



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2524

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Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

December 12, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Jefferson County Plan Amendment
DLCD File Number 002-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 2, 2008

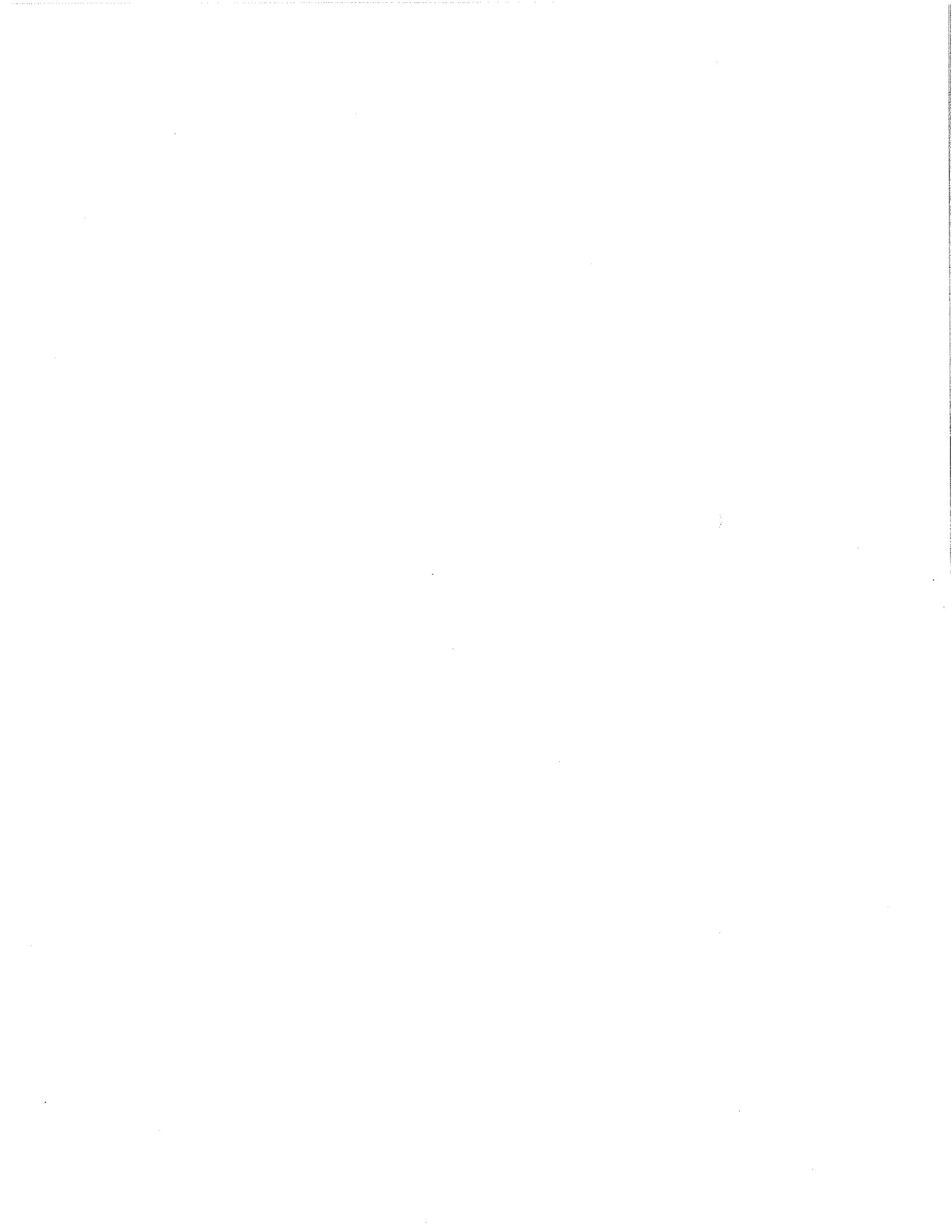
This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board 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 DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Sandy Mathewson, Jefferson County

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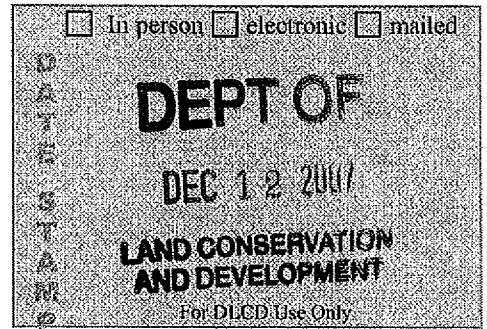


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DLCD

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: *Jefferson County*

Local file number: *07-PA-05*

Date of Adoption: *12/5/07*

Date Mailed: *12/10/07*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: *8/10/07*

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

*Changed zone from EFU A-1 to RR-2.
Exception to Goals 3 & 14.*

Does the Adoption differ from proposal? Please select one

Same

Plan Map Changed from: *Exclusive Farm Use* to: *Rural Land*

Zone Map Changed from: *EFU A-1* to: *RR-2*

Location: *North of Cherry Lane, one mile NE of Madras* Acres Involved: *10*

Specify Density: Previous: *80 ac. min.* New: *2 ac. min.*

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. *002-07 (16304)*

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

ODOT, Deschutes Valley Water District

Local Contact: *Sandy Mathewson*

Phone: *(541)475-4462* Extension: *4144*

Address: *85 SE 'D' St.*

Fax Number: *541-325-5004*

City: *Madras* OR Zip: *97741*

E-mail Address: *sandy.mathewson@co.jefferson.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 Complete Copies (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
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 now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also 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.

**BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON FOR
THE COUNTY OF JEFFERSON**

**IN THE MATTER OF AN AMENDMENT TO)
THE COMPREHENSIVE PLAN MAP AND)
ZONING MAP, AND AN EXCEPTION TO)
STATEWIDE PLANNING GOALS 3 AND 14)**

Ordinance No. 0-200-07

WHEREAS, Bill and Helen Houts own ten acres located at 670 NE Cherry Lane, tax lot 10-13-25-201. The property is zoned Exclusive Farm Use A-1. The Houts submitted an application for a Comprehensive Plan map and Zoning map amendment and exception to statewide planning Goals 3 and 14 in order to rezone the property to Rural Residential RR-2 so that it can be divided into two-acre residential lots; and

WHEREAS, the Jefferson County Planning Commission considered the proposal at a public hearing on October 11, and by a vote of 3 in favor and 2 opposed voted to recommend that the Board of Commissioners approve the application; and

WHEREAS, the Jefferson County Board of Commissioners conducted a public hearing on November 28, 2007 and accepted testimony from the applicant and his agent; and

WHEREAS, no persons appeared to testify in opposition to the application at either the Planning Commission or Board hearings, and no written testimony in opposition was submitted.

WHEREAS, at the conclusion of the November 28 hearing the Board closed the record. After considering the Planning Commission recommendation and testimony, the Board voted unanimously to AFFIRM the Planning Commission recommendation;

NOW THEREFORE, the Jefferson County Board of Commissioners hereby **ORDAINS** as follows:

1. Adoption of Comprehensive Plan Map and Zoning Map Amendments

Jefferson County hereby AMENDS the Comprehensive Plan map to change the designation of tax lot 10-13-25-201 from Exclusive Farm Use to Rural Land, and AMENDS the Zoning map to change the designation from Exclusive Farm Use A-1 to Rural Residential RR-2.

2. Adoption of Exception


Jefferson County hereby takes an exception to statewide planning Goals 3 and 14 for tax lot 10-13-25-201, and incorporates the justification for the exception into Appendix II of the Comprehensive Plan.

3. **Adoption of Findings**

The Board of Commissioners hereby accepts the arguments and evidence made by the applicant, and adopts the findings of fact set forth in the Planning Commission recommendation, which is incorporated herein by this reference.

Dated this 5TH day of December, 2007.

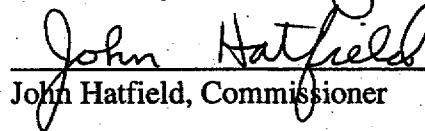
BOARD OF COMMISSIONERS:



Mike Ahern, Commission Chair



Bill Bellamy, Commissioner



John Hatfield, Commissioner

Attest:



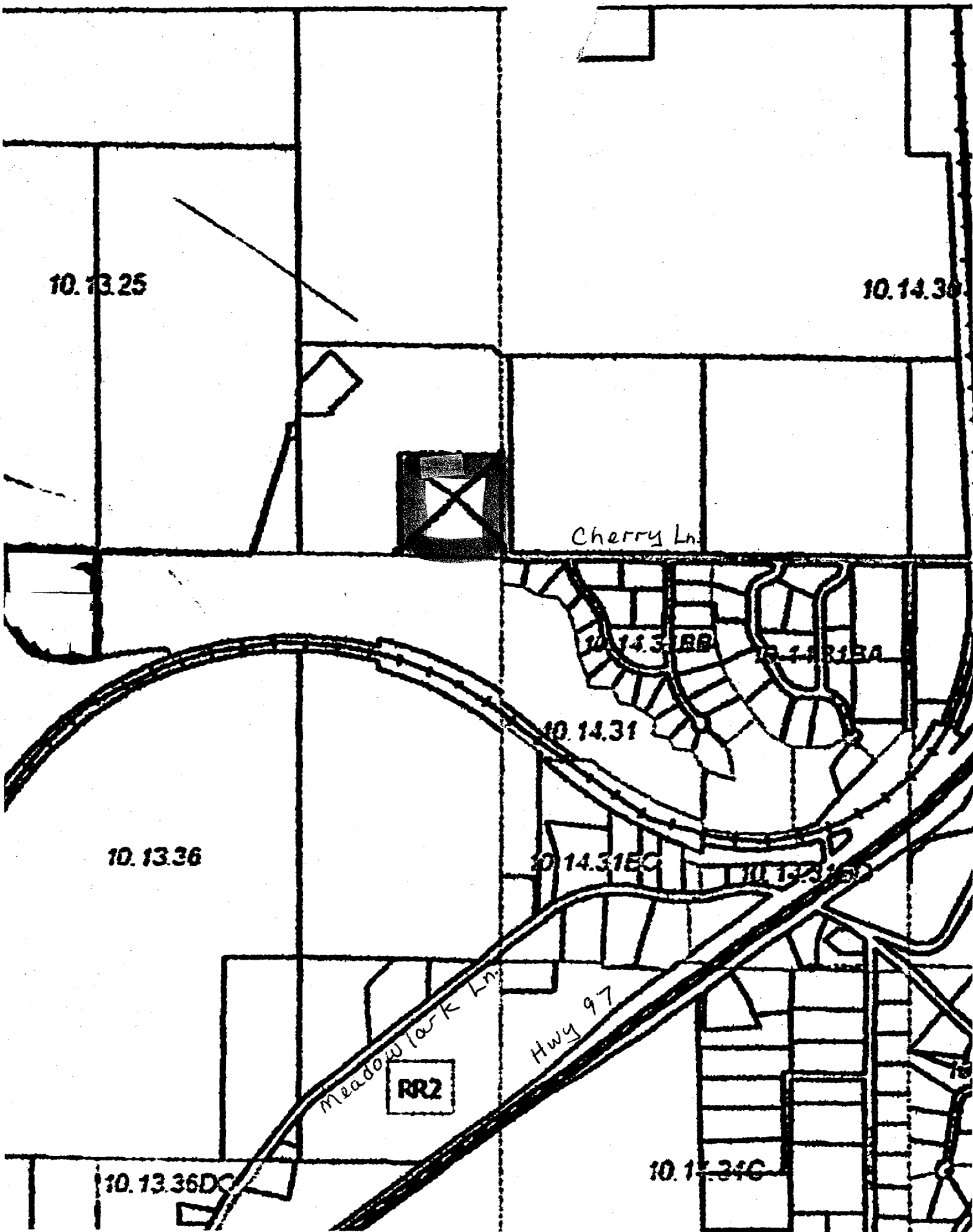
Appeal Information

Planning Casefile #07-PA-05

This decision may be appealed to the Land Use Board of Appeals within 21 days of the Jefferson County Board of Commissioners Decision. Oregon Revised Statute (ORS) 197.830 sets forth the review procedures. Copies of the Board of Commissioners decision and the state statute are available from the Community Development Department located at 85 SE "D" Street, Madras, Oregon 97741.

Board of Commissioners adoption date: December 5, 2007

The complete file is available for review at the Jefferson County Community Development Department. For further information, contact the Community Development Department. Phone (541) 475-4462.



10.13.25

10.14.30

Cherry Ln.

10.14.31BB

10.14.31BA

10.14.31

10.13.36

10.14.31EC

10.13.36

Meadowlark Ln.
RR2

Hwy 97

10.13.36DC

10.14.31C

Before the Planning Commission of Jefferson County

**In the Matter of a Comprehensive Plan Map)
Amendment, Zoning Map Amendment and)
Exception to Goal 3 to rezone ten acres from) Application # 07-PA-05
Exclusive Farm Use A-1 to Rural Residential)**

I. Background

An application was submitted by Bill and Helen Houts for a quasi-judicial revision to change the Comprehensive Plan Map designation from Exclusive Farm Use to Rural Land; change the Zoning Map designation from Exclusive Farm Use A-1 to Rural Residential RR-2; and take an Exception to Statewide Planning Goals 3 and 14 for a ten acre property located at 670 NE Cherry Lane, tax lot 10-13-25-201.

II. Applicable Criteria

Part 5 of the 2007 Jefferson County Comprehensive Plan; Chapter 8 of the 2007 Jefferson County Zoning Ordinance (JCZO); OAR 660-004, 660-014 and 660-015.

III. Public Hearing

The public hearing on the application was opened on September 27, 2007, but at the request of the applicant was continued until October 11, 2007, at which time the Planning Commission reviewed the application and staff report and accepted public testimony from the applicant and his agent. No other persons appeared at the hearing to testify either in favor or against the application.

IV. Findings of Fact and Conclusions

The Jefferson County Planning Commission, having conducted a public hearing, reviewed the staff report, taken testimony and deliberated on the evidence presented therein, hereby accepts the arguments made by the applicant and bases its decision on the following factors:

1. The property is ten acres in size and does not have access to irrigation water. Consequently, an intensive livestock operation would be the only feasible farm use that might be profitable. Such use would conflict with nearby residences.
2. There is an existing residence on the property, and the southern portion of the property contains steep slopes. The geography and development on the property make it different than the surrounding EFU land. Consequently, approval of the proposed exception would not lead to further exceptions being justifiable on nearby lands.

V. Recommendation

Based on the above findings and conclusions, the Jefferson County Planning Commission, by a vote of 3 in favor and 2 opposed, recommends that the Board of Commissioners approve Casefile 07-PA-05.

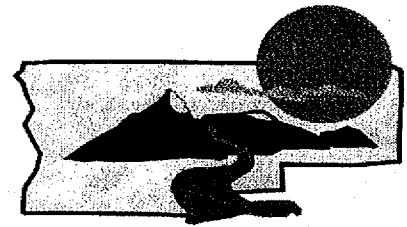
Signed Donald J. Martin

Date 26 Oct 07

Donald Martin, Chair, Jefferson County Planning Commission

JEFFERSON COUNTY
Community Development Department

85 S.E. "D" St. • Madras, Oregon 97741 • Ph: (541) 475-4462 • FAX: (541) 475-4270



September 27, 2007 hearing

STAFF REPORT
CASEFILE 07-PA-05

**Applicant/
Owners:** Bill and Helen Houts
670 NE Cherry Lane
Madras, OR 97741

Agent: Bruce White
PO Box 1298
Bend, OR 97709

Request: A request to change the Comprehensive Plan Map designation from Exclusive Farm Use to Rural Land; change the Zoning Map designation from Exclusive Farm Use A-1 to Rural Residential RR-2; and take an Exception to Statewide Planning Goals 3 and 14.

Tax Lot: T10S, R13E, Section 25, Tax Lot 201

Location: The property is located at 670 NE Cherry Lane.

Zoning: Exclusive Farm Use A-1 (EFU A-1)

Soils: According to the NRCS Soil Survey, the property is composed of the following soils:

- A. 40% 80D Licksillet-Redcliff very gravelly loams, 15 – 30% south slope, agricultural capability class VIe.
- B. 45% 2A Agency loam, 0 – 3% slopes, agricultural capability class IVs if not irrigated, IIIs if irrigated.
- C. 15% 87A Madras loam, 0 – 3% slope, agricultural capability class IVs if not irrigated, IIs if irrigated.

The 2A and 87A soils are classified as prime if irrigated. According to Assessor's data the property is not irrigated, so it is not high-value farmland.

Lot Legality: The subject property, tax lot 201, is not a separate, lawfully created parcel. It was created by partition in 1976 when the minimum lot size for the zone was 40 acres. Since tax lot 201 is only 10 acres, it did not meet the requirements to be recognized as a separate parcel. Minutes from the County Court meeting that approved the partition state that the "Court told Bill Houts that the restriction on the deed will have to read that the 10 acres will have to go with the

40 acres” and the motion for approval was “for a ten acre parcel with Deed restrictions to the 40 acres.” No record of the required deed restrictions was found. The 10 acres referred to is tax lot 201, which was purchased by William and Helen Houts by warranty deed. The 40 acres referred to was presumably the remainder of the southeast corner of the southeast corner of Section 25, consisting of what are now tax lots 203, 204 and 207. The Houts entered into a contract to purchase this property at the same time as they purchased tax lot 201. Information indicates that the 10 acres was obtained separately so that it could be used as collateral for a loan to build a house. The 30 acres that was obtained by contract was foreclosed, but the Houts retained the 10 acres. Pursuant to ORS 92.010(7)(a), a division of land resulting from a foreclosure is not a partition, so does not create separate parcels. In order to correct the situation tax lot 201 would need to be consolidated back into a single parcel with tax lots 203, 204 and 207. However, if this application is approved tax lot 201 could lawfully be divided from the remainder of the parcel.

APPLICABLE STANDARDS:

Part 5 of the 2007 Jefferson County Comprehensive Plan; Chapter 8 of the 2007 Jefferson County Zoning Ordinance (JCZO); OAR 660-004, 660-014 and 660-015.

FINDINGS OF FACT:

A. A Comprehensive Plan Map amendment is required to change the designation of the property from Exclusive Farm Use to Rural Land. Since the application involves a single property, it is a quasi-judicial land use decision. 2007 Jefferson County Comprehensive Plan Part 5, Quasi-Judicial Amendments, states that in order to be approved, the proposed amendment must:

1. *Comply with applicable Statewide Planning Goals, Oregon Revised Statutes and Administrative Rules, or comply with requirements for an exception to the goal(s);*

Finding: The County’s Comprehensive Plan is under appeal so has not been acknowledged. Consequently, the statewide planning Goals are directly applicable and must be addressed. Compliance with the Goals is addressed in finding C. Oregon Revised Statutes (ORS) 197.732 states that a local government may adopt an exception to a goal, subject to compliance with [administrative] rules adopted by LCDC. The Administrative Rule requirements for taking an exception are addressed in finding D.

2. *Comply with all applicable Comprehensive Plan goals and policies; and*

Finding: The following Comprehensive Plan policies are applicable:

Goal 3, policy 1.2: *Lands within the North Unit Irrigation District boundary should be zoned Exclusive Farm Use A-1. Dwellings that are not in conjunction with farm use should not be permitted in the A-1 zone in order to prevent adverse impacts to farming practices.*

Finding: The subject property is in the NUID boundary, although it is not irrigated.

Goal 6, policy 1.7: *Impacts to surrounding lands should be considered before lands are rezoned. Impacts should be mitigated whenever possible, such as by providing buffers between different types of land use activities.*

Finding: The property is on the edge of a rim, with steep slopes dropping off to the south. To the north, northwest and east are large parcels made up of agricultural soils, but that are not in production due to a lack of irrigation water. To the southeast is a developed rural residential subdivision. Due to the lack of intensive agricultural use on adjacent lands, rural residential development on the subject property would have minimal impact to the surrounding lands.

Goal 7, policy 4.2: *Property in an agricultural or forest zone should not be rezoned to a rural residential or other nonresource zone unless structural fire protection can be provided.*

Finding: The property is in the Jefferson County RFPD, so structural fire protection could feasibly be provided.

Goal 10, policies:

- 1 *Sufficient rural residential land should be provided to meet the need to accommodate population growth and the demand for rural home sites outside city limits.*
 - 1.1 *Rural residential areas should have minimum lot or parcel sizes of from 2 to 20 acres. These sizes typically permit septic disposal systems while not increasing densities beyond levels which would conflict with other rural and agricultural uses.*
 - 1.2 *Increasing the density in existing rural residential areas is preferable to rezoning new areas, except when the existing area is in close proximity to a city and increasing the density would limit the ability of parcels to be used for future urban development.*
- 2 *Criteria for rezoning lands to Rural Residential should be established.*
 - 2.1 *Whenever possible, irrigated farm land should not be rezoned for rural residential development. Nonirrigated farm land or range land is more appropriate for rezoning, provided there will be no significant impact to nearby farming operations.*
 - 2.2 *Whenever possible, areas proposed to be rezoned for rural residential development should be located near or adjacent to existing rural residential development, but should not be in a location where a city is likely to expand unless the minimum lot size will be ten acres or larger. Divisions of rural residential land near a city should include a shadow plat to show how the land can be efficiently redeveloped at an urban scale if annexed.*

2.3 *Areas proposed to be rezoned for rural residential development should have adequate water, road access, law enforcement, fire protection and schools.*

Finding: The proposal is for a 2-acre lot size, which would allow a maximum of five lots. Because of steep slopes that would limit building on part of the property, and the location and size of the existing development on the property, new dwellings would likely be clustered closer together than a typical 2-acre rural residential area. Policy 1.2 would not be met because the proposal involves rezoning a new area rather than increasing the density of an existing rural residential area. The proposal conforms to policy 2.1 because the property is nonirrigated farm land, and there would be no significant impact to nearby farming operations because none of the adjacent land is in farm use. The area proposed to be rezoned is near, but not adjacent to existing rural residential development. The area is far enough from the city limits that it is not in an area likely to be added to the urban growth boundary in the foreseeable future. Adequate services are available to serve the proposed development, in conformance with policy 2.3 - water is available from Deschutes Valley Water District, Cherry Lane is adequate to provide road access, law enforcement would be provided by the County Sheriff's Department, fire protection would be provided by Jefferson County RFPD, and the property is in the 509J school district.

Goal 13, policies:

- 1 *Conservation of energy should be considered when an application is submitted to rezone property.*
- 1.1 *Areas proposed to be rezoned to industrial, commercial or rural residential should be in close proximity to existing cities or rural communities in order to reduce transportation energy costs.*

Finding: By road, the subject property is 2.2 miles from the Madras city limits. Consequently, transportation energy costs will be minimal.

3. *Be necessary due to changes in physical, economic or social conditions, population growth, or development patterns which require an adjustment in the land use designations in the area where the amendment is proposed.*

Finding: The application states that the change is necessary to accommodate a desire for higher-end homes in the Madras area. No explanation was provided as to why the land use designation in this particular area should be changed to meet that alleged need.

- B. The proposal involves changing the Zoning Map designation from EFU A-1 to RR-2. Jefferson County Zoning Ordinance Section 803.2 contains the approval criteria for zoning map amendments, as follows:

An amendment to the Zoning Map may be approved if it complies with the approval criteria in this Section. The burden of proof is on the applicant to submit sufficient information to demonstrate that the application complies with the approval criteria. For instance, a traffic impact study in accordance with Section 421 may be needed to show compliance with criterion (F).

A. *The zoning designation will conform to the Comprehensive Plan Map designation;*

Finding: The application includes a request to change the Comprehensive Plan Map designation from Exclusive Farm Use to Rural Land. Rural Land is the Comprehensive Plan designation for Rural Residential zones.

B. *The amendment is consistent with other Zoning Ordinance requirements including, but not limited to, wildlife habitat, bird habitat and riparian protection standards;*

Finding: The property is not in a wildlife habitat, bird habitat or riparian protection area, and there are no other designated Goal 5 resources on or near the property. All applicable Zoning Ordinance requirements for rezoning property are addressed in this report.

C. *The amendment will cause no significant adverse impact to other properties in the vicinity due to factors such as water quality, drainage, air quality or noise;*

Finding: There are no streams or wetlands on the property, and domestic water in the area is provided by the Deschutes Valley Water District. There should be no significant adverse impact to water quality in the area provided that sewage disposal systems that meet DEQ requirements are installed to serve the proposed residential development. Subdivision regulations require that a drainage plan be submitted demonstrating that all runoff will be retained on site before a plat creating new lots is signed by the County and recorded. Residential use does not normally have a significant adverse impact on air quality or create significant noise.

D. *The amendment will not force a significant change in or significantly increase the cost of farming or forest practices on surrounding resource land;*

Finding: Surrounding lands are not being used for farming or forestry due to a lack of irrigation water.

E. *Adequate public safety, fire protection, sanitation, water and utility facilities and services are available or will be provided to serve uses allowed in the proposed zone;*

Finding: The area is served by the County Sheriff and Jefferson County RFPD. On-site septic systems would need to be installed for sanitation. Water, utilities and other services already serve the property and are available to serve the additional proposed lots.

F. *The uses allowed in the proposed zone will not significantly affect a transportation facility identified in an adopted Transportation System Plan by:*

1. *Changing the functional classification of an existing or planned transportation facility;*

2. *Allowing 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*
3. *Reducing the performance standards of the facility below the minimum acceptable level identified in the Transportation System Plan (LOS C).*

A Traffic Impact Study in accordance with Section 421 may be required to show compliance with this standard.

Finding: The property is accessed by Cherry Lane from Highway 97. Cherry Lane ends at the north end of the property. This portion of Cherry Lane is a high-volume local road serving approximately 50 existing lots and dwellings. Dwellings generate on average 9.6 vehicle trips per day. The existing dwellings thus make 480 daily trips. If the zone change is approved, four new lots could potentially be created, which would add 38 daily trips. High-volume local roads have an average of 150-600 daily trips. The next higher functional classification is a low volume minor collector, which has an average of 600-1,200 daily trips. Since the average trips would continue to be less than 600, the functional classification of Cherry Lane would not change and the level of development would continue to be consistent with a high-volume local road. A Traffic Impact Study was not submitted. However, staff does not believe that adding 38 daily trips would reduce the performance standard of the road below Level of Service C.

- G. *If the proposed amendment is for a smaller minimum lot size in an existing Rural Residential zone, the application shall meet the requirements for an exception to statewide planning Goal 14; and*

Finding: The property is not in an existing Rural Residential zone, so this criterion is not applicable.

- H. *If the proposed amendment involves taking an exception to statewide planning Goals 3 or 4 to rezone the property from Exclusive Farm Use A-1, Exclusive Farm Use A-2, Range Land or Forest Management to a Rural Residential zone, the minimum lot size shall be at least ten acres unless the application meets the requirements for an exception to statewide planning Goal 14 in accordance with OAR 660-004-0018.*

Finding: The proposal involves an exception to rezone the property from EFU A-1 to RR-2. The requirements for taking an exception to Goal 14 are addressed in finding G.

- I. *The following criteria shall be met if the proposed amendment involves rezoning the property to Exclusive Farm Use A-2:*
1. *The area to be rezoned is at least 500 acres and consists of lawfully created parcels;*
 2. *At least 50 percent of each parcel proposed to be rezoned is made up of agricultural capability class VI – VIII soil;*
 3. *The area lies east of the Crooked River, Lake Billy Chinook and the Warm Springs Indian Reservation;*
 4. *No water rights are available to the parcels proposed to be rezoned; and*
 5. *The area is within three miles of a school or school bus route.*

Finding: The proposal is to rezone the property to RR-2, not EFU A-2, so these criteria are not applicable.

- C. The application must comply with the statewide planning Goals. The Goals are found in OAR 660-015.

Finding: Statewide planning Goal 1 requires that the county provide the opportunity for citizens to be involved in the planning process. Notice of the public hearings to consider the proposal was mailed to all property owners within 750 feet of the subject property and was published in the Madras Pioneer. Providing the opportunity for public input complies with Goal 1. The revised Comprehensive Plan and Zoning Ordinance set out procedures and regulations for land use decision-making, in compliance with Goal 2.

Goal 3 requires the preservation and maintenance of agricultural lands. Agricultural lands are defined as being predominantly composed of agricultural capability Class I – VI soils in eastern Oregon. The subject property is made up of Class IV soils, so has been protected as agricultural land through EFU zoning. An exception to Goal 3 has been requested.

Goal 4 is to conserve forest land. The subject property is not forest land so is not subject to Goal 4. There are no designated Goal 5 resources on or near the property, so Goal 5 is not applicable. Goal 6 requires that the air, water and land resources of the state be maintained or improved. The uses allowed in a Rural Residential zone generally do not result in significant degradation of air, water or land resources.

The property is not subject to any significant natural hazards (Goal 7). There are no known geologic faults in the county, and the earthquake hazard is considered to be moderate. Approximately 70 percent of the property has flat terrain, but the remainder slopes steeply to the south. Development on the sloping portion of the property would be hazardous. The property is not in a mapped flood hazard area. The property is in a fire district, and measures, such as construction of fuelbreaks around structures, could minimize the wildfire hazard.

The property is not needed to meet the recreational needs of the citizens of the county, so the proposal does not conflict with Goal 8. Goal 9 requires jurisdictions to provide adequate opportunities for economic development. No industrial or commercial uses have been proposed, so Goal 9 is not applicable.

Goal 10 requires that sufficient buildable lands be provided in urban and urbanizable areas to provide for the housing needs of the citizens of the state. The property is in a rural area, so Goal 10 requirements to meet housing needs are not applicable. Goal 11 requires that cities or counties develop a public facility plan for areas within a UGB containing a population greater than 2,500. The property is not in a UGB.

Goal 12 requires jurisdictions to provide a safe, convenient and economic transportation system. The proposed rezone would be consistent with the adopted Transportation System Plan because it would not change the functional classification of Cherry Lane or lower the level of service of the road.

The proposal conserves energy because the property is adjacent to the city, so energy expended for transportation will be minimized, in accordance with Goal 13.

Goal 14 requires local governments to provide for an orderly and efficient transition from rural to urban land uses, and to accommodate urban population and employment inside urban growth boundaries while ensuring the efficient use of land. The subject property is a mile from the UGB, but is not in an area likely to be added to the UGB or an urban reserve area. Goal 14 is addressed further in findings F and G.

D. The property is currently protected as agricultural land under statewide planning Goal 3. An exception to the goal is required in order to rezone the property for residential use. There are three types of exceptions. The first is for lands that are already "physically developed" to the extent that they are no longer available for uses allowed by the applicable goal, in this case agricultural use. The second type of exception is for lands that are "committed" to uses not allowed by the goal because existing adjacent uses and other factors make uses allowed by the goal impracticable. The third type of exception requires "reasons" to justify why the state policy embodied in the applicable goals should not apply. The applicant has applied for a "committed" exception. OAR 660-004-0028 states:

- (1) *A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;*
- (2) *Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*
 - (a) *The characteristics of the exception area;*
 - (b) *The characteristics of the adjacent lands;*
 - (c) *The relationship between the exception area and the lands adjacent to it; and*
 - (d) *The other relevant factors set forth in OAR 660-004-0028(6).*
- (3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*
 - (a) *Farm use as defined in ORS 215.203;*
 - (b) *Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
 - (c) *Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*

- (4) *A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.*
- (5) *Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.*
- (6) *Findings of fact for a committed exception shall address the following factors:*
- (a) *Existing adjacent uses;*
 - (b) *Existing public facilities and services (water and sewer lines, etc.);*
 - (c) *Parcel size and ownership patterns of the exception area and adjacent lands:*
 - (A) *Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;*
 - (B) *Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.*
 - (d) *Neighborhood and regional characteristics;*
 - (e) *Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements,*

or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

- (f) *Physical development according to OAR 660-004-0025; and*
- (g) *Other relevant factors.*

Finding: The proposed exception area is ten acres in size and is developed with a residence. Approximately 1/4 of the property contains steep slopes, dropping off to the south and west. Air photos show that all adjacent land is undeveloped agricultural land with minimal vegetation. 660 feet to the north land is cultivated and is being used to grow crops. There are water tanks and a transmission tower approximately 500 feet to the northwest.

Southeast of the subject property is the Country View Estates subdivision. The subdivision is not directly adjacent to the subject property – only one corner of one subdivision lot meets the corner of the subject property. The land making up Country View has been zoned Rural Residential since 1981. The subdivision was platted in 1984. At that time, the County's zoning had been acknowledged. In 1997, as part of Periodic Review, the County was required to take exceptions for all rural residential areas, or else rezone them for resource use. A committed exception was taken for Country View estates since it had been platted, roads had been constructed, other infrastructure was in place, and many of the lots had been developed. Lands to the north and west of Country View continued to be zoned Exclusive Farm Use. Country View Estates was approved pursuant to the statewide land use goals. OAR 660-004-0028(6)(c) prohibits impacts from rural residential uses approved pursuant to the state goals from being used to justify a committed exception for nearby property.¹ LUBA has indicated that the mere presence of nearby residential development does not justify a committed exception to Goal 3 unless it can be shown that there are conflicts between the residential development and agricultural use of the subject property or some other explanation of why the relationship between the residential development and the subject property renders farm use impracticable.² The application states that residents of Country View might object to noise, dust, overspray and smells associated with farming activities, or there might be conflicts if farm machinery uses Cherry Lane to get to the property. This is conjecture only. No evidence of actual conflicts has been provided. The Court of Appeals has indicated that conflicts between rural residential development and agricultural land are, "at best, make-weights."³ Although such considerations may be a factor in showing that resource use is impracticable, they are not conclusive.⁴ The Court of Appeals stated in *1000 Friends of Oregon v. LCDC*, 69 Or App 717, 728, 688 P2d 103 (1984):

"People who build houses in an agricultural area must expect some discomforts to accompany the perceived advantages of a rural location. If problems of this sort by themselves justified a finding of commitment, it would be impossible to establish lasting boundaries between agricultural and residential areas anywhere, yet establishing those boundaries is basic to the land use planning process."

¹ *Friends of Yamhill County v. Yamhill County*, 38 Or LUBA 62 (2000).

² *Wodarczak v. Yamhill County*, 34 Or LUBA 453 (1998).

³ *Prentice v LCDC*, 71 Or App 394, 403, 692 P2d 642 (1984).

⁴ *DLCD v. Yamhill County*, 31 Or LUBA 488 (1996).

Additionally, LUBA has indicated that, absent evidence of conflicts, the fact that access to resource land is via a county road that passes through an area of rural residential homes is not a sufficient basis to conclude that a property is irrevocably committed to uses not allowed by the goal.⁵

The property has agricultural capability class IV soils, but the lack of irrigation water limits the types of crops that can be grown. The soils are not suitable for growing merchantable tree species. Steep slopes make most types of agriculture unfeasible on approximately 1/4 of the property. An area about 125 feet wide adjacent to the northern property line and most of the eastern half of the property could conceivably be used for some type of agriculture. The property is receiving special assessment as farm land. A residence, driveway, large gravel parking area, landscaping and septic drainfield occupy the center of the property. The location of these improvements hampers the ability to farm the property. However, when considering physical development according to OAR 660-004-0025, it must be shown that the property has been physically developed to such an extent that all Goal 3 or 4 resource uses are precluded.⁶ OAR 660-004-0025(2) also states that “uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.” According to Assessment information the dwelling was constructed in 1977. At that time the property was in an EFU A-1 zone and dwellings for owners and farm operators were permitted outright. The County’s land use regulations were not acknowledged in 1977, but state rules also allowed dwellings in conjunction with farm use. Additionally, LUBA has indicated that the characteristics of the proposed exception area should not be given “exclusive or preponderant weight” when impacts from adjacent properties are not sufficient to support an irrevocably committed exception.⁷

Cherry Lane dead-ends at the northern boundary of the subject property. Deschutes Valley Water serves the property. Road access and public water are commonly provided to dwellings on agricultural land, and do not contribute to irrevocably committing the property to non-resource use.

LUBA has indicated that it is the relationship between the subject property and adjacent lands that determines whether a property is irrevocably committed to nonresource use.⁸ While the adjacent lands are not currently being farmed, most are part of larger tracts. Tax lot 203, which borders the subject property on the north and west, is under the same ownership as an 80-acre property to the north, which is being used to grow crops (tax lot 205). The property to the south is part of a tract of over 600 acres owned by Binder LLC, which makes up the majority of the land between the subject property and Highway 26 to the west. To the east is a 40-acre parcel. Although none of these adjacent lands are being farmed, they also are not developed for uses that commit the subject property to non-resource use. It also should be noted that the proposed exception area is not a lawfully created separate parcel, but is part of a larger 40-acre parcel with tax lot 203.

⁵ *Friends of Linn County v. Linn County*, 53 Or LUBA 420 (2007).

⁶ *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995).

⁷ *DLCD v. Coos County*, 39 Or LUBA 445 (2000).

⁸ *Friends of Linn County v. Linn County*.

The subject property is located north and west of Cherry Lane. Except for the portion of the road adjacent to the subject property, Cherry Lane runs in an east – west direction following section lines. The road is somewhat of a dividing line, with urban and rural residential uses occurring south of the road, and agricultural lands occurring on the north side of the road. If the subject property is rezoned, it would be the only nonresource land on the north side of Cherry Lane between Highway 97 and Highway 26.

- E. OAR 660-004-0018(2) states: *“For “physically developed” and irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:*
- (a) *That are the same as the existing land uses on the exception site;*
 - (b) *That meet the following requirements:*
 - (A) *The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and*
 - (B) *The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and*
 - (C) *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;*
 - (c) *For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, “Planning and Zoning of Unincorporated Communities”, if applicable, or*
 - (d) *That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714*

Finding: The RR-2 zone would allow single family residential use. This is the same as the existing use of the subject property. Overall density would be one dwelling per two acres. However, steep slopes make approximately ¼ of the property unsuitable for residential development, which would likely result in the dwellings being clustered in fairly close proximity. Each lot would need to be served by an individual on-site septic system, in accordance with the requirement that the land remain rural. Public water and utilities are available, but will not result in making the land urban rather than rural.

Tax lot 1103, which is adjacent to the east of the subject property, is predominantly composed of the same soil type as the subject property, is not being farmed, contains areas of steep topography, and is bordered along its southern boundary by Cherry Lane and the Country View Estates subdivision. The owner of tax lot 1103 is on record as wanting to develop the property, having filed a Measure 37 claim and arguing that the

property should not be zoned EFU A-1. All of the arguments made in the present application about the subject property being committed to nonresource use could be made about tax lot 1103. Approval of the proposed exception area would further commit tax lot 1103 to nonresource use because it would increase the amount of rural residential development surrounding it.

If an exception is approved for the subject property, up to four new dwellings could be constructed on the ten acre property, which is the same overall density as Country View Estates. Public facilities and services would be the same as those currently serving Country View Estates. The application asserts in part that Country View Estates commits the property to nonresource use because rural residential use and normal farming practices are incompatible due to potential complaints about noise, smoke, odors and transportation of farm machinery. If that is the case, then development of the subject property would not be compatible with potential or future resource use of any of the adjacent properties.

F. OAR 660-004-0040(7)(i) states:

For rural residential areas designated after the effective date of this rule, the affected county shall either:

- (A) *Require that any new lot or parcel have an area of at least ten acres, or*
- (B) *Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements for an exception to Goal 14 in OAR 660, Division 014. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."*

Finding: The proposal is to rezone the property to RR-2, with a two acre minimum lot size. Since this does not comply with (A), an exception to Goal 14 is required.

G. OAR 660-014-0040 contains the requirements for taking an exception to Goal 14:

- (1) *As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.*
- (2) *A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.*
- (3) *To approve an exception under section (2) of this rule, a county must also show:*

- (a) *That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;*
- (b) *That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development 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 on other undeveloped rural lands, considering:*
 - (A) *Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and*
 - (B) *Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.*
- (c) *That Goal 2, Part II(c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:*
 - (A) *Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and*
 - (B) *Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.*
- (d) *That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and*
- (e) *That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.*

Finding: The proposed rural residential lots are not necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource. The application asserts that the reason that an exception is justified is to meet a need for high-end housing to help attract people of means to the community, basing this assertion on the Madras Urbanization Study. The Urbanization study has not been adopted by the County. The Court of Appeals has held that a local government violates Goal 2 if it bases a planning

decision on a study that has not been incorporated into its Comprehensive Plan.⁹ Even if the Urbanization Study could be relied upon, the premise of the study is that needed housing types, including high-end housing, needs to be provided inside the Madras city limits, not in the unincorporated area of the county. Additionally, relying on a “need” for any particular housing type is not adequate to satisfy the requirements of OAR 660-014-0040. Housing need is based on statewide planning Goal 10, and must be met within urban growth boundaries. The application does not tie the purported need for high-end housing to Goal 10, but asserts that providing the opportunity for such housing will improve the economy of the county under statewide planning Goal 9 because it will attract people of means who will provide capital and expertise for business enterprises. If the application is approved, the County has no authority to require that the lots be used for high-end housing. Nor is there any evidence or assurance that the owners of the lots would bring new business opportunities or otherwise contribute to economic development in the County.

The application asserts that the proposed two-acre lots cannot be reasonably accommodated within the Madras city limits or urban growth boundary because Goal 10 precludes the provision of lots of that size on urban land. Although this assertion is likely correct, it is not a valid reason for approving an exception to Goal 14. There is no obligation under state statutes and rules to provide additional rural residential land.

CONCLUSION: The application does not comply with the requirements for a “committed” exception to Goal 3, which require a showing that existing adjacent uses and other relevant factors make agriculture and forestry on the proposed exception area impracticable. All adjacent land is vacant with the exception of unmanned water tanks and a transmission towers. Although the property is near Country View Estates, pursuant to OAR 660-004-0028(6)(c)(A) nonresource parcels created pursuant to statewide planning goals shall not be used to justify a committed exception. Consequently, there are no adjacent uses that make agricultural use on the property impracticable.

The application does not comply with OAR 660-004-0018(2)(b)(B), which requires that the uses, density and public facilities and services allowed on the exception area will not commit adjacent or nearby resource land to nonresource use. Approval of an exception for the subject property would make it more likely that the 40-acre parcel that is adjacent to the east could make an argument that it also is committed to nonresource use.

The application does not comply with the requirements in OAR 660-014-0040 for taking an exception to Goal 14 to allow lots less than ten acres in size because inadequate reasons have been provided to justify why two-acre lots should be allowed on this particular property.

RECOMMENDATION: Staff recommends that casefile 07-PA-05, an application to change the Comprehensive Plan Map designation of tax lot 10-13-25-201 from Exclusive Farm Use to Rural Land; change the Zoning Map designation from Exclusive Farm Use A-1 to Rural Residential RR-2; and take an Exception to Statewide Planning Goals 3 and 14, be denied.

⁹ *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 124 P3d 1249 (2005).