



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

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

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

### NOTICE OF ADOPTED AMENDMENT

August 15, 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 003-06



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: August 28, 2006**

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: Gloria Gardiner, DLCD Urban Planning Specialist  
Jon Jinings, DLCD Regional Representative  
Steven Santos, Dlcd Economic Development Planning Specialist  
Tamra Mabbott, Umatilla County

<paa> y/



FORM 2

D L C D 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

DEPT OF

(See reverse side for submittal requirements)

AUG 09 2006

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Umatilla County Local File No.: Z-285; T-06-029 (If no number, use none)

Date of Adoption: August 2, 2006 (Must be filled in) Date Mailed: August 7, 2006 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: August 7, 2006

- 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."

Rezone 17 acres m/L from Rural Light Industrial and Rural Residential to Retail Service Center for use as a "big box" retail business

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, except the Order specifically precludes a strip mall retail development and allows a "big box" retail only. Goal 14 exception also approved.

Plan Map Changed from: LI/Rural Residential to Commercial

Zone Map Changed from: RLI/RR-2 to Retail, Service, Commercial

Location: Intersection of Hwy 11 and State Line Road Acres Involved: 17 m/L

Specify Density: Previous: 1-2 Acres New: 1-2 acres

Applicable Statewide Planning Goals: 3, 14

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

DLCD File No.: 003-06(15054)

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. Yes:  No:  N/A

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

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

CWRD, Milton-Freewater, Dep't of Agriculture

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

Address: 216 S.E. 4th Street

City: Pendleton Zip Code+4: 97801

### 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](mailto:Larry.French@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

RECEIVED

MAY 02 2006

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY  
RECORDS

STATE OF OREGON

In the Matter of Amending )  
Comprehensive Plan and ) ORDINANCE NO. 2006-13  
Development Code to include )  
Goal 3 and 14 Exceptions and )  
Comprehensive Plan Map for )  
Commercial Use for CIFF )  
Enterprises )

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 CIFF Enterprises requesting Umatilla County to allow the re-zoning of rural property to allow for commercial use on property owned by Robert W. and Delores M. Jackson, and Richard W. and Janice E. Harvey, which would require an exception to Goals 3 and 14;

WHEREAS the Umatilla County Planning Commission held a public hearing on April 13, 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 Commissioners held a public hearing on May 2, 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 the adoption of the following amendment to the Umatilla County Comprehensive Plan:

To be added under the section entitled *East County Commercial* on Page XVIII-421:

The property (identified as Jackson/Harvey) located at the southwest intersection of State Highway 11 and Stateline Road, to be designated commercial is described as Lots 2 and 7, Grandview Orchard Tracts, as located in Section 13, Township 6 North, Range 35, East of the Willamette Meridian, Umatilla County, Oregon, excepting any roads and rights-of-way.

The County has previously approved a Goal 3 exception for the property based on the fact that the property is irrevocably committed to non-farm uses; therefore, Goal 3 does not apply. This section considers the standards applicable to an exception to Goal 14. The applicable criteria are set forth at OAR 660-014-0040.

OAR 660-014-0040(2) allows the County to adopt an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. The rule provides that the reasons that can justify the exception are not limited to those found in the rule. In this case, the County finds that the exception is justified in part by the site's location on a state highway immediately adjacent to an urban area outside of the State of Oregon, which provides a unique opportunity for economic development in Umatilla County. This characteristic is found nowhere else in the State of Oregon except the Portland metropolitan area.

The criteria for approving a Goal 14 exception are set forth at OAR 660-014-0040(3), which provides as follows:

(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.

**FINDING:** The Board finds that the proposed use cannot be reasonably accommodated in or through an expansion of existing urban growth boundaries. The closest urban growth boundary is that of Milton-Freewater, more than four (4) miles to the south, and the City is in support of the proposed use. The proposed use is justified by the proximity of the site to the State of Washington and the Walla Walla urban area (including College Place) and the site's location on a state highway, which provides easy access and high visibility.

(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.

FINDING: Long-term environmental, economic, social and energy consequences will not be significantly more adverse at this site than would typically result from the same proposal being located on other undeveloped rural lands. The site is not limited by soil, air, water or energy capacity nor will the commercial use adversely affect air, water, energy and land resources of the surrounding area. The property currently is zoned for industrial and rural residential uses, and the proposed use will not result in significantly more adverse ESEE consequences than uses already allowed under the existing zoning. The surrounding area along the Highway 11 corridor already consists of a mix of industrial and commercial lands, and is largely composed of Goal 3 exception areas. The amount of land included within the boundaries of the proposed urban development is appropriate for the proposed use, and the entire property must be rezoned in order to provide sufficient space for the development and related wastewater and sewage treatment.

(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

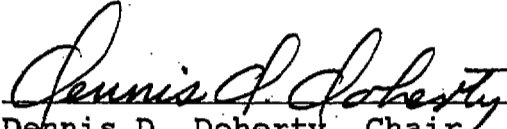
(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

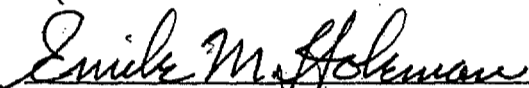
FINDING: Compatibility with adjacent uses will be ensured through the imposition of a condition of approval designed to mitigate potential impacts on nearby residential uses. Urban development at this location will not detract from the ability of nearby cities, such as Milton-Freewater, to provide public services.


The plan designation of the property is changed from Rural Residential and Light Industrial, to Commercial, and all maps in the Comprehensive Plan are changed to reflect this amendment.

DATED this 2nd day of May, 2006.

UMATILLA COUNTY BOARD OF COMMISSIONERS

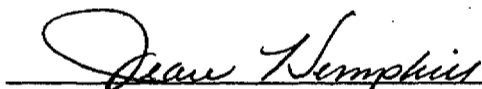
  
Dennis D. Doherty, Chair

  
Emile M. Holeman, Commissioner

  
William S. Hansell, Commissioner



ATTEST:  
OFFICE OF COUNTY RECORDS

  
Records Officer



**BEFORE THE UMATILLA COUNTY  
BOARD OF COMMISSIONERS**

	)	<b>Findings Of Fact</b>
<b>In The Matter Of</b>	)	<b>And Conclusions Of Law In</b>
<b>An Application By</b>	)	<b>Support Of Comprehensive</b>
<b>Ciff Enterprises For</b>	)	<b>Plan Map Amendment</b>
<b>Post-Acknowledgement Plan and</b>	)	<b>(File No. T-06-029) and Zoning</b>
<b>Zoning Map Amendments</b>	)	<b>Map Amendment (Umatilla</b>
	)	<b>County File No. Z-285)</b>

**I. DESCRIPTION OF APPLICATION AND SITE**

**Applicant:** CIFF Enterprises, P.O. Box 165, Walla Walla, WA 99362

**Site Location:** Southwest corner of Stateline Road and Highway 11  
Tax Lot Nos. 300, 700 and 701

**Site Acreage:** 18.34 acres

**Comprehensive  
Plan (the "Plan")**

**Map Designation:** Light Industrial ("LI") and Rural Residential ("RR-2")

**Zoning**

**Map Designation:** Rural Light Industrial and Rural Residential

- Requests:**
- (1) Tax Lot 1300 (8.86 acres) – amend Plan designation from Light Industrial to Commercial and amend zoning designation from Rural Light Industrial ("RLI") to Retail Service Center ("RSC") with a Limited Use Overlay ("LU") zone.
  - (2) Tax Lots 700 and 701 (9.44 acres) – amend Plan designations from Rural Residential to Commercial and amend zoning designations from RR-2 to Retail Service Center ("RSC") with a Limited Use Overlay ("LU") zone.
  - (3) Related exception to Statewide Planning Goal ("Goal") 14, "Urbanization," to allow urban levels of use on rural land.



## II. INTRODUCTION

The applicant proposes to designate the site to allow development of a large-format retail use immediately adjacent to the Washington State border, which will allow the county to compete economically with the Walla Walla, Washington urban area immediately across the Washington state line. This site is unique because no other site in Oregon, with the exception of the Portland metropolitan area, is in such close proximity to a competing urban area in an adjacent state. Neither the cities of Hermiston, Ontario, Klamath Falls nor Ashland are as close to urban areas in an adjacent state.

The site consists of three (3) tax lots. Tax lot 1300 is the northerly tax lot and contains 8.86 acres zoned RLI. Tax lot 700 is the southerly tax lot and contains 8.5 acres zoned RR-2. The third tax lot is located along an unimproved public road at the northeast corner of its intersection with Oregon Highway 11. Tax lot 701 is zoned RR-2 and contains .94 acres

The site has water rights. Sanitary sewerage disposal will be handled by a private, on-site system permitted through Umatilla County (the "county") and the Oregon Department of Environmental Quality ("DEQ"). Stormwater will be handled on site.

The site is currently in grass hay production. Three (3) curb cuts exist from the site to the state highway. The public road to the south is unimproved. The site is 4.6 miles north of the City of Milton-Freewater, Oregon. The site has two (2) water wells. Evidence in the record shows that this site can accommodate stormwater, sanitary sewage disposal and potable water needs without public (or municipal) services. The site is in close proximity to the cities of Walla Walla and College Place, Washington.

The county has previously approved Statewide Planning Goal 3, "Agricultural Lands" exceptions for the site based on findings that the property is irrevocably committed to non-agricultural uses. Therefore, an additional Goal 3 exception is not required; however, the applicant must meet the criteria for an exception to Goal 14.

## III. PROCEDURAL STATUS

The entire planning file was physically before the Board of County Commissioners (the "Board"). The Umatilla County Planning Commission recommended that the Board approve this application by a vote of 7-2.

The Board opened the public hearing on May 2, 2006 following notice as required by Umatilla County Development Code and ORS 197.763. Commissioners

Doherty and Holeman were present. Commissioner Hansell was absent. The Board determined that it had a quorum to proceed with the public hearing.

The Board asked for disclosure of ex parte contacts and none were revealed. The Board asked for challenges to its jurisdiction and no party objected.

The Board opened the public hearing for the applicant, followed by supporters, followed by opponents with rebuttal by the applicant. No party requested that the public hearing be continued or the written record held open. The applicant waived its right to final written argument.

The Board closed the public hearing and tentatively approved the application by a vote of 2-0. The Board directed that the applicant propose findings for review by County staff and adoption by the Board at a later date.

#### **IV. OVERVIEW**

As explained elsewhere in these findings, the Board finds that this is a unique site available for economic development in Umatilla County. The site is immediately south of the Washington state line and within close proximity to the cities of Walla Walla and College Place, Washington. No other site already subject to a Goal 3 exception is available for development and provides for a similar opportunity for economic development. The applicant testified that he believes the site to be competitive with the Walla Walla urban area across the state line.

The Board understands the objections raised by the Department of Land Conservation and Development ("DLCD") and other parties to this hearing and appreciates their testimony. However, the Board finds that ORS 197.340(1)(2) must be considered in this application. ORS 197.340(1) provides that both DLCD and the Land Conservation and Development Commission ("LCDC") "shall give the goals equal weight in any matter in which the goals are required to be applied." The Board finds this to mean that Goal 9 has as much weight as Goal 14 in this proceeding. The Board finds, based on substantial evidence in the whole record, that the economic development potential of this site outweighs any concerns regarding Goal 14, especially given two important facts.

First, as already noted, this site is already subject to a Goal 3 exception and is therefore not a resource site. Moreover, it is currently zoned to allow an industrial use. Many of the potential impacts discussed at the public hearing on May 2 that can be expected from an industrial use would be similar to impacts from a commercial use. Second, the Oregon Highway 11 corridor between Milton-Freewater and the Washington state line is already composed of many exception sites adjacent to the

state highway and has an existing commercial and industrial development along the state highway. The Board makes two commitments through these findings.

First, the Board will carefully scrutinize future exceptions similar to this along the Oregon Highway 11 corridor. The Board believes, without making a binding decision, that it will be difficult for future applicants to justify an exception similar to this for several reasons. First, this site is appropriately sized and located to capture economic development opportunity not otherwise available in the Oregon Highway 11 corridor. Second, the Board believes there is an opportunity for one such development and more than one such development would likely be inappropriate in this corridor. Additionally, the Board recognizes that the Planning Commission and Planning Department are working on a long range study of the corridor, together with the City of Milton-Freewater. That study will include a comprehensive analysis of Goal 9 opportunities for the city and county. The minutes from the Planning Commission hearing include extensive dialogue about the opportunities along the corridor for the community, including the city and county. The Planning Commission specifically recognized the proposed zone change would provide economic stimulus, an anchor development, for future opportunities. However, while the Planning Commission expressed strong support for the zone change, they offered equal support for a long range, Goal 9 master plan for the corridor to insure a balanced land use and economic development program. The record exemplifies the county's understanding of the land use planning program and commitment to balance the Goals and the careful consideration to support this request in that context. In other words, the county finds that the proposed zone change is wholly justified and the county is committed to ensuring a well-balanced land use and economic development program.

Additionally, ORS 197.340(2) provides "the Commission and Department shall consider and recognize regional diversity and differences in regional needs when making and reviewing a land use decision or otherwise applying the goals."

The Board finds that this statute provides that the DLCD and LCDC are to recognize regional differences in making land use decisions and applying the goals. Distances between population centers are greater in eastern Oregon and the opportunities for economic development are less. A site such as this that is able to capture economic growth based on proximity to an urban area in a neighboring state must be allowed to take advantage of that economic opportunity. Moreover, while other areas of the state, such as the Willamette Valley, have urban areas closer to one another and generally larger urban areas, this area does not have those opportunities. As the Board heard at the May 2 public hearing, travel times and costs are greater and siting a commercial site such as this proximate to an urban area in an adjacent state will capture economic growth because people are unwilling to drive greater distances, especially with the current cost of gasoline. This is why the Board finds it to be true that even if the Milton-Freewater urban growth boundary had available comparable

sites, the greater than four miles of additional travel would preclude development of a site such as this thereby negating the economic gain to the County and the state.

The Board also commits to engaging in a master planning process for the Oregon Highway 11 corridor so that property owners and future applicants have some understanding and guidance as to appropriate uses in this corridor. Finally, the Board finds that while the Oregon Department of Transportation ("ODOT") has identified Oregon Highway 11 as a safety corridor, this application will not worsen safety on the state highway for two reasons.

First, the Kittelson traffic impact analysis demonstrates that with appropriate mitigation, all operational standards relevant to County and state highways can be maintained. Second, the Board finds that locating a use such as this closer to or within the Milton-Freewater urban growth boundary would in fact create more congestion as opposed to locating it further away from the urban growth boundary.

In conclusion, the Board notes as explained above that this property is an existing exception site not required to be used for resource uses, already allows non-residential uses, is adjacent to a sizable population center in a neighboring site, and is on a state highway that is lined with exception areas.

Additionally, the Board finds that ORS 197.732(1)(d) is satisfied. The Board finds that the proposed use is or can be made compatible with adjacent uses including measures designed to reduce adverse impacts. The Board notes that ORS 197.732(2) defines compatible as "not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." Based on testimony received by the Board at the May 2 hearing, the Board believes it is appropriate to require that site plan review pursuant to Umatilla County Development Code section 152.536 be subject to enhanced notice to the public and a requirement for a public hearing before the Planning Commission. While the Board recognizes that all commercial development in Umatilla County subject to site plan review (including the limited use overlay zoning district), the Board believes it will be appropriate to give surrounding residents an opportunity to respond to the site plan application at a public hearing. The Board will impose this requirement as a condition of approval.

The Board also notes that ORS 197.732(6)(a) provides that it and LCDC are bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in an approval of an exception. In this case, as explained throughout these findings, the Board finds there is substantial evidence to justify this exception.

Finally, the Board finds that ORS 197.732(8)(a) means that this approval does not establish a precedent that binds the Board to similar actions in the future. ORS

197.732(8)(a) provides that an exception is "applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability." This means that no precedent is established by this action and that each application the Board hears in the future will be subject to applicable approval criteria and facts demonstrating compliance with those approval criteria.

The Board adopts the following findings in response to issues raised by DLCD at the public hearing.

DLCD argued that the administrative rule implementing Goal 9 (OAR Chapter 660, Division 9) applies only to urban areas. The Board agrees, but notes that Goal 9 applies statewide to both urban and rural areas. As noted above, the Board finds that balancing Goal 9 with other relevant goals, such as Goal 14, allows the Board to determine that a Goal 9 economic development opportunity is presented by this site that is not available elsewhere in this area.

DLCD also argued that Goal 11 is implicated. Substantial evidence in the whole record demonstrates that no public facilities will be required for development of this site.

DLCD raised several issues related to the administrative rule implementing Goal 14. DLCD argued that OAR 660-014-0040(3)(a) is not met. The Board finds that this use cannot be accommodated in proximity to Milton-Freewater. The Board finds that substantial evidence demonstrates that other comparable sites were unavailable in the Milton-Freewater urban growth boundary and that such sites are not "relatively common" as indicated in DLCD's letter.

DLCD also argued that OAR 660-014-0040(3)(b) (a requirement that economic, social, energy and environment impacts be considered) was not appropriately addressed. The Board notes that findings addressing the ESEE requirements are found elsewhere in this decision. The Board also notes that this site has a significant economic and energy advantage over a comparable site in the Milton-Freewater urban growth boundary assuming such a site was available. First, because the Board believes the evidence demonstrates that the economic development opportunity exists because of proximity to the Walla Walla urban area, not driving to the Milton-Freewater area saves energy. Moreover, as the Board has already concluded, the economic development opportunity is available at this site and not in Milton-Freewater because of the increased distance and the lack of comparable available sites.

Finally, DLCD argued that HB 2458 (2005) provided for additional development opportunities for industrial sites. The Board notes that this house bill is not relevant to this application and that if the economic development opportunity

presented to the Board is going to be implemented, it must be done so with an appropriate commercial zone. As noted elsewhere in this decision, the Board finds that applying the limited use overlay zone is appropriate to limit the uses to those justified by this exception and to control external impacts.

## V. COMPLIANCE WITH APPLICABLE APPROVAL CRITERIA

### A. Compliance with Goal 14 Exception Criteria

The County has previously approved a Goal 3 exception for the subject property based on the fact that the property is irrevocably committed to non-farm uses; therefore, Goal 3 does not apply. This section of the findings considers the standards applicable to an exception to Goal 14. The applicable criteria are set forth at OAR 660-014-0040, which is entitled "Establishment of New Urban Development on Undeveloped Rural Land."

OAR 660-014-0040(2) allows the County to adopt an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. The rule provides that the reasons that can justify the exception are not limited to those found in the rule. In this case, the County finds that the exception is justified in part by the site's location on a state highway immediately adjacent to an urban area outside of the State of Oregon, which provides a unique opportunity for economic development in Umatilla County. This characteristic is found nowhere else in the State of Oregon except the Portland metropolitan area.

The criteria for approving a Goal 14 exception are set forth at OAR 660-014-0040(3), which provides as follows:

1. *"(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."*

**FINDING:** The Board finds that the proposed development cannot be reasonably accommodated in or through an expansion of existing urban growth boundaries. The closest urban growth boundary is that of Milton-Freewater, more than four (4) miles to the south. The proposed use is justified by the proximity of the site to the State of Washington and the Walla Walla urban area (including College Place) and the site's location on a state highway, which provides easy access and high visibility.

Testimony from a local realtor shows that there are no sites within the Milton-Freewater UGB large enough to site the proposed big box store. One opponent, Gary Luisi, identified an alternative site within Milton-Freewater that he suggested would be appropriate for the store. However, the Board finds that the identified site consists of several individual lots of insufficient sizes in different ownerships. There is no evidence to indicate that any of those individual lots are available for sale, and none of the individual lots are large enough for the proposed retail use. The Board also accepts evidence submitted by the local realtor and applicants' representatives that the site is inappropriate for the proposed use and that there is no way to install a signalized intersection in that location. Based on all of this evidence, the Board finds that the site in Milton-Freewater suggested by Mr. Luisi could not reasonably accommodate the use.

For the same reasons, the Board also finds that the proposed urban development cannot be reasonably accommodated through the expansion of existing UGBs. The primary justification for the proposed development is its location immediately adjacent to the State of Washington, which creates a significant economic advantage and encourages economic development in Umatilla County in support of Goal 9 and related County Plan policies.

2. ***"(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."***

**FINDING:** Long-term environmental, economic, social and energy consequences will not be significantly more adverse at this site than would typically result from the same proposal being located on other undeveloped rural lands. The site is not limited by soil, air, water or energy capacity nor will the commercial use adversely affect air, water, energy and land resources of the surrounding area. The property is currently zoned for industrial and rural residential uses, and the proposed use will not result in significantly more adverse ESEE consequences than uses already allowed under the existing zoning. The surrounding area along the Highway 11

corridor already consists of a mix of industrial and commercial lands, and is largely composed of Goal 3 exception areas. The amount of land included within the boundaries of the proposed urban development is appropriate for the proposed use, and the entire property must be rezoned in order to provide sufficient space for the development and related wastewater and sewage treatment. No other undeveloped rural lands were specifically identified by opponents or DLCDC as potential alternative sites for development.

3. *"(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."*

**FINDING:** Compatibility with adjacent uses will be ensured through the imposition of a condition of approval designed to mitigate potential impacts on nearby residential uses. Urban development at this location will not detract from the ability of nearby cities, such as Milton-Freewater, to provide public services. The City of Milton-Freewater supports this proposal and, as described above, the proposed use can not be reasonably accommodated within the existing Milton-Freewater UGB or through an expansion of that UGB. Because the property is not currently zoned for resource use, and is located in an area characterized by commercial and residential uses on existing Goal 3 exception areas, the Board finds that OAR 660-014-0040(3)(c)(B) is inapplicable.

The Board find that OAR 660-014-0040(3)(d) and (3) are inapplicable, because no public facilities or services are proposed, and no urban growth boundary or establishment of a new city is proposed.

#### **B. Compliance with the Plan**

Umatilla County Development Code ("UCDC") Section 152.751 requires that map amendments must demonstrate compliance with the Plan. This part of the application demonstrates compliance with the acknowledged Umatilla County Comprehensive Plan.

Comprehensive Plan Chapter XII is entitled "Economy of the County." Several of the policies support this application. Policy 5 states:



*"In close proximity to cities, yet outside of urbanizable areas, limit commercial development to those areas that meet the requirements of Goal 2 and ORS 197.732 for an exception in resource areas. Commercial developments shall also be limited to land demanding many activities that require two public services."*

This policy is satisfied for two reasons. First, this site, which is in close proximity to the City of Milton-Freewater yet outside of its urban area, satisfies Goal 2 because there is an adequate factual base to justify this exception. Also, this site is uniquely qualified in that it does not require public services and will encourage economic development along a significant state highway without impacting the capacity of that highway. Because of its proximity to Walla Walla, it will provide additional economic development in the State of Oregon that would otherwise occur in Washington State.

Policy 9 provides:

*"Recognize the need for flexibility in planning and periodically review/update economic policies and projects."*

The Board finds that this policy is satisfied because this is a response to an identified opportunity to generate jobs and economic growth in this portion of the County.

The Board finds that the applicable policies of its comprehensive plan are satisfied.

**C. Compliance with Umatilla County Development Code Criteria**

The application requests that the County impose the Retail/Service Commercial ("RSC") zoning district. UCDC Section 152.245 provides that the purpose of this zoning district is to provide areas outside of urban growth boundaries for specific commercial activity that require larger sites than are available inside a UGB and to provide for retail and service-oriented commercial activities to accommodate rural residents.

UCDC Section 152.246(B)(17) permits retail sales outlets. The Board finds that this application will satisfy the use requirements of the RSC zoning district.

UCDC Section 152.250 sets forth the dimensional standard for the RSC zoning district. The minimum lot size pursuant to subsection (A) is one (1) acre. The Board finds that all applicable dimensional requirements are satisfied or can be satisfied.

The applicant requests that the County impose the Limited Use Overlay ("LU") zone found in UCDC Section 152.530-152.535 to allow only retail service outlets. UCDC Section 152.530 states that the purpose of the Limited Use Overlay zone is to limit the list of permitted uses and general activities allowed in the underlying zone when a plan amendment and zone change rezones a parcel through a goal exception. The application of the LU zoning district limits the uses on this site to those justified by the exception.

The Board finds that the criteria found in UCDC Section 152.534(A)(1)-(3) are satisfied. First, the uses and general activities subject to the rezoning are required to be limited to those uses and general activities justified in the Goal exception. Second, a review of the zones in the UCDC demonstrates that no existing zone limits the use of general activities. The RSC zoning district, for example, allows a number of uses. Finally, the requirements and standards of this section apply in addition to those specified in the RSC zoning district.

**D. Compliance with the Transportation Planning Rule (the "TPR")**

OAR 660-012-0060 applies to amendments to comprehensive plans and land use regulations. The purpose of the Transportation Planning Rule is to prevent significant affects to a transportation facility. The definition of significant affects is found in OAR 660-012-0060(1)(a)-(c). Case law requires that an application determine whether a significant affect applies. If substantial evidence demonstrates that a significant effect does not apply, then the TPR is satisfied. If there is a significant affect, then the applicant may nevertheless demonstrate compliance pursuant to OAR 660-012-0060(2).

The applicant has submitted a transportation impact analysis ("TIA") prepared by Kittelson & Associates, which establishes that with mitigation as identified in the TIA, no significant effect will occur. The Board specifically adopts and incorporates by reference the Kittelson TIA dated January 2006, as well as the supplemental memorandum from Del Huntington of Kittelson dated March 23, 2006, which respond to traffic-related issues raised by ODOT. The Board finds that the mitigation proposed by Kittelson will ensure that the impacted transportation facilities, in particular the intersection of Highway 11 and Stateline Road, will continue to operate acceptably and the proposed amendments will not significantly affect any facilities within the meaning of the TPR.

**E. Compliance with Statewide Planning Goals**

The requested plan amendment must demonstrate compliance with all applicable Statewide Planning Goals. The Goals are addressed below.

**1. Goal 1, "Citizen Involvement"**

**FINDING:** Goal 1 requires local government to develop a citizen involvement program to ensure the opportunity for citizens to be involved in all phases of the planning process. Because Goal 1 establishes a requirement for local government to develop a program, it is not directly applicable to this decision. However, the county's citizen involvement plan has been adopted by the county and acknowledged by the Land Conservation and Development Commission. The hearings and county evaluation process for this case has been governed by that acknowledged program. For this particular request, public hearings have been held by the Commission. The Board finds that Goal 1 has been met generally by the City and specifically in this instance.

**2. Goal 2, "Land Use Planning"**

**FINDING:** Goal 2 requires the establishment of the land use planning and policy framework as a basis for all decisions and actions. Part 2 of Goal 2 relates to the exception process that must be followed should an applicant or local jurisdiction request an exception to any particular Statewide Planning Goal. The first part of Goal 2 has been met by acknowledgement of the Plan by the state. With respect to part 2, the applicable Goal 14 exception criteria have been addressed above

**3. Goal 3, "Agricultural Lands"**

**FINDING:** The subject property is subject to a Goal 3 exception area and, therefore, Goal 3 is inapplicable.

**4. Goal 4, "Forest Lands"**

**FINDING:** The subject property is not forest land subject to Goal 4.

**5. Goal 5, "Open Spaces, Scenic and Historic Areas and Natural Resources"**

**FINDING:** No Goal 5 natural resources (wetlands, riparian areas, wildlife habitat, etc.) have been identified at the affected parcels. In addition, the amendment does not propose that any natural resources be put onto an inventory of significant resources.

**6. Goal 6, "Air, Water and Land Resources Quality"**

**FINDING:** The Applicant will comply with all state and federal environmental laws and regulations. Therefore, Goal 6 will be met.

**7. Goal 7, "Area Subject to Natural Disasters and Hazards"**

**FINDING:** No such areas have been identified on the site. Goal 7 is not applicable.

**8. Goal 8, "Recreational Needs"**

**FINDING:** The area is not identified as a recreational resource by the City. Goal 8 is not applicable.

**9. Goal 9, "Economic Development"**

**FINDING:** Goal 9 requires that local government provide adequate opportunities for a variety of economic activities vital to the health, welfare and prosperity of the citizens of Oregon. As addressed above, the proposed amendment will encourage economic development in Umatilla County, and will provide a number of new employment opportunities. The construction of the proposed store will also result in a number of temporary construction jobs that will benefit the county. The Board finds that the Amendment is consistent with Goal 9.

**10. Goal 11, "Public Facilities and Services"**

**FINDING:** Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The proposed amendment is consistent with Goal 11.

**11. Goal 12, "Transportation"**

**FINDING:** For purposes of this application, Goal 12 is implemented by the TPR, which is addressed in subsection II.D, above. Because the TPR is satisfied, the proposed amendments are consistent with Goal 12.

**12. Goal 13, "Energy Conservation"**

**FINDING:** Goal 13 is not applicable to this application.

**13. Goal 14, "Urbanization"**

**FINDING:** Compliance with the Goal 14 exception criteria is addressed in section II.A above, which concludes that the applicable exception criteria are satisfied.

**14. Goals 15-19**

**FINDING:** These Goals are inapplicable in Umatilla County.

The Board finds that the proposed amendments are consistent with the applicable Goals.

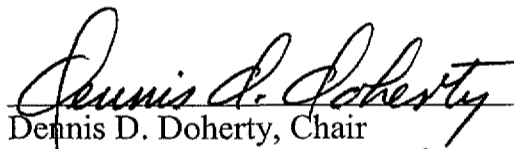
**VI. CONCLUSION**

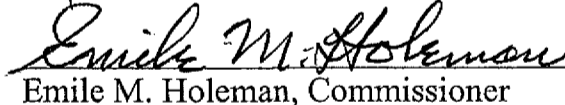
For the reasons contained herein, the Board approves this application, which provides that the three tax lots be designated commercial on the County's comprehensive plan map and rezoned retail service commercial with a limited use overlay. This decision is subject to two conditions of approval as follows:

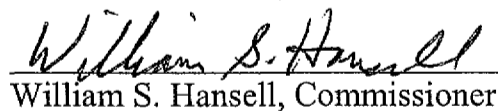
1. Development of the site shall require site plan review pursuant to Umatilla County development code section 152.536. Such approval shall be preceded by a public hearing before the planning commission with appropriate notice as required by the Umatilla County Development Code and ORS 197.763.

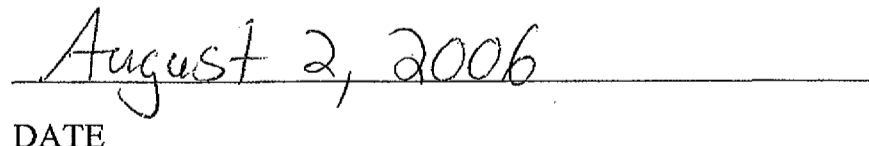
2. The only use allowed on this site, subject to the limited use overlay zone, shall be a large format commercial facility subject to site plan review as provided in condition of approval 1 above. This site shall not be used for "strip commercial" development.

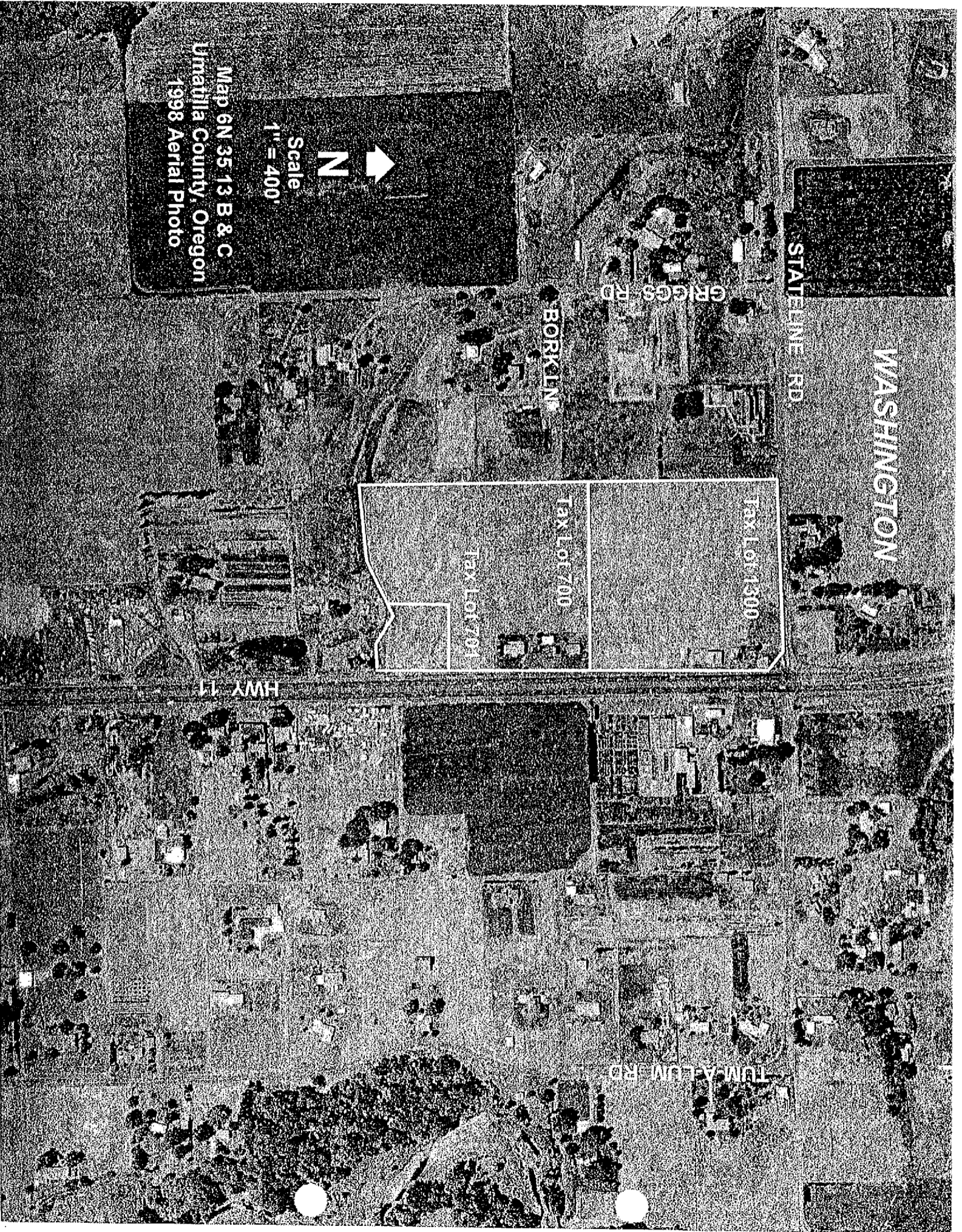
UMATILLA COUNTY BOARD OF COMMISSIONERS

  
Dennis D. Doherty, Chair

  
Emile M. Holeman, Commissioner

  
William S. Hansell, Commissioner

  
DATE



WASHINGTON

STATELINE RD

GRIGGS RD

BORKLIN

Tax Lot 1500

Tax Lot 700

Tax Lot 701

HWY 11

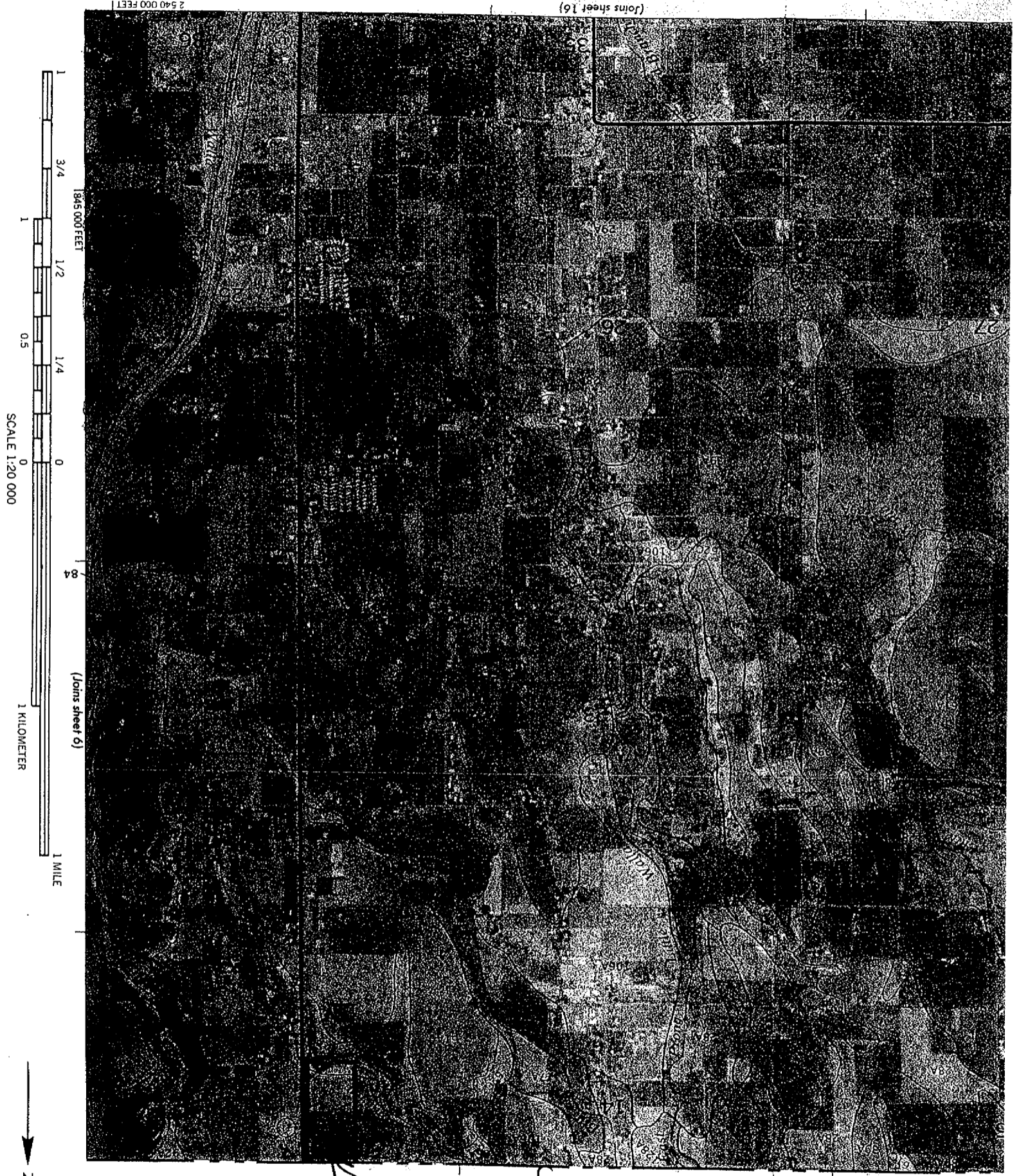
TUMALUM RD



Scale  
1" = 400'

Map 6N 35 13 B & C  
Umatilla County, Oregon  
1998 Aerial Photo

Exhibit #4



GN3513B & C - Tax lots 1300, 700, 701  
 Subject Area →  
 CIFF Enterprises

5



SCALE 1:20 000

(Joins sheet 6)

945 000 FEET

1  
3/4  
1/2  
1/4  
0  
0  
0.5  
1

1 KILOMETER

1 MILE

(Joins sheet 16)

2 540 000 FEET

