



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

July 7, 2006



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 004-06

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: July 19, 2006

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
Tamra Mabbott, Umatilla County

<paa> ya/

FORM 2

DLCD NOTICE OF ADOPTION DEPT OF

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18 JUN 30 2006

(See reverse side for submittal requirements)

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Umatilla County Local File No.: Z-284:P-084 (If no number, use none)

Date of Adoption: 6-13-06 Date Mailed: 6-28-06 (Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD:

- Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
Land Use Regulation Amendment
Zoning Map Amendment
New Land Use Regulation
Other: (Please Specify Type of Action)

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

Changed one EFU parcel to Rural Residential 10-Acre Zone.

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

Plan Map Changed from: EFU to Rural Residential

Zone Map Changed from: EFU to RR-10

Location: SW of Pendleton Acres Involved: 25.83 Ac.

Specify Density: Previous: 160 Acre New: 10 Acre

Applicable Statewide Planning Goals: 3

Was an Exception Adopted? Yes: [checked] No:

DLCD File No.: 004-06 (15064)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. N/A Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No: N/A

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

Rural Fire

Local Contact: Tanya Mabbott Area Code + Phone Number: 541-278-6246

Address: 216 SE 4th St.

City: Pendleton Zip Code+4: 97844

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 of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

RECEIVED

JUN 13 2006

UMATILLA COUNTY
RECORDS

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Amending)
Comprehensive Plan to include) ORDINANCE NO. 2006-14
Goal 3 Exception and)
Comprehensive Plan Map)
for Residential Use for Brad)
and Pam Wheeler)

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 Brad and Pam Wheeler requesting Umatilla County to allow the re-zoning 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 Lot 1N32-1000 located in the South Half of the Northeast Quarter of Section 4, Township 1 North, Range 32, East of Willamette Meridian, Umatilla County, Oregon;

WHEREAS the Umatilla County Planning Commission held a public hearing on May 25, 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 June 13, 2006, to consider the proposed amendment, and voted to adopt the amendment as proposed by the Planning Commission.

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 E, 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, Central County Developed/Committed Exceptions, Pg XVIII-347)

Area: Sparks Area (Area #8)
Total Acres: 25.83
Number of Dwellings: 1

Goal Exception Statement

The exception is justified as a "reasons" exception in accordance with ORS 197.721(1)(c) and OAR 660-004-0020 through 660-004-0022. The change of the designation of this site from Agriculture to Rural Residential is justified by the particular circumstances that are unique to the property. The site is part of an area with a mix of lot areas and Comprehensive Plan and zoning designations. The site is located north and west of Coombs Canyon Road, which forms a physical barrier between development in the Birch Creek within Coombs Canyon and dry land farms to the south. The site is bisected by Birch Creek, which creates two lots for practical purposes of maintenance and security, owing to limitations on access. Both sides of the creek have septic system approvals and currently have functioning systems in place. If eventually divided to create two parcels as the applicants' hope, both will have irrigation water and sufficient area to maintain some level of agricultural activities. The existing buildings west of the creek could accommodate an indoor arena, horse boarding, or similar activities.

1. Alternative Sites

An exception must consider alternative sites, even when a use is already established or circumstances of a particular property argue for unique circumstances. The site is already committed to the Rural Residential form of small acreage development. The site is relatively small, as compared to neighboring properties that are farmed, and has a residence. The property is split by Birch Creek, which makes access, security, and management problematic. No public facilities are necessary for the proposed use as Rural Residential. Septic approvals have been granted on both the east and west sides of the creek, and the existing domestic well has sufficient capacity to support a second residence. No alternative site that would not also require an exception could accommodate the use.

2. Adverse Impacts

The site is 25.38 acres in area, and as such has virtually no environmental, economic, social or energy consequences, certainly none that rise to the level of "significantly more adverse" than existing permitted development. The difference between the proposed

designation and present designation would be the potential for one additional residence, west of the creek, where several outbuildings and support systems are already in place. The environmental, economic, social, and energy consequences of the proposed exception are anticipated to go unnoticed, particularly in view of the scale of the proposed change.

(A) The environmental consequences of the proposed change in designation are non-existent. A septic system has been approved for both sides of the creek and domestic water is available from an existing well. In addition, a site for a new residence is available above the 100 year flood elevation, which would have the concomitant effect of limiting new impervious surface in the vicinity of the creek.

(B) Economic consequences are similarly non-existent. One more residence on the site would hardly be noticed in the County's economy. The site is not presently farmed, though the applicants operated a mink farm for 12 years until they realized that the operation could not be profitable. The buildings remain on the site and could be used for farm and related operations, such as horse boarding and training, and so on.

(C) Social consequences of the proposed change to Rural Residential would include the potential for one new residence, in an area along Birch Creek where residences have historically been constructed because the land was relatively flat and water was available. New development is occurring in Pendleton and along Highway 395 in the McKay Reservoir vicinity.

(D) Energy consequences would factor in the costs of constructing and maintaining a new residence, and commuting to and from employment.

3. Compatibility

The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. A residence is located across Coombs Canyon Road to the south and a mix of parcel sizes and residences are scattered along Birch Creek north and south of the site. In addition, uses allowed in the EFU and RR-10 Zones are similar, providing for many of the same type of agricultural-related uses. The exception would create the potential for one additional residence, and that the criterion was satisfied because residences along watercourses and roadways were common throughout the County and because future uses on the

site would remain agricultural.

In addition to the tax lots in the immediate vicinity of the site, rural residential uses (RR-2, RR-4, and RR-10) have been developed to the south near the Country Club, along the ridge top adjacent to Highway 395, and near McKay Reservoir.

To summarize, adjacent uses include at least two residences as well as irrigated pasture, and irrigated and dry land farming. Little farming activity of any kind occurs on the steep slopes of Coombs Canyon. Rural residences are common on smaller lots, though not immediately adjacent to the site.

4. Identification of potential adverse impacts

No "adverse impacts" have been identified, and no mitigating measures are necessary. The proposed Comprehensive Plan and Zoning change would allow one additional residence and uses allowed in the RR-10 Zone. Potential impacts of a new residence include new trips on Coombs Canyon Road to Highway 395 and additional noise. A septic system is already in place, used for the mink ranching operation, along with a water system, buildings, and lights. As the site already is occupied by a residence and outbuildings related to farm uses, no new potential impacts would be expected from continuing farm uses, such as pasture for animals, etc.

A single family residence generates less than 10 trips daily, according to the ITE Manual used by transportation engineers to calculate traffic impacts. Coombs Canyon Road has a very low level of trips, serving primarily local farms and rural residences on Birch Creek. Highway 395 carries significantly more vehicles, however is a state highway and designed to accommodate higher traffic flow. One single family residence will not have a noticeable effect on the traffic on adjacent roads, certainly nothing approaching an "adverse impact" that would require mitigation.

A single family residence generates a certain amount of noise, just by its existence, however, noise is mitigated by distance. The closest residences are the existing residence on Tax Lot 1000 and the "McDaniel place" south of Coombs Canyon Road, both at a distance of several hundred feet. No other noise sensitive use is located in the vicinity and a railroad line is immediately adjacent to the potential home site along the west property boundary. Therefore, the new noise created by an additional residence will probably not have a noticeable effect in the area or on nearby

residences, certainly nothing that would approach an "adverse impact" requiring mitigation.

One last consideration is the potential impact on the overall land use program and policy that calls for preservation of resource land. Approval of the proposed plan and zone change is not the beginning of a "slippery slope" that will lead to an "abyss" of zone changes throughout the county, but rather a recognition that this site and these circumstances are unusual and do not constitute an attack on the state and County policy embodied in Goal 3. The effect of the exception would allow a single new residence, through the partition of a 25 acre site created in 1957 that is already divided by Birch Creek. The arrangement of the site, with buildings located on both sides of the creek, is such that the appearance suggests two separate properties are already established. A 10-acre site is within the means and management ability of a part-time farmer, whose primary income is derived from other sources, so the site will very likely remain as pasture, maintaining the resource-related use.

5. Need for Use

To satisfy this requirement, the site must show that there is a need for new rural residential development based on circumstances in the area. There is a demand for rural uses in farming and livestock on small ten acre parcels in association with housing and residential uses. The level of agricultural activity on the property will not be materially be changed by the change in plan and zone designation. The majority of the property will remain as irrigated pasture, within the flood plain. The outbuildings west of the creek could be used for raising animals as previously occurred, or be converted to an indoor riding arena or similar activity. There are very few "RR-10" properties, which are large enough to support a minimal level of farm use yet within a manageable and affordable size.

The property subject to this application is at the edge of a natural boundary to further expansion of rural residential development. South of Coombs Canyon Road, the land opens to the south and west, with larger property holdings and dry land grain farms. North of Coombs Canyon, along the creek, there is a mix of smaller properties and rural residential designations.

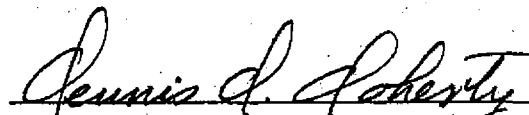
Economic activity in the vicinity that may generate a need for additional housing includes the Sparks Grain Elevator (approximately 1/8 of a mile), the Pendleton Country Club (along

Birch Creek, about 2 miles distant), and the landfill near Hoeft Road (2.5 miles). These activities generate approximately 8-10 jobs, which could be filled by nearby residents.

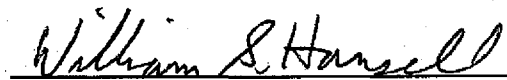
There is a need for larger lot rural residential land, which can continue to be used for farm-related activities and yet be manageable and affordable. The present size of the site is smaller than the minimum lot area in the EFU district and, more importantly, smaller than the typical economic farm property. There are economic activities in the vicinity of the site, which can justify provision of nearby housing. The site is in an area where rural residential development occurred historically, along the creek bottom land. The site is in a location that forms a natural boundary to further expansion of rural residential uses to the south, where Coombs Canyon Road crosses Birch Creek at the railroad line. Therefore, approval of the exception is justified.

DATED this 13th day of June, 2006.

UMATILLA COUNTY BOARD OF COMMISSIONERS

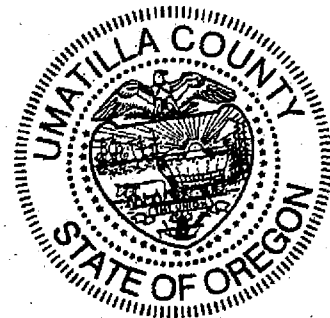

Dennis D. Doherty, Chair

ABSENT
Emile M. Holeman, Commissioner


William S. Hansell, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS


Records Officer



FINAL
Findings of Fact
Wheeler Comprehensive Plan Map and Zoning Map
Amendment

Applicant	Brad & Pam Wheeler 43277 Coombs Canyon Road Pendleton, OR 97801 (541) 276-0040
Representative	Leslie Ann Hauer 6100 Collins Road West Richland, WA 99353 (509) 967-2074
Location	43277 Coombs Canyon Road, north of Coombs Canyon Road, east of the Union Pacific Railroad line where Birch Creek crosses the road
Legal Description	Tax Lot 1000 1N 32E
Comprehensive Plan Proposed:	Present: North/South County Agriculture Rural Residential
Zoning	Present: Exclusive Farm Use ("EFU") Proposed: Rural Residential-10 ("RR-10")
Site Size	25.83 acres
Proposal	Change the Comprehensive plan map designation from "North/South County Agriculture" to "Rural Residential" and the zoning map from Exclusive Farm Use ("EFU") to Rural Residential – 10 Acre Minimum Lot ("RR-10")

Site Description

The site is located north and west of Coombs Canyon Road, east of the Union Pacific Railroad line. The site is bisected by Birch Creek.

The site is lowest along the creek, rising to the railroad tracks and Coombs Canyon Road. The 100-year flood plain occupies the area along Birch Creek and may include as much as half of the site. The residence east of the creek is above the flood plain elevation, however farm buildings west of the creek appear to be at the edge or partially within the flood plain. Coombs Canyon broadens to the south and west, with hillsides rising to

1,400 feet to the east and northwest. Wetlands may be located in the vicinity of the creek in some areas.

Access to the site is from Coombs Canyon Road, which forms the east and south boundaries. Coombs Canyon Road connects directly to Highway 395, to the east and uphill from the property. Straughan Road intersects Coombs Canyon Road just east of the property, and follows Birch Creek down the canyon to the south.

The surrounding area includes a patchwork of zoning and lot areas. The site and adjacent properties to the south and west are designated EFU, with large dryland grain farming operations. Along the creek, both to the north and to the south, and along the ridge in the vicinity of McKay Reservoir and Highway 395, there is a mix of Rural Residential (RR-2 and RR-4) zoning and development. Immediately to the south, across the road, is the McDaniel House, built in 1918. The property is within three miles of the City of Pendleton's Urban Growth Boundary¹ and approximately 4 miles "as the crow flies" from the city limits.

The property has water rights under Certificate No. 80978 for irrigation from a well for 12.08 Acres and supplemental irrigation of 6.6 acres. The primary irrigation area is identified as 10.70 acres west of the creek and 1.38 acres east of the creek, in the vicinity of the residence. The supplemental area is east of the creek and west of the house, on a portion of the property that is probably within the 100 year flood plain.

The property was created in its present form and size in June, 1957. Wheelers purchased the property in August of 1990 with the intention of raising mink. They constructed buildings and facilities west of the creek for that enterprise and established a residence in December of 1990. However, the mink farming enterprise was discontinued after 12 years as it did not prove economically successful. The site is not commercially farmed at this time. Most of the property is rented for horse pasture. The location of the creek, with associated bottomland, through the center of the site makes it difficult to maintain the property and manage any sort of farm operation. With the exception of steeply sloped hillsides, most adjacent land is in agricultural use to some degree, ranging from low intensity grazing (pasture) and hay, to dry land grains to the south.

Three soil types are identified on the site. A fourth type, 26E Entic Durochrepts, 20 to 40% slopes, appears to be located east of the property, where the hillside begins along Straughan Road.

Table A: Soil Types

Number	Name and explanation from NRCS Study	Location on site
16C	Cantala silt loam, 7 to 12% slopes This deep, well drained soil is on broad	This soil type is located along the railroad, where the

¹ Map 2N 32 shows the Pendleton UGB along the west line of 2N 32 21.

	summits of hills. It formed in loess and old alluvium. It is on north-and east-facing slopes.... This unit is used for nonirrigated crops. It is limited by the moderate hazard of water erosion.	land begins to slope up the hillside.
39A	Hermiston silt loam, 0 to 3% slopes This deep, well drained soil is on flood plains. It formed in silty alluvium.... This unit is suited to irrigated crops. It has few limitations.	Most of the flood plain and area along the creek is in this classification.
111A	Vitrandepts, 0 to 5% slopes These deep, well drained soils are on alluvial fans and in depressional areas where volcanic ash has accumulated. ...Most areas in this unit are used as rangeland and pastureland. A few areas are used for nonirrigated grain and wildlife habitat. This unit can be used for irrigated crops if water is made available.	This soil type is located along the railroad, west of and above the creek, and north of Coombs Canyon Road.

Water is available to the residence from a well located near the buildings west of the creek, and piped to the house. Septic system approvals have been granted for locations on both sides of the creek, near the residence and near the outbuildings.

Proposal

The applicant requests that the County change the Comprehensive Plan map designation from "North/South County Agriculture" to "Rural Residential" and the zoning map designation from "EFU" to "RR-10".

If the change is approved, the applicant will propose a partition to create two parcels where two exist for practical purposes, one east and one west of the creek. The septic system and well for domestic water west of the creek are already in place to support a new residence.

Applicable Criteria and Standards

The criteria and standards that apply to this application are as follows:

Statewide Planning Goals and related Oregon Administrative Rules ("OAR")

Goal 2 Land Use Planning (Exceptions)

Goal 3 Agricultural Lands

Umatilla County Comprehensive Plan

General Review Policies

Development Strategy Policies

Other Use Policies

Umatilla County Development Code

152.055-152.063 EFU Exclusive Farm Use Zone

152.160-152.164 RR-10 Rural Residential Zone

152.750 Amendments (zoning ordinance text or map)

Discussion of Criteria and Standards

In the following discussion of criteria and standards, code requirements are indicated by italics, response and discussion in plain text.

Statewide Planning Goals

Goal 3 applies to this request, as the site is designated “Exclusive Farm Use” or “EFU.” Goal 3 articulates the state’s policy to preserve and maintain agricultural lands for farm use, consistent with existing and future needs. This policy is found in the Oregon Revised Statutes (“ORS”) 215.243:

ORS 215.243 Agricultural land use policy. The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones.

Goal 2 Land Use Planning also applies, as it includes the standards for considering an exception to the goals. An exception is, simply stated, a variance from the policy granted when certain findings can be made to justify the proposal.² The request for changing the Comprehensive Plan designation from Agricultural to Rural Residential requires consideration of an exception.

Requirements for an Exception

An exception may be justified if the site is “physically developed” and “irrevocably committed” or by “reasons.” Although there is some basis for an argument that the site was “committed” when it was created in 1957, the fact that the site is non-conforming for size in the EFU Zone is not, by itself, sufficient to justify that type of exception. Therefore, the proposal will be justified as a “reasons” exception in accordance with ORS 197.721(1)(c) and OAR 660-004-0020 through 660-004-0022 (quoted in full, shown in *italic text* with responses in plain text).

660-004-0020

Goal 2, Part II(c), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

This narrative provides the justification to change the designation of this site to Rural Residential. The text of this justification can be adopted as part of the Comprehensive Plan.

(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;

² OAR 660-004-000(2)

The nature of "reasons" that are sufficient to justify an exception are set forth in detail in OAR 660-004-0022, which will be discussed in a following section in this narrative. By way of summary: The proposed Comprehensive Plan amendment to change the designation of this site from Agriculture to Rural Residential is justified by the particular circumstances that are unique to the property. The site is part of an area with a mix of lot areas and Comprehensive Plan and zoning designations. The site is located north and west of Coombs Canyon Road, which forms a physical barrier between development in the Birch Creek within Coombs Canyon and dry land farms to the south. The site is bisected by Birch Creek, which creates two lots for practical purposes of maintenance and security, owing to limitations on access. Both sides of the creek have septic system approvals and currently have functioning systems in place. If eventually divided to create two parcels as the applicants' hope, both will have irrigation water and sufficient area to maintain some level of agricultural activities. The existing buildings west of the creek could accommodate an indoor arena, horse boarding, or similar activities.

(b) "Areas which do not require a new exception cannot reasonably accommodate the use":

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a

local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

An exception must consider alternative sites, even when a use is already established or circumstances of a particular property argue for unique circumstances. In this case, alternative sites would have to have immediate access to a County road, which also forms a boundary between the site and larger farm properties. The alternative site would have to have physical features separating it from other farming properties, such as the railroad, county road, large hills that form the walls of Coombs Canyon, a creek bisecting the property that effectively creates two separate parcels, and approved septic sites for each "half" of the property. The applicants were unable to find comparable alternative sites, as the specific circumstances affecting this property and the proposed use as Rural Residential are unusual.

No alternative site is available within an Urban Growth Boundary, which by its nature cannot support Rural Residential development. Land within an UGB is held for future urban-level development, not devoted to small scale farm use.

As previously noted, the site is already committed to the Rural Residential form of small acreage development. The site is relatively small, as compared to neighboring properties that are farmed, and has a residence. The property is split by Birch Creek, which makes access, security, and management problematic.

No public facilities are necessary for the proposed use as Rural Residential. Septic approvals have been granted on both the east and west sides of the creek, and the existing domestic well has sufficient capacity to support a second residence.

In summary, this standard is satisfied because no alternative site that would not also require an exception could accommodate the use. Further, the site is already relatively small and affected by a variety of topographic conditions and physical circumstances that make it well suited for Rural Residential use.

(c) 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. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the

Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

The site is 25.38 acres in area, and as such has virtually no environmental, economic, social or energy consequences, certainly none that rise to the level of "significantly more adverse" than existing permitted development. The difference between the proposed designation and present designation would be the potential for one additional residence, west of the creek, where several outbuildings and support systems are already in place.

The environmental consequences of the proposed change in designation are non-existent. A septic system has been approved for both sides of the creek and domestic water is available from an existing well. In addition, a site for a new residence is available above the 100 year flood elevation, which would have the concomitant effect of limiting new impervious surface in the vicinity of the creek.

Economic consequences are similarly non-existent. One more residence on the site would hardly be noticed in the County's economy. The site is not presently farmed, though the applicants operated a mink farm for 12 years until they realized that the operation could not be profitable. The buildings remain on the site and could be used for farm and related operations, such as horse boarding and training, and so on.

Social consequences of the proposed change to Rural Residential would include the potential for one new residence, in an area along Birch Creek where residences have historically been constructed because the land was relatively flat and water was available. One new residence is unlikely to have any impact on Umatilla County, especially since new development is occurring in Pendleton and along Highway 395 in the McKay Reservoir vicinity.

Energy consequences would factor in the costs of constructing and maintaining a new residence, and commuting to and from employment.

Overall, the proposed exception to allow rural residential use of the site must be evaluated in terms of the site itself, which is already committed to this type of development by the location, surrounded by Coombs Canyon Road and the railroad,

bisected by the creek, and already occupied by buildings on both sides of the creek. For these reasons, the environmental, economic, social, and energy consequences of the proposed exception are anticipated to go unnoticed, particularly in view of the scale of the proposed change.

(d) 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 practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

The application narrative described adjacent uses in the "Site Description" and the previous response to OAR 660-004-0020(2)(d), noting that a residence is located across Coombs Canyon Road to the south and that a mix of parcel sizes and residences are scattered along Birch Creek north and south of the site. In addition, uses allowed in the EFU and RR-10 Zones are similar, providing for many of the same type of agricultural-related uses. The application narrative concluded that the proposed exception would create the potential for one additional residence, and that the criterion was satisfied because residences along watercourses and roadways were common throughout the County and because future uses on the site would remain agricultural.

The analysis to demonstrate compliance with this standard warrants several steps: a definition for "compatible" in this context, identification of adjacent uses, and identification of any adverse impacts of the proposed use on adjacent use, with appropriate mitigating measures.

1. Definition of "compatible"

"Compatible" as used in OAR 660-004-0020(2)(d) does not mean "no interference or adverse impacts" and does not mean a new use must be identical to established or otherwise permitted uses. The term must be construed, as Webster does, to mean "capable of living or performing in harmonious, agreeable, or friendly association" or "capable of orderly, efficient integration and operation with other elements in a system...."³ The rule also notes that measures may be required to render the new use compatible, if adverse impacts are identified.

2. Identification of adjacent uses

The applicant has identified uses on adjacent properties, described in the following table.

³ Webster's II New Riverside University Dictionary, 1984.

Adjacent Properties and Uses

Tax Lot	Current use
900*	Dwelling; alfalfa hay east of Birch Creek; no farm activity west of Birch Creek
901*	Hay (access by road along the railroad right of way; may be part of 900)
1400*	CRP
1200	Dry land wheat (105 acres tillable)
1100	"McDaniel place" (residence); irrigated pasture
801	CRP
1190	Possible railroad right of way? Long narrow property between the railroad line and Sparks Station Road; no current use
1300	Some farmed area, some scab ground

*All or part of these tax lots are in the CRP program.

In addition to the tax lots in the immediate vicinity of the site, rural residential uses (RR-2, RR-4, and RR-10) have been developed to the south near the Country Club, along the ridge top adjacent to Highway 395, and near McKay Reservoir.

To summarize, adjacent uses include at least two residences as well as irrigated pasture, and irrigated and dry land farming. Little farming activity of any kind occurs on the steep slopes of Coombs Canyon. Rural residences are common on smaller lots, though not immediately adjacent to the site.

3. Identification of potential adverse impacts

The proposed Comprehensive Plan and Zoning change would allow one additional residence and uses allowed in the RR-10 Zone. Potential impacts of a new residence include new trips on Coombs Canyon Road to Highway 395 and additional noise. A septic system is already in place, used for the mink ranching operation, along with a water system, buildings, and lights. As the site already is occupied by a residence and outbuildings related to farm uses, no new potential impacts would be expected from continuing farm uses, such as pasture for animals, etc.

A single family residence generates less than 10 trips daily, according to the ITE Manual used by transportation engineers to calculate traffic impacts. Coombs Canyon Road has a very low level of trips, serving primarily local farms and rural residences on Birch Creek. Highway 395 carries significantly more vehicles, however is a state highway and designed to accommodate higher traffic flow. One single family residence will hardly have a noticeable effect on the traffic on adjacent roads, certainly nothing approaching an "adverse impact" that would require mitigation.

A single family residence generates a certain amount of noise, just by its existence. However, noise is mitigated by distance. The closest residences are the existing residence on Tax Lot 1000 and the "McDaniel place" south of Coombs Canyon Road, both at a

distance of several hundred feet. No other noise sensitive use is located in the vicinity and a railroad line is immediately adjacent to the potential home site along the west property boundary. Therefore, the new noise created by an additional residence will probably not have a noticeable effect in the area or on nearby residences, certainly nothing that would approach an "adverse impact" requiring mitigation.

No "adverse impacts" have been identified, therefore no mitigating measures are proposed.

One last consideration is the potential impact on the overall land use program and policy that calls for preservation of resource land. Approval of the proposed plan and zone change is not the beginning of a "slippery slope" that will lead to an "abyss" of zone changes throughout the county, but rather a recognition that *this site and these circumstances* are unusual and do not constitute an attack on the state and County policy embodied in Goal 3. As noted in the original narrative, the effect of the proposal would be to allow a single new residence, through the partition of a 25 acre site created in 1957 that is already divided by Birch Creek. The arrangement of the site, with buildings located on both sides of the creek, is such that the appearance suggests two separate properties are already established. A 10-acre site is within the means and management ability of a part-time farmer, whose primary income is derived from other sources, so the site will very likely remain as pasture, maintaining the resource-related use.

Based on the above findings, OAR 660-004-0020(2)(d) is shown to be satisfied, based on a review of specific land uses on adjacent properties and consideration of potential impacts.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

The exception request involves only one area.

"Reasons" that Justify an Exception

The types of reasons that can be used to justify a variance are found in OAR 660-004-0022, and are quoted in full for convenience:

660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 014....

The general part of the “reasons” requirement is superceded by the more specific provisions for rural residential development in OAR 660-004-0022(2).

(2) 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 this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. 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.

To satisfy this requirement, the site must be show that there is a need for new rural residential development based on circumstances in the area. In this regard, the findings from the “Perkins Amendment” recently approved by Umatilla County⁴ also apply to the present application. In particular, Finding 22.2 responds to the rural residential requirement as follows:

The County finds that the criteria set out in the OAR 660-004-0022(2) is satisfied for the following reasons:

First, the market demand proven in the record of these proceedings is not just a market demand for housing, but also a demand for rural uses in farming and livestock on small ten acre parcels in association with housing and residential uses. Second, the evidence in the record shows that past urban and rural population patterns and distributions are continuing, and that the past distribution pattern for urban and rural populations that resulted in complete build-out of the four-acre and two-acre residential developments adjacent to the subject property will, therefore, continue and result in complete build-out of the rezoned area. Third, the housing type and cost characteristic of residences on the subject property is unique because an owner with a desire to pursue agricultural uses in conjunction with their residential uses on smaller tracts can do so without making the much larger expenditure necessary for land that is zoned in larger tracts and are better suited for commercial agricultural use. The subject property is unique and better suited for rural residential use than are other

⁴ “Umatilla County, Board of County Commissioners, Final Findings and Conclusions: Perkins Comprehensive Plan Map Amendment (File #P-080), Exception to Statewide Planning Goal 3 (File #T-04-018), and Zoning Map Amendment (File #Z-279) for property located on Assessor’s Map 1N 32 10A, Tax Lot 100.” The applicants request that Findings from the “Perkins” application relevant to land supply and need be incorporated as justification for this exception.

lands zoned for resource use because of its proximity to other such residential uses, its proximity to roads and utilities, and other public services, its proximity to the McKay Creek Reservoir and wildlife preserve, and its relative uselessness for commercial agricultural use due to soil type, location, size, and absence of irrigation water rights.

The proposed rezone is also 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.”

The County finds that the proposed rezone is encouraged and supported by the above comprehensive plan policy. The proposed rezone will allow residential uses on unproductive farm lands in larger rural residential lot size minimums often acres and will thereby serve to ease the pressure to convert valuable farm lands to residential uses. *Bridges v. City of Salem*, 19 Or LUBA 373 (1990); *1000 Friends of Oregon v. Marion County*, 18 Or LUBA 408 (1989).

The findings and conclusion for Perkins also apply here: The level of agricultural activity on the property will not be materially be changed by the change in plan and zone designation. The majority of the property will remain as irrigated pasture, within the flood plain. The outbuildings west of the creek could be used for raising animals as previously occurred, or be converted to an indoor riding arena or similar activity. There are very few “RR-10” properties, which are large enough to support a minimal level of farm use yet within a manageable and affordable size.

As with the Perkins site, the property subject to this application is at the edge of a natural boundary to further expansion of rural residential development. South of Coombs Canyon Road, the land opens to the south and west, with larger property holdings and dry land grain farms. North of Coombs Canyon, along the creek, there is a mix of smaller properties and rural residential designations.

Economic activity in the vicinity that may generate a need for additional housing includes the Sparks Grain Elevator (approximately 1/8 of a mile), the Pendleton County Club (along Birch Creek, about 2 miles distant), and the landfill near Hoeft Road (2.5 miles). These activities generate approximately 8-10 jobs, which could be filled by nearby residents.

In summary, the proposed exception satisfies the requirements of OAR 660-004-022(2) for the following reasons: There is a need for larger lot rural residential land,

which can continue to be used for farm-related activities and yet be manageable and affordable. The present size of the site is smaller than the minimum lot area in the EFU district and, more importantly, smaller than the typical economic farm property. There are economic activities in the vicinity of the site, which can justify provision of nearby housing. The site is in an area where rural residential development occurred historically, along the creek bottom land. The site is in a location that forms a natural boundary to further expansion of rural residential uses to the south, where Coombs Canyon Road crosses Birch Creek at the railroad line. Therefore, approval of the exception is justified.

Umatilla County Comprehensive Plan

The application proposes an amendment to the Comprehensive Plan, and must comply with unamended portions of the plan.

Goal 12 & Transportation Planning

A Comprehensive Plan amendment has a “significant impact” if it forces the change in street classifications. In this case, one additional residence is the potential outcome. This means an addition of ten or less daily trips on Coombs Canyon Road and at the intersection of Coombs Canyon Road and Highway 395.

Traffic is very light. Highway 395 is a major north-south route. The intersection has a turn-bay, to facilitate turns and maintain traffic flow. At this point, Highway 395 traffic is less than closer to Pendleton. Trips from one more residence will not be noticed.

Umatilla County Development Code

The County’s Development Code provides an “EFU” zone (Sections 152.055 through 152.063) and several rural residential zones, including “RR-10” (Sections 152.155 through 152.159). Purpose statements for both zones are as follows:

EFU Exclusive Farm Use Zone

§ 152.055 DESCRIPTION AND PURPOSE. The purposes of the EFU, Exclusive Farm Use Zone, are to preserve and maintain agricultural lands for farm use, including range and grazing uses, consistent with existing and future needs for agricultural products, forest and open spaces; to conserve and protect scenic resources; to maintain and improve the quality of air, water and land resources of the county and to establish criteria and standards for farm uses and related and supportive uses which are deemed appropriate. It is also the purpose of this use zone to provide the automatic farm use valuation for farms, which qualify under the provisions of ORS Chapter 308. The provisions in this use zone are subject to automatic legislative amendments as described in §152.004.

RR-10 Rural Residential Zone 152.155-152.159

§ 152.160 PURPOSE. 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 property is now designated "EFU" even though the site is smaller than the minimum acreage requirement now imposed for this district. The site is arguably not an economically viable farm unit (see "Perkins" and various "Exception" discussions in the Comprehensive Plan) and, with the value of established buildings, is unlikely to be combined with adjoining property to the south and farmed in its entirety. Even if joined with property to the north, the creek's path and floodplain through the center of the site makes a coordinated management of the entire site problematic for access and security.

The uses allowed in the EFU and RR-10 Zones are similar, providing for many of the same type of agricultural-related uses. A 10-acre site is within the means and management ability of a part-time farmer, whose primary income is derived from other sources. The site will very likely remain as pasture, maintaining the resource-related use.

Umatilla County Development Code: Amendments

The County's Development Code also provides for amendments, in the sections quoted here:

§ 152.750 AUTHORIZATION TO INITIATE AMENDMENTS.

An amendment to the text of this chapter or to a zoning map may be initiated by the County Board of Commissioners, the County Planning Commission, or by application of a property owner. The request by a property owner for an amendment shall be accomplished by filing an application with the Planning Director, using forms prescribed pursuant to § 152.767.

The application is filed by the property owners.

§ 152.751 COMPLIANCE WITH COMPREHENSIVE PLAN. An amendment to the text of this chapter or to a zoning map shall comply with the provisions of the County Comprehensive Plan Text and Comprehensive Land Use Map. Any deviation from this section shall be preceded by an amendment to the Comprehensive Plan Text or to the Comprehensive Land Use Map. However, if the existing use of the property is

allowed outright in the requested zone, compliance with the Comprehensive Plan is not necessary.

Compliance with the County's Comprehensive Plan is accomplished through the request for amendment and exception, previously discussed.

The following sections are primarily procedural in nature:

§ 152.752 PUBLIC HEARINGS ON AMENDMENTS. The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures of § 152.771 of this chapter at its earliest practicable meeting after it is proposed. The decision of the Planning Commission shall be final unless appealed, except in the case where the amendment is to the text of this chapter, then the Planning Commission shall forward its recommendation to the Board of Commissioners for final action. The Board shall hold a public hearing in accordance with § 152.771 of this chapter within 60 days from receipt of the Planning Commission's recommendation. Appeal shall be to the County Board of Commissioners who shall hold a public hearing on any appeal, pursuant to § 152.771. Appeal shall be heard on a de novo basis.

§ 152.753 CONDITIONS TO AMENDMENTS.

(A) The Planning Commission may adopt or reject an amendment, or any portion thereof, as set forth in the request, or may impose conditions to the amendment or portions thereof.

(B) (1) Conditions to amendments shall be completed within the time limitations set forth by the county, or if no such time limit is set, within a reasonable time.

(2) Such conditions shall directly benefit the property described in the amendment and shall be imposed only if the county finds them necessary to prevent circumstances which may be adverse to public health, safety and welfare.

(3) Such conditions shall be reasonably conceived to fulfill public needs emanating from the proposed land use as set forth in the petition in the following respects:

(a) Protection of the public from potentially deleterious effects of the proposed use; or

(b) Fulfillment of the need for public service demands created by the proposed use.

(4) Changes or alterations of conditions shall be proposed in the manner set forth in §§ 152.750 through 152.777 of this chapter, for amendments.

(5) Such conditions shall be set forth in a contract executed between the county acting by and through the Board of County Commissioners, and the property owner and any contract purchaser. No amendments with conditions shall be effective until such properly executed contract is filed with County Records, and proof of filing be submitted to the Planning Office. Such contract shall be properly signed and executed within 45 days after Commission actions on the amendment with conditions; provided, however, that the Commission may grant reasonable extensions in cases of practical difficulty. Such extensions shall not restrict the power of the county to rezone with or without conditions. In return for the granting of the petition for amendment, the property owner, contract purchasers and their heirs, successors and assigns shall perform those conditions set forth therein for the benefit of the public health, safety and welfare. Said contract shall be enforceable against the signing parties, their heirs, successors and assigns by the county by appropriate action in law or suit in equity.

(6) Failure to fulfill any conditions to amendments within the time limitations may be grounds for amendments to the zoning map (changes in zone) upon initiation by the proper parties pursuant to the procedure set forth in §§ 152.750 through 152.777 of this chapter.

(7) The county may require a bond in a form acceptable to the county or a cash deposit from the property owner or contract purchaser in such an amount as will assure compliance with the conditions imposed pursuant to this section. Such bond shall be posted at the same time the contract containing the conditions to the amendment is filed with County Records.

(8) Improvements to adjacent roads. The county may require improvements to county or public roads, or recorded easements, abutting any parcel of land as a condition of granting an amendment to the zoning map for that parcel (change in zone), where such improvements are necessary for public safety, pursuant to requirements of this chapter.

As noted in the discussion of the exception, no impacts of this proposal on adjacent properties or adjacent roads have been identified. Public services, to the extent available for rural development, are already provided to the site. A private domestic well and two approved septic disposal sites are also available.

§ 152.754 RECORD OF AMENDMENTS. The Office of County Records shall maintain records of amendments to the text and zoning map of this chapter.

§ 152.755 LIMITATION ON REAPPLICATION. No application of a property owner for an amendment to the text of this chapter or to the zoning map shall be considered by the Planning Commission within the one year period immediately following a previous denial of such request, except that the Planning Commission may permit a new application if, in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.


The applicants are certainly willing to comply with reasonable conditions of approval, if related to potential impacts of the proposal.

CONCLUSION

The County Planning Commission voted 7-0 to recommend the Board of Commissioners approve the proposed Plan Map and Zone Change. There was one absence and one absention. No conditions of approval were recommended.

The Board of Commissioners accepted the record, including exhibits 1-18, and voted 2-0 (one Commissioner was absent) to approve the Plan Map and Zone Change Request.

UMATILLA COUNTY BOARD OF COMMISSIONERS



Dennis D. Doherty, Chair



William S. Hansell, Commissioner

ABSENT

Emile M. Holeman, Commissioner

June 27, 2006