



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

June 5, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Malheur County Plan Amendment
DLCD File Number 003-08



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: June 20, 2008

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
Jon Beal, Malheur County

<paa> ya

FORM 2
DEPT OF

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)

JUN 02 2008
**LAND CONSERVATION
AND DEVELOPMENT**

Jurisdiction: Malheur County Local File No.: Taggart
2008-02-013
(If no number, use none)
Date of Adoption: May 28, 2008 Date Mailed: May 30, 2008
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: _____

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

(Please Specify Type of Action)

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

Zone a 29 acre parcel from EFU to
Rural Residential with a six acre minimum
parcel size requirement

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 : 80 ac to 6 ac

Zone Map Changed from: EFU to Rural Residential

Location: TL 401, T17S, R47E, W.M. Sec 16 Acres Involved: 29

Specify Density: Previous: 80 New: 6

Applicable Statewide Planning Goals: 2, 3, 14,

Was an Exception Adopted? Yes: No:

DLCD File No.: 003-08 (16758)

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: _____

Malheur County, DLCD

Local Contact: Jon D. Beal Area Code + Phone Number: 541-473-5185

Address: 251 "B" St W. City: Vale, OR

Zip Code+4: 97918 Email Address: jbeal@malheurco.org

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 Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

FILED
2:46 PM

ORDINANCE 178

MAY 28 2008

**In the matter of:
Ordinance Amending Malheur County's Comprehensive Plan
To Adopt An Exception to Statewide Planning Goal 3(Agricultural
Lands) and 14 (Urbanization) For 29.046 Acres Commonly Described
As Tax Lot 401, Assessor's Map 17S4716, Account Number 20168
(the Property) and Amending Malheur County's Zoning
Maps to Rezone the Property from EFU to R-1, Rural Residential**

DEBORAH R. DELONG County Clerk
By *Shari Childs* Deputy

This matter came before the Malheur County Court sitting in regular session for the reading of this ordinance on May 14, 2008 and May 28, 2008

WHEREAS, Max and Sheryl Taggart (Taggarts or Applicants) submitted an application to the Malheur County Planning Commission requesting an amendment to Malheur County's Comprehensive Plan to adopt an exception to Statewide Planning Goal 3 (Agricultural Lands) and Statewide Planning Goal 14 (Urbanization) for 29.046 acres commonly described as tax lot 401, Assessor's Map 17S4716, Account Number 20168 (the Property) and to rezone the Property from Exclusive Farm Use (EFU) to Rural Residential (R-1); and

WHEREAS, the Taggarts propose to divide the Property into three rural residential homesites not less than 5 acres each (approximate size: 5.5, 11.568, and 11.233). One homesite (11.233 acres) is the Taggart's current residence; and

WHEREAS, the Property is legally described on Exhibit "1" attached hereto and incorporated herein by reference; and

WHEREAS, following a quasi-judicial land use hearings on April 24, 2008, the Malheur County Planning Commission unanimously made a recommendation to approve the Taggart's application to the Malheur County Court; and

WHEREAS, attached hereto as Exhibit "2" and incorporated herein by reference are findings of fact and conclusions of law in support of this ordinance and approving the application to amend Malheur County's Comprehensive Plan to adopt an exception to Statewide Planning Goal (3) and (14) for the Property and to amend the Malheur County Zoning Maps to rezone the Property from EFU to R1 with a minimum lot size of 5 acres, (Findings of Fact and Conclusions of Law); and

WHEREAS, the Malheur County Court adopts the Findings of Facts and Conclusions of Law and finds that they set forth compelling facts and reasons to justify an amendment to the County's Comprehensive Plan to adopt an exception to Statewide Planning Goals 3 and 14 for the Property and to rezone the Property from EFU to R1.

**NOW THEREFORE, THE MALHEUR COUNTY COURT, STATE OF OREGON,
ORDAINS AS FOLLOWS:**

Section 1: Amend Comprehensive Plan

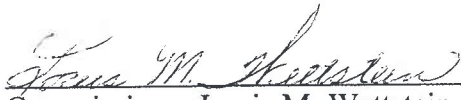
The Malheur County Comprehensive Plan shall be amended to adopt an exception to Statewide Planning Goals 3 and 14 for a 29.046 acre property comprised of tax lot 401, Malheur County Assessor's Map 17S4716, which property is more particularly described in Exhibit "1" attached hereto and incorporated herein by reference (The Property).

Section 2: Rezone and Amend Zoning Maps

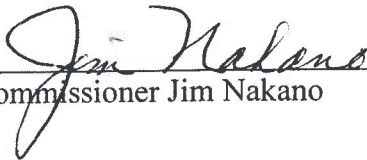
The Malheur County Zoning Map shall be amended as shown on Exhibit "3", attached hereto and incorporated herein by reference, and The Property shall be rezoned from Exclusive Farm Use (EFU) to Rural Residential Zone (R-1) with a 5 acre minimum lot size. However, the Property shall not be divided in such a way to exceed three (3) homesites including the current homesite of the Taggart's and divisions must substantially conform to Applicant's Exhibit 5.



Judge Dan P. Joyce



Commissioner Louis M. Wettstein



Commissioner Jim Nakano

ATTEST:



Kim Mason

Land in Malheur County, Oregon, as follows:

In Twp. 17 S., R. 47 E., W.M.:

Sec. 16: A parcel of land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ described as follows:
Beginning at the NE corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, which is the Point of Beginning;
thence N. 89° 52' 26" W., along the North boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 1,317.68 feet to the NW corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$;
thence S. 0° 07' 50" W., along the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 447.72 feet;
thence S. 70° 39' 37" E., 537.38 feet;
thence S. 29° 40' 12" E., 220.71 feet;
thence N. 79° 15' 27" E., 104.15 feet;
thence S. 76° 25' 24" E., 242.04 feet;
thence S. 22° 49' 10" E., 430.73 feet to the centerline of the Jacobson Gulch Pickup Canal;
thence N. 19° 01' 12" E., 25.07 feet along the centerline of said canal;
thence N. 28° 51' 02" E., 163.60 feet along the centerline of said canal;
thence N. 33° 49' 44" E., 251.00 feet along the centerline of said canal;
thence N. 32° 34' 22" E., 401.45 feet along the centerline of said canal;
thence N. 34° 12' 06" E., 36.25 feet along the centerline of said canal;
thence N. 27° 30' 30" E., 193.54 feet along the centerline of said canal;
thence N. 24° 53' 37" E., 58.36 feet along the centerline of said canal;
thence N. 19° 15' 15" E., 138.01 feet along the centerline of said canal;
thence N. 25° 54' 14" E., 76.11 feet along the centerline of said canal;
thence N. 53° 00' 51" E., 82.67 feet along the centerline of said canal;
thence N. 0° 12' 48" E., parallel with the west boundary of said NW $\frac{1}{4}$ NE $\frac{1}{4}$, 31 feet, more or less, to the North boundary of the NW $\frac{1}{4}$ NE $\frac{1}{4}$;
thence West along the North boundary of said NW $\frac{1}{4}$ NE $\frac{1}{4}$, 524 feet, more or less, to the Point of Beginning.

TOGETHER WITH any and all tenements, hereditaments and appurtenances thereunto belonging or used in connection therewith, and all water and water rights used upon or appurtenant to said property, however evidenced.

Account No.: 06896

Code No.: 15

Map No.: 1747B

Tax Lot No.: 300

EXHIBIT #

// / //

COMPLIANCE WITH OAR 660-004-0018 & OAR 660-004-0028
Exception to Goal 3, Agricultural Lands

OAR 660-004-0018 provides an "irrevocably committed" exception is intended to recognize and allow the continuation of the existing types of development in the exception area. It also requires there be a single numeric minimum parcel size that limits the uses, density and services to those that are the same as the existing uses, maintaining the "rural" nature of the area, and are compatible with, and will not commit nearby or adjacent resources lands to nonresource use.

OAR 660-004-0028 sets forth the requirements for an "irrevocably committed" exception. Findings of fact supporting the exception must address the characteristics of the exception area and the lands adjacent to it and their relationship. Existing adjacent uses, public facilities and services (water and sewer lines) and parcel size and ownership patterns of the exception area and adjacent lands, along with neighborhood and regional characteristics and natural impediments separating the exception parcel from adjacent resource lands should also be discussed.

The Exception Parcel was approved for the establishment of a non-farm dwelling and is presently a rural homesite.. The overall land use pattern in the area is best described by the level of parcelization in the area. See area map attached as Exhibit "6" and aerial photographs attached as Exhibits "7" and "8". The area surrounding the Exception Parcel is characterized by small to medium sized rural residential development in existing rural residential zones to the north and south of the Exception Parcel and on adjacent lands zoned EFU. In the area located south of Snowmoody Way, east of Hyline Road, north of Jacobson Gulch Road and west of Highway 201 there are 22 parcels with 18 existing dwellings. The 10 parcels adjacent to the Exception Parcel, including the 6 parcels in a rural residential zone adjacent to the northern border (Snowmoody Way), range from 1.92 to 14.4 acres with an average parcel size of 5.36 acres. All of the parcels, except for the 12.28 acre parcel (tax lot 400) on the eastern border of the Exception Parcel are either zoned rural residential or in rural residential use. Tax lot 400 has one permanent dwelling and one temporary hardship dwelling, and is in pasture, however the effective agricultural land is less than 9 acres. The proposed 5 acre minimum parcel size requirement would fall within the range of existing parcels in the area and maintains the rural nature of the area.

Services to the parcels would be by private wells and septic systems and do not promote further development of the Exception Parcel or other properties in the area. Tax lot 400, which is in farm use, is effectively buffered from the Exception Parcel by the topography of the area; see the topographical map attached as Exhibit "9" and the aerial photograph attached as Exhibit "8". Findings need not demonstrate that every farm use allowed by the goal is "impossible", however the findings must demonstrate the farm use of the Exception Parcel is "impracticable." Whether it is practical to farm the Exception Parcel depends on the characteristics of the of the Exception Parcel and adjacent lands and the relationship between them. It is reasonable to conclude that it is impracticable to manage a parcel for farm use if the site limitations diminish the ability to carry out accepted farming practices

to the extent there is no reasonable return on the investment. The Exception Parcel is bordered on the north, south and west sides by land that is either zoned rural residential or lands zoned EFU that is approved for rural residential homesites. The Exception Parcel and all the parcels in the area surrounding it shown in the area map attached as Exhibit "6" and the aerial photographs attached as Exhibits "2", "7" and "8". With the exception of tax lots 400 and 100 located to the east and northeast of the Exception Parcel, none receive farm use appraisal. Although it is not required to adopt findings regarding farm deferral status, the lack of farm deferral is relevant evidence in determining the predominate use of the area and whether it is impracticable to put the Exception Parcel to farm use. Although non-farm uses created in compliance with the goals cannot be used to justify an exception, the "neighborhood and regional characteristics" must be evaluated and it is reasonable to conclude it would be difficult to carry out standard farming practices successfully in such close proximity to rural residences. Access to the Exception Parcel, (Snowmoody Way) is narrow and is the access corridor for several rural residential parcels. Dust, sprays, noise and machinery access to the property are often objectionable to non-farm residences. Although the term "farm use" does not distinguish between "commercial" and "non-commercial" levels of farming, inherent conflicts between farm use practices with adjoining rural residences dictate the farm use of the exception parcel to incidental farming activities associated with rural residential use.

COMPLIANCE WITH OAR 660-004-0040
Exception to Goal 14, Urbanization

OAR 660-004-0040 requires that for any rural residential areas designated after the effective date of the rule, the county require a minimum parcel size requirement of at least ten acres, or establish a minimum parcel size of at least two acres in accordance with the requirements for an exception to Goal 14, *Urbanization*. The result of this OAR is "urban uses" cannot be established outside an urban growth boundary without an exception to Goal 14. Urban uses have not been defined, however development on small parcels is included as a potential urban use. The issue is whether or not the proposed creation of a residential zone with a five acre minimum parcel size requirement for homesites is an "urban" or "rural" use.

The Exception Parcel is not located in an urban growth area or urban reserve area and is approximately 3.5 miles from the nearest border of the Ontario Urban Growth Area. It is not serviced by urban services such as water and sewer facilities. Lots within urban areas where on site sewage disposal systems and private wells are not feasible, and where urban services (such as water and sewer) are necessary or required, are substantially smaller than the five acre minimum parcel size proposed in this Application. Housing densities in urban areas normally run between four to ten units per acre. The nature of the development pattern in the area surrounding the Exception Parcel has some bearing on the question of whether the proposed parcel size is urban or rural; see area map attached as Exhibit "6" and aerial photographs attached as Exhibits "2", "7" and "8". The average size of adjacent parcels is over 5.36 acres and the remaining parcels located south of Snowmoody Way range between three to nine acres. These factors lead to the conclusion that a zoning district with a minimum parcel size requirement of five acres which is without a need for or

provided with public services (such as sewer and water) is rural use and meet the intent of Goal 14, Urbanization.

IV. COMPLIANCE WITH THE MALHEUR COUNTY CODE

Malheur County Code, Section 6-10-7, sets forth the review criteria for proposed legislative amendments. The legislative criteria are applicable because they relate to a comprehensive plan text and a zoning map amendment. The criteria described in the Malheur County Zoning Ordinance Section 6-10-7 are addressed below.

Section 6-10-7. Compliance with the Comprehensive Plan in considering an amendment to the text or zoning map, the planning commission and county court shall determine the following:

Section 6-10-7: A The proposed change is consistent with the Comprehensive Plan.

1. **Goal 1-Citizen Involvement:** To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

This Goal is met through the public participation provisions of Malheur County's acknowledged Zoning Ordinance and Comprehensive Plan.

2. **Goal 2-Land Use Planning:** To establish a comprehensive planning process and framework as a basis for all decisions and actions related to land use, and to assure an adequate factual base for those decisions and actions.

This Goal is met through the procedures in Malheur County's Comprehensive Plan and Zoning Ordinance.

3. **Goal 3- Agricultural Lands:** To preserve and maintain agricultural land in Malheur County for agricultural purposes.

An irrevocably committed exception to Goal 3 is addressed in Section VIII of this Application.

4. **Goal 4- Forest Lands:** To preserve and maintain forest lands for allowable agriculture and forest uses.

There are no Goal 4 forest resources on or near the subject property. This Goal does not apply.

5. **Goal 5-Open Space, Scenic and Historic and Natural Resources:** To conserve open space and protect natural and scenic resources.

There are no Goal 5 resources on or near the subject property. This Goal does not apply.

6. Goal 6-Air, Water and Land Quality: To maintain and improve the quality of Malheur County's air, water and land resources.

Use of the property will be limited by the County's zoning regulations. The proposed zoning designation for the Exception Parcel will not have any adverse impact on air, water or land quality. The use of the Exception Parcel will not be substantially changed from the manner the property is presently used.

7. Goal 7-Natural Disasters and Hazards: To protect life and property from natural disasters and hazards.

There are no natural hazards on the Exception Parcel. The Exception Parcel is located outside the designated flood plain. The proposal complies with Goal 7.

8. Goal 8-Recreation: To meet the park and recreation needs of the citizens of Malheur County and visitors.

This Goal is not applicable to this application.

9. Goal 9-Economy: To diversify and improve the economy of Malheur County.

Allowing the re-zoning of the Exception Parcel will expand rural housing and encourage the expansion of employment opportunities in County.

10. Goal 10-Housing: To promote reasonable land use policies at minimal government interference to insure citizens have ample opportunity to obtain adequate housing.

This Application proposes no changes in the County housing policies. This Goal is not applicable to this application.

11. Goal 11-Public Facilities and Services: 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 zone change would have no effect on public facilities and services. The subject parcel and the area surrounding it are serviced by private wells and septic systems. The Exception Parcel is also within the Ontario Rural Fire Protection District. Power, telephone and emergency services have already been extended to the property.

12. Goal 12-Transportation: To provide and encourage a safe, convenient and economic transportation system.

The Exception Parcel is accessed directly from Snowmoody Way which comes off Hyline Road. Hyline Road is classed as a rural major collector in the Malheur County Transportation Plan. Rural major collector routes in Malheur County generally carry

anywhere from 500 to 1000 vehicle trips per day. The proposed zone change would create a maximum of four additional homesites (five with Applicant's existing home) which will not materially change the operation level of the existing road system.

The maximum number of homesites in the preceding paragraph is based on the size of the Exception Parcel (29.046 acres) and a maximum size of 5.0 acres, which is slightly smaller than Parcel 1 displayed in Exhibit "5". A single minimum parcel size is required by OAR 660-004-0040, which does not permit more than one size. The Applicants have, however, represented in this Application that upon approval, they will partition the Exception Parcel in accordance with Exhibit "5", and further protect that partition with recorded covenants and restrictions prohibiting further partition or division of any parcel of the partition plat

13. Goal 13-Energy: To conserve energy.

Allowing the proposed re-zoning of the Exception Parcel will not have a major effect on energy conservation in the county.

14. Goal 14-Urbanization: To provide or an orderly and efficient transition from rural to urban use.

An irrevocably committed exception to Goal 14 is addressed in Section VIII of this document.

Section 6-10-7: B. The level of development in other locations has reached the point where additional land is needed for the proposed use and the proposed zone change can best meet such needs.

In the general area surrounding the Exception Parcel identified in area map attached as Exhibit "6", there are five existing parcels in an area zoned rural residential that are undeveloped. The proposed rezoning of the Exception Parcel would create four additional rural homesites (five with the Applicants' existing home). There are no other areas in the immediate vicinity zoned rural residential with available homesites.

The maximum number of homesites stated in the preceding paragraph is based upon the size of the Exception Parcel (29.046 acres) and a maximum parcel size of 5.0 acres. Though a single minimum parcel size is required by OAR 660-004-0040, the Applicants have represented that upon approval, they will partition the Exception Parcel in accordance with Exhibit "5", and further protect that partition with recorded covenants, conditions and restrictions prohibiting further partition or division of any parcel of their partition plat.

Section 6-10-7: C. That adequate rural services are available to the property.

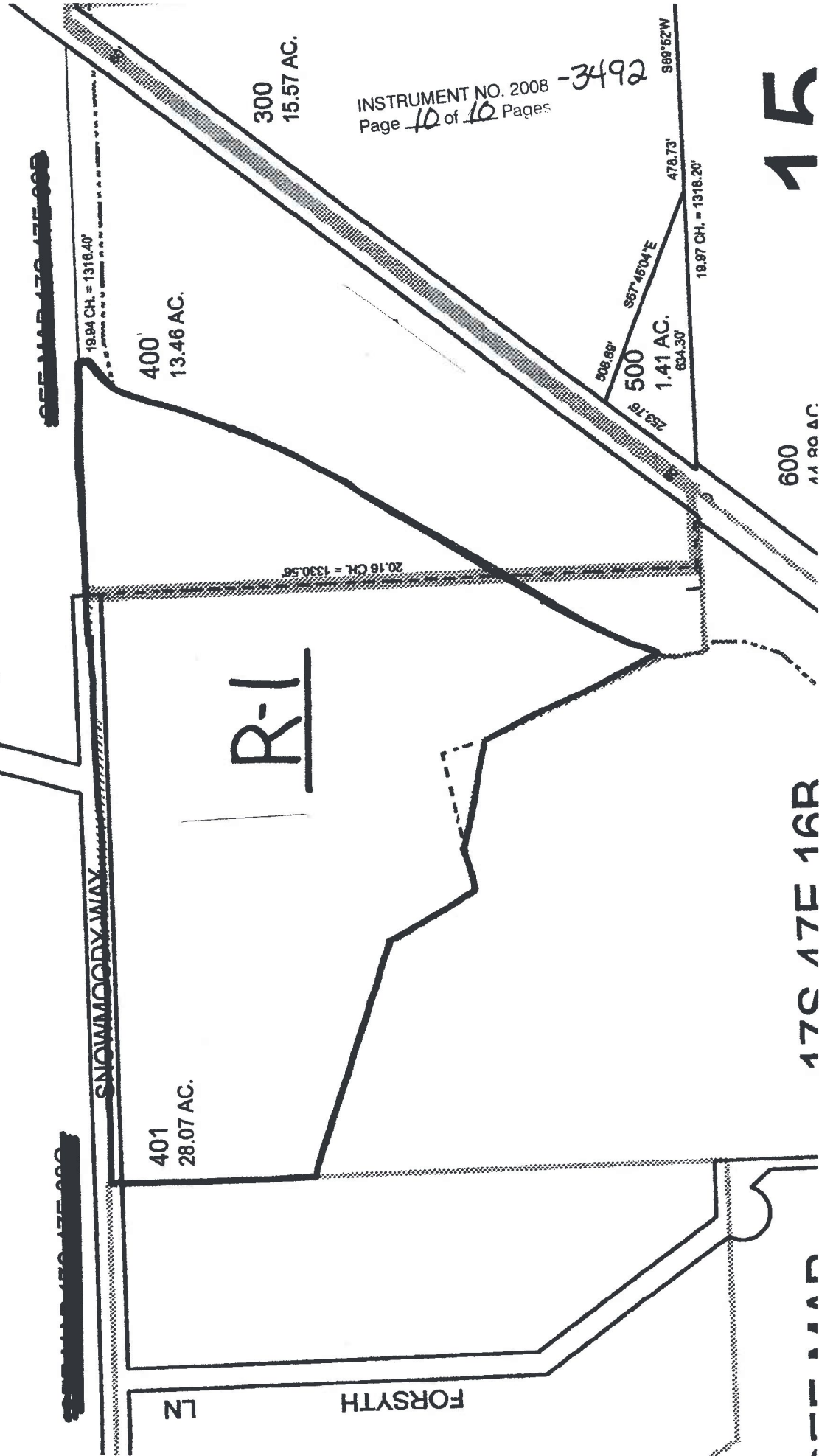
The water and sanitation requirements for the properties in the area are handled by private wells and sanitation systems. Fire, emergency and police services are already available to the property. Electrical and telephone services are already extended to the Exception

Parcel. Adequate rural services are available to the Exception Parcel and will not be overburdened by the re-zoning of the Exception Parcel.

Section 6-10-7: D. That amendments to the text or the zoning map which significantly affect the transportation facility, shall assure that the allowed uses are consistent with the function, capacity and level of service of the facility identified in the Transportation Systems Plan.

The Exception Parcel is accessed directly from Snowmoody Way which comes off Hyline Road. Hyline Road is classes as a rural major collector in the Malheur County Transportation Plan. Rural major collector routes in Malheur County generally designed to carry anywhere from 500 to 1000 vehicle trips per day. The proposed zone change would create at a maximum three additional homesites which will not drastically change the operation level of the existing road system.

Map 1754716



INSTRUMENT NO. 2008 -3492
Page 10 of 10 Pages

18.94 CH. = 1316.40'

400'
13.46 AC.

300
15.57 AC.

20.16 CH. = 1330.56'

R-1

401
28.07 AC.

508.69'
567°45'04"E
500
1.41 AC.
634.30'

478.73'
18.97 CH. = 1318.20'

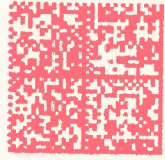
15

600
11 RD AC.

17C 17E 16R

1" = 300'

EXHIBIT #



UNITED STATES POSTAGE
 PITNEY BOWES
 \$ 03.04⁰
 02 1A MAY 30 2008
 0004616467 MAILED FROM ZIPCODE 97918

FROM: Malheur County
 Planning Department
 Courthouse, #12
 251 B Street West
 Vale, OR 97918



TO: ATTN: Plan Amendment Specialist
 Dept. of Land Conservation & Development
 635 Capitol Street NE, Suite 150
 Salem, OR 97301-2540
