fact that the additional homes may in fact, improve services because the homes would increase property values on the subject property and the homes and property would be taken out of farm deferral creating revenue to the County. Further, ten homes would not create significant demand for the Sheriff departments services. Therefore, the property can be adequately provided sheriff services.

Roads – The site has frontage on two County roads – Ott Road and Canal Road. Given the small number of homes to be developed, the impact to roads will be minimal. The County has not indicated that the roads are not sufficient to serve the site.

In the specific case of the Kennedy Wood property, given the small number of homes to be developed and the self-contained nature of the sewer and water system, the site can be developed without significant cost to the public. In return, the change in use of the property will result in the property’s removal from a farm deferral status and more accurately reflecting its value, generating revenue to the County. Because the sites are not commercially farmed in a significant manner, they are not actively contributing to the agricultural base of the County and there is no loss in revenue to the economy by converting the property to residential or small farm residential uses.

This in and of itself is not a reason to approve the goal exception. However, it is a reason to find that the request is consistent with the provisions of Goal 11.

V. COMPREHENSIVE PLAN MAP AMENDMENT CRITERIA FOR APPROVAL, FINDINGS, AND CONCLUSIONS

There are no specific amendment criteria contained in the County’s Comprehensive Plan or Development Code. However map amendments must comply with the general provisions of the Comprehensive Plan. The following Comprehensive Plan Policies that relate to Rural Residential development are relevant to this request and are therefore addressed. The plan policies are shown in **bold** and the applicants’ response follows each.

Rural Residential Plan Map Section

Goals:

- (1) To provide an alternative lifestyle to urban living by providing adequate numbers of rural residential housing units in area of the County where such housing is needed.**

Finding:

As shown in the inventory of land use classifications, there is a minimal amount (50 acres) of land zoned for ten acre homesites. Adding the subject 103 acres collectively or individually and providing for up to ten, 10 acre lots will add to the number of available rural residential housing units in the County, providing an additional choice in housing types to Umatilla County residents.

(2) To allow flexibility of housing location, type and design in Umatilla County.

Finding:

The County added to the opportunity for flexibility of housing types when they adopted the 10 acre zone. Approval of this land use request will assist the County in providing a variety of and flexibility in housing types and design in Umatilla County.

(3) To preserve and enhance the rural character within existing and proposed rural residential areas until such time as conversion to other uses as deemed appropriate.

Finding:

Although the subject property is adjacent to two existing rural residential neighborhoods, the development of the site as ten acre homesites will have no negative impact on the adjacent residential areas, and will be more compatible than the existing agricultural uses.

(4) To provide rural housing needs at a density consistent with the level of public services and facilities that can reasonably be provided in that area and within the capability of the land to yield safe drinking water and accommodate septic systems.

Finding:

With a minimum parcel size of ten acres both the installation of an exempt well for a safe drinking water supply and the installation of onsite septic systems will be easy to accommodate and consistent with this policy. The location of such utilities as well as any improvements would be determined at the time of a development permit whether following a boundary line adjustment, minor partition, or proposed subdivision on either of the Wood or Kennedy parcels.

General Review Policies

(1) Policy 1: Future rural residential development will be reviewed to ensure compatibility with existing similar uses and with adjacent designated resource lands

Finding:

The proposed development is compatible with existing adjacent uses – the rural residential uses to the north and south, the uses within the UGB to the west. The EFU property to the north and east is separated from the site by either roads or the irrigation canal. Therefore, the site is isolated and separated from other resource lands, making the proposed rural residential area compatible.

The ten acre parcel size would make for a gradual, orderly, transition area from the area inside the Hermiston UGB and to the cultivated farms to the east of the site.

(2) Policy 2: New major development (those involving ten or more lots for rural home structures or related uses) that creates significant impacts upon existing facilities, services or requiring additions to or new facilities or services shall be carefully examined. Examination shall include land use compatibility questions and issues regarding adequate services provided and readily available.

Finding:

Neither the Kennedy or Wood property alone may accommodate ten or more lots. Combined they have the potential of ten lots as indicated above. Any request for an improvement on other than the existing lots will require completion and submission of either a boundary line adjustment or minor partition request. If either Mr. Kennedy or Mrs. Wood desired four or more parcels on the respective properties, an application for a subdivision would be required. Regardless of future development or the large size of the parcels, when taking into consideration adequate existing public roads there will not be a significant impact on existing facilities, services, or the requirement of new facilities.

Finally, the new development will require no urban services.

Development Strategy Policies

(1) Policy 3: To accommodate citizen desire and to help assure availability of rural residential property to as many income groups as possible, a rural residential use zone at several densities has been created.

Finding:

The County added to the choices in density when they adopted the RR-10 zone. Allowing its application to specific properties, where appropriate will aid in meeting this goal.

(2) Policy 4: To maintain plan flexibility desired by many citizens, clustering will be strongly encourage but not required.

Finding:

Following approval of this application the applicants, or their successors in interest, will consider clustering of home sites at the time a development plan is arrived at on either the Kennedy or Wood property.

(3) Policy 5: In designated rural residential areas, cluster development shall be allowed on parcels of ten acres or larger.

Finding:

The site is eligible for clustering. Determination regarding clustering will be made prior to submission of an application for development.

(4) Policy 6: The overall density of a cluster development in designated rural residential areas shall be according to the prescribed zoning lot size minimum on the County zoning map.

Finding:

Whether or not the applicants choose to cluster development, the site shall remain in RR-10 zoning.

(5) Policy 7: A density bonus of 20% will be given for those who cluster rural residential development.

Finding:

If clustering is determined to be appropriate by the applicants and allowed by state regulations, a maximum of four homesites could be accommodated on the Wood parcels and a maximum of eight on the Kennedy parcels.

Other Use Policies

(1) Policy 8: Certain agricultural uses are compatible with rural residential activities and shall be permitted within designated rural regional areas according to limitations and requirements in the Development Ordinance.

(2) Policy 9: Public/semi-public uses, non-commercial greenhouses or nurseries and certain types of signs shall also be allowed with minimal requirements in rural residential areas.

(3) Policy 10: Other uses normally found within rural home areas or that support and serve rural residential uses and activities will be permitted within the rural residential zone based upon certain considerations and evaluations of the proposal.

(4) Mobile home parks, apartments or other higher density housing developments are not in keeping with the rural character or service capabilities in these county areas and are not permitted within designated rural residential lands. These uses shall be encouraged to develop within urban growth boundaries around incorporated cities.

Finding:

The uses allowed in the RR-10 zoning are identified in the Umatilla County Development Code. The applicants' intent is to develop single family homesites. The proposal is consistent with the uses allowed in the RR-10 zone.

Public Facilities and Services

(1) Roads

(i) Policy 12: to assure efficiency of road improvements, the county will adopt in the Development Ordinance road improvement standards based on the Public Works Director's recommendation for development in rural residential areas.

(ii) **Policy 13: Developers and property owners proposing new subdivisions, partitions, or other major development (e.g. involving ten lots or more) that generate significant amounts of traffic shall be required to meet access improvement requirements in the Development Ordinance.**

(iii) **Policy 14: In most rural residential areas, future road improvements to accommodate anticipated rural residential growth will be assured through irrevocable consent agreement requirements listed in the Development Ordinance.**

(iv) **Policy 15: Major developments defined above not locating on roads constructed to minimum county standards shall be discouraged. However, if developers agree to make necessary improvements to handle the expected traffic as determined by the Public Works Director, such development may be permitted, provided that other applicable standards and requirements in the Development Ordinance are complied with.**

(v) **Policy 16: Access control shall be emphasized to minimize negative effects and traffic hazards generated by new development.**

(vi) **Policy 17: At the first plan update a county-wide study shall be undertaken to develop an integrated comprehensive transportation plan and shall address among other issues rural residential road plans and their coordination and integration with County/City co-adopted road plans within urban growth boundaries of all the incorporated cities in the county.**

Finding:

The County's Transportation System Plan (TSP) has been completed and adopted as part of the comprehensive plan. The policies and road standards in the TSP have been incorporated into the Development Code for the RR-10 zone. In Umatilla County, the TSP standards are reviewed as part of the subdividing process and Irrevocable Consent Agreements are required prior to approval and recording of final plats. Therefore, these standards are met or will be met prior to development.

(2) **Water/Sewage Disposal**

(i) **Policy 18: The County will rely upon pertinent state statutes and administrative rules administered by the Department of Environmental Quality and the County Health Department for domestic water and waste disposal regulations as the means to provide and protect the quality of this important resource.**

Finding:

All development will be in accordance with DEQ and County Health Department standards related to domestic water and waste disposal regulations in accordance with these criteria. Although the site will accommodate ten homesites, and therefore, qualifies as a major development, it really isn't a large development requiring large amounts of domestic water. As indicated by staff in the Perkins land use changes, these policies will be applied to the individual development proposal and coordinated with the state agencies, Oregon Water Resources Department and the Oregon Department of Environmental Quality at that time.

It should be noted that the Umatilla County Board of Commissioners adopted a resolution clarifying that until a 2050 plan is developed to direct development, allocation, and management of groundwater in the Umatilla River Basin in Umatilla County, the citizens within the critical areas may continue to install exempt wells, as authorized by state statute, and as they have been historically allowed to do. In the interim, applicants to Umatilla County for zoning permits, land partitions or rural subdivisions will not be required to pay impact fees, conduct water availability studies, provide mitigation measures or have any other domestic water supply condition imposed on them until a 2050 plan is developed, or as duly authorized by County ordinance. The County adopted the resolution based in part on the Umatilla County Critical Groundwater Task Force findings that state in part "The Task Force finds domestic and other exempt uses of water consume relatively very little of the alluvial and basalt aquifer waters in the critical areas as compared to non-exempt uses such as that used for municipal, industrial, and agriculture purposes. (See The Board of Commissioners of Umatilla County Exempt Well Resolution in the Application – Exhibit 1 of the record).

(3) Other Service and Facility Considerations

(i) Policy 20: Large subdivisions (over ten lots) shall be sent for review to the appropriate rural fire district for consideration of owner/developer-provided fire equipment and/or other facilities (e.g. water storage) deemed appropriate by the rural fire district.

Finding:

If developed as a single development composed of ten or more lots, this project will be sent to the Hermiston Rural Fire Protection District for review prior to development. However, the nearest station is less than one mile from the site. Conversations with Captain Hart indicate that the district has the capacity to serve the proposed ten homesites.

(ii) Policy 21: Future rural residential development shall depend on close proximity and available to existing services and facilities.

(iii) Policy 22: The County will continue to try to provide minimum services based upon budget availabilities.

Finding:

Specific services will be reviewed at the time specific development is proposed.

(4) Nuisance Policies

(i) Policy 23: As a commitment to initiate solutions and help solve existing nuisance problems of dog control, illegal dumping, sanitation and odor problems relating to livestock and animals, land use incompatibility problems, etc., the County will work with private property owners and appropriate regulatory agencies to develop solutions that will accomplish this policy.

Finding:

With future homesites, the problems identified above are less likely to occur with residents on the property, than if kept in the EFU classification.

(5) Historic, Scenic, Natural Area Policies

(i) Policy 24: The County will thoroughly review new rural residential development as it may affect historic, cultural and scenic values and resources.

(ii) Policy 25: The County will adopt regulations and provide encouragements that are reasonable and enforceable to protect historic, cultural and scenic resources.

Finding:

No known historic, scenic or natural area resources exist on the property.

C. Zoning Map Amendment

The zoning map amendment is automatically approved based on the approval of the Goal 3 exception process, therefore no additional criteria are discussed.

D. Consistency With Statewide Planning Goals

This section reviews the proposed UGB amendment order to ensure consistency with the Statewide Planning Goals.

Goal 1 – Citizen Involvement

"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

Finding:

The County's Comprehensive Plan has been acknowledged by LCDC as being in compliance with Goal 1. This land use request does not change any of the Goal 1-related provisions of the city's plan or ordinance, and the City is following applicable procedures when reviewing this amendment. Therefore, the proposed amendments comply with Statewide Planning Goal 1.

Goal 2 – Land Use Planning

"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

Finding:

The County's Comprehensive Plan has been acknowledged by LCDC as being in compliance with Goal 2. These land use approvals are subject to the existing County planning process and policy framework laid out in the comprehensive plan. The exception, plan amendment and zone change complies with the Goal 2 exceptions process as explained above. The amendment is supported by an adequate factual base, as explained in these findings, and is therefore consistent with Goal 2.

Goal 3 – Agricultural Lands

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

Finding:

The subject land is not appropriate for commercial farm uses and the concerns expressed in Goal 3 are fully addressed in the County's compliance with the Exception Standards as explained above which are further adopted herein as a part of this finding.

Goal 4 – Forest Lands

"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."

Finding:

The request does not affect any forest lands. Therefore, Goal 4 is inapplicable.

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

"To protect natural resources and conserve scenic and historic areas and open spaces."

Finding:

The amendments are consistent with Goal 5 noting that the site is within a critical groundwater area. Regardless, residential withdrawals of water are an exempt use under state law (ORS 537.545) and OWRD Rules as specifically discussed above in the Goal 5 Analysis, Findings, and Conclusions part of this document which are adopted herein as a part of this finding.

Goal 6 – Air, Water, and Land Resources Quality

"To maintain and improve the quality of the air, water and land resources of the state."

Finding:

The amendment will not negatively affect any environmental resources, and the amendment is consistent with Goal 6, as described earlier in this application. Residential withdrawals of water are an exempt use under state law (ORS 537.545).

Goal 7 – Areas Subject to Natural Disasters and Hazards

"To protect life and property from natural disasters and hazards."

Finding:

No area of the County is mapped as subject to natural disasters or hazards.

Goal 8 – Recreational Needs

"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts."

Finding:

No recreational facilities are planned for the site. Therefore, this Goal is not relevant.

Goal 9 – Economy of the State

"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

Finding:

See previous discussions for Findings and Conclusions on Goal 9 which are adopted herein as part of this finding.

Goal 10 – Housing, and OAR 660-008

"To provide for the housing needs of citizens of the state."

Finding:

The purpose of the Goal 10 administrative rule, from OAR 660-008-000(1), reads as follows:

The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This rule is intended to define standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.

The proposed amendments will provide 104 acres of land to the County's supply of housing land. As explained in detail, this land use change enables the County to plan for and provide the entire spectrum of the County's housing needs now lacking. This amendment is consistent with Goal 10.

Goal 11 – Public Facilities and Services

"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

Finding:

Consistent with requirements of Goal 11, the County has developed a timely, orderly and efficient arrangement of public facilities and services. Specific requirements for public facilities will be required when new residential development is applied for.

Goal 12 – Transportation and Transportation Planning Rule

"To provide and encourage a safe, convenient and economic transportation system."

Finding:

The ten housing units that may result from the requested land use actions will not generate a significant number of vehicle trips. Additionally, upon review of land use application for partition or subdivision, the county will apply the specific development standards of the County's TSP.

Transportation Planning Rule – OAR 660-012-0060

- (1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.*

- (2) A plan or land use regulation amendment significantly affects a transportation facility if it: (a) changes the functional classification of an existing or planned transportation facility; (b) changes standards implementing a functional classification system; (c) allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or (d) would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.*

Finding:

According to the County, the County's Transportation System Plan (TSP) has been completed and adopted as part of the comprehensive plan. The policies and road standards in the TSP have been incorporated into the Development code for eh RR-10 zone and in other criteria required for review of development proposals. The TSP Standards are reviewed as part of the portioning or subdividing process. Irrevocable consent agreements are required prior to approval and recording of final plats. These policies will be addressed at that time.

Goal 13 – Energy Conservation

"To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

Finding:

The location of the RR-10 site near the City of Hermiston, allows a desired housing type in proximity to a jobs center. Therefore, urban workers who desire to live in a rural setting can do so within close proximity to their jobs. This is an efficient land use arrangement.

Goal 14 – Urbanization

"To provide for an orderly and efficient transition from rural to urban land use."

Finding:

The location of this rural residential land use adjacent to the City of Hermiston UGB, provides for a logical and efficient transition between the urban land to the west and the agricultural base to the east.

Goal 15 – Willamette River Greenway

Finding:

Statewide Planning Goal 15 is not applicable.

Goal 16 – Estuarine Resources

Finding:

Statewide Planning Goal 16 is not applicable.

Goal 17 - Coastal Shorelands

Finding:

Statewide Planning Goal 17 is not applicable.

Goal 18 - Beaches and Dunes

Finding:

Statewide Planning Goal 18 is not applicable.

Goal 19 - Ocean Resources

Finding:

Statewide Planning Goal 19 is not applicable.


VI. CONCLUSION

Based upon the above Findings of Fact and Conclusions, Umatilla County approves the foregoing requests of the Kennedy Wood application.

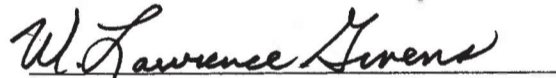
- A. *Change the Comprehensive Plan designation from North/South County Agriculture to Rural Residential land;*
- B. *Change the Zoning Classification from Exclusive Farm Use to Rural Residential (RR-10 acre minimum lot size), and*
- C. *Amend the Umatilla County Comprehensive Plan text to include a Goal 3 exception justification to change the designation from resource land to non-resource land.*

DATED this 2 day of February, 2007.

UMATILLA COUNTY BOARD OF COMMISSIONERS


Dennis D. Doherty, Chair


William S. Hansell, Commissioner


W. Lawrence Givens, Commissioner

