



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/22/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 002-09

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: Monday, January 04, 2010

This amendment was submitted to DLCD for review 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Dana M. Gibson, Polk County
Gloria Gardiner, DLCD Urban Planning Specialist
Gary Fish, DLCD Regional Representative
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA

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: **Polk County** Local file number: **LA 09-01**
 Date of Adoption: **12/9/2009** Date Mailed: **12/15/2009**
 Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **8/4/2009**
 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".
A zone change of two parcels that total approximately 3 acres from Public and Private Education Facilities (PE) to Exclusive Farm Use (EFU).

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **N/A** to:
 Zone Map Changed from: **PE** to: **EFU**
 Location: **9070 & 9000 Wallace Road NW, Salem, Oregon** Acres Involved: **3**
 Specify Density: Previous: **No minimum parcel size** New: **80 acres**

Applicable statewide planning goals:
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

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. _____

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

ODOT

Local Contact: **Jerry Sorte**

Phone: (503) 623-9237 Extension:

Address: **850 Main Street**

Fax Number: **503-623-6009**

City: **Dallas**

Zip: **97338**

E-mail Address: **sorte.jerry@co.polk.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.

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5
6 **BEFORE THE BOARD OF COMMISSIONERS FOR**
7 **POLK COUNTY, OREGON**
8

9 In the matter of Legislative Amendment LA 09-01)
10 Changing the zoning of two parcels totaling 2.95 acres)
11 From Public and Private Education Facilities to)
12 Exclusive Farm Use; located at 9000 & 9070 Wallace)
13 Road NW, Salem, Oregon (T6S, R3W, Section 8, Tax)
14 Lots 1200 and 1201).)
15

16 **ORDINANCE NO. 09-07**

17
18 **WHEREAS**, on August 4, 2009, at the request of the owners of the subject properties, the Polk County Board of
19 Commissioners initiated a legislative amendment (Legislative Amendment 09-01) to change the zoning of the parcels located at
20 9000 & 9070 Wallace Road NW, Salem, Oregon (T6S, R3W, Section 8, Tax Lots 1200 and 1201) from Public and Private
21 Education Facilities (PE) to Exclusive Farm Use (EFU); and
22

23 **WHEREAS**, on October 6, 2009 the Polk County Planning Commission conducted a duly noticed public hearing and
24 received written and oral testimony. The Planning Commission deliberated at the October 6, 2009 meeting, and unanimously
25 recommended that the Board of Commissioners change the zoning of the subject parcels to EFU; and
26

27 **WHEREAS**, on November 4, 2009, the Polk County Board of Commissioners held a duly noticed public hearing.
28 Commissioner Propes was absent. An opportunity was provided for members of the public to submit oral and written testimony.
29 The Board of Commissioners deliberated at the November 4, 2009 meeting, and Commissioners Ritchey and Dodge both voted
30 to approve Legislative Amendment 09-01; now, therefore:
31

32 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

- 33
34 Sec. 1. That Polk County adopts the findings in favor of the Polk County Zoning Map amendment identified in the Staff
35 Report section of the Board of Commissioners Memorandum dated October 28, 2009 shown on Exhibit A.
36
37 Sec. 2. That Polk County amends the Polk County Zoning Map as shown on Exhibit B.
38
39 Sec. 3. That Polk County determines that an emergency related to the economic welfare of the citizens of Polk County
40 is declared and this ordinance is effective immediately upon passage.
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42 Dated this 9th day of December 2009 at Dallas, Oregon.
43
44

45 **POLK COUNTY BOARD OF COMMISSIONERS**

46
47 *Tom Ritchey*
48 Tom Ritchey, Chair

49
50 *Ron Dodge*
51 Ron Dodge, Commissioner

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53
54
55 *unavailable for signature*
56 Mike Propes, Commissioner

57 Approved as to Form:

58 *David Doyle*
59
60 David Doyle
61 County Counsel

62
63 First Reading: 12-9-09

64
65 Second Reading: 12-9-09

66
67 Recording Secretary: *James Wheel*

091160

Staff Report Section of the Board of Commissioner's Memorandum Dated October 28, 2009 for Legislative Amendment 09-01:

I. NATURE OF REQUEST & BACKGROUND

The applicant is proposing to change the zoning of two contiguous parcels, that total 2.95 acres, from Public and Private Education Facilities (PE) to Exclusive Farm Use (EFU). The subject parcels currently have, and would continue to have, a Comprehensive Plan designation of Agriculture.

The subject parcels are both owned by Richard T., Sandra J., Leroy, and Joanne Martin, and located at 9070 & 9000 Wallace Road NW, Salem, Oregon (T6S, R3W, Section 8, Tax Lots 1200 and 1201). See Attachment A. The subject parcels were lawfully created in accordance with Polk County Subdivision and Partition Ordinance (PCSO) section 91.950(b) as evidenced by the recording of Partition Plat 2007-0024, dated February 1, 2007. That partition plat was authorized by Polk County Planning Authorization LP 06-09, dated June 26, 2006. LP 06-09 was approved when the subject property was owned by Willard and Mae Etta Kennel. The subject parcels are identified as Parcels 1 and 2 of Partition Plat 2007-0024. Based on a review of the Polk County Assessor records and the applicant's plot plan (Attachment A), the parcel identified as Tax Lot 1201 contains one dwelling and one accessory building, and the parcel identified as Tax Lot 1200 also contains one dwelling and one accessory building. Each parcel is served by an on-site sewage disposal system and receives water from a well. The subject parcels both have frontage along Highway 221, a minor arterial as defined on the Polk County Transportation Systems Plan, Figure 3. According to a conversation with the applicant on September 2, 2009, the subject property offers u-pick apples, grapes, walnuts, and cherries. These orchard and vineyard areas are depicted on the plot plan (Attachment A).

The subject parcels obtained their current zoning designation as a result of approval of Zone Change 79-04, dated July 10, 1979. That action changed the zoning of the subject property from Exclusive Farm Use-20 to PE, but did not change the Comprehensive Plan designation of the subject property, which remains Agriculture. The 1979 zone change was intended to allow the subject property to be used for housing in conjunction with the Western Mennonite School; which is located directly across Highway 221 from the subject parcels. The subject property is under private ownership, and according to the information in the application, has not been used as a part of the Western Mennonite School since 2006 when the subject property was sold from Willard and Mae Etta Kennel to the current owners. The owners of the subject parcels are requesting this zone change in order to better manage the property for agricultural purposes, and to have the ability to obtain a conventional loan on the property. The review and decision criteria for this application are listed in Polk County Zoning Ordinance Sections 115.060 and 170.070, and they are addressed in Section III of the staff report, below.

Based on a review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map 415053C0150F dated December 19, 2006, the northern portion of Tax Lot 1201 is located within the 100-year floodplain. There are no inventoried historic sites or Willamette River Greenway areas on the subject parcels. Based on a review of the Polk County Significant Resource Areas there are no inventoried significant resources located on the subject parcels. According to the National Wetlands Inventory (NWI) Mission Bottom Quadrangle, there are no identified significant wetlands located on the subject parcels. Based on Natural Resources Conservation Service (NRCS) soil data, Tax Lot 1201 contains approximately 74% high-value soils, and Tax Lot 1200 contains 100% high value soils. Soil reports for the subject parcels are included as Attachment B to this memo.

The subject parcels, and all contiguous properties are designated Agriculture on the Comprehensive Plan Map. Properties to the north, east, and south are zoned EFU. The Western Mennonite School property to the west is zoned PE.

Planning Division staff provided notification of the October 6, 2009 Planning Commission public hearing and the November 4, 2009 Board of Commissioner's public hearing for file LA 09-01 to the Dallas *Itemizer-Observer* Newspaper for publication on September 16, 2009. On September 10, 2009, Planning staff sent notice of both hearings to surrounding property owners and interested parties. On September 18, 2009, the applicant picked up two signs, one to post each parcel that same day. Notification of this legislative proceeding has been fulfilled pursuant to Polk County Zoning Ordinance (PCZO) Section 111.370.

II. COMMENTS RECEIVED

ODOT: ODOT has no problem with the land use change but they will need an access permit. Sight distance and safety issues may need to be worked out so please have them contact Robert Earl at 503-986-2902. Robert can go over the road approach application process with them.

No other comments were received as of the writing of this staff report.

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to change the zoning of a public zone under PCZO 170.070 may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. Staff's analysis and findings are provided below:

1. **ABANDONING USE: TRANSFER OF OWNERSHIP.** Whenever the existing use of any Public Zone, or a part of any such zone, is abandoned or the property transferred to private ownership for different use, the Planning Commission shall recommend to the Board of Commissioners appropriate rezoning for any such area. [Amended by Ordinance #96-3, dated June 5, 1996.] [PCZO 177.070]

Findings: The current property owners acquired the subject property on June 29, 2006, pursuant to Polk County Clerk Document 2006-10682. The subject property is under private ownership, and according to the information in the application, it has not been used as a part of the Western Mennonite School since the subject property was sold to the current property owners in 2006. The applicant included a letter with the application from Mark Rasmussen, Western Mennonite School Facilities Manager, which indicates that the School no longer has any interest in the subject parcels. The subject parcels are under private ownership and no longer used for school purposes. PCZO 177.070 requires that the Planning Commission recommend to the Board of Commissioners appropriate zoning for the subject parcels. The Planning Commission held a public hearing on October 6, 2009, and unanimously recommended that the Board of Commissioners change the zoning classification of the subject parcels from Public and Private Education Facilities to Exclusive Farm Use (EFU).

As discussed in the following sections of the staff report, Staff agrees with the applicant and the Planning Commission that the appropriate zoning for the subject parcels is EFU.

2. **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules.** If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]
 - (A) **Uses on land identified as high-value farmland and uses on land not identified as high-value farmland shall be limited to those specified in OAR 660-033-0120. Except as provided for in section (2) of this rule, counties shall apply zones that qualify as exclusive farm use zones under ORS chapter 215 to "agricultural land" as identified under OAR 660-033-0030 which includes land identified as high-value farmland and land not identified as high-value farmland. [OAR 660-033-0090(1)]**

Findings: The subject parcels are both currently designated Agriculture on the Comprehensive Plan Map and zoned Public and Private Education Facilities (PE). The applicant is requesting that the subject parcels be rezoned to Exclusive Farm Use (EFU) as an appropriate zoning to reflect that the subject parcels are no longer used in conjunction with the neighboring Western Mennonite School.

As defined in OAR 660-033-0020(1), "agricultural land" as defined in Goal 3 includes lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon. "Agricultural land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4. According to NRCS soil data, Tax Lot 1201 is composed of approximately 74% Class I-IV soils, and Tax Lot 1200 is composed of 100% Class I-IV soils. Neither parcel has been granted an exception to Statewide Planning Goals 3 or 4, nor are they located within an urban growth boundary. Both parcels are; therefore, "agricultural land" as defined in OAR 660-033-0020(1). Based on the fact that both parcels are "agricultural land," the rezoning of the subject parcels to EFU would be consistent with OAR 660-033-0090(1). The proposed zone change would not require an exception to any Oregon Statewide Planning Goals. Changing the zoning of the subject property to any zoning other than EFU would require an exception to Statewide Planning Goal 3.

Therefore, Staff concludes that the proposed zoning map amendment would be consistent with the Oregon Statewide Planning Goals, Oregon Revised Statutes, and Oregon Administrative Rules.

3. Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

(A) Agricultural Lands Element:

- (1) **To preserve and protect agricultural lands within Polk County.** [PCCP Section II, Element B, Agricultural Lands, Goal 1]
- (2) **To diversify agriculture within Polk County.** [PCCP Section II, Element B, Agricultural Lands, Goal 2]
- (3) **To preserve and protect those resources considered essential for the continued stability of agriculture within Polk County.** [PCCP Section II, Element B, Agricultural Lands, Goal 3]

(B) Polk County will place lands designated as agriculture on the Comprehensive Plan Map consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33 in an exclusive farm use zoning district. [PCCP Section II, Element B, Agricultural Lands, Policy 1.2]

Findings: The subject parcels are both currently designated Agriculture on the Comprehensive Plan Map and zoned PE. The applicant is requesting that the subject parcels be rezoned to Exclusive Farm Use (EFU) as the appropriate zoning to reflect that the subject parcels are no longer used in conjunction with the neighboring Western Mennonite School.

The applicant's proposal to rezone the subject property to EFU would be consistent with past comprehensive planning which designated the property Agriculture on the Comprehensive Plan Map. As described in Section 4 of the Polk County Comprehensive Plan (PCCP), the Agriculture Plan designation is implemented by the EFU zone. Also, changing the zoning of the subject property from PE to EFU would allow the subject parcels to be used for a broader range of uses, including the existing farm use of the property. According to a telephone conversation with the applicant on September 2, 2009, the subject property offers u-pick apples, grapes, walnuts, and cherries. Those orchard and vineyard areas are depicted on the plot plan (Attachment A).

Applying the EFU zone to the subject parcels would not introduce significant new negative impacts to surrounding properties. As described in PCZO 136.070, the EFU zone has a minimum parcel size of 80-acres, with limited exceptions. Consequently, if the EFU zone is applied to the subject parcels, they could not be divided further. Each of the subject parcels currently contains a dwelling, and as described in PCZO Chapter 136, the EFU zone only permits second dwellings under the terms and conditions for hardship dwellings and for commercial farming operations that require a dwelling for farm help. Based on the small size of the subject parcels, 1.60 acres and 1.35 acres, Staff believes it would be unlikely that applying the EFU zone to the subject parcels would result in the establishment of additional dwellings or the creation of new parcels. Also, the uses that are outright permitted in the EFU zone, such as farm use, and other resource related uses, are unlikely to attract substantially more traffic to the subject parcels. The subject parcels are currently managed for farm use, and there is no indication that these farm uses would change if this application is approved. Those more impactful uses in the EFU zone that could be approved through an administrative review or conditional use application process would require future review and approval through a land use application process.

Staff believes that the EFU zone would be the most suitable zone for the subject property, and other possible zoning designations, such as commercial, industrial, or acreage residential, would be less suitable. Any zoning other than EFU would require at least one statewide planning goal exception. The subject parcels are located within an unincorporated rural area and outside of an urban growth boundary. The subject parcels are bordered by a greenway parcel owned by the State of Oregon to the south and east zoned EFU, the Western Mennonite School to the west zoned PE, and an approximately 2 acre property to the north zoned EFU. Based on a review of the 2008 Polk County Aerial Photograph, the property to the north is used for rural residential purposes. The subject parcels each contain a dwelling and farming activities, so a commercial or industrial zoning designation would not be appropriate. A zoning designation of AR-5, which would allow the existing residential and farm use of the subject parcels, would require an exception to Statewide Planning Goals 3 and 14. According to statements by the applicant, the subject parcels are currently managed for farm use, so it is unlikely that a statewide planning goal exception would be supported at this time.

Based on a review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map 415053C0150F dated December 19, 2006, the northern portion of Tax Lot 1201 is located within the 100-year floodplain. The applicant has not indicated that any new development would occur in the floodplain as a result of the zone changing from PE to EFU. There are no inventoried historic sites or Willamette River Greenway areas on the subject properties. Based on a review of the Polk County Significant Resource Areas there are no inventoried significant resources located on the subject parcels. According to the National Wetlands Inventory (NWI) Mission Bottom Quadrangle, there are no identified significant wetlands located on the subject parcels.

Based on the above findings, the proposed zone change of the subject parcels from PE to EFU would comply with the above identified Comprehensive Plan policies. No other Comprehensive Plan policies or goals have been identified to be relevant to this proposal.

4. That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

Findings: The proposed zone change would implement the Polk County Comprehensive Plan, Agricultural Lands Element by applying the (Exclusive Farm Use) EFU Zoning District to the subject property. The current Public and Private Education Facilities (PE) Zone allows specific educational uses. Rezoning the subject parcels to EFU would allow the subject property to be used for a broader range of uses, including the agricultural activities that are currently present on the subject parcels. The subject parcels are currently used for residential purposes and managed to offer u-pick apples, grapes, walnuts, and cherries. The EFU zone would allow the continued farm use of the subject property. Such use would be of general public benefit because it would

allow the subject property to continue to contribute to the agricultural output of the County, be it on a small scale, by providing local food production.

5. Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

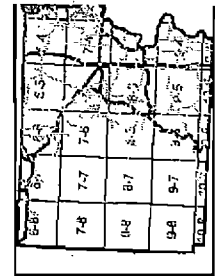
Findings: The subject parcels are not located within an urban growth boundary. Therefore, there are no intergovernmental agreements that apply to the subject parcels.

IV. CONCLUSION & RECOMMENDATION

Based on the findings above, Staff concludes that the proposed zone change would comply with all of the applicable review and decision criteria for a legislative amendment. Staff recommends that the Board of Commissioners conduct a public hearing and approve a zone change of the parcels identified on Attachment A from PE to EFU.

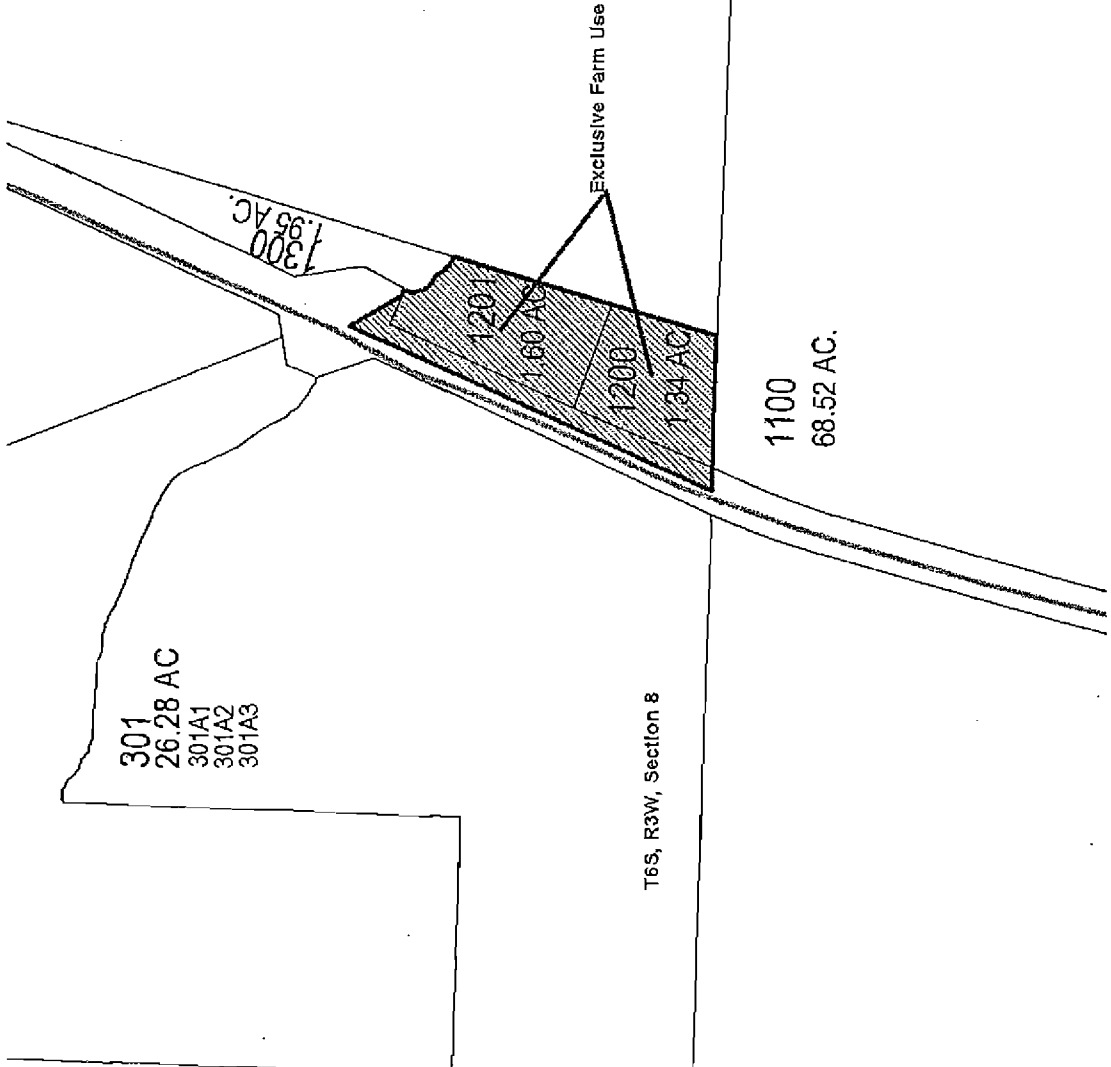
Community Development

- Roads
- STATEHWY
- Taxlot#9
- Taxlot Arrows#9
- Taxlot Boundaries
- taxlot#9



11/9/2019

LA 09-01



1 in. = 350 ft.

This map was produced using the Polk County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

091486

Polk County Community Development
Polk County Courthouse
850 Main Street
Dallas, Oregon 97338



TO:

Attn: Plan Amendment Specialist
Dept. of Land Conservation and
Development
635 Capitol St NE, Suite 150
Salem, OR 97301-2540