



# 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](http://www.lcd.state.or.us)

## NOTICE OF ADOPTED AMENDMENT

December 15, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Wheeler County Plan Amendment  
DLCD File Number 002-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: December 29, 2006**

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

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

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

Cc: Doug White, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative  
Theresa Ward, Wheeler County

<paa> ya

# FORM 2

## 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

(See reverse side for submittal requirements)

DEPT OF

DEC 11 2006

LAND CONSERVATION  
AND DEVELOPMENT

Jurisdiction: Wheeler County Local File No.: 06-ZC-003  
(If no number, use none)

Date of Adoption: December 4, 2006 Date Mailed: December 8, 2006  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 8/18/06

- |  |   |
|--|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment     | <input checked="" type="checkbox"/> Zoning Map Amendment  |
| <input type="checkbox"/> New Land Use Regulation           | <input type="checkbox"/> Other: _____                     |
- (Please Specify Type of Action)

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

Landowner requested a zone change from EFU to RR-10.

Wheeler County Court approved the request for the zone change at  
a Special Meeting held on December 4, 2006. Additional Findings

provided by the applicant was reviewed in making the Final Decision.

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

Same

Plan Map Changed from : EFU to RR-10

Zone Map Changed from: EFU to RR-10

Location: T9S, R25S, Sec 4, TL 700, Spray, OR Acres Involved: 130

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: \_\_\_\_\_

Was an Exception Adopted? Yes: \_\_\_\_\_ No: \_\_\_\_\_

DLCD File No.: 002-06 (15482)

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:

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

Affected State or Federal Agencies, Local Governments or Special Districts: ODOT, DEO  
Water Resources, DLCD, ODWF, Surveyor

Local Contact: Theresa W. Ward Area Code + Phone Number: 541-763-2126

Address: 701 Adams St. PO Box 327

City: Fossil Zip Code+4: 97830-0327

### **ADOPTION SUBMITTAL REQUIREMENTS**

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

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

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

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



# Wheeler County

## County Court

---

P.O. Box 447 • Fossil, Oregon 97830-0447  
Wheeler County Courthouse • 701 Adams St.  
(541) 763-3460 • FAX (541) 763-2026

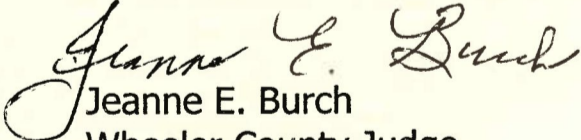
### Notice of Decision

On December 4, 2006 the Wheeler County Court held a Special Meeting regarding the application of Hugh Eisele for a Zone Change.

The request was to rezone 130 acres from Exclusive Farm Use (EFU) to Rural Residential-10 (RR-10).

The Wheeler County Court approved the request of Hugh Eisele to rezone 130 acres from Exclusive Farm Use (EFU) to Rural Residential-10 (RR-10).

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.

  
Jeanne E. Burch  
Wheeler County Judge



# Wheeler County

## County Court

---

P.O. Box 447 • Fossil, Oregon 97830-0447

Wheeler County Courthouse • 701 Adams St.

(541) 763-3460 • FAX (541) 763-2026

### WHEELER COUNTY COURT

#### AGENDA

A Special Meeting of the Wheeler County Court will be held Monday, December 4, 2006 at the Wheeler County Courthouse, Fossil, Oregon at 10:00 a.m.

---

Call to Order

Judge Burch

10:00 a.m.     Public Hearing  
                      Legalization of Notch Road

11:00 a.m.     Public Hearing  
                      Land Use Regulation Amendment Rural Residential Zone minimum lot  
                      size to 2 acres

11:30 a.m.     Public Hearing  
                      Request to rezone to RR 10

Adjournment

---

Wheeler County abides by Section 504 of the Rehabilitation Act of 1973. TTD service is available. Assistance shall be provided to individuals with special needs upon request.

Wheeler County is an Affirmative Action/ Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973.

---

**ADDITIONAL FINDINGS  
FOR  
Hugh Eisele 130 acre zone change  
Application**

**I. Purpose**

The purpose of this report is to provide necessary background information for a proposed set of amendments to Wheeler County's acknowledged comprehensive plan and zoning code and to supply the necessary findings of fact and conclusions of law to support these amendments. These findings are required by Wheeler County's acknowledged comprehensive plan and zoning code, Oregon's Statewide Planning Goals, as well as the statutes and administrative rules that implement the Statewide Goals.

**II. Background Information**

Hugh Eisele is requesting a zone change and exception to Statewide Planning Goal 3 (Agricultural goal) to develop 130 acres in to a development of 10 acres lots.

**III. Specific Proposal**

This proposal is to provide needed housing in the 10 acre and above range.

**IV. Location**

T9S R2E Section 4 Tax Lot 700, Wheeler County, Oregon. The property is approximately 4 miles east of the City of Spray along Highway 19. There is no NRCS Soil Survey for Wheeler County, and no known site soil survey for this location.

**V. Planning Process**

In order to amend the comprehensive plan map, zoning map and text, public hearings are required before the Wheeler County Planning Commission and the Wheeler County Court. The Planning Commission will hold a public hearing on

at the Wheeler County Courthouse. The County Court will hear the matter, as soon as possible after the Planning Commission makes a decision, in Fossil in the Circuit Court Chambers of the Wheeler County Courthouse. The Department of Land Conservation and Development ("DLCD") has been notified of this proposal.

**VI. Findings in Support of Exceptions to Statewide Planning Goals 3**

In order to amend the County's acknowledged comprehensive plan map and text as well as its acknowledged zoning map and text, exceptions to Statewide Planning Goals 3 and 14 must be taken. Statewide Planning Goal 2 and the statutes and administrative rules enacted pursuant to that goal describe the legal standards for taking such exceptions.

The specific legal standards for taking a "reasons" exception under Goal 2 to Goals 3 is found in the Administrative Rules for Goal 2 codified at OAR 660-04-020 and OAR 660-04-022, which are set forth below verbatim, followed by the necessary findings of fact and conclusions of law for each criteria.

OAR 660-04-022 describes the reasons necessary to justify an exception under Goal 2, Part II(c).

OAR 660-04-020 describes additional criteria necessary to justify an exception. These criteria are set out in Section B below.

**A. Requirements of OAR 660-04-022**

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

*"(1) For uses not specifically provided for in subsequent sections of this rule, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:*

*"(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3-19."*

*"(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or*

*"(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."*

#### **FINDINGS**

The property is an area that is not productive agricultural land, for the area has not been used for any type of farming for the past 30 years. The land is very steep and could not be used for any type of crops. There is only one other area in the county zoned for 10 acre rural residential use, and that is the area that is near the Kinazua golf course. This site is near the City of Spray and could help benefit the economy of Spray.

#### **FINDINGS**

*"(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas."*

#### **FINDINGS**

10 acre lot sizes would be not be economical to serve with sewer and water and would use up land necessary for urban uses.

*"(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision."*

#### **FINDINGS**

This location will provide necessary housing for people coming to Wheeler County that require a larger size if lot than can be found in Spray or the other two cities in Wheeler County.

#### **B. Requirements of OAR 660-04-020 (Goal 2, Part II Exception)**



OAR 660-04-020 provides as follows:

*"(1) If a jurisdiction determines there are reasons consistent with OAR 660-04-022 to use resource lands for uses not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.*

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

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

#### **FINDINGS**

See section (1) above

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

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

#### **FINDINGS**

See application

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

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

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

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

### FINDINGS

Most of Wheeler County is comprised of similar steep land. Most of the land that is not as steep is either in crops or used for livestock. As noted above this property has not been used for crop or livestock for more than 30 years. If a parcel of land in the county is capable of crop or livestock use then it has been used sometime in the past 30 years.

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

### FINDINGS

This parcel has no known Goal 5 or other environmental, economic, social or energy factor that would require a Goal 5 protection.

*"(d) 'The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts'. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management practices. 'Compatible' is intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."*

### FINDINGS

There are some small parcels in the area.

## **VII. Compliance With the Statewide Planning Goals**

### **Goal 1 Citizen Involvement**

#### **FINDINGS**

The Planning Commission and the County Court will both hold advertised public hearings concerning this application. Therefore, the County has ensured the opportunity for citizens to be involved in all phases of the planning process for this project. Accordingly, the requirements of Goal 1 have been met.

### **Goal 2 Land Use Planning**

#### **FINDINGS**

The County has followed all local and statutory requirements related to this amendment of its comprehensive plan and zoning ordinance. Furthermore, this document ensures that an adequate factual basis exists to support this zone changes and comprehensive plan amendment. Therefore, the requirements of Goal 2 have been met.

### **Goal 3 Agricultural Lands**

#### **FINDINGS**

Because the site is currently zoned EFU (even though there has never been a soil survey done on this parcel), an exception to this Goal has been requested and is supported by

findings contained elsewhere in this report. Therefore, an exception to this Goal has been taken and the Goal therefore need not be met.

**Goal 4 Forest Lands**

**FINDINGS**

This site is not in the State's forest land base. Therefore, Goal 4 does not apply.

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

**FINDINGS**

This site does not contain any resources identified in the County's acknowledged comprehensive plan as Goal 5 resources. Therefore Goal 5 does not apply.

**Goal 6 Air, Water and Land Resource Quality**

**FINDINGS**

All wastewater discharges from the future development of this site must be previously approved by DEQ prior to the issuance of any development permit for the site. The site has the potential for a well that should meet all relevant drinking-water standards and has sufficient capacity to support limited industrial uses as proposed. Any well or wells will be monitored to ensure that its use does not significantly affect the aquifer or surrounding wells. Therefore, the requirements of Goal 6 will be met.

**Goal 7 Areas Subject to Natural Disaster and Hazards**

**FINDINGS**

There is not known Goals 7 sites on this parcel. Therefore Goal 7 does not apply

**Goal 8 Recreational Needs**

**FINDINGS**

This goal does not apply.

**Goal 9 Economic Development**

This site will provide for some additional housing which will benefit a county with a total current population of 1500 people. It will also help the economy of the City of Spray. For these reasons, the proposed zone change and comprehensive plan amendments satisfy Goal 9.

**Goal 10 Housing**

**FINDINGS**

As stated under Goal 9 this proposal will help the housing needs of Wheeler County.

**Goal 11 PublicFacilities and Services**

**FINDINGS**

The rural services that already exist or will need to be built (i.e., septic fields) will be commensurate with the carrying capacity of the area. DEQ will review and approve all permits for subsurface sewer in a manner consistent with the protection of public health. Overall, the requirements of Goal 11 will be met.

**Goal 12 Trasportation**

**FINDINGS**

This site is next to Highway 19, which has the capacity to handle the additional traffic from this proposal. This development meets the requirements to the Wheeler County TSP. Therefore the requirements of Goal 12 will be met.

**Goal 13 Energy Conservation**

**FINDINGS**

There is not energy sites that will be affected by this proposal, Therefore Goal 13 does not apply.

**Goal 14 Urbanization**

**FINDINGS**

As explained in this report an exception to Goal 14 is not required

**Goals 15-19 Willamette Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, Ocean Resources**

**FINDINGS**

These goals do not apply.

**VII. Compliance With the County's Acknowledged Comprehensive Plan**

There are policies throughout the Wheeler County Comprehensive Plan that encourages increases in housing and population

**FINDINGS**

This proposal meets those policies.

**CONCLUSION**

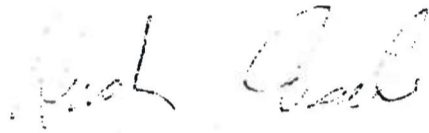
This request meets the requirement for and exception to Goal 3 and the requirements of the Wheeler County Comprehensive Plan and Zoning Ordinance.

October 31 2006

Wheeler County Planning Commission

The Attached letter is additional information to help justify my rezoning of the 130 acres in question..

Thank you



Hugh Eisele



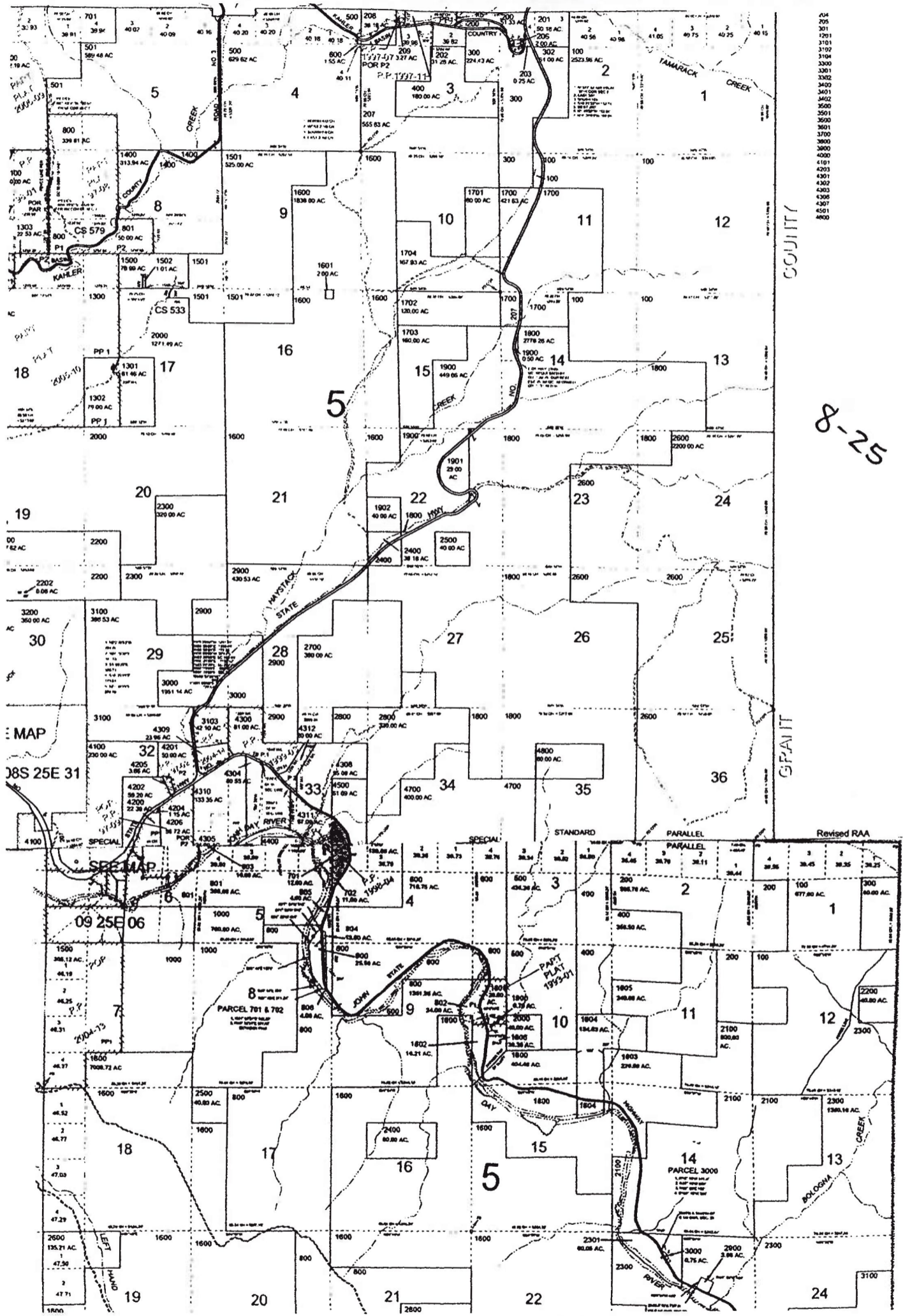


exhibit A

8-25

9-25

COUNTY

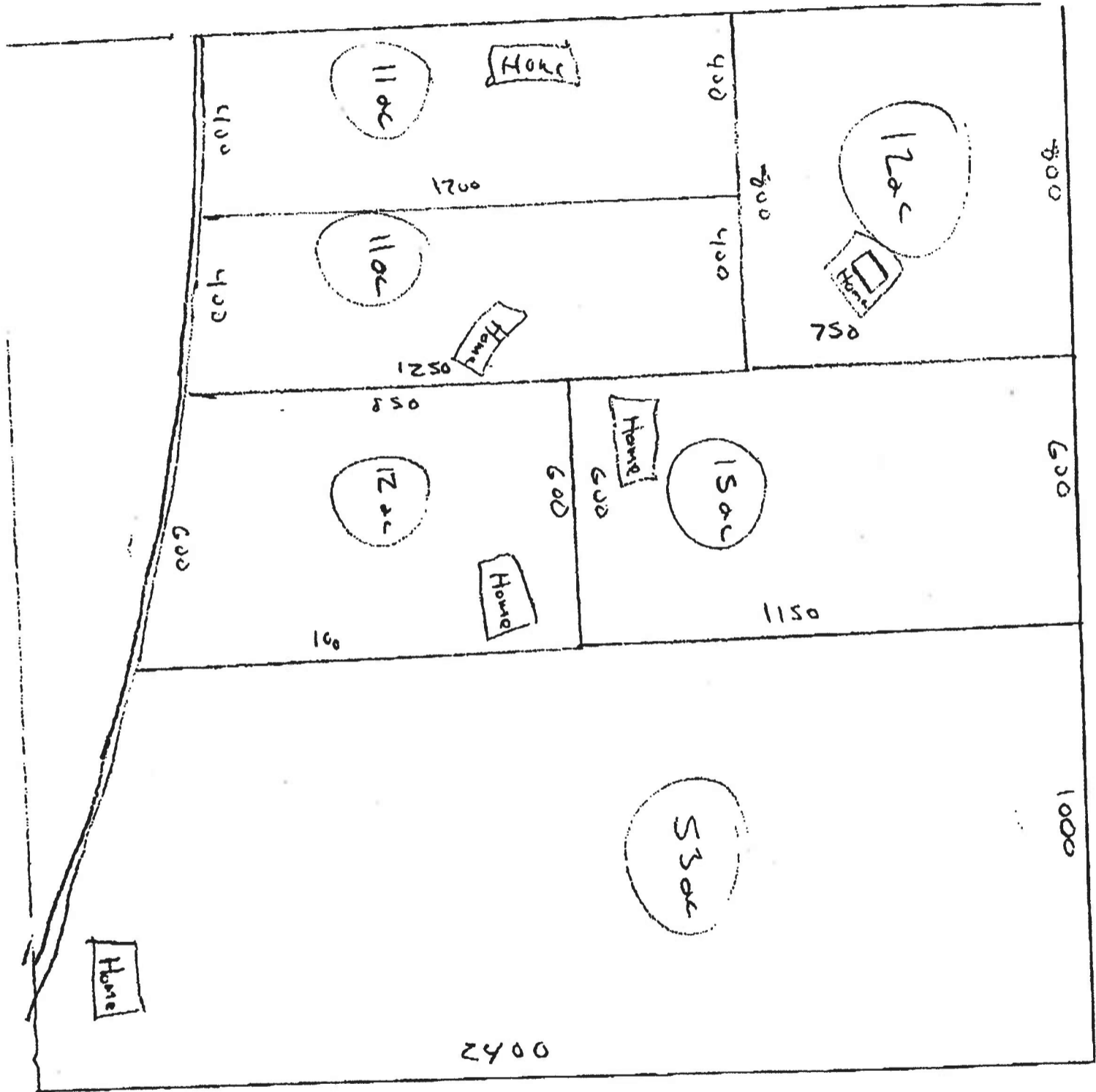
GRAIT

COUNTY

204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300

1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1320  
1321  
1322  
1323  
1324  
1325  
1326  
1327  
1328  
1329  
1330





130 ac  
PROPERTY  
SPRAY  
OK.

9-25  
TL 700