



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

March 21, 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 006-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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: April 4, 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

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FORM 2

D L C D NOTICE OF ADOPTION

DEPT OF

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)

MAR 17 2008

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Malheur County Local File No.: 2007-10-008
(If no number, use none)

Date of Adoption: March 12, 2008 Date Mailed: March 13, 2008
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: Oct 4, 2007

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."

Zone change from EFU to R1, Rural
Residential of a 28 acre parcel

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."

Plan Map Changed from : EFU to R1

Zone Map Changed from: EFU to R-1

Location: Sec 21, T.18S, R.44E., W.M. Acres Involved: 28

Specify Density: Previous: 80 parcel / 160 home New: 5 ac
site

Applicable Statewide Planning Goals: 3, 14

Was an Exception Adopted? Yes: No:

DLCD File No.: 006-07 (16457)

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 Co, DLCD

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

Address: 251 B St W #17 City: Uale 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
3:29 PM

ORDINANCE 175

MAR 12 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 28.46 Acres Commonly Described
As Tax Lot 1400, Assessor's Map 18S4421, Account Number 13396
(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 *Sheila Childs* Deputy

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)
)
)

This matter came before the Malheur County Court sitting in regular session for the reading of this ordinance on February 20, 2008 and March 5, 2008.

WHEREAS, John Zueger 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 28.46 acres commonly described as tax lot 1400, Assessor's Map 18S4421, Account Number 13396 (the Property) and to rezone the Property from Exclusive Farm Use (EFU) to Rural Residential (R-1); and

WHEREAS, Mr. Zueger proposes to divide the Property into four rural residential homesites not less than 5 acres each (approximate size: 5, 7.5, 6.5 and 9.0). One homesite (7.5 acres) is Mr. Zueger'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 January 24, 2008, the Malheur County Planning Commission made a (3 to 2) recommendation to deny Mr. Zueger'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 prepared by Mr. Zueger in support of this ordinance and approving his 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 28.46 acre property comprised of tax lot 1400, Malheur County Assessor's Map 18S4421, 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 four (4) homesites including the current homesite of Mr. Zueger and divisions must substantially conform to Applicant's Exhibit G, page 2.

Section 3. Effective Date:

This ordinance shall take effect on the 91st day following March 5, 2008.

Absent
Judge Dan P. Joyce

Louis M. Wettstein
Commissioner Louis M. Wettstein

Jim Nakano
Commissioner Jim Nakano

ATTEST:

Kim Mason
Kim Mason

EXHIBIT 1

Land in Malheur County, Oregon, as follows:

In Twp. 18 S., R. 44 E., W.M.:

Sec. 21: SW1/4 SE1/4,

EXCEPTING THEREFROM the following parcels:

Parcel No. 1: (Tax Lot 2703)

Commencing at the Northeast corner of said SW1/4 SE1/4;

thence N. 89° 22' 24" W., 467 feet;

thence S. 0° 0' 30" E., 364.90 feet to the Point of Beginning;

thence S. 0° 0' 30" E., 482.10 feet;

thence N. 89° 22' 24" W., 482.10 feet;

thence N. 0° 0' 30" W., 482.10 feet;

thence S. 89° 22' 24" E., 482.10 feet to the Point of Beginning.

Parcel No.2: (Tax Lot 2702)

Commencing at the Northeast corner of said SW1/4 SE1/4;

thence N. 89° 15' W., 467 feet;

thence S. 0° 0' 30" E., 467 feet;

thence S. 89° 30' E., 467 feet;

thence N. 0° 0' 30" W., 467 feet to the Point of Beginning.

EXCEPTING THEREFROM the South 30 feet as conveyed to Malheur County, by Deed recorded June 8, 1931, Book 35, Page 160, for road right of way.

FURTHER EXCEPTING that portion as conveyed to the State of Oregon, Highway Commission by Deed recorded Sept. 11, 1946, Book 68, Page 113 for highway right of way.

INSTRUMENT NO. 2008-1344
Page 4 of 117 pages

Account No.: 13396

Code No.: 43

Map No.: 184421

Tax Lot No.: 1400

EXHIBIT 2

In the matter of the application of John Zueger for a Comprehensive Plan map Amendment from Exclusive Farm Use (EFU) to Rural Residential and a concurrent zone change from Exclusive Farm Use (EFU) to Rural Residential, together with an exception to the Statewide Agricultural Goal, on 28.46 acres of land located north of Graham Blvd., Vale, Malheur County, OR and described as Follows: Tax Lot 1400 in Township 18 S. Range 44 E., W.M.; also identified as corresponding Tax Account No. 13396.

**APPLICANT'S
SUPPLEMENTAL
INFORMATION, ANALYSIS
and PROPOSED
FINDINGS OF FACT**

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INTRODUCTION AND BACKGROUND

This Application comes before the Malheur County Planning Commission on Application filed by John Zueger, 2132 Graham Blvd. Vale, OR 97918. Applicant is the title holder to the subject parcel. The subject property is below identified:

- A. TAX LOT NUMBER: 1400
TAX ACCOUNT NUMBER: 13396
DEED REFERENCE NUMBER Bargain & Sale Deed: 07-1224
MAP # 1844-21
LEGAL DESCRIPTION Township 18 S. Range 44 E., W.M.
SIZE OF PARCEL 28.46 acres

An Assessor's Office plat map, attached hereto as Exhibit "A", depicts the above described tax lots (using old tax lot numbers). The parcels are located north of Graham Blvd. in Vale, Malheur County, Oregon. The parcel is located in a rural area approximately 4 miles west of Vale on Graham Blvd. Prior land use actions and a brief history of the parcels include the following: Albert Zueger and Margaret Zueger purchased property located at 2128 graham Blvd. in 1977. The 40 acres were surveyed by Edwards Engineering and three tax lots were created: TL 1400 of 28.46 acres, TL 1500 of 5.33 acres, and TL 1600 of 5.00 acres. The applicant purchased 2128 Graham Blvd. in 1997. Subsequently, the applicant sold TL 1600 (5 acres) in 2005 and TL 1500 (5.33 acres) in 2006. TL 1400 (28.46 acres) remains in the applicant's name and is the subject of this application. The applicant would like to build upon the proposed 9.0 acre lot depicted in Exhibit "G" if permitted to make the division sought by this application.

COMPREHENSIVE PLAN POLICIES

A Comprehensive Plan map change is subject to an evaluation of the agricultural, rural and urbanization elements of the Comprehensive Plan. These elements of the Comprehensive Plan must be evaluated to determine which policies are most appropriate and applicable to the subject property. The Applicant has reviewed the Comprehensive Plan with respect to this document and makes the following proposed Findings:

- A. Applicable Agricultural Policies: Policy 1 of Goal (3) (Agricultural lands of the Comprehensive Plan) identifies those areas designated as agricultural:
"Public and private land classified by the U.S. Soil Conservation Service as being in

Capability Classes I through VI, as well as other lands determined to be suitable as needed for farm use, are considered to be agricultural lands.”

Review of the official soils data for Applicant’s property as provided by the Natural Resources Conservation Service reveals the following: Applicant’s parcel consist of primarily soils class 35B (Virtue Silt Loam, 2 to 5 % slopes) and 11B (Frohman Silt Loam, 2 to 5 % slopes).

These soil types correspond to Soil Classifications IV e for the 11B (Frohman Silt Loam, 2 to 5 % slopes) and III e for the (Virtue Silt Loam, 2 to 5 % slopes).

B. Areas Generally in Parcels of Twenty (20) Acres or Larger: There are several ways to define the “area” under consideration. The area of consideration could be a certain radius of properties around the subject property in the same zoning district, which in this case is EFU. Based upon a radius of one (1) mile (Similar to the Sweeten Test) the “Area of consideration” does contain parcels of or exceeding twenty (20) acres. See Exhibit “B”. The subject parcel is 28.46 acres in size. The present Agricultural designation is consistent with the EFU designation.

C. Lands Having the Highest Agricultural Capabilities: Goal (3) Policy (2): Lands having the highest agricultural capabilities are to be given the greatest protection – Class I having the highest Capability and Class VI having the lowest Capability. The subject property is classified as primarily soils class 35B (Virtue Silt Loam, 2 to 5 % slopes) and 11B (Frohman Silt Loam, 2 to 5 % slopes). Applicant’s review of the subject property would indicates that the majority of the subject property is soils Classification 11B (Frohman Silt Loam, 2 to 5 % slopes - Soil Classifications IV e). See Exhibits “C” and “D”. However, a significant portion of the parcel

lacks an irrigation water right. Without a water right to irrigate the property, the present Agricultural designation is not consistent with this factor for the proposed exception area. See Exhibit "E".

D. Storage Capacity for Irrigation Water: Goal (3) Policy (7): The County is to seek methods of increasing storage capacity for irrigation water in the County. The subject property has no water storage facilities and has never had the same. The present Agricultural designation is not consistent with this factor for the proposed exception area.

E. Non-farm Dwelling(s) in an Agricultural Zone: Goal (3) Policy (10): A non-farm dwellings in agricultural zones will be allowed where:

1. It is compatible with established or possible future farm uses;
2. It will not now, or in the future, interfere with established farm practices;
3. It will not alter the stability of the over all land use pattern of the area;
4. It is situated on land generally unsuitable for the production of farm crops and livestock.

The Applicant proposes the following Findings of Fact as to the above mentioned four (4) criteria:

1. **Compatibility with established or possible future farm uses:** The subject property currently supports three (3) residential dwellings: Applicant's residence on Tax Lot 1400, and non-farm dwellings on Tax Lots 1500 and 1600. Introduction of an additional three (3) residential dwellings will have no impact upon established or possible future farm uses as the rural residential activities associated with these structures will be restricted to the subject property. Further, there are no existing established farm uses on the subject property and no future farm uses are envisioned. The amount of the parcel with a water right is sufficiently small that farming practices are not economically justified. Established or possible future farm uses of surrounding properties will not be impacted by the proposal as

these farm uses currently co-exist with nearby area non-farm uses.

Applicant's parcel is so fractured by residential dwelling development that incorporation of Tax Lot 1400 into adjoining farm operations is impracticable, if not impossible. The present Agricultural designation is not consistent with this factor for the proposed exception area.

2. The proposal will not now, or in the future, interfere with established farm practices. Refer to Exhibit "F" for a depiction of farm practices on immediately adjacent lands. The area supports a combination of pasture and forage grounds under production, as well as a substantial amount of lands immediately to the north of the parcel which lands lack water rights. The agricultural uses identified in Exhibit "F" successfully coexist with the rural residential development located along much of Graham Blvd. The present Agricultural designation is consistent with this factor for the proposed exception area.
3. The proposal will not alter the stability of the over all land use pattern of the area. Using Exhibit "B", it is evident that smaller parcels are not too numerous in the impact study area as depicted. A review of the study area reveals approximately eleven (11) parcels of the size being proposed by the Applicant. Addition of three more similarly sized parcels will blend comfortably with the distribution of currently existing smaller parcels. The present Agricultural designation is consistent with this factor for the proposed exception area.
4. The proposal will be situated on land generally unsuitable for the production of farm crops and livestock. See Exhibit "G" for Applicant's proposed division of Tax Lot 1400. Applicant's personal residence is located on the property designated by the "X" (Home site). Using Exhibit "E", it is apparent that the Applicant will have some water rights. The site composed of the 6.5 acre parcel will likewise have some water right. The site composed of the 9.0 acre parcel will have a limited water right. The site on the northern

most portion of Tax Lot 1400 will have no water rights. As a whole, nearly one half of Tax Lot 1400 lacks water rights. Without a water right, this parcel must be considered as "land generally unsuitable for the production of farm crops and livestock". Depiction of the main irrigation water conveyances/ ditches is set forth in Exhibit "E". This same exhibit shows by color (green representing lands under cultivation and brown representing lands lacking water and thus cultivation) the substantial amount of lands in the surrounding area which are not being farmed for crop production. Due to the uncertainty of well water to irrigate Tax Lot 1400, well water for farm crop and/or livestock production cannot be considered a viable alternative to water from an irrigation district. The present Agricultural designation is consistent with this factor for the proposed exception area.

Based upon the above proposed Findings, the characteristics of the subject property are inconsistent with the applicable Agricultural Comprehensive Plan Goals. The Agricultural plan designation is no longer appropriate when applied to the subject property.

COMPREHENSIVE PLAN AMENDMENT CRITERIA

Proposed amendments to the Malheur County Comprehensive Plan are subject to review Malheur County Planning Commission, and ultimately must be reviewed and approved by the Malheur County Court. Upon receiving Applicant's request for an amendment to the Comprehensive Plan, the County is required to give notice of the proposed amendment to the Oregon Department of Land Conservation and Development (DLCD) at least 45 days prior to the first scheduled public hearing on the matter. Any amendment to the County's Comprehensive Plan must be reviewed by DLCD to ensure that the proposed action meets the criteria under statewide planning goals and applicable administrative rules.

Locally adopted procedures and criteria for reviewing a proposed amendment to the Plan are set forth in general policies contained within the Plan document, as well as by specific

standards and procedures prescribed by Malheur County. Additional statutory and administrative procedures and criteria are also codified in various administrative rules adopted by the Land Conservation and Development Commission (LCDC).

Generally, amendments to the Malheur County Comprehensive Plan must be supported by Findings of Fact in three areas. First, it must be demonstrated that the amendment is consistent with the written policies contained within Malheur County's Comprehensive Plan. Second, it must be shown that the proposed amendment is consistent with all applicable statewide planning goals adopted by LCDC. Third, if the County proposes to take an exception to any of the statewide planning goals as a prerequisite to approving the proposed amendment, specific Findings of Fact showing why the exceptions are justified must also be adopted by the County. The proposed Plan Amendment will necessitate an exception to statewide goal 3: Agricultural Lands, and Goal 14: Urbanization. The procedures and standards for taking exceptions are prescribed in OAR Chapter 660.

Appropriate criteria must apply to any proposal to amend the Malheur County Comprehensive Plan. These criteria include the following:

- A) The proposed amendment must comply with the Statewide Planning Goals adopted by the Land Conservation and Development Commission pursuant to ORS 197.240 or as revised pursuant to ORS 197.245;
- B) That there is a public need for the change sought by the amendment (re-zoning from Exclusive Farm Use to Rural Residential);
- C) That such need may be best served by changing the Plan designation of the particular piece of property in question as compared with other available properties.

To address these standards, part of this Supplemental Information, and Analysis includes proposed Findings of Fact developed by the Applicant which are intended to demonstrate that the

requested Comprehensive Plan amendment and zone change, together with the requested exceptions (Goals 3 and 14) are justified and appropriate.

COMPLIANCE WITH THE STATEWIDE PLANNING GOALS

Statewide Planning Goals numbered 1 through 14 have previously been acknowledged as applicable to the Malheur County Comprehensive Plan. The Applicant asserts that goals 1, 2, 3, 10, and 14 are applicable to this requested Comprehensive Plan amendment. Goals 4, 5, 6, 7, 8, 9, 11, 12 and 13 are inapplicable. The Applicant submits the following proposed Findings of Fact regarding Statewide Planning Goals 1, 2, 3, 10, and 14.

Goal No. 1: Citizen Involvement: To ensure the opportunity for citizen involvement in all phases of the planning process. Proposed Finding of Fact:

Malheur County shall provide direct written notice of the requested Comprehensive Plan amendment to surrounding property owners. Additionally, Malheur County shall cause that a public notice of the Applicant's requests shall be published in the local news paper. Finally, Malheur County shall give notice to those affected state and local agencies, individuals and organizations otherwise entitled to such notice. Such notice assures that local citizens have an opportunity to become informed about and participate in the public hearing process. The requested Plan amendment and zone change shall comply with due process designed to assure full compliance with Statewide Goal No. 1

Goal No. 2: Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to ensure an adequate factual base for such decisions and actions. Proposed Finding of Fact:

Malheur County has established policies and procedures which require a detailed evaluation of any proposal to amend its Comprehensive Plan. Specific criteria and standards have been established against which the Applicant's amendment request must be evaluated in light of relevant Findings of Fact. The County's final decision in this matter will be based upon the weight

of those relevant Findings of Fact. As previously indicated, the Applicant's proposed Plan amendment and zone change involve converting a single parcel of land totaling 28.46 acres into four new parcels. One to include the Applicant's residence and three new parcels with sizes of 5.0 acres, 6.5 acres and 9.0 acres. Statewide Goal 2 requires that conversion of land from Exclusive Farm Use (EFU) to a non-resource use (Rural Residential) follow the applicable criteria and procedures prescribed for goal exceptions as codified under OAR Chapter 660. By following the applicable criteria and procedures, Malheur County is ensuring that the planning process and framework provides a legitimate basis for land use planning and decision making rather than allowing an ad hoc approach to land use decisions to prevail. Applicant's requested Comprehensive Plan amendment and zone change are being evaluated in a manner assuring full compliance with Statewide Goal No. 2.

Goal No. 3: Agricultural Land: To preserve and maintain agricultural lands. Proposed Finding of Fact:

Eastern Oregon agricultural lands include classes I through V soils. Goal 3 also applies to other lands which are suitable for farm use, taking into consideration soil fertility, grazing suitability, climatic conditions, existing and future availability of water for farm irrigation needs, as well as lands of lower value which are considered necessary to permit farm practices to be undertaken on adjacent or nearby lands. The State of Oregon declares a policy of preserving and maintaining agricultural lands by restricting development that can occur on lands designated for farm use.

Review of the official soils data for Applicant's property as provided by the Natural Resources Conservation Service reveals the following: Applicant's parcels consist of primarily soils class 35B (Virtue Silt Loam, 2 to 5 % slopes) and 11B (Frohman Silt Loam, 2 to 5 % slopes). Applicant's review of the subject property would indicate that the majority of the subject property is soils Classification 11B (Frohman Silt Loam, 2 to 5 % slopes - Soil Classifications IV e). See

Exhibits "C" and "D". These soils have Soils Classifications III e and IV e.

The NRCS soils data above cited reveals that soils on the subject parcels is composed entirely of "farm soils" as defined by the Statewide Agricultural Goal. Conversion of the designated farm use land to non-farm use via an amendment of the Comprehensive Plan requires Malheur County to adopt Findings demonstrating why the state policy contained in the Agricultural Goal should not be applied to the property in question. The Applicant advocates that while the parcel is technically composed of "farm soils" the soils lack sufficient water rights to sustain generally accepted farm practices and produce economically viable crop(s). Further, when adopting Findings, Malheur County is required to follow the procedures and requirements set forth in Land Use Planning Goal 2 for goal exceptions. Applicable procedures and requirements for a goal exception are codified in Chapter 660, Goal Exception Process. The Applicant has set forth proposed Findings in a later section of this application demonstrating than an exception to Statewide Goal No. 3 is justified because the subject site is either "land irrevocably committed" under OAR 660-004-0028, or "land physically developed" as defined by OAR 660-004-0025.

Goal No. 4: Forest Lands: To preserve forest lands for forest use. Proposed Finding of Fact:

Inapplicable. The proposed property does not meet the definition of "forest lands" (defined as lands suitable for commercial forest usage). The subject property does not contain any commercial tree species, nor has it historically been used for forest practices.

Goal 4 also applies to adjacent or nearby lands which are necessary to permit forest operations or practices, as well as other forested lands which maintain soil, air, water and fish/ wildlife resources. It is the policy of the State of Oregon to preserve and maintain forest lands by restricting the type(s) of development that can occur on lands designated for forest use. Lands adjacent or surrounding the subject properties do not meet the definition of forest lands. Consequently, the Applicant concludes that the statewide Forest Lands Goal is inapplicable to this

Plan Amendment and requested zone change.

Goal No. 5: Open Space, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources. Proposed Finding of Fact:

Inapplicable. Goal 5 addresses a variety of resources not specifically covered in other goals and sets forth a process requiring an inventory and evaluation. Steps of the process include determination of the level of significance of resources, and if an identified resource appears to be significant, then further evaluation is required. Such evaluations may lead to alternative courses of action, including fully protecting the identified resource.

Goal 5 addresses the following resources:

- 1) Open spaces;
- 2) Mineral and aggregate resources;
- 3) Energy resources;
- 4) Fish and wildlife areas and habitats;
- 5) Ecologically and scientifically significant resources;
- 6) Outstanding scenic views and sites;
- 7) Water areas, wetlands, watersheds and groundwater resources;
- 8) Wilderness areas;
- 9) Historical areas, sites, structures and objects;
- 10) Cultural areas;
- 11) Oregon recreation trails;
- 12) Wild and scenic waterways.

The Applicant submits the following Findings of Fact relevant to these twelve criteria:

- 1) Open spaces: The subject property is bounded on the south by Graham Blvd. Lands located to the east and west are a mix of farm use properties with farm use and non-farm use residences located thereon. Lands to the north are farm use lands, but lack water rights. Applicant's property contains no special topographical features making the property unique from other properties located on the Vale bench. Applicant's property should not be considered "significant" in terms of open spaces and Malheur County has not identified the property as significant for open space needs. Rezoning the property from Exclusive Farm Use to Rural Residential would result in at best an insignificant impact upon open spaces.

2) Mineral and aggregate resources: Mineral and aggregate resources have not been developed on the parcel.

3) Energy resources: Goal 5 energy resources refer to sites and resources identified for the generation of energy, including natural gas production, oil, coal, hydroelectric, geothermal, nuclear and solar. The Applicant has not identified any such energy production capabilities on the subject property. Energy production upon adjacent properties is not evident and has not been observed.

Fish and wildlife areas and habitats: Due to the lack of water, the parcel supports no fish habitat. As the subject property is bordered on the north by lands lacking water rights, wildlife habitat is highly limited. Applicant's proposed use of Rural Residential zoning would permit an additional three (3) residences to be built upon the acreage. These additional residences should have little impact on existing wildlife resources as there are currently existing three other residences located within the original forty acre parcel.

4) Ecologically and scientifically significant resources: Inapplicable. The Applicant has not identified any ecologically or scientific significant natural resources associated with the subject property or upon adjacent properties.

5) Outstanding scenic views and sites: Inapplicable. The Applicant has not identified any outstanding scenic views and sites associated with the subject property or upon adjacent properties. As identified in the Open Spaces analysis, the site has much in common with similarly situated properties in the general area. The property possesses no prominent topographical features giving the site scenic significance. Local residences are visible to the south, east and west from the subject property. At best, it is arguable that the parcel offers a view out toward the Sand Hollow cliffs area. Rezoning the property from Exclusive Farm Use to Rural Residential would result in at best an insignificant impact upon outstanding scenic views and sites, either from the subject property or from

surrounding properties.

Water areas, wetlands, watersheds and groundwater resources: Inapplicable. The subject property lacks water areas, wetlands, water sheds and ground water resource areas. All tail water from the minimal amount of irrigation which occurs on the parcel flows off the parcel onto adjacent lands and are not captured/ held on the subject property.

8) Wilderness areas: Inapplicable. The subject property is not within, adjacent to, or a portion of lands designated as "wilderness".

9) Historical areas, sites, structures and objects: Inapplicable. There are no identified or inventoried historic structures of features located on or adjacent to the subject property.

10) Cultural areas: Inapplicable. There are no identified or inventoried archeological or cultural resources or features on the subject property or located upon adjacent lands.

11) Oregon recreation trails: Inapplicable. There are no designated or planned recreational trails on or adjacent to the subject property.

12) Wild and scenic waterways: Inapplicable. The subject property is not located within any designated or planned wild and scenic waterway, nor has such a designation been applied to other lands adjacent to or within the general vicinity of the subject property.

Based upon the foregoing analysis, the Applicant asserts that the requested Comprehensive Plan Amendment and zone change will not conflict with Goal 5: resources. The subject property has not been included in any inventory of needed open spaces or scenic areas/ vistas. The subject property has not been identified in the Malheur County Comprehensive Plan as having any historic, cultural or significant natural resources which should be preserved and protected.

Goal No. 6: Air, Water and Land Resource Quality: To maintain and improve the quality of the air, water and land resources of the state. Proposed Finding of Fact:

Statewide Goal 6 requires that air, land and water resources of the State of Oregon be

maintained and improved by assuring that future development, in conjunction with existing rural development, does not violate applicable state and federal environmental quality standards, and does not exceed the carrying capacity of local air sheds, degrade land resources, or threaten the availability of such resources.

Any future land use activities on the property will be required to comply with all local, state and federal environmental regulations, assuring that the Malheur County Comprehensive Plan amendment and zone change will not adversely impact the carrying capacity of local air sheds, degrade land and water resources, or threaten the availability of such resources. Although the proposed rural residential land use designation on the property may result in some potential environmental impact if not properly monitored and regulated, Malheur County and the State of Oregon have sufficient regulatory measures in place, assuring that subsequent development will not result in unanticipated impacts. The proposed Plan Amendment and zone change has been evaluated in a manner assuring full compliance with Statewide Goal No. 6.

Goal No. 7: Areas Subject to Natural Disasters and Hazards: To protect life and property from natural disasters and hazards. Proposed Finding of Fact:

The subject property is not subject to flooding. It is arguable that the lands to the immediate north of the parcel could be themselves subject to grass fires which could threaten structures located on the subject property. However, fire breaks and appropriate landscaping will greatly reduce such threats. The subject property does not immediately abut up to grounds subject to rangeland wild fires.

Goal No. 8: Recreational Needs: To satisfy the recreational needs of the citizens of the state. Proposed Finding of Fact:

The subject property has not been identified in any inventory of areas which have likely potential for public recreational needs land(s). The subject property is not identified in the Malheur County Comprehensive Plan as lands devoted for public recreational needs. The proposed Comprehensive Plan amendment and zone change will not conflict with Statewide Goal

No. 8.

Goal No. 9: Economy of the State: To diversify and improve the economy of the state.
Proposed Finding of Fact:

The Statewide Economic Development Goal requires that local land use plans provide for at least an adequate supply of sites of suitable size, type, and location for residential growth and development consistent with Statewide Goal No. 9 policies. Vale is the nearest defined geographical urban concentration close to the parcel. Malheur County must balance the need to diversify and improve the economy of the State of Oregon and of Malheur County against the goal of preserving agricultural lands (Statewide Goal No. 3). The proposed Comprehensive Plan Amendment and zone change will create three additional rural residential building lots which are nearly non-existent in Malheur County. Consequently, the tax base for Malheur County will benefit by increased revenues. The opportunity for additional construction, maintenance and improvement dollars will positively impact the economy of both Malheur County and the State of Oregon.

Goal No. 10: Housing: To provide for the housing needs of the citizens of the state. Proposed
Finding of Fact:

The primary purpose of Statewide Goal No. 10, within the context of amending the Malheur County Comprehensive Plan, is to ensure that sufficient land available for new construction is available to allow for the full range of housing needs within Malheur County. A secondary goal, but of equal importance, is avoidance of shortages of residential building lands which artificially restricts market choices in housing types, price ranges, or locations. The Malheur County Comprehensive Plan requires that population growth be monitored and assessed for impacts on previous estimates of needed housing and the availability of sufficient land for residential use and construction.

As has been mentioned, the former forty acre parcel currently contains three (3) single family residences, including the Applicant's. The remainder of the subject property is vacant and not

used as farm lands. The proposed rural residential zoning, if approved, will create the potential of three (3) additional lots as building sites. These sites will be from 5.0 to 9.0 acres in size and are in substantial demand in Malheur County, especially if located within a reasonable distance from an urban center (Vale). No further land division will result from the Comprehensive Plan amendment and proposed zone change. Based upon the foregoing, the Applicant has concluded Comprehensive Plan amendment and zone change will increase the number of rural residential houses by potentially three new buildings when fully developed. This will not result in population growth in excess of growth envisioned by the comprehensive plan as the proposed development is not high density. Thus, no conflict in Statewide Goal No. 10 purposes and requirements will result.

Goal No. 11: Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement for public facilities and services to serve as a framework for urban development. Proposed Finding of Fact:

Statewide Goal No. 11 focuses upon public facilities and services aspects of amending the Comprehensive Plan on the subject property from farm use to rural residential use, and requires consideration of a system or plan ensuring the proper coordination of the types, locations, and delivery of public facilities and services which best support currently existing as well as proposed land uses.

The Applicant's subject property is located in a rural setting in which public facilities and services are very limited when compared to the broad range of services available in the nearby Ontario urban setting. There are no public sanitary systems available to the subject property and consequently, private septic systems must be incorporated in new construction and must meet local building code and Oregon Department of Environmental Quality standards for the soil types found on the subject property. Fortunately, area residences are spread sufficiently far enough apart that the impact of up to three (3) new septic systems should not overtax the natural ability of the ground to treat residential effluents. Attached as Exhibit "F" is a map depicting location of area

residences in relationship to the subject property. Rural residential development is occurring along the Graham Blvd. corridor and the Applicant's proposal is consistent with this development trend.

The subject property, like surrounding rural properties, will require domestic water for household uses are provided by private on-site wells. Well log records for surrounding residences establish that the ground water resources in the area are average to limited. Attached as Exhibit "H" is a letter authored by Robert D. Maynard, eastern Region Well Inspector for the Water Resources Dept. of the State of Oregon. Mr. Maynard cannot advise whether insertion of three additional wells into the aquifer underlying the parcel will have a negative impact upon adjacent wells. It is interesting to note that the well logs included in Exhibit "H" reflect highly variable first water and static water levels within the area. Under ORS 537.545, ground water may be used for purposes consistent with stock watering, watering of lawns and gardens not exceeding ½ acre in size, and single domestic purposes which do not exceed 15,000 gallons per day. See Exhibit "H". These uses are consistent with the Applicant's proposal to create three new building sites, all under ten acres in size.

Fire protection will be provided by the Vale Rural Fire Dept. See Exhibit "T". The Vale Rural Fire Dept.'s station is located within the City of Vale, a distance of approximately 4.0 miles from the subject property. Anticipated drive time from the Vale station to the subject property is approximately 4 ½ minutes depending upon weather conditions.

The demand for other utilities and services on the subject property, including electric, gas, and communications will be no greater than that resulting from historic use of other adjoining properties and residences. Based upon the foregoing analysis, the Applicant concludes that the subject property will be provided with adequate levels of public services and facilities with timely delivery mechanisms consistent with Statewide Goal No. 11. The Applicant has further concluded that the proposed Comprehensive Plan amendment and zone change will not adversely impact the

present or future availability of public services and facilities in the surrounding area. This conclusion is premised upon existing public service delivery systems and plans currently in effect within the surrounding areas, which are intended to ensure proper coordination of the types, locations and delivery of the public facilities and services necessary to support existing and proposed land uses in the area.

Goal No. 12: Transportation: To provide and encourage a safe, convenient and economic transportation system. Proposed Finding of Fact:

Statewide Goal No. 12 is generally intended to be applied at the county level on a county wide basis. Specific transportation related policies and development standards are included in the Malheur County Comprehensive Plan and current land use ordinances assure that the intent of the statewide transportation goal is implemented by application of both state and local policies and standards at the time of development. The intent of Goal 12 also includes implementation of an on-site specific basis by the State Transportation Planning Rule (OAR 660, Division 12). OAR 660-12-060(1) requires that amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of facility service.

Determination whether a proposed Comprehensive Plan amendment will significantly affect a transportation facility requires evaluation of the proposed Comprehensive Plan amendment against specific criteria established by the Transportation Planning Rule (TPR). Oregon's TPR states that a plan or land use regulation amendment significantly affects a transportation facility if it:

- 1) Changes the functional classification of an existing or planned transportation facility; 2) Changes standards implementing a functional classification system; 3) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent

with the functional classification of a transportation facility; or 4) Would reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.

Estimates of the number of average daily trips (ADTs) generated by a specific land use can be readily obtained. The most commonly cited source for ADT data is Trip Generation, published by the Institute of Transportation Engineers. ADT generation rates published in the Institute of Transportation Engineers' 5th Edition (1991) are based primarily on field data obtained from direct observation of actual land use activity. Trip generation rates are reported as an average of vehicle counts taken at numerous sites having the same land use classification. Trip generation rates are frequently broken down into specific time frames such as morning peak hour ADTs and evening peak hour ADTs.

For land use planning purposes, including single family rural residential dwellings, the Institute of Transportation Engineers defines an ADT as a one-way vehicular movement between a single origin and a single destination. For a single family dwelling, trip generation rates are reported as a ratio of 9.5 vehicle ADTs per dwelling unit. Based upon the maximum potential development density permitted by the requested rural residential zoning, the subject property currently produces 28.5 ADTs and would increase to a total of 57.00 ADTs.

New land use development projects within the State of Oregon which generate less than 300 ADTs are generally considered as having no significant impact upon local transportation facilities and serve the development site. Currently, Graham Blvd. services the subject property and surrounding area as the primary East-West arterial into Vale. Graham Blvd. is adequate to service both existing and potential future traffic volumes which are likely generated by full development of the subject property under the Comprehensive Plan amendment and zone change. The Applicant does not envision the necessity of a traffic signal or other device being required by the addition of 28.5 ADTs. The four (4) new rural residential

parcels (three additional new residences) created by the proposed Comprehensive Plan amendment and zone change will access Graham Blvd. off of the existing private drive ways servicing the property. See Exhibit "G". Access must be in compliance with OAR 734-051. See Exhibit "J".

An on site view of the section of Graham Blvd. reveals that Graham Blvd is generally flat and straight at the location of the subject parcel. Lines of sight as vehicular traffic approaches the parcel from either the east or west are sufficient to allow vehicles entering Graham Blvd. to do so safely, as well as to allow vehicular traffic already on Graham Blvd. to see vehicles entering the thoroughfare. Applicant's proposed full development of the subject parcel will not negatively impact Graham Blvd. or other local public transportation facilities.

Based upon the existing service levels of adjacent and nearby transportation facilities, the Applicant concludes that the proposed amendment to the Comprehensive Plan and zone change will be consistent with the identified function, capacity, and level of service of Graham Blvd. and arterial roadways.

Goal No. 13: Energy Conservation: To conserve energy. Proposed Finding of Fact:

Statewide Goal No. 13 is intended to apply both at a county-wide basis through adoption of local energy conservation goals contained within the Malheur County Comprehensive Plan, and on a site specific basis through implementation of those Plan policies via property development standards intended to require land and use development on lands by management and control, maximizing conservation of all energy forms, based upon sound and locally applicable economic principals. The subject property is located with an established rural residential area where future development promotes efficient energy related uses of existing and planned public facilities and services. The subject property is free of significant geographic constraints that would otherwise require additional energy to develop and use the property than would other property located in the

same geographical area. Applicant's proposed Plan amendment and zone change will not conflict with Statewide Goal No. 13.

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Goal No. 14: Urbanization: To provide for an orderly and efficient transition from rural to urban land use. Proposed Finding of Fact:

Statewide Goal No. 14 requires local governing bodies establish urban growth boundaries which separate urban lands from rural lands. The subject property is situated in a rural area outside the Vale Urban Growth Boundary (UGB). The proposed Plan amendment and zone change does not include the incorporation of rural lands into the UGB or the conversion of rural lands into urban lands, nor does it otherwise impact the established UGB. Goal 14 is not applicable to the proposed Plan amendment and zone change.

Goal fourteen (14) of the Malheur County Comprehensive Plan sets forth the Goal: "To provide for an orderly and efficient transition from rural to urban land use." It is apparent that the framers of the Comprehensive Plan envisioned a date and time in which areas surrounding cities in Malheur County would be viewed as a transition area in which an "efficient transition from rural to urban land use" would occur. Applicant's parcel is likely outside any "transitional" zone envisioned for the City of Vale. As such, further analysis is mandated.

The Land Use Element of the Malheur County Comprehensive Plan, under Land Use categories identifies Farm Use as:

"Areas designated on the plan maps for Farm Use (F) are reserved for uses set forth in ORS 215.203. *They are areas that are irrigated, or areas that are generally well-suited to farming and in close proximity to irrigated land.* These areas are zoned for Exclusive Farm Use (EFU)." Italics added. Rural Residential Use is defined as:

"Areas designated on the plan maps for Rural Residential Use (RR) are areas reserved for existing or future low-density residential development. Some of these lands are already built upon and committed to rural residential use; these committed lands are zoned R-1. *However, most of the*

areas designated RR on the plan maps are pasture lands not yet committed to rural residential use; these lands are zoned for Exclusive Farm Use (EFU). It is intended that as the need arises for additional land zoned R-1, developers will go through the zone change procedure set out in the zoning ordinance. If all criteria are met, a parcel zoned EFU but designated R on the plan maps may be re-zoned R-1." Italics added

Current Housing Needs of Malheur County: Vale Area: The Applicant proposes that a re-zoning of the subject property from EFU to RR with a goal of creating four (4) additional parcels will help meet growth needs of the Greater Vale Area while maintaining a balance of impacts upon transportation facilities, public education facilities, and public utility services. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and appropriateness of the Rural designation on the subject property.

Alternative Areas in Malheur County which should be Designated Rural and Why the Chosen Alternative is more Suitable: The Applicant is unaware of other areas within Malheur County which are under consideration for re-zoning from EFU to RR zones. Evaluation of a "comparable alternative" site is an exercise in speculation as the subject property has unique characteristics brought about by the development of the site. The Applicant's site is ideally suited for transition from EFU into RR due to the fact that the practicability of farming the site is de minimus due to construction of three (3) residences upon the forty acre parcel. These residences cut the forty acre parcel in sizes and shapes which do not support farming operations, cultivation, or irrigation. The subject property offers building sites as proposed by the Applicant. Survey of area building contractors and local realtors establishes a significant need for parcels available for rural residential development with small acreages. Demand for these parcels is now at an all time high. Area residents and populations seeking to re-locate into Malheur County have consumed the available rural building lots with smaller acreages. Previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with Goal 14 factors and the appropriateness

of a re-zoning to a rural designation on the subject property. Recent analysis generated by local Realtor, John Faw, supports the lack of rural building sites. See Exhibit "K".

Long Term Environmental, Economic, Social and Energy Consequences to the Locality, Region or State by Designating this Property as Rural Residential: A zone change from EFU to RR would allow for appropriate development of the subject property. Three (3) proposed residential dwellings have been shown to have little if any measurable impact upon the locality, region or State of Oregon. The proposed development would not be dependent upon public utilities including public water or public sewer sanitation services. It is estimated and anticipated that there will be some impact upon traffic and the traffic corridor facilities within the local area as previously set for in this Applicant's proposed Findings of Fact. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and appropriateness of the Rural designation on the subject property.

EXCEPTION TO THE STATEWIDE AGRICULTURAL GOAL

The Goal exception process is generally inapplicable to Statewide Goals 1 and 2, or Goals 5 through 13. However, the exception process is applicable to those Statewide Goals prescribing or restricting certain uses of resources lands, including Agricultural lands (Goal 3) and Forest lands (Goal 4). Applicant asserts that Goal 4 is inapplicable in this Application as the subject property does not meet Forest Lands classifications and definitions.

The subject property is currently designated "Exclusive Farm Use" under the Malheur County Comprehensive Plan and lands inventory. Statewide Agricultural Goal 3 seeks to conserve and maintain open spaces for farm and agricultural uses. Applicant's proposed Comprehensive Plan amendment seeks a zoning change from EFU designation to a Rural Residential designation. Goal 2, part II (Exceptions) provide for local governing bodies to adopt an exception to an applicable statewide goal when the land subject to the exception is "irrevocably committed" to uses not

allowed by the applicable goal due to existing adjacent uses and other relevant factors making the allowed goal use impracticable. The standards for determining whether land is "irrevocably committed" to a non-resource use are set forth in OAR 660-04-0028 (Exception Requirements for Land Irrevocably Committed to Other Uses), and requires consideration of factors including: 1) existing adjacent uses, 2) existing public facilities and services, 3) parcel size and ownership pattern in the area, 4) neighborhood characteristics, 5) natural or man made features that separate committed lands from resources lands, and 6) the degree and character of existing development in the area.

The subject property consists of a single tax lot: TL 1400 of 28.46 acres. The subject property is bounded on the south by Graham Blvd. The northern boundary of the subject property is TL 2800 a parcel of 77 acres and lacking water rights. An aerial photograph of the subject property and lands lying to the north, east and west is attached as Exhibit "L". This exhibit depicts by color those lands with water rights and under cultivation. Lands to the north of the subject parcel lack water rights and cultivation. Likewise, lands located to the east and west of the subject property have little water right, making incorporation of the subject parcel into a larger farm operation unlikely. Attached as Exhibit "M" is a Sweeten test map incorporating approximately 2,000 acres. Exhibit "M" depicts the local area includes a mix of larger parcels interspersed with some smaller parcels as small as 1.10 acres in size. Development of smaller parcels has occurred predominantly along the primary roadways and arterial roads within the Sweeten map zone: Graham Blvd and Greenfield Road. It can be anticipated that further rural residential development will occur along these corridors and particularly on lands with marginal farm value. The Applicant proposes that the following Findings of Fact are relevant to the exceptions requirements of land irrevocably committed to non-resources uses as set forth under OAR 660-04-028(6).

(A) Existing Adjacent Uses:

As previously indicated, the subject property is bounded to the south by Graham Blvd. Smaller parcels adjoin the property on the east and west sides. Lands to the north lack irrigation water rights and are not cultivated (Exhibit "E"). Incorporation of the subject property into larger resource land parcels to the north, east or west is not practicable. Consequently, the subject property must be viewed as a single tax lot which is unavailable to larger farming endeavors in the area. Exhibit "F" identifies farm uses of properties surrounding and adjacent to the subject property.

(B) Existing Public Facilities and Services:

The subject property is located in a rural area where public facilities and services are relatively limited as compared to the broader range of services existing in the Vale urban area. There are no public sanitary sewer systems available to service the subject property. However, the low density of rural development in the area (Exhibit "M"), and the proposal of adding three (3) additional rural residences to the subject property lends to use of individual subsurface septic systems subject to standards established by the Oregon Department of Environmental Quality. Likewise, there is no public domestic water available to the subject property. Existing non-farm dwellings in the adjoining area have their own individual water system (private wells) and there is no current evidence of groundwater depletion. Refer to Exhibit "H".

Fire protection in the area is available through the Vale Rural Fire District. Demand for other utilities on the subject property, including electricity and communications will be no greater than demands historically resulting from uses of other nearby and adjoining properties.

(C) Parcel Size and Ownership patterns:

The subject property is 28.46 acres in size and currently includes one single family dwelling. Two other parcels (Tax Lots 1500 and 1600) were created out of the original forty acre parcel. See Exhibit "A". The Applicant proposes creation of four (4) parcels from the 28.46 acre parcel

with the following acreages: 5.0, 7.5, 6.5, and 9.0. Exhibit "G" is a basic depiction of the proposed new configuration of the four lots, not drawn to scale. The private road necessary to access Graham Blvd. is already in existence: See Exhibit "N". This private easement road is intended to service all proposed lots.

Rural residences in the area immediately adjacent to the subject property are single family dwellings. By using the Sweeten map, Exhibit "M", to identify rural residential dwellings, these dwellings likewise appear to be single family structures. The Applicant has been unable to identify any multiple family structures within Exhibit "M". Applicant's proposal seeks three (3) additional single family dwellings within the Exhibit "M" area.

Analysis of the parcel size within Exhibit "M" shows a broad range of parcel sizes, consistent with land use and development over time. As indicated, smaller parcels have been developed near the major traffic arterials located within Exhibit "M". These roadways include Graham Blvd. and Greenfield Road. The larger parcels are predominantly located north of Graham Blvd and the subject property. Many of these parcels exceed 100 acres in size and have not been the subject of land use changes from their farm use zoning. Parcels lying south of Graham Blvd. are primarily smaller in size, however, there are larger parcels devoted to farm use which abut up to Graham Blvd.

(D) Neighborhood and Regional Characteristics:

The "neighborhood" of the subject property is geographically defined by Graham Blvd. and the bench ground. This neighborhood has experienced less residential development over the recent years than other areas located within Malheur County. Primary residential development around the Vale area has been concentrated to lands within a mile of the city limits. However, lands offering a small acreage with a rural building site are almost non-existent. Applicant's subject property offers some desirable view lots which lack water rights and cultivation. These lots are

suitable as building sites and should be considered as part of the "farming community" neighborhood.

The area along Graham Blvd. may be considered the "region" in which the subject property lies. This area includes the lands above Graham Blvd which lack water for farm production on certain properties. These lands may become the subject of additional rural residential development due to potential view lots and the close proximity to Vale and the local job market.

(E) Natural or Man Made Features or Impediments

The subject property is presently zoned for Exclusive Farm Use. The original 40 acre parcel has been the subject of property division actions which now substantially impact the ability to economically farm the remaining EFU grounds. The Applicant acknowledges that water rights remain on portions of the property zoned EFU. The placement of residences on and around the subject property severely restricts the ability to engage in viable farm use of the property. As mentioned, incorporation into a larger EFU tract is also not likely and Graham Blvd. cuts the property off from farm use lands lying south of Graham Blvd.

Lands Physically Developed: The Applicant believes the property meets the exception to Statewide Goal number 3 (OAR 660-004-0025). An exception under this provision requires demonstration that the land subject to the exception is physically developed to the extent it is no longer available for uses allowed by the applicable goal. Emphasis added. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The findings of fact shall identify the extent and location of the existing physical development on the land and may include information on structures, road, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal to which an exception is being taken shall not be used to justify a physically developed exception.

The applicable goal in this case is Statewide Planning Goal 3-Agricultural Land. The uses allowed under this goal are farm uses, and non-farm uses defined by the LCDC that will not have significant adverse effects on accepted farm practices.

The remaining subject parcel is 28.46 acres in size and retains some water right. This acreage has been physically developed to the point of the property being excluded as farm use grounds. Refer to attached Exhibit "Q" which depicts the original forty acre parcel, the two parcels of five acres (using the old tax lot numbering system), the remaining 28.46 acre parcel (TL 1400) and the road easement which runs north to south and bisects the parcel longitudinally. Attached Exhibit "R" is an enlargement of the Vale Oregon Irrigation Dist. water rights map. Review of Exhibit "R" reveals that TL 1400 retains 13 acres of water rights of the 28.46 acre parcel. These water rights are not "neatly" distributed in a central location, but rather, stretch across the southerly portion of TL 1400. Further, the acreage with water rights is bisected by the north-south easement road, cutting off a piece of the acreage approximately 3 ½ acres in size which contains a water right. To further complicate the matter, the property slopes from a plateau on the northern portion of the original forty acre parcel down toward Graham Blvd. on the southern boundary of the property.

Placement of structures upon the original forty acre parcel: Three rural residences are now located upon the original forty acre parcel: Refer to Exhibit "M". Each residence has a separate domestic well for water supply and sanitary system for domestic waste disposal. These features further impact the ability of the remaining 28.46 acre parcel to be utilized as farm lands.

Location of the parcel in conjunction with roadways: Refer to Exhibit "Q". The original forty acre parcel lies entirely to the north of Graham Blvd. Tax Lots 1500 and 1600 are serviced by the private easement road depicted in Exhibit "Q". Applicant's residence (located on TL 1400) is serviced by the private easement road depicted in Exhibit "Q". Finally, lands lying immediately

to the north of TL 1400 are now serviced by the private easement road depicted in Exhibit "Q". See Exhibit "N".

Incorporation of TL 1400 into adjoining farm use lands: TL 1400 is bounded on the south by Graham Blvd. Refer to Exhibit "A". This severs the property from farm use lands located to the south of the subject property. TL 1400 does abut up to farm use lands on the north, east and west. Applicant asserts the following conditions preclude inclusion of TL 1400 into those lands for the following reasons:

- a) Lands to the east: Lands lying to the immediate east of TL 1400 (a 77.00 acre parcel) include 51 acres of water right. Refer to Exhibit "E". However, the portion of TL 1400 which has a water right and abuts up to those lands to the immediate east is marginal. There is no incentive for the land owner of the easterly lands to incorporate TL 1400 into their farm operation.
- b) Lands to the west: Lands lying to the immediate west of TL 1400 (a 38.79 acre parcel) include 18 acres of water right. Refer to Exhibit "E". The portion of TL 1400 which has a water right and abuts up to those lands to the immediate west includes the ground which slopes to the south toward Graham Blvd. Additionally, Applicant's residence is located near the western boundary of TL 1400. These factors detract from any incentive for the land owner of the westerly lands to incorporate TL 1400 into their farm operation.
- c) Lands to the north: Lands lying to the immediate north of TL 1400 (a 192.00 acre parcel) include no acres of water right. Refer to Exhibit "E". Inclusion of TL 1400 would at best provide the owner of the 192.00 acre parcel with 13 acres of water right, which water right would not abut

immediately up to the 192.00 acres. There is no incentive for the land owner of the northern lands to incorporate TL 1400 into their farm operation.

Lands Irrevocably Committed The Applicant asserts the property likely does not meet this exception to Statewide Goal number 3 (OAR 660-004-0028). An analysis of lands "committed" requires the review of the following:

660-004-0028 Exception Requirements for Land Irrevocably Committed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;

(c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

(b) The characteristics of the adjacent lands;

(c) The relationship between the exception area and the lands adjacent to it; and

(d) The other relevant factors set forth in OAR 660-004-0028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are

impracticable:

- (a) Farm use as defined in ORS 215.203;
- (b) Propagation or harvesting of a forest product as specified in OAR 660- 033-0120; and
- (c) Forest operations or forest practices as specified in OAR 660-006- 0025(2)(a).

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

- (a) Existing adjacent uses;
- (b) Existing public facilities and services (water and sewer lines, etc.);
- (c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

- (d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and

(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.732 & ORS 197.736

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 5-1985, f. & ef. 11-15-85; LCDC 4-1996, f. & cert. ef. 12-23-96

OAR 660-004-0028, OR ADC 660-004-0028

Lands Irrevocably Committed: Analysis and Proposed Findings of Fact:

(a) The characteristics of the exception area: Physical characteristics of the exception area are as depicted in Exhibit "B". Of the original forty acre parcel, two other parcels have been created which sit in the center of the original forty acres, and in the north east corner. Further, the original parcel has been divided by an easement road: Exhibit "R". A portion of the remaining 28.46 acres (the exception area) retains a water right. Refer to Exhibits "E and O". The parcel is bounded to the south by Graham Blvd. Lands lying to the north lack a water right and are not cultivated, crop producing lands (Exhibit "O"). Sloping terrain of the exception area makes production of row crops difficult, but not impossible for production of small parcels of pasture. The Applicant seeks to partition the exception area as depicted in Exhibit "G". The exception area is unique in the sense that it is partially located above and below the Graham Blvd. bench with the lands sloping north to south toward Graham Blvd.

This feature allows for residences to be built on the higher ground, providing a desirable view for residential dwellings.

(b) The characteristics of the adjacent lands: Lands located immediately adjacent to the exception area are visually depicted in Exhibit "O". The greater area includes a mixture of lands irrigated and those lands lacking irrigation water rights. See also Exhibit "F" depicting pasture lands, irrigated lands for crop production and location of residences. Applicant's exception area is quite similar to those lands located to the immediate east and west including lands sloping north to south toward Graham Blvd. The majority of lands lacking irrigation water rights are located north of Graham Blvd (See Exhibits "E and F").

(c) The relationship between the exception area and the lands adjacent to it: Review of Exhibits "F" and "M" reveals that a mixture of smaller acreages (some as small as 1.10 acres) and rural residences exist within the study area. Residential density in the study area is not high density: the majority of the rural residences are scattered along Graham Blvd and Greenfield Road. The original forty acre parcel currently supports three residences (Exhibit "M") and the Applicant seeks to add another three residences using the configuration depicted in Exhibit "G". This configuration will allow three of the four parcels to have a water right for a small pasture. This small acreage / pasture opportunity will fit into the development trend along Graham Blvd: Exhibit "M" depicts several parcels of approximately ten acres in size with a rural residence located thereon. Applicant's requested actions will create an area with the highest density of rural residences within the study area depicted in Exhibit "M". However, there are no residences located to the immediate north of the exception area, and few residences located to the east and west of the exception area. As a result, the impact upon adjoining neighbors is not anticipated to be significant. Analysis of the impact upon groundwater has been set forth infra.

(d) Existing adjacent uses: Crop production is the predominant use of adjacent lands. Soils classifications are depicted in Exhibit "D". These soils dictate crop production as shown in Exhibit "F". Applicant's historic crop production on the exception area has traditionally been marginal at best. Refer to Exhibit "P". Production on adjacent lands has paralleled that of production on Applicant's parcel. However, those lands lying south of Graham Blvd. do not have the same bench rise in topography as those lands located north of Graham Blvd. Lands located due north of the exception area lack water rights. These lands are available for limited grazing, depending upon the amount of forage grown by spring rains. Lands to the east and west are a mixture of pasture lands and rural residential housing. Applicant's exception area is not remarkable from those lands to the immediate east and west.

(e) Existing public facilities and services (water and sewer lines, etc.): Public facilities and services are limited to power and telecommunications. Rural residences located graham Blvd must provide on site septic service as approved by the Sanitation dept. and must provide private domestic wells for household water needs. Public transportation (other than school busses for school children) is not available in this rural setting. There are no close mass transit facilities to the exception area. The nearest urban area is the City of Vale located a little over four (4) miles to the east.

(f) Parcel size and ownership patterns of the exception area and adjacent lands: Exhibit "M" information reveals the following: 43 rural residential homes exist within the study area which includes approximately 2,500 acres. Approximately 53 different individuals own ground located within the study area of Exhibit "M". On average, parcels sizes are 47.17 acres in size, consistent with the original size of the property when the Applicant's parents acquired the

ground. Parcels under ten (10) acres in size: There are eleven (11) parcels under ten (10) acres in size. Applicant's proposed division as set forth in Exhibit "G" would add another four parcels under ten acres in size to the land pattern.

Applicant's family has owned the original forty acre parcel since 1977. The transfer from parent to child occurred in subsequent years and the property remained in the family until the two five acre parcels were created. Changes in ownership of adjacent properties have been historically slow as many of the properties are used in agriculture and include a farm dwelling. These smaller properties do not change hands frequently in Malheur County unless the lands are being incorporated into larger farm tracts. This trend has not been evident in the area surrounding the Applicant's property.

(g) Neighborhood and regional characteristics: The "neighborhood" of the subject property is geographically defined by Graham Blvd. and the bench ground. This neighborhood has experienced less residential development over the recent years than other areas located within Malheur County. Primary residential development around the Vale area has been concentrated to lands within a mile of the city limits. However, lands offering a small acreage with a rural building site are almost non-existent. Applicant's subject property offers some desirable view lots which lack water rights and cultivation. These lots are suitable as building sites and should be considered as part of the "farming community" neighborhood.

The area along Graham Blvd. may be considered the "region" in which the subject property lies. This area includes the lands above Graham Blvd which lack water for farm production on certain properties. These lands may become the subject of additional rural residential development due to potential view lots and the close proximity to Vale and the local job market.

(h) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area: The subject property is presently zoned for Exclusive Farm Use. The original 40 acre parcel has been the subject of property division actions which now substantially impact the ability to economically farm the remaining EFU grounds. The Applicant acknowledges that water rights remain on portions of the property zoned EFU. The placement of residences on and around the subject property makes viable farm use of the property unlikely. As mentioned, incorporation into a larger EFU tract is also not likely and Graham Blvd. cuts the property off from farm use lands lying south of Graham Blvd.

Graham Blvd. bounds the exception area to the south. A private easement (Exhibit "N") further bisects the exception area north to south. This easement services the five acre lots and residences adjacent to the exception area, as well as provide access to those lands lying immediately north of the exception area.

(i) Physical development according to OAR 660-004-0025: The Applicant believes the property meets the exception to Statewide Goal number 3 (OAR 660-004-0025). An exception under this provision requires demonstration that the land subject to the exception is physically developed to the extent it is no longer available for uses allowed by the applicable goal. Emphasis added. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The findings of fact shall identify the extent and location of the

existing physical development on the land and may include information on structures, road, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal to which an exception is being taken shall not be used to justify a physically developed exception.

The applicable goal in this case is Statewide Planning Goal 3-Agricultural Land. The uses allowed under this goal are farm uses, and non-farm uses defined by the LCDC that will not have significant adverse affects on accepted farm practices. The remaining subject parcel is 28.46 acres in size and retains some water right. This acreage has been physically developed to the point where the property is being excluded as viable farm use ground.

(j) Other relevant factors. The exception area contains lands sloping north to south toward Graham Blvd. Ground lying in the northern portion of the exception lands primarily lacks irrigation water rights. Of the potential four new parcels depicted in Exhibit "G", three of the parcels offer potential building sites on "high ground" where a view to the south and east is offered. These sites are desirable as building sites and in significant demand in Malheur County, Oregon. Allowance of an amendment to the Comprehensive Plan and a re-zoning will make possible the creation of four new parcels with a rural residential tax basis for Malheur County. The 2006 taxes on the 28.46 acre parcel were: \$1,671.48 2006 taxes on the five acre lots adjacent to the exception lands were \$1,168.49 for TL 1500 and \$1,013.69 for TL 1600. Thus, the five acre parcels which are zoned rural residential generate nearly as much tax revenue as TL 1400, which is 5.69 times larger in acreage. Refer to Exhibit "S". From Applicant's proposed division (Refer Exhibit "G") it can be anticipated that the County will benefit by increased taxes of approximately \$3,272.00 per year by creation of three (3) additional tax lots

EXCEPTION TO STATEWIDE URBANIZATION GOAL

Applicable Rural (Urbanization) Policies:

Goal fourteen (14) of the Malheur County Comprehensive Plan sets forth it's Goal: "To provide for an orderly and efficient transition from rural to urban land use." The framers of the Comprehensive Plan envisioned a date and time in which areas surrounding cities in Malheur County would be viewed as a transition area in which an "efficient transition from rural to urban land use" would occur. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and appropriateness of the Rural Residential design designation on the subject property.

The Land Use Element of the Malheur County Comprehensive Plan, under Land Use categories identify Farm Use as:

“Areas designated on the plan maps for Farm Use (F) are reserved for uses set forth in ORS 215.203. *They are areas that are irrigated, or areas that are generally well-suited to farming and in close proximity to irrigated land.* These areas are zoned for Exclusive Farm Use (EFU).” Italics added.

Rural Residential Use is defined as:

“Areas designated on the plan maps for Rural Residential Use (RR) are areas reserved for existing or future low-density residential development. Some of these lands are already built upon and committed to rural residential use; these committed lands are zoned R-1. *However, most of the areas designated RR on the plan maps are pasture lands not yet committed to rural residential use; these lands are zoned for Exclusive Farm Use (EFU).* It is intended that as the need arises for additional land zoned R-1; developers will go through the zone change procedure set out in the zoning ordinance. If all criteria are met, a parcel zoned EFU but designated R on the plan maps may be re-zoned R-1.” Italics added.

OAR 600-004-0040(7)(i) addresses newly created rural residential areas such as proposed by the Applicant:

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

- (A) Require that any new lot or parcel have an area of at least 10 acres; or
- (B) Establish a minimum size of at least 2 acres for new lots or parcels in accordance with the requirements of Section (6).

OAR 660-004-0040(6) clearly establishes that an exception to Goal 14 is required to create any new lots smaller than 10 acres in any rural residential area. Specifically, it provides that “[a]fter the effective date of this rule, a local government’s requirement for minimum lot or parcels sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14.” Designating new rural residential lots with acreages of 5.0, 7.5, 6.5 and 9.0 as proposed by

the Applicant requires an exception to Goal 14. The “physically developed” and the “irrevocably committed” exceptions require a finding that the subject area is not available for uses allowed by the applicable goal, or that the surrounding land “commit” the subject areas to an urban use, making it no longer available or practical for rural farm or exception uses, or that reasons justify why the state policy embodied in the applicable goals should not apply.

The need for Additional Land Zoned R-1: With the exception of the areas already exempt from the Comprehensive Plan, all areas around the City of Vale are zoned EFU or ERU. The number of similar lots available for rural residential construction is addressed in Exhibit “K”. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and appropriateness of the Rural designation on the subject property.

The current Housing Needs of Malheur County: Greater Vale Area: The Applicant proposes that a re-zoning of the subject property from EFU to RR with a goal of creating three (3) new parcels with lot sizes of 5.0, 7.5, 6.5 and 9.0 acres meets growth needs of the greater Vale area while maintaining a balance of impacts upon transportation facilities, public education facilities, and public utility services. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and appropriateness of the Rural designation on the subject property.

Alternative Areas in Malheur County which should be Designated Rural and Why the Chosen Alternative is more Suitable: The Applicant is aware of one other area within Malheur County which is under consideration for re-zoning from EFU to RR zones: Malheur County Planning Dept. Application #2007-08-011. Evaluation of “comparable alternative” sites would be a comparison of lands within the greater Ontario area as compared to the Applicant’s parcel. Due

to the geographic, economic and regional differences between the lands under consideration in Malheur County Planning Dept. Application #2007-08-011, comparison of those lands against Applicant's parcel is truly an "apples to oranges" comparison. The Applicant's site is ideally suited for transition from EFU into RR due to the fact that the practicality of farming the site has been diminished, if not totally abolished due to the development of tax lots 1500 and 1600. The subject property offers highly desirable building sites as proposed in Exhibit "G". The Applicant has determined such sites are in high demand by local building contractors and the local real estate market. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and the appropriateness of the Rural designation on the subject property.

Long Term Environmental, Economic, Social and Energy Consequences to the Locality, Region or State by Designating this Property as Rural Residential: A zone change from EFU to RR allows for appropriate development of the subject property. The level of development proposed by the Applicant would result in development of three (3) additional residential dwellings on three (3) new lots. Three (3) proposed residential dwellings have been shown to have little if any measurable impact upon the locality, region or State. The proposed development would not be dependent upon public utilities including public water or public sewer sanitation services. It is estimated and anticipated that there will be some impact upon traffic and traffic corridor facilities within the local area, primarily Graham Blvd. As has been set forth by the Applicant, measures to address safety concerns have been identified by appropriate officials and are agreeable with the Applicant. The previously provided Findings addressing and warranting a Goal Exception demonstrate consistency with these factors, and appropriateness of the Rural designation on the subject property.

Based upon the above Findings, the characteristics of the subject property are consistent with rural and urbanization policies discussed above and the Rural Residential plan designation is

appropriate.

PUBLIC NEED FOR REQUESTED PLAN AMENDMENT & ZONE CHANGE

Comprehensive Plan amendments must be predicated upon a demonstrated need for the proposed change at issue, as well as a demonstration that the need will be best served by changing the Comprehensive Plan and zoning of the property at issue as compared with other available property. It is the policy of the State of Oregon to preserve and maintain designated resource lands for farm use. This same policy is articulated in the Malheur County Comprehensive Plan and is implemented in land use regulations which discourage or prohibit the establishment of additional non-resource related development in rural areas of Malheur County. The Comprehensive Plan further recognizes that there is a public need to provide opportunities for non-resource related residential uses in rural settings. Statewide policy and local planning regulations establish standards and procedures enabling Malheur County to reach a balance between the policy of preserving farm use lands and the recognized need for rural residences in rural Malheur County. This balance may be achieved by recognizing and accommodating pre-existing non-resource related residential development in rural areas which would otherwise be planned and zoned for resource related uses. Goal 2, Part II (Exceptions) provides for local governing bodies to adopt an exception to an applicable Statewide Goal when the land subject to the exception is either "irrevocably committed" or "physically developed" to uses not allowed by the applicable goal due to existing adjacent uses, conditions of the subject property, and other relevant factors making the use allowed by the applicable goal impracticable, or reasons justify why the state policy embodied in the applicable goals should not apply. The Oregon Administrative Rules establish specific standards and procedures for acknowledging such pre-existing uses and conditions.

In the preceding section of this Supplemental Application document, the Applicant has presented Findings of Fact demonstrating that the subject property is arguably irrevocably

committed and certainly physically developed to non-resource uses. The Applicant proposes that the current highest and best use of the subject property is now creation of a rural residential zoning by amendment of the Comprehensive Plan to permit the creation of three (3) additional rural residential building sites. Adoption of Findings of Fact which justify excepting the subject property from the restrictions of Statewide Goal No. 3 (Agriculture) is consistent with statewide and local policy planning, recognizing that there is a public need to facilitate residential development in rural areas of Malheur County where resource related uses are no longer practicable. Approval of the requested zone change and Comprehensive Plan Amendment of the subject property helps mitigate future public need to convert other higher value resources lands through rural residential zoning with the subsequent increase in the amount of non-resource residential uses in the local area. The public need will be best served by amending the Comprehensive Plan and changing the zoning of the subject property as compared against other available rural properties available in Malheur County.

The Applicant's counsel has worked with John Faw, principal broker with Waldo Real Estate, of Ontario, OR, in an effort to determine the quantity of available rural residential building sites of 10 acres in size or less. Attached as Exhibit "K" is a letter authored by John Faw with supporting documentation setting forth the significant lack of 10 acre or smaller rural residential building sites. Review of the greater Vale area reflects a complete lack of lots which exceed two (2) acres but fall under ten (10) acres in size. Re-zoning of the lowest quality resource lands to non-resource uses should be a first priority for Malheur County, preserving higher value resource lands for their intended uses: farming and crop production.

ZONE CHANGE CRITERIA

Zone changes require that the Planning Commission find that:

- d) The rezoning will conform with the applicable sections of the Comprehensive Plan;
- e) The site is suitable to the proposed use; and,

- f) There has been a conscious consideration of the public health, welfare and safety in applying the specific zoning regulations.

Addressing the above cited zone change criteria, the Applicant proposes the following Findings of Fact: The requested change in zoning from EFU to Rural Residential of the subject property is based upon a concurrent request to amend the Comprehensive Plan designation from EFU to Rural Residential, together with a proposed exception to the Statewide Agricultural Goal. If Applicant's Plan Amendment and Goal exception request is approved, the requested zone change will conform to the amended Comprehensive Plan Map. Findings demonstrating that the requested change in zoning will conform to applicable policies contained in the Comprehensive Plan are included in preceding sections of this Supplemental Application document. The Applicant concludes that the rezoning will conform to the applicable sections of the Malheur County Comprehensive Plan.

Specific Findings addressing the suitability of the subject site for the proposed zone and the intended use are included in preceding sections of this Supplemental Application document. Those earlier Findings demonstrate that the subject property is very well suited for the proposed Rural Residential zoning with respect to the physical characteristics of the property, availability of necessary and appropriate public facilities and services, adequate access to local transportation facilities, the low potential of natural hazards from flooding or wild fire, the absence of unstable geology, and compatibility with adjacent and nearby land use activities. The Applicant therefore concludes that the site is suitable for the proposed zone (Rural Residential) and the intended use (provision for three additional residential structures).

Specific Findings addressing the public health, safety and welfare aspects of the proposed zone change of the subject property are included in preceding sections of this Supplemental Application document. Those Findings demonstrate that there is currently a sufficient level of public services and utilities available to the subject property that the zone change will not adversely impact the

carrying capacity of local air sheds, degrade land and water resources or threaten the availability of such resources. The subject property has not been identified as having a significant potential of natural disaster such as flooding or wild fire.

The subject property is not needed for public recreational facilities. The requested zone change will not significantly increase the existing supply of housing in the surrounding area, but will meet a unique market demand for rural residential building sites which exceed two (2) acres but are less than ten (10) acres in size. Population growth from the proposed use will not overburden present or future transportation facilities or public utilities.

The Applicant respectfully submits this Supplemental Information, Analysis and Proposed Findings of Fact, urging the Malheur County Planning Commission to approve Applicant's requested actions: 1) rezoning of the subject property from Exclusive Farm Use to Rural Residential; and 2) amending the Malheur County Comprehensive Plan with the request to create three (3) additional rural residential building sites.

I, the undersigned, John Zueger, the titleholder of the property described in this application, and I hereby certify that the statements and information contained herein are in all respects true, complete, and correct to the best of my knowledge and belief.

Signed: John Zueger
John Zueger

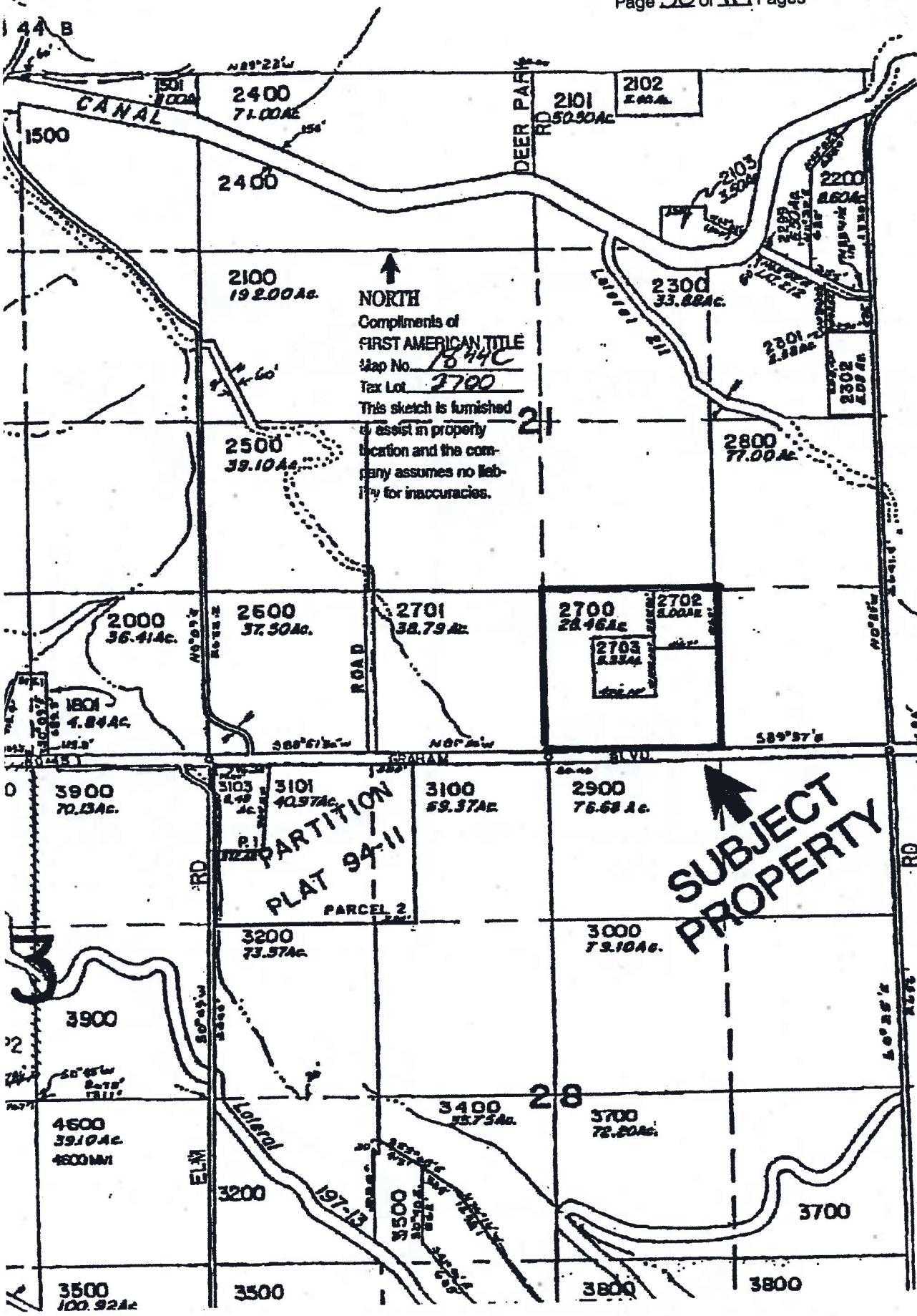
Date: 9-27-07

**APPLICANT'S SUPPLEMENTAL
INFORMATION, ANALYSIS and
PROPOSED FINDINGS OF FACT.**

TABLE OF CONTENTS TO EXHIBITS:

<u>Exhibit Number:</u>	<u>Description of Exhibit:</u>	<u># Pages</u>
A	Plat Map depicting subject property	1
B	<u>Sweeten Test map</u> and Subject Property	1
C	USDA Soil Survey Map	1
D	Soils Classification Map	1
E	Vale Oregon Irrigation Dist. Map & photo	2
F	<u>Sweeten Test map</u> : surrounding uses	1
G	Plat map and hand drawn rendition of proposed lot lines	2
H	Water Resources Dept. letter & Info.	4
I	Vale Rural Fire Dept. letter	1
J	Oregon Dept. of Transportation letter	1
K	John Faw letter & documentation	14
L	Aerial photo	1
M	<u>Sweeten Test map</u> : Residential placement	1
N	Easement documents re: subject parcel	7
O	Aerial photos & irrigation map overlay	2
P	Water User Census: 1993 - 2006	23
Q	Plat Map with Easement Road depicted	1
R	Enlarged Vale Oregon Irrigation Dist. Map	1
S	Plat Map & tax info.	1

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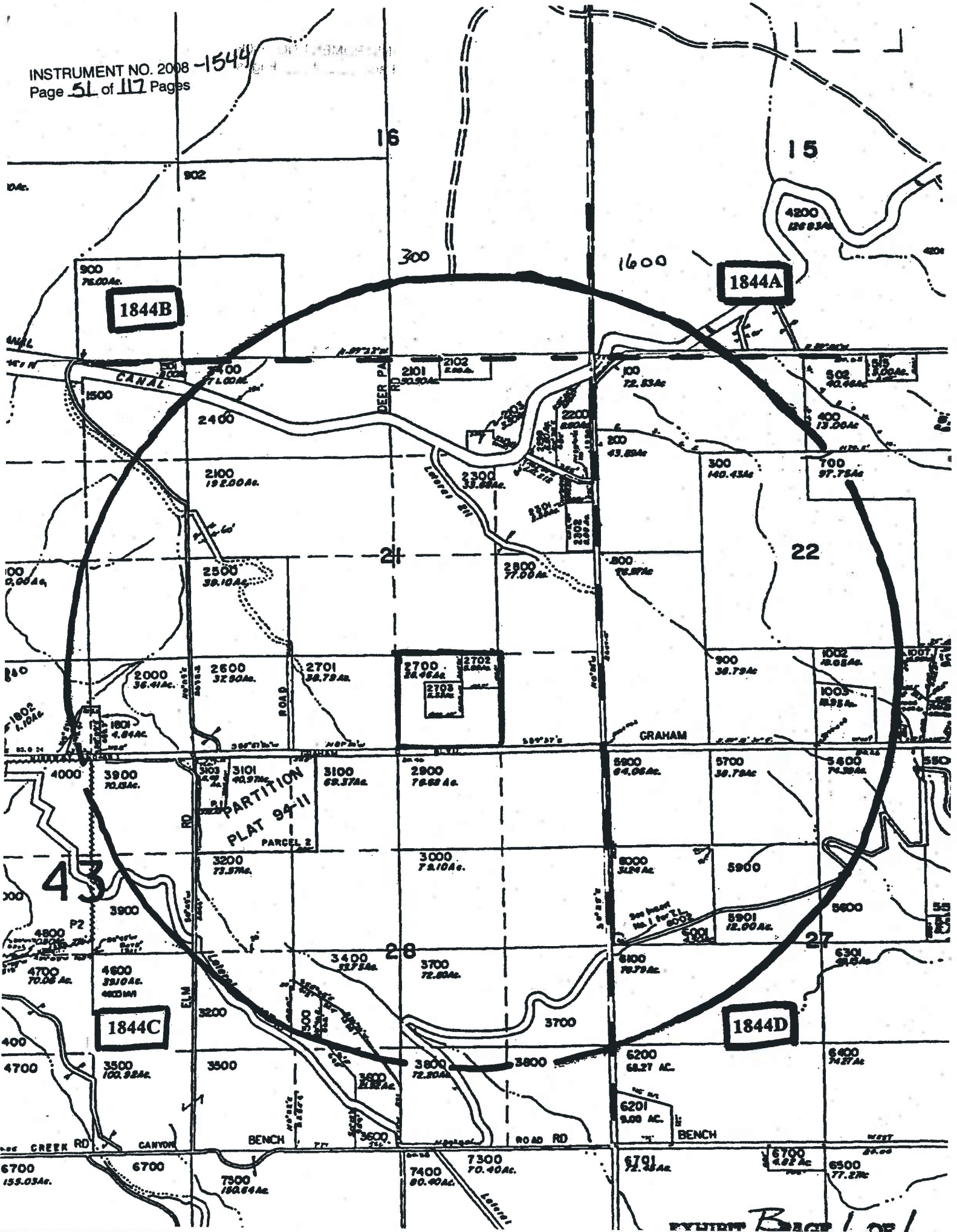
NORTH
 Compliments of
 FIRST AMERICAN TITLE
 Map No. 1844C
 Tax Lot 2700
 This sketch is furnished
 to assist in property
 location and the com-
 pany assumes no liab-
 ility for inaccuracies.

**SUBJECT
 PROPERTY**

- CANCELLED
- 200
 - 1399
 - 1400
 - 2001
 - 3300
 - 4100
 - 4901
 - 4904
 - 4904U1 THF
 - 4904U3
 - 5001
 - 5300
 - 5401
 - 5500
 - 5600
 - 5700
 - 5701
 - 6401
 - 6600
 - 7900

SEE MAP 18 44 D

- PARCEL 7000
1. 80°47'00" E 30'
 2. 80°35'00" E 30'
 3. 50°24'00" E 100'
 4. 80°15'00" E 120'
 5. SOUTH 200'
 6. 22°22'00" W 220'
 7. 50°10'00" E 25'
 8. 54°30'00" E 170'
 9. SOUTH 100'
 10. 54°30'00" E 40'
 11. 55°30'00" E 40'
 12. 82°30'00" E 15'
 13. WEST 100'



1844B

1844A

1844C

1844D

PARTITION
PLAT 94-11
PARCEL 2

GRAHAM

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ref 13)



CLASS II CLASS III CLASS IV CLASS V CLASS VI CLASS VII CLASS VIII

Farm

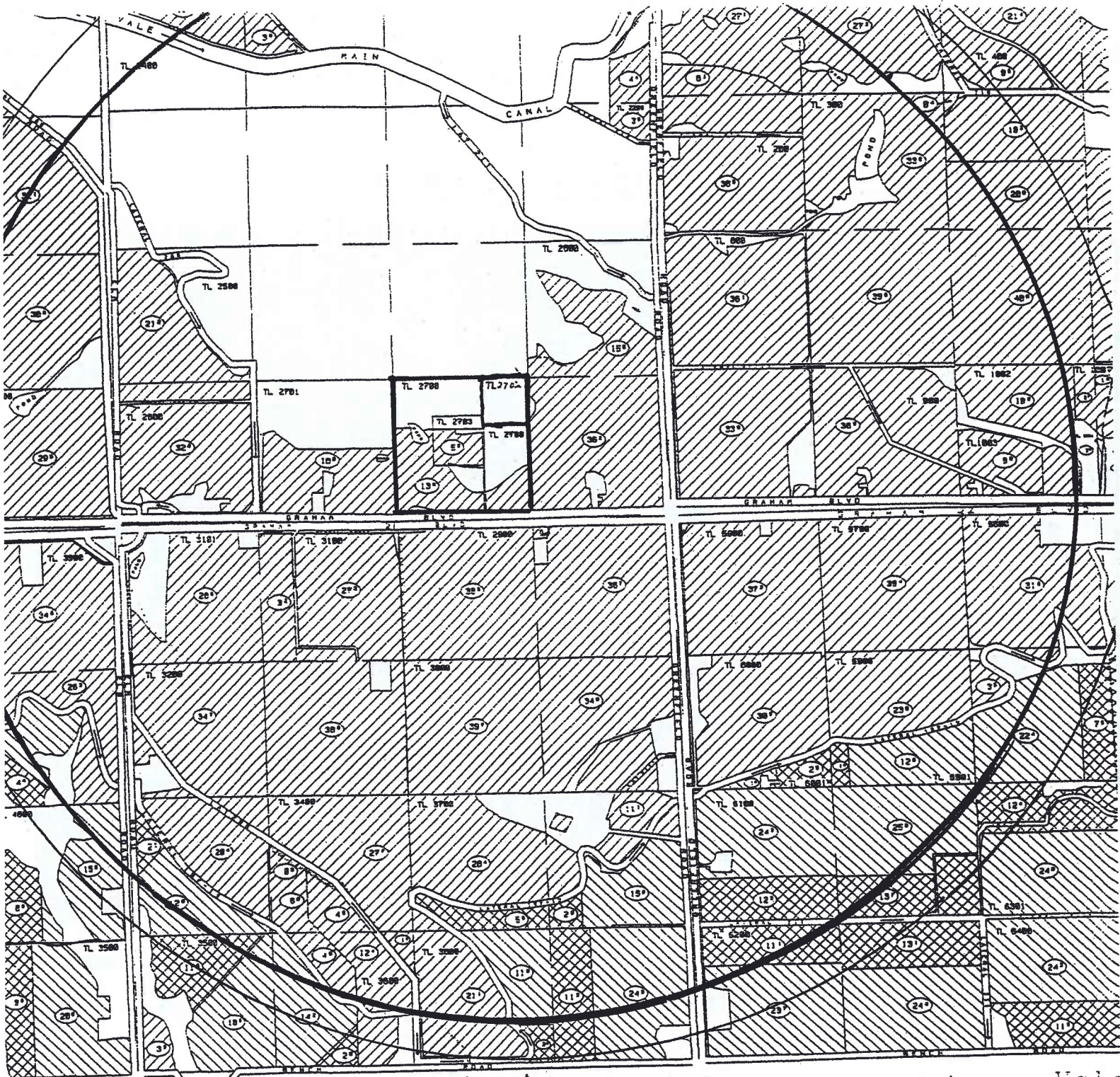
Graze

Rocks

SURVEY 15

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Vale Oregon
Irrigation
District

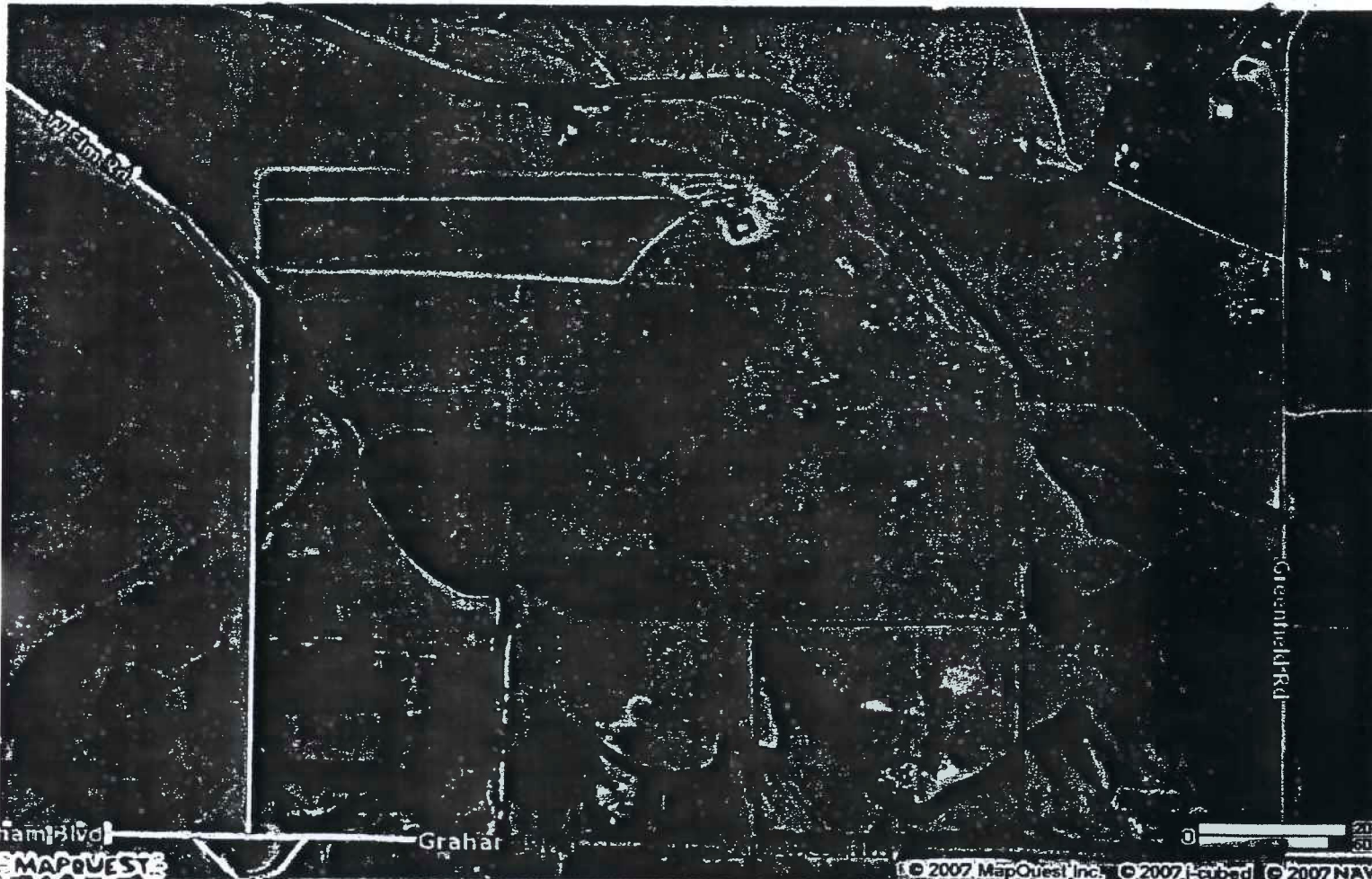
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INSTRUMENT NO. 2008-1544
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★ Vale City Hall:
541-473-3133
252 B St W
Vale, OR 97918, US

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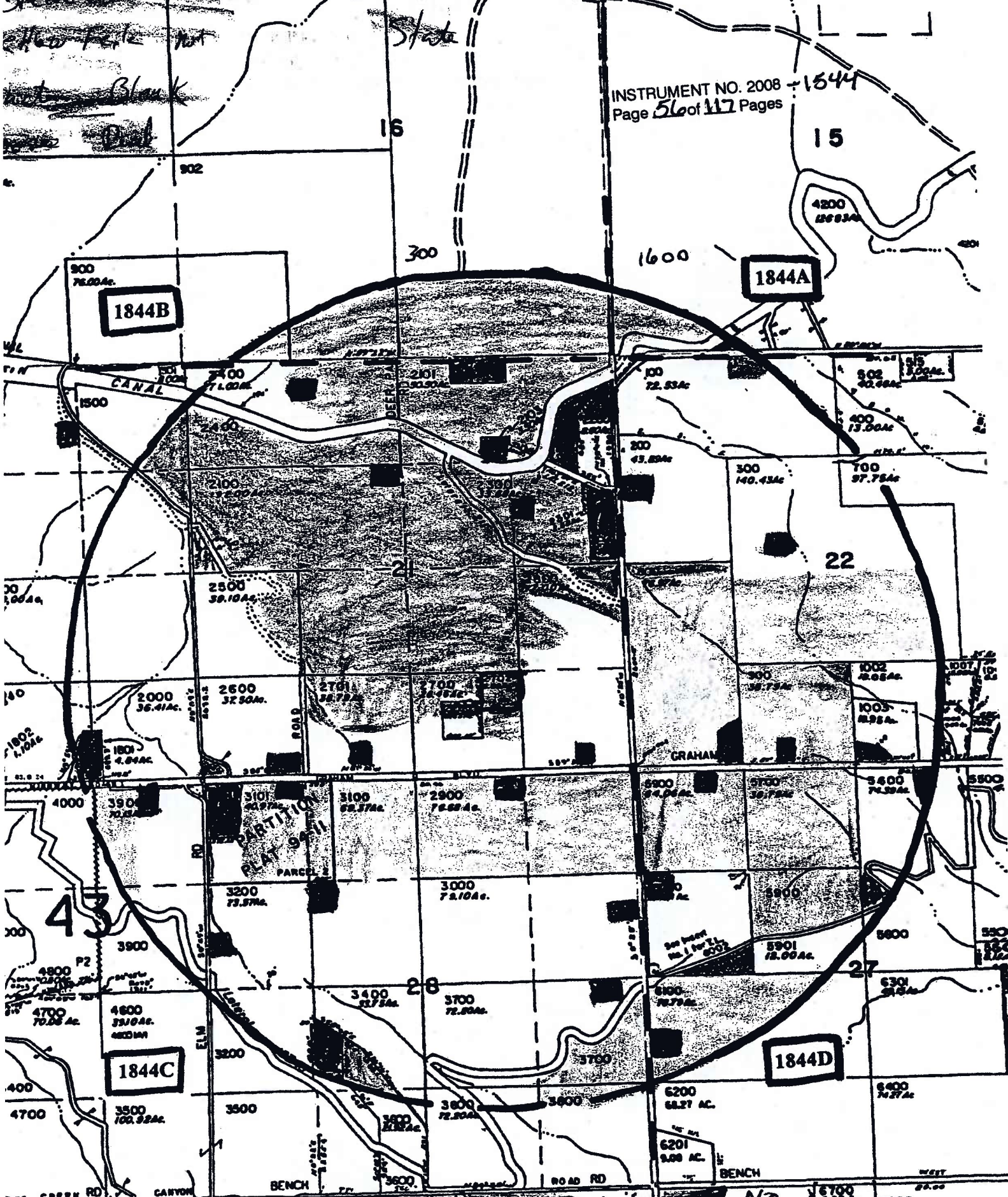
This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.

Mike Curtis | John Zueger |
Live water is Delivered From Elm Road, to mike Curtis, then John Zueger, then it Ends a Jim John sons line.
all of the tail water Runs allong Graham Blvd. to Greenfield Road. →

New parts not
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State

INSTRUMENT NO. 2008-1844
Page 56 of 117 Pages



Dwellings

Irrigated Pasture

Irrigated cash crop

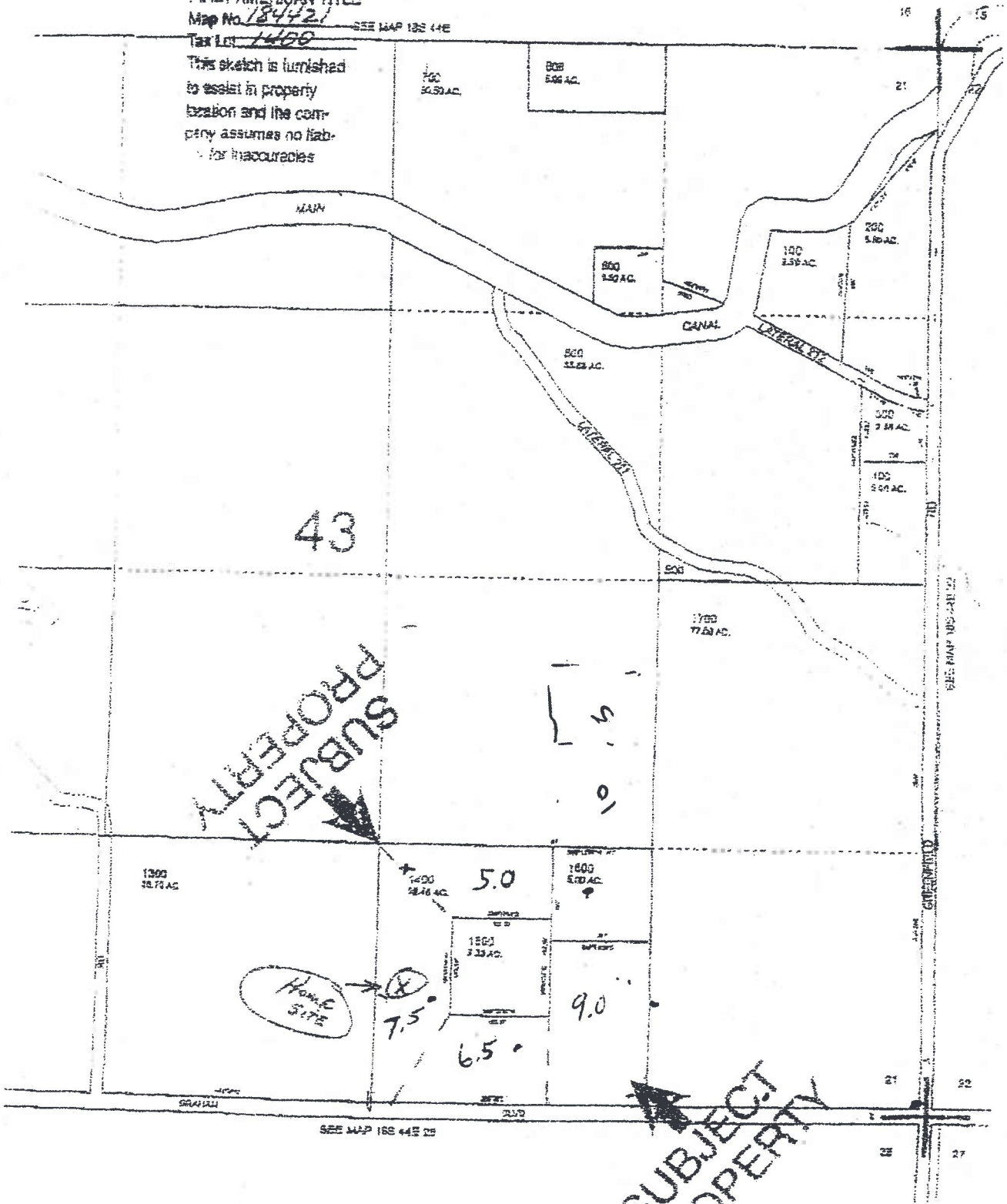
NO WATER RIGHTS
EXHIBIT E PAGE 1 OF 1

FEB-13-2007 TUE 02:57 PM First American Title FAX NO. 5418892927 P. 08
MALHEUR COUNTY

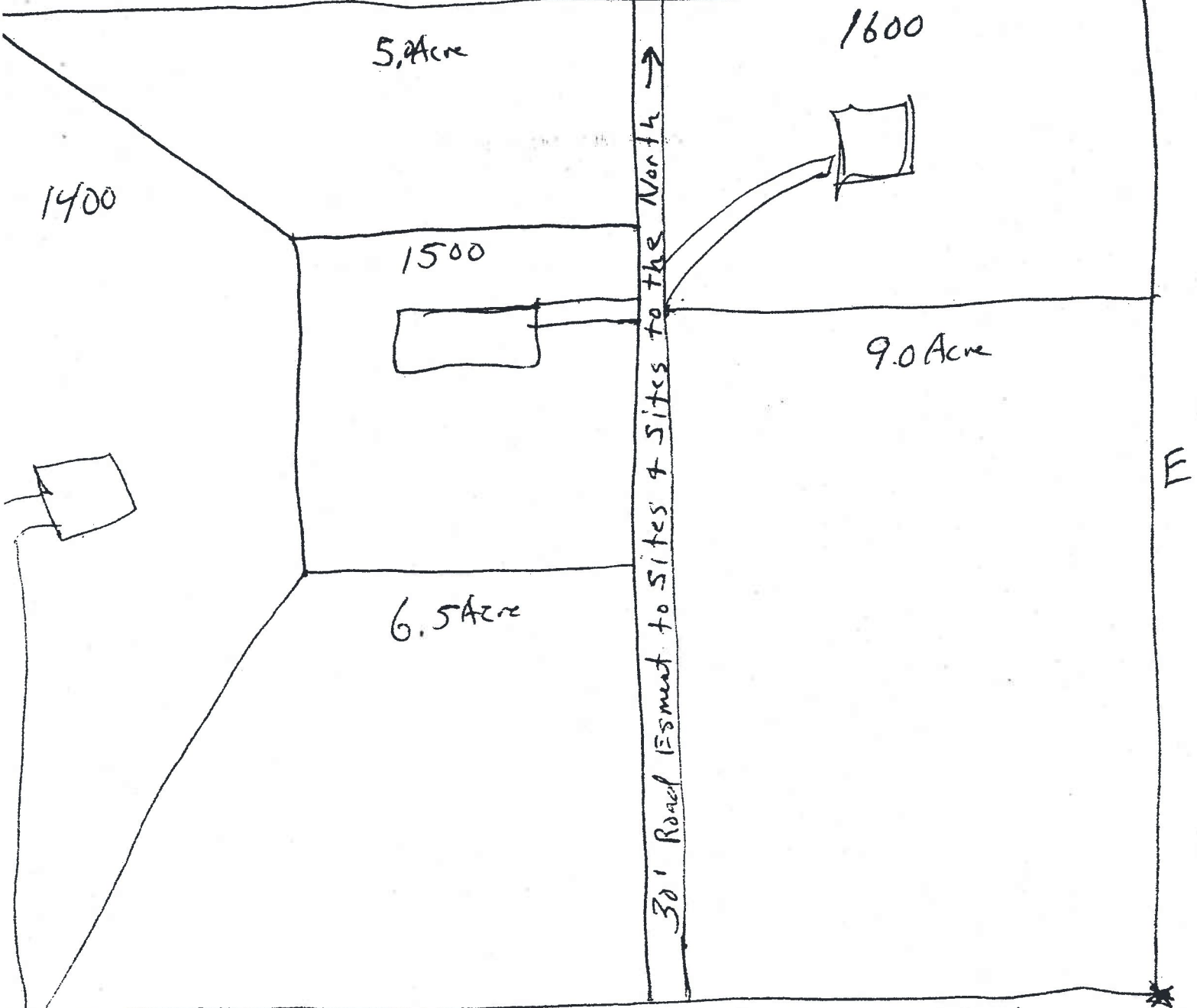
NORTH
Compliments of
FIRST AMERICAN TITLE

Map No. **184421** SEE MAP 182 44E
Tax Lot **1400**

This sketch is furnished
to assist in property
location and the com-
pany assumes no liab-
ility for inaccuracies



**SUBJECT
PROPERTY**



South

Graham Blvd

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Oregon

Theodore R. Kulongoski, Governor

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Water Resources Department
Eastern Region
Baker County Courthouse
1995 3rd Street, Suite 180
Baker City, OR 97814
Phone: (541) 523-8224
Fax: (541) 523-7866
www.wrd.state.or.us

April 19, 2007

John Zueger
2132 Graham Blvd
Vale OR 97918

On April 11, 2007 you requested an inspection of your existing well.

Inspection of your well referenced by MALH 804, found a 6 inch steel cased well. The top of the casing was 2 feet above land surface and the well was fitted with a sealed cap. The static water level was 3 feet below land surface and the well is reported to be 57 feet deep. After a review of the well log for MALH 804, this well appears to meet the minimum well construction standards as set forth in Oregon Administrative Rules 690, Division 210.

During this inspection you asked if there was a chance of interference with the existing wells in the immediate area if you were to drill several other wells.

Although there is a possibility of connectivity among neighboring wells, any interference would be dependent on aquifer characteristics and pumping rates. It would take an aquifer study and pump tests to determine if there is any, and the level of that interference.

The well logs of record in this area indicate wells to be low yielding. If a well failed due to interference in the future, Oregon Water Resources Department would require that well to be deepened to fully penetrate the aquifer before regulating off a new use.

If you have any questions, please contact me at my office.

Thank you,

Robert D. Maynard
Eastern Region Well Inspector
1995 3rd Street Suite 180
Baker City OR 97814
541-523-8224 ex 22

Well Log Query Results

Township: 18 S, Range: 44 E, Sections: 21

Well Log	T-R-S/ Q-Q	Taxlot	Street of Well	Owner	Company	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date
MALH 812	18.00S-44.00E-21 NE-NE			KNOTT, ROBERT VALE OR		W	89.00	200.00	68.0	20.0	08/22/1970
MALH 813	18.00S-44.00E-21 SE-NE			KEESLER, NORMAN VALE OR 97918		W		34.00			03/08/1977
MALH 814	18.00S-44.00E-21 SE-NE			KEESLER, NORMAN VALE OR 97918		W	117.00	123.00	60.0	30.0	03/12/1977
MALH 815	18.00S-44.00E-21 NW-SE		2124 Graham	mac Rasmason JONES, EUGENE VALE OR 97918		W	280.00	558.00	84.0	0.0	05/19/1977
MALH 818	18.00S-44.00E-21 SW-SE		2128 Graham	John Zueger ZUEGER, AL VALE OR 97918		W	29.00	68.00	23.0	7.0	03/14/1978
MALH 50843	18.00S-44.00E-21 SW-NE	2100	GREENFIELD RD	PROSSER, DAVID 3759 GREENFIELD RD VALE OR 97918		W	114.00	350.00	79.0	2.0	12/13/1997
MALH 50889	18.00S-44.00E-21 SW-NE	2100	GREENFIELD RD	PROSSER, DAVID 3759 GREENFIELD RD VALE OR 97918		W	90.00	120.00	51.0	15.0	04/07/1998

12

6" x 6"

[Download Data](#)

[Return to Well Log Query](#)

~~Debbie~~

~~Zueger~~ Nothing for John?

208-452-6820

EXHIBIT H PAGE 2 OF 4

Well Log Query Results

Township: 18 S, Range: 44 E, Sections: 21

Well Log	T-R-S/ Q-Q-Q	Taxlot	Street of Well	Owner	Company	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Rec Dr
MALH 802	18.00S-44.00E-21 SW-SW			Mike Cortrs MESSINGER, GENE RT 1 BOX 1472 VALE OR 97918		W	47.00	100.00	47.0	12.0	08/27/1985	11/18.
MALH 803	18.00S-44.00E-21 NW-SW			RANDLE, MIKE 22227 SE 275TH PL KENT WA 98031		W	164.00	165.00	75.0	20.0	08/25/1980	06/30.
MALH 804	18.00S-44.00E-21 SW-SE		2132 Graham	John Zueger ZUEGER, AL VALE OR 97918 2132 Graham		W	53.00	57.00	3.0	8.0	12/20/1979	12/31.
MALH 805	18.00S-44.00E-21 NE-NE			KNOTT, ROBERT VALE OR 97918		W	228.00	270.00	60.0	38.0	08/03/1979	10/25.
MALH 806	18.00S-44.00E-21 NE-NE			KNOTT, ROBERT VALE OR 97918		W	95.00	210.00	50.0	80.0	08/08/1979	07/08.
MALH 807	18.00S-44.00E-21 NE-NE			KNOTT, ROBERT VALE OR 97918		W	280.00	310.00	58.0	10.0	08/05/1979	07/08.
MALH 808	18.00S-44.00E-21 SE-NE			BUCK, GARY L RT 1 BOX 183A VALE OR 97918		W	85.00	90.00	70.0	18.0	12/20/1979	01/18.
MALH 809	18.00S-44.00E-21 SE-SE		15,006	Tim Johnson GREENBANK, ELMER VALE OR 97918		W	50.00	215.00	30.0	1.0	08/18/1979	08/25.
MALH 810	18.00S-44.00E-21 NW-NW			ZUEZER, GEORGE RFD VALE OR 97918		W		113.00	30.0	5.0	10/23/1969	04/25.
MALH 811	18.00S-44.00E-21 NE-NE			KNOTT, SEYMORE RT 2 BOX 20-A VALE OR 97918		W	46.00	80.00	80.0	24.0	07/28/1973	08/16.

12

[Download Data](#)
[Return to Well Log Query](#)

APPROPRIATION OF WATER GENERALLY

537.545

ect under a permit, upon approval by the Water Resources Department, to recover up to 100 percent of the water stored in the aquifer storage facility if valid scientific data gathered during operations under the limited license or permit demonstrate that the injected source water is not lost through migration or other means and that ground water otherwise present in the aquifer has not been irretrievably lost as a result of aquifer storage or retrieval. The Water Resources Department may place such other conditions on withdrawal of stored water necessary to protect the public health and environment, including conditions allowing reconsideration of the permit to comply with ORS 537.532.

(c) The procedure for allowing the Department of Environmental Quality and the Department of Human Services to comment on and recommend permit conditions.

(6) The use of water under a permit as injection source water for an aquifer storage and recovery project up to the limits allowed in subsection (5)(b) of this section shall not affect the priority date of the water right permit or otherwise affect the right evidenced by the permit.

(7) The holder of a permit for aquifer storage and recovery shall apply for a transfer or change of use if the use of recovered water is different from that which is allowed in the source water permit or certificate. [1995 c.487 §4; 1997 c.587 §2; 1999 c.665 §3; 2003 c.594 §6]

(Appropriation of Ground Water)

537.535 Unlawful use or appropriation of ground water, including well construction and operation. (1) No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992.

(2) Except for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water. [1955 c.708 §4; 1957 c.341 §5; subsection (2) enacted as 1961 c.668 §2; 1985 c.673 §47]

537.540 [Repealed by 1955 c.708 §38]

537.545 Exempt uses. (1) No registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS

537.505 to 537.795 and 537.992 is required for the use of ground water for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;

(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes;

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day; or

(g) Land application, so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

(2) The use of ground water for a use exempt under subsection (1) of this section, to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. Except for the use of water under subsection (1)(g) of this section, the Water Resources Commission by rule may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof. For a use of water described in subsection (1)(g) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.

(3) If it is necessary for the Water Resources Department to regulate the use or

February 7, 2005

Jon Beal, Planning Director
Malheur County Planning Commission
251 B Street West
Vale, OR 97918

To Whom It May Concern,

Regarding request for fire protection for John Zueger, pertaining to property located at 2128 Graham Blvd., Vale, OR 97918, Map Number 1844C, Tax Lot Numbers 2702, Sec. 21, Township 18 S, Range 44E. W.M. N.W Quarter. The property in question lies within the designated area for coverage by the Vale Rural Fire Department, Inc. here in after called the *Department*. Upon the payment of the annual dues and proper registration by the property owner, the *Department* will provide fire suppression protection to the property.

The obligation upon the *Department* to provide that coverage is limited by the following two provisions contained in the *Department's* By-Laws:

Section I., Paragraph 2.1 provides as follow:

2.1 The *Department* shall have as its object the extinguishing and prevention of member's fires in the designated area, when the fires are accessible to the fire fighting equipment and /or fire personal.

Section VI, paragraph 4 provides as follows:

It shall be the obligation of the members to provide appropriate roads, crossing and other access so that there is available to the *Department* all weather access sufficient for a fully loaded fire truck. The *Department's* obligation to respond to a fire shall be limited to the extent that there is not appropriate access provided to the member's property.

Subject to this limitation fire protection will be available to the property.

If you have any questions regarding this subject please call me at 473-2612. If I am unavailable please leave a message on the answering machine and I will return your call as soon as possible.

Sincerely,



Elaine Kuwahara, Secretary
Vale Rural Fire Department, Inc.

DEPARTMENT OF
TRANSPORTATION

1390 SE First Avenue
Ontario OR 97914

District 14

August 10, 2005

FILE CODE:

Malheur County Planning Dept.
251 B St. West
Vale, OR 97918

To Whom It May Concern:

This letter is in reference to a request made by John Zueger for access to the State Highway system. The location of the request is from property abutting Graham Blvd. identified as Tax Lot 2700, T.18 S., R. 44 E., W.M., Sec.21. The property owner may request an application for State Highway Approach. The Oregon Department of Transportation will review the application and render a decision based on the guidelines set forth in OAR 734-051.

The Department shall approve an application for an approach for an applicant who applies for a private approach where the subject property has a right of access and the requirements of OAR 734-051 are met.

Respectfully,



Tom Busche
District Operations Coordinator
ODOT District 14



1508 East Idaho Ave.
Ontario, OR 97914
(541) 889-9115
(541) 889-9116
(541) 889-6600 FAX



WALDO REAL ESTATE

HOME • FARM • COMMERCIAL

ONTARIO
37 S.W. 30TH ST.
P.O. BOX 39
ONTARIO, OR 97914
41.889.8160
00.398.3457
41.889.7541 FAX

NEW PLYMOUTH
29 N. PLYMOUTH AVE.
P.O. BOX 350
NEW PLYMOUTH, ID
83655
08.278.5252
88.278.5252
08.278.5202 FAX

NYSSA
18 MAIN ST.
NYSSA, OR 97913

February 27, 2007

INSTRUMENT NO. 2008-1644
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Law Offices
Butler & Looney, P.C.
David Butler
292 Main St. South
Vale, Or 97918

Dear Mr. Butler,

This letter is in response to the question of the availability of 10 acre building sites in the Ontario, Oregon and the surrounding area.

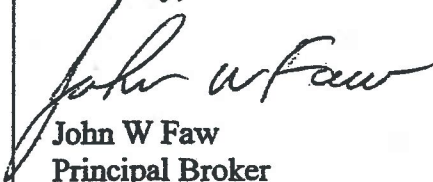
Researching the inventory that is currently for sale in this area, I find only 2 build able rural lots available at this time that are in the 5 to 20 acre size. One of these is in Jordan Valley Oregon which leaves only one in the Ontario area that one is priced at \$75,000 and this is for a 6 acre parcel.

This is the only inventory of this type of property that is now available to the general public.

Researching further, there have only been 5 sold in the past year. These range in size from 4.83 to 16 acres. The prices on these have ranged from a high of \$150,000 for the 16 acres to a low of \$60,000 and this lot was located in near Vale Oregon.

Our market is in very short supply of small acreage building lots that are available and desirable for new construction.

Sincerely,


John W Faw
Principal Broker



S #	Status	Area	Price	# Acres	DOM	LP	\$/# Acres	SP	\$/# Acres
59222	Active	Vale - 1625	\$19,500	1.19	974	\$19,500	\$16,386.55		
59225	Active	Vale - 1625	\$19,500	1.19	974	\$19,500	\$16,386.55		
59236	Active	Vale - 1625	\$19,500	1.03	974	\$19,500	\$18,932.04		
59243	Active	Vale - 1625	\$19,500	1.17	974	\$19,500	\$16,666.67		
59277	Active	Vale - 1625	\$19,500	1.03	974	\$19,500	\$18,932.04		
59282	Active	Vale - 1625	\$19,500	1.03	974	\$19,500	\$18,932.04		
55895	Active	Vale - 1625	\$19,500	1.00	230	\$19,500	\$19,500.00		
88732	Active	Out of Area - 2000	\$25,000	5.10	13	\$25,000	\$4,901.96		
55487	Back on Market	Vale - 1625	\$39,900	2.00	244	\$39,900	\$19,950.00		
90200	Active	Nyssa/Malheur Other - 1650	\$60,000	3.00	4	\$60,000	\$20,000.00		
65547	Active	Ontario - 1600	\$75,000	6.00	179	\$75,000	\$12,500.00		
89938	Active	Ontario - 1600	\$125,000	1.25	5	\$125,000	\$100,000.00		
33802	Active	Ontario - 1600	\$135,000	4.81	374	\$135,000	\$28,066.53		
					Avg	Avg	Avg	Avg	Avg
					530	\$45,876	\$23,934		

Land - Sold - PAST 12 MO.

S #	Status	Area	Price	# Acres	DOM	LP	\$/# Acres	SP	\$/# Acres
30359	Sold	Ontario - 1600	\$14,000	1.01	128	\$18,000	\$17,821.78	\$14,000	\$13,861.39
71952	Sold	Ontario - 1600	\$15,000	1.00	616	\$17,500	\$17,500.00	\$15,000	\$15,000.00
71941	Sold	Ontario - 1600	\$18,500	1.00	665	\$19,000	\$19,000.00	\$18,500	\$18,500.00
37032	Sold	Ontario - 1600	\$19,250	1.00	63	\$19,200	\$19,200.00	\$19,250	\$19,250.00
69246	Sold	Vale - 1625	\$19,500	1.06	694	\$19,500	\$18,396.23	\$19,500	\$18,396.23
69248	Sold	Vale - 1625	\$19,500	1.09	795	\$19,500	\$17,889.91	\$19,500	\$17,889.91
53727	Sold	Ontario - 1600	\$19,500	1.03	44	\$19,500	\$18,932.04	\$19,500	\$18,932.04
69230	Sold	Vale - 1625	\$19,500	1.16	764	\$20,000	\$17,241.38	\$19,500	\$18,810.34
69221	Sold	Vale - 1625	\$20,000	1.10	670	\$20,000	\$18,181.82	\$20,000	\$18,181.82
37020	Sold	Ontario - 1600	\$20,000	1.00	49	\$20,000	\$20,000.00	\$20,000	\$20,000.00
69240	Sold	Vale - 1625	\$20,000	1.39	670	\$21,000	\$15,107.91	\$20,000	\$14,388.49
23102	Sold	Ontario - 1600	\$20,000	1.13	98	\$22,500	\$19,911.50	\$20,000	\$17,699.12
29232	Sold	Ontario - 1600	\$22,000	1.57	93	\$24,000	\$15,286.62	\$22,000	\$14,012.74
59741	Sold	Ontario - 1600	\$23,000	1.00	23	\$23,500	\$23,500.00	\$23,000	\$23,000.00
31404	Sold	Nyssa/Malheur Other - 1650	\$24,500	1.93	21	\$24,900	\$12,901.55	\$24,500	\$12,694.30
45421	Sold	Vale - 1625	\$26,500	1.22	49	\$26,500	\$21,721.31	\$26,500	\$21,721.31
62175	Sold	Vale - 1625	\$26,500	2.15	85	\$32,500	\$15,116.28	\$26,500	\$12,325.58
213826	Sold	Ontario - 1600	\$29,750	1.25	299	\$35,000	\$28,000.00	\$29,750	\$23,800.00
237007	Sold	Ontario - 1600	\$32,000	2.00	198	\$35,000	\$17,500.00	\$32,000	\$16,000.00
280201	Sold	Ontario - 1600	\$34,900	1.01	73	\$34,900	\$34,554.46	\$34,900	\$34,554.46
236988	Sold	Ontario - 1600	\$35,000	2.00	196	\$35,000	\$17,500.00	\$35,000	\$17,500.00
226653	Sold	Ontario - 1600	\$35,000	2.39	91	\$39,900	\$16,694.56	\$35,000	\$14,644.35
242891	Sold	Ontario - 1600	\$35,000	1.85	160	\$50,000	\$27,027.03	\$35,000	\$18,918.92
244976	Sold	Ontario - 1600	\$36,000	3.04	269	\$45,000	\$14,802.63	\$36,000	\$11,842.11
209697	Sold	Ontario - 1600	\$40,000	3.42	477	\$50,000	\$14,619.88	\$40,000	\$11,695.91

S #	Status	Area	Price	# Acres	DOM	LP	\$/# Acres	SP	\$/# Acres
248407	Sold	Ontario - 1600	\$45,000	2.49	167	\$42,500	\$17,068.27	\$45,000	\$18,072.29
248399	Sold	Ontario - 1600	\$48,000	2.93	272	\$49,500	\$16,894.20	\$48,000	\$16,382.25
273774	Sold	Vale - 1625	\$60,000	5.00	120	\$60,000	\$12,000.00	\$60,000	\$12,000.00
218213	Sold	Ontario - 1600	\$72,000	4.83	281	\$74,900	\$15,507.25	\$72,000	\$14,906.83
248344	Sold	Ontario - 1600	\$80,000	4.91	34	\$85,000	\$17,311.61	\$80,000	\$16,293.28
208168	Sold	Vale - 1625	\$85,000	10.39	297	\$85,000	\$8,180.94	\$85,000	\$8,180.94
177777	Sold	Ontario - 1600	\$150,000	16.00	729	\$175,000	\$10,937.50	\$150,000	\$9,375.00
					Avg	Avg	Avg	Avg	Avg
					287	\$39,493	\$18,009	\$36,403	\$16,775

Land Summary Statistics

	High	Low	Average	Median
LP:	\$175,000	\$17,500	\$41,337	\$25,000
SP:	\$150,000	\$14,000	\$36,403	\$26,500

Disclaimer

is information is deemed reliable but not guaranteed. EQUAL HOUSING OPPORTUNITY

INSTRUMENT NO. 2008-1844
Page 6 of 117 Pages

BIBBIT K PAGE 2 of 14

LIST PRICE:
SOLD PRICE:

HIGH	LOW	AVERAGE	MEDIAN	TOTAL PRICE	LISTING COUNT
\$175,000	\$17,500	\$41,337	\$25,000	\$1,860,200	45
\$160,000	\$14,000	\$38,403	\$28,500	\$1,164,900	

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EXHIBIT E PAGE 5 OF 17

Default MLS Defined Spreadsheet

City	Price	# Acres	Directions	Irrigation (Y/N)	MLS #	Address	Type	Status	Manu Homes Allowed (Y/N)	Land Use	DOMPIC	Agent - Agent Name and Phone	Listing Office Name and Phone	Cov & Restrict (Y/N)	Land Size	Sold Price	Status Date	
Jamieson	\$24,500	1.93	Hwy. 26N to Jamieson, West on Main to property.	No	98231404	5174 W Main	Building Lots	Sold	Yes	Single	21	1	Sandra Hinson-Rouse (208) 230-0881	Coldwell Banker-Classical (208) 642-9316	No	1 Acre - 4.99 Acres	\$24,500	2/21/2006
Ontario	\$14,000	1.01	N on Hwy 201, left on Casa Rio Drive	No	98230359	0 Casa Rio Drive	Building Lots	Sold	No	Single	128	1	Sherry Schoeneman (208) 741-0606	RE/MAX Four Star - Main (541) 889-8801	Yes	1 Acre - 4.99 Acres	\$14,000	5/31/2006
Ontario	\$15,000	1.00	N on Hwy 201, 3 miles		98171952	Lot 24 Riata Circle	Building Lots	Sold	No	Single	616	1	GERALD KURTH - (541) 889-8579	Ace Realty Ontario - Main (541) 889-1999	Yes	1 Acre - 4.99 Acres	\$15,000	4/6/2006
Ontario	\$18,500	1.00	N on Hwy 201, 3 miles on L	No	98171941	lot12 Casa Rio Dr.	Building Lots	Sold	No	Single	665	1	GERALD KURTH - (541) 889-8579	Ace Realty Ontario - Main (541) 889-1999	Yes	1 Acre - 4.99 Acres	\$18,500	1/22/2007
Ontario	\$19,250	1.00	N. ON 201, W. ON CHESTER, N. ON TUTTLE	No	98237032	LOT 202 TUTTLE DR.	Building Lots	Sold	Yes	Single	63	1	Kathy Judy - (208) 230-1954	RE/MAX Tr Cities - Main (208) 452-4334	Yes	1 Acre - 4.99 Acres	\$19,250	5/17/2006
Ontario	\$19,500	1.03	North 201, L on Vaquero Dr., R on Riata Cir., Right side of circle.	No	98253727	TBD Riata Cr.	Building Lots	Sold	No	Single	44	2	Curtis L McKinney - (208) 707-1619	Parkview - Main (208) 942-4026	Yes	1 Acre - 4.99 Acres	\$19,500	8/10/2006
Ontario	\$20,000	1.13	Hwy 201 to Casa Rio Dr., North of Ontario	No	98223102	TBD Casa Rio Dr.	Building Lots	Sold	No	Single	98	0	Kim A Bruce - (208) 642-1762	Parkview - Main (208) 642-4026	No	1 Acre - 4.99 Acres	\$20,000	2/13/2006
Ontario	\$20,000	1.00	N. ON 201, W. ON CHESTER, N. ON TUTTLE	No	98237020	LOT 200 TUTTLE DR.	Building Lots	Sold	Yes	Single	49	1	Kathy Judy - (208) 230-1954	RE/MAX Tr Cities - Main (208) 452-4334	Yes	1 Acre - 4.99 Acres	\$20,000	5/22/2006
Ontario	\$22,000	1.57	Hwy 201 toward Weiser, Appx 2 mi. from Ontario turn L on Casa Rio Drive, property on L by new home	No	98229232	000 Lot 4	Building Lots	Sold	No	Single	93	1	Barbara Lee - (208) 739-3937	CENTURY 21 New Image Realty - Main (541) 889-3162	Yes	1 Acre - 4.99 Acres	\$22,000	4/14/2006
Ontario	\$23,000	1.00	South on 201, Turn Left on Tuttle Dr.	No	98259741	TBD Tuttle Dr.	Building Lots	Sold	No	Single	23	3	Curtis L McKinney - (208) 707-1619	CENTURY 21 Parkview - Main (208) 642-4026	Yes	1 Acre - 4.99 Acres	\$23,000	8/23/2006
Ontario	\$29,750	1.25	N on Oregon, S onto Former, W onto NW 11th Place	No	98213828	TBD NW 11th	Building Lots	Sold	No	5+ Units	299	4	Sharon Harp	Parkview - Main (208) 642-4026	No	1 Acre - 4.99 Acres	\$29,750	6/19/2006
Ontario	\$32,000	2.00	N. ON 201, W. ON CHESTER, N. ON TUTTLE	No	98237007	LOT 1301 TUTTLE DR.	Building Lots	Sold	Yes	Single	198	1	Kathy Judy - (208) 230-1954	RE/MAX Tr Cities - Main (208) 452-4334	Yes	1 Acre - 4.99 Acres	\$32,000	9/29/2006

Ontario	\$34,900	1.01	Ontario, W on Casa Rio Drive (approx 3 miles N of Ontario)	No	98280201 Drive	TBD Casa Rio	Building Lots	Sold	No	Single	73	2	20	Phil 885	RE/MAX Tr Cites - Main (208) 452-4334	No	1	Acres - 4.99	\$35,000	3/20/2006
Ontario	\$35,000	1.85	N on Hwy 201 from Ontario approx 9 miles to sign	No	98242891	4753 hwy 201	Building Lots	Sold	Yes	Single	160	2	20	Phil 885	RE/MAX Tr Cites - Main (208) 452-4334	No	1	Acres - 4.99	\$35,000	3/20/2006
Ontario	\$35,000	2.39	West on Chester, cross over Freeway, turn South onto Foothill Dr.	No	98226653	410 Foothill Dr.	Building Lots	Sold	Yes	Single	91	0	0	Kathy Judy - (208) 230-1954	RE/MAX Tr Cites - Main (208) 452-4334	Yes	1	Acres - 4.99	\$35,000	9/27/2006
Ontario	\$35,000	2.00	N. ON 201, W. ON CHESTER, N. ON TUTTLE	No	98236988	LOT 1300 TUTTLE DR.	Building Lots	Sold	Yes	Single	196	1	1	Kathy Judy - (208) 230-1954	RE/MAX Tr Cites - Main (208) 452-4334	Yes	1	Acres - 4.99	\$35,000	9/27/2006
Ontario	\$36,000	3.04	Hwy 201 towards Weiser, West on Chester, North on Baker Rd to signs.	No	98244976	TBD Baker Rd	Building Lots	Sold	Yes	Single	269	4	4	Travis Currey - (541) 212-1871	Banker-Mahneur - Main (541) 889-5800	No	1	Acres - 4.99	\$36,000	11/21/2006
Ontario	\$40,000	3.42	Hwy 201 W on Morgan Av S on Clark Blvd to lane to property. Property East of Clark Blvd.	No	98209897	0 Clark Blvd	Building Lots	Sold	None	Single	477	5	5	Thomas Phillips - (541) 889-8401	Tom Phillips Agency - Main (541) 889-8401	No	1	Acres - 4.99	\$40,000	11/20/2006
Ontario	\$45,000	2.49	N. ON 201, W. ON CHESTER RD, CROSS OVER FREEWAY, TURN S. ON FOOTHILL. LOOK FOR SIGNS	No	98248407	00 FOOTHILL DR. LOT 2	Building Lots	Sold	No	Single	167	1	1	Vicki L Swain - (208) 868-7080	RE/MAX Tr Cites - Main (208) 452-4334	No	1	Acres - 4.99	\$45,000	11/10/2006
Ontario	\$48,000	2.93	N. ON 201, W. ON CHESTER RD, CROSS OVER FREEWAY, TURN S. ON FOOTHILL. LOOK FOR SIGNS	No	98248399	00 FOOTHILL DR. LOT 1	Building Lots	Sold	No	Single	272	1	1	Vicki L Swain - (208) 868-7080	RE/MAX Tr Cites - Main (208) 452-4334	No	1	Acres - 4.99	\$48,000	2/26/2007
Ontario	\$72,000	4.83	N. ON 201, W. ON CHESTER, S. ON FOOTHILL	No	98218213	434 FOOTHILL	Building Lots	Sold	Yes	Single	281	0	0	Kathy Judy - (208) 230-1954	RE/MAX Tr Cites - Main (208) 452-4334	No	1	Acres - 4.99	\$72,000	7/7/2006
Ontario	\$80,000	4.91	I-84 to Exit 374 turn right on Old-Ferry-201 Turn W onto Hyline Road to sign after 4605 Hyline Road	Yes	98248344	4605 Hyline Road	Building Lots	Sold	Yes	Single	34	5	5	Ruthie Carlson - (208) 739-1049	Choice Realtestate, LLC - Main (208) 452-2411	No	1	Acres - 4.99	\$80,000	6/26/2006
Ontario	\$150,000	16.00	Hwy 201 to 20, to Vista Dr.	No	98177777	4605 Hyline Road	Building Lots	Sold	Yes	Single	729	1	1	DAN COLEMAN - (541) 212-1984	Ace Realty Ontario - Main (541) 889-1999	No	1	Acres - 19.9	\$150,000	9/28/2006
Vale	\$19,500	1.16	1 Mile East Of Vale on Hwy 20-26	No	98169230	5 Louise St	Building Lots	Sold	Yes	Single	764	0	0	Donald R Schultz - (541) 881-6260	R. Realty Co. - Main (541) 473-2012	Yes	1	Acres - 4.99	\$19,500	7/31/2006
Vale	\$19,500	1.09	1 Mile East of Vale on Hwy 20/26	No	98169248	011 James Ln	Building Lots	Sold	Yes	Single	795	0	0	Donald R Schultz - (541) 881-6260	R. Realty Co. - Main (541) 473-2012	Yes	1	Acres - 4.99	\$19,500	9/1/2006

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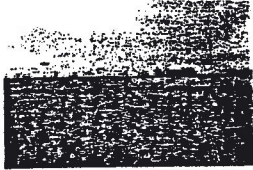
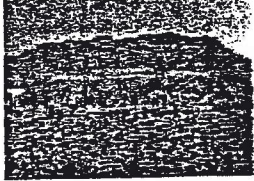
INSTRUMENT NO. 2008-1544
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Vale	\$20,000	1.10	1 Mile east of Vale on Hwy 20-26 1 Mile east of Vale on Hwy 20-26	98169221	00 Louise St	Building Lots	Sold	Yes	Single	670	0	Schultz - (541) 881-8280	- Main (541) 473-2012	Yes	4.99 Acres	5/1/2006
Vale	\$20,000	1.39	1 Mile east of Vale on Hwy 20/26	98169240	0 Dustin Dr.	Building Lots	Sold	Yes	Single	670	0	Schultz - (541) 881-8280	- Main (541) 473-2012	Yes	4.99 Acres	5/1/2006
Vale	\$26,500	2.15	Vale, W on Graham Blvd 1/4 to prop.	98262175	0 A St W	Building Lots	Sold	Yes	Single	85	0	Brandt L Bond - (541) 212-1246	Flying Realty - Main (541) 473-3155	Yes	4.99 Acres	11/7/2006
Vale	\$26,500	1.22	East of Vale on Hwy 20-26 to Shadow Butte Estates Subdivision.	98245421	0 Dustin Dr	Building Lots	Sold	Yes	Single	49	0	Donald R Schultz - (541) 881-8260	R. Realty Co. - Main (541) 473-2012	Yes	4.99 Acres	6/26/2006
Vale	\$60,000	5.00	From Vale on Washington St. W to Graham Blvd. W to Ash St. N to Thousand Springs Rd. to end of rd.	98273774	TBD Thousand Springs Rd	Building Lots	Sold	Yes	Single	120	0	NANCY ANTHONY - (541) 473-2881	Tom Phillips Agency - Main (541) 889-8401	No	9.9 Acres	2/20/2007
Vale	\$85,000	10.39	North of Logan's Market, east of US 26 (1/4 mile from the junction of US 20).	98208168	000 TBD	Building Lots	Sold	Yes	5+ Units	297	5	Richard O Beck - (541) 372-3532	Mel Beck Real Estate - Main (541) 372-3532	No	19.9 Acres	5/5/2006
Jamieson	\$39,900	2.00	from hwy turn west on 13 1/2 st. last lot on left	98255467	000 TBD	Building Lots	Back on Market	Yes	Single	244	3	Barbara A Kuhlman	Century 21 New Image Realty - Main (541) 889-3162	No	5 Acres	2/23/2007
Jordan Valley	\$25,000	5.10	95 SOUTH TO JORDAN VALLEY, TERRY SUBDIVISION NO. 2	98288732	MAP 30S46 1202 TERRY SUBDIVISION NO. 2.	Building Lots	Active	Yes	Single	13	3	Tara L Sharpe	Century 21 New Image Realty - Main (541) 889-3162	No	9.9 Acres	2/17/2007
Nyssa	\$60,000	3.00	Fr Adrian on OR 201 go approx 2.3 miles North, turn east on Beet Dump Rd, turn north.	98290200	610 Kygar Rd	Building Lots	Active	Yes	Single	4	4	Maurice Clements - (208) 260-2193	Brandt Agency - Main (208) 466-7821	No	4.99 Acres	2/26/2007
Ontario	\$75,000	6.00	20-26 Ontario towards Vale, S on Butte Rd at Butte Baptist Church cross Onlon, sign on S end of prop	98265547	TBD Butte Rd	Building Lots	Active	Yes	Single	179	0	Patricia Phillips - (541) 889-8401	Tom Phillips Agency - Main (541) 889-8401	No	5 Acres	10/30/2006
Ontario	\$125,000	1.25	N. on Oregon St, S on Fortner, W on NW 11th Place	98289938	TBD NW 11th Place	Building Lots	Active	No	5+ Units	5	3	Larissa Barto - (208) 739-0114	Century 21 Parkview - Main (208) 642-4026	No	4.99 Acres	2/26/2006
Ontario	\$135,000	4.81	From SW 4th Av. go South about 10 blocks, then on the East side of road.	98233802	0 Sunset Dr.	Building Lots	Active	Yes	Other	374	3	Larry Wilson - (541) 889-3800	Banker-Malheur - Main (541) 889-5600	Yes	4.99 Acres	10/21/2006
Ontario	\$135,000	4.81	From SW 4th Av. go South about 10 blocks, then on the East side of road.	98233802	0 Sunset Dr.	Building Lots	Active	Yes	Other	374	3	Donald R Schultz - (541) 889-3800	R. Realty Co. - Main (541) 889-5600	Yes	4.99 Acres	7/15/2006

Vale	\$19,500	1.03	1 Mile East of Vale on Hwy 20/26	No	98169277	08 Dustin Dr. Building Lots	Active	Yes	Single	974	0	Donald R Schultz - (541) 861-6260	K. Keally L.O. - Main (541) 473-2012	Yes	4.99 Acres	7/15/2006
Vale	\$19,500	1.03	1 Mile East Of Vale on Hwy 20/26	No	98169282	07 Dustin Dr Building Lots	Active	Yes	Single	974	0	Donald R Schultz - (541) 861-6260	R. Realty Co. - Main (541) 473-2012	Yes	4.99 Acres	7/15/2006
Vale	\$19,500	1.19	1 Mile East of Vale on Hwy 20-26	No	98169225	023 Dustin Dr Building Lots	Active	Yes	Single	974	0	Donald R Schultz - (541) 861-6260	R. Realty Co. - Main (541) 473-2012	Yes	1 Acre - 4.99 Acres	7/15/2006
Vale	\$19,500	1.19	1 Mile east of Vale on Hwy 20-26	No	98169222	01 Louise St Building Lots	Active	Yes	Single	974	0	Donald R Schultz - (541) 861-6260	R. Realty Co. - Main (541) 473-2012	Yes	1 Acre - 4.99 Acres	7/15/2006
Vale	\$19,500	1.17	1 Mile East Of Vale on Hwy 20/26		98169243	022 Dustin Dr Building Lots	Active	Yes	Single	974	0	Donald R Schultz - (541) 861-6260	R. Realty Co. - Main (541) 473-2012	Yes	1 Acre - 4.99 Acres	7/15/2006
Vale	\$19,500	1.00	East of Vale on Hwy 20-26 to Shadow Butte Estates.	No	98255895	09 Dustin Drive Building Lots	Active	Yes	Single	230	0	Donald R Schultz - (541) 861-6260	R. Realty Co. - Main (541) 473-2012		1 Acre - 4.99 Acres	7/15/2006

Disclaimer

This information is deemed reliable but not guaranteed. EQUAL HOUSING OPPORTUNITY



98288732
US Active
e \$25,000
res MAP 30S46 1202 TERRY
SUBDIVISION NO 2
cti 95 SOUTH TO JORDAN
VALLEY, TERRY
SUBDIVISION NO. 2

Type Building Lots
Area Out of Area - 2000
City Jordan Valley

MLS # 98290200
Status Active
Price \$60,000
Address 610 Kygar Rd

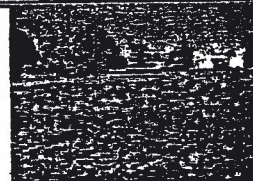
Type Building Lots
Area Nyssa/Malheur Other -
1650
City Nyssa

Directions Fr Adrian on OR 201 go
approx 2.3 miles North,
turn east on Beet Dump
Rd, turn north.

Remarks BUILD YOUR DREAM HOME IN THIS NICE
SUBDIVISION IN JORDAN VALLEY. POWER TO
PROPERTY. PROPERTY SIMILAR TO PHOTOS SHOWN.

Remarks Secluded building lot near Owyhee River. 4.5 miles
from Adrian, Oregon. 11.75 miles to Nyssa. Irrigation
water available & power to the property. Paved
county road access. Wild life seen on, or near
property; Deer, wild turkeys, pheasant, ducks, geese
& upland game birds. Near fishing on Owyhee and

No Photo
Available



98265547
US Active
e \$75,000
res TBD Butte Rd

Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98289938
Status Active
Price \$125,000
Address TBD NW 11th Place
Directions N. on Oregon St, S on
Fortner, W on NW 11th
Place

Type Building Lots
Area Ontario - 1600
City Ontario

cti 20-26 Ontario towards
Vale, S on Butte Rd at
Butte Baptist Church
cross Onion, sign on S
end of prop

Remarks Malheur County has approved the property for a
conditional use permit to build a home. View property,
room for horse, has easement on south end to
neighboring property.

Remarks Excellent opportunity for a multi-family complex. This
property is zoned RM-10, high density residential and
has the potential too for a large complex or may easily
suit 5 four-plexes. Seller has provided proposed site
plan to connect NW 11th Place & NW 4th St. to
accommodate city requirements & avoid fire truck



No Photo
Available

98233802
US Active
e \$135,000
res 0 Sunset Dr.

Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98255895
Status Active
Price \$19,500
Address 09 Dustin Drive
Direction East of Vale on Hwy 20
S -26 to Shadow Butte
Estates.

Type Building Lots
Area Vale - 1625
City Vale

Directions From SW 4th Av. go
South about 10 blocks,
then on the East side of
road.

Remarks CHOICE BUILDING LOT - Hard to find 4.81 acre
building site inside the Urban Growth Boundary.
Zoned R-2UGA. Currently farmed and has a 5 acre
Owyhee Water Right. Can be subdivided if annexed
int city limits. Buyers are advised to consult with
Ontario City Planner regarding subdivision and

Remarks Nice building lots. Easy access to major Hwy. Lot has
Phone, Electric, Gas, and Cable underground.

No Photo Available

No Photo Available

98169282
Status Active
Price \$19,500
Address 07 Dustin Dr
Directions 1 Mile East Of Vale on Hwy 20/26

Type Building Lots
Area Vale - 1625
City Vale

MLS # 98169236
Status Active
Price \$19,500
Address 06 Louise St
Directions 1 Mile east of Vale on Hwy 20/26

Type Building Lots
Area Vale - 1625
City Vale

Remarks Rural subdivision. Animals OK. Mfg Homes allowed. Level land. Underground electric, gas, phone and cable, Easy access to major Hwy.

Remarks Rural subdivision. Animals OK. Level lots. Easy access to Major Hwy. Underground utilities. Mfg, Homes OK. Septic approved.

No Photo Available

MLS # 98169225
Status Active
Price \$19,500
Address 023 Dustin Dr
Directions 1 Mile East of Vale on Hwy 20-26

Type Building Lots
Area Vale - 1625
City Vale

MLS # 98169222
Status Active
Price \$19,500
Address 01 Louise St
Directions 1 Mile east of Vale on Hwy 20-26

Type Building Lots
Area Vale - 1625
City Vale

Remarks Rural Subdivision. Animals OK. Level lots. Easy access to major Hwy. Mfg, Homes allowed. Underground electric, gas, phone and cable.

Remarks Rural Subdivision. Easy access to Major highway. Level lots. Mfg, Homes allowed. Room for animals. Underground utilities

No Photo Available

MLS # 98169277
Status Active
Price \$19,500
Address 08 Dustin Dr.
Directions 1 Mile East of Vale on Hwy 20/26

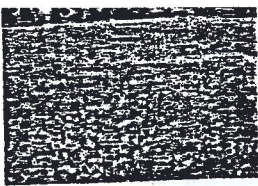
Type Building Lots
Area Vale - 1625
City Vale

MLS # 98169243
Status Active
Price \$19,500
Address 022 Dustin Dr
Directions 1 Mile East Of Vale on Hwy 20/26

Type Building Lots
Area Vale - 1625
City Vale

Remarks Rural Subdivision. Easy access to major Hwy. Level lots. Mfg. Homes allowed. Underground electric, gas, phone and cable. Animals OK

Remarks Rural Subdivision. Level lots. Underground electric, gas, phone, cable. Buy to put in well & Septic. Animals OK. Mfg. homes allowed. Easy access to major Hwy.



MLS # 98255487
Status Back on Market
Price \$39,900
Address 000 TBD
Directions from hwy turn west on
13 1/2 st. last lot on
left

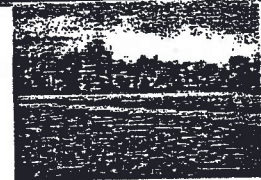
Type Building Lots
Area Vale - 1625
City Jamieson

MLS # 98231404
Status Sold
Price \$24,500
Address 5174 W Main
Directions Hwy. 26N to Jamieson,
West on Main to
property

Type Building Lots
Area Nyssa/Malheur Other -
1650
City Jamieson

Remarks Nice building lot in small town close to hunting and
fishing. M/H okay.

Remarks Property has 1953 Manufactured home. Foreclosure,
does not have title. nice lot in Jamieson. Several
outbuildings, driveway to left



MLS # 98230359
Status Sold
Price \$14,000
Address 0 Casa Rio Drive
Directions N on Hwy 201, left on
Casa Rio Drive

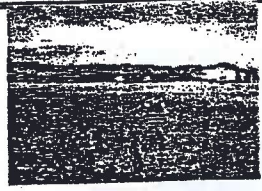
Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98171952
Status Sold
Price \$15,000
Address Lot 24 Riata Circle
Directions N on Hwy 201, 3
miles

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks Close to town and yet in the country. Build your dream
house here.

Remarks Country living close to town



MLS # 98171941
Status Sold
Price \$18,500
Address lot 12 Casa Rio Dr.
Directions N on Hwy 201, 3 miles
on L

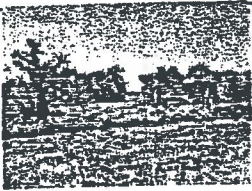
Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98237032
Status Sold
Price \$19,250
Address LOT 202 TUTTLE DR.
Directions N. ON 201, W. ON
CHESTER, N. ON
TUTTLE

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks Country living close to town

Remarks Affordable country lot, country but convenient. Enjoy
the space an acre of land gives you.



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No Photo Available

S # 98253727
 Status Sold
 Price \$19,500
 Address TBD Riata Cr.
 Section North 201, L on Vaquero Dr., R on Riata Cir., Right side of circle.

Type Building Lots
 Area Ontario - 1600
 City Ontario

MLS # 98223102
 Status Sold
 Price \$20,000
 Address TBD Casa Rio Dr.
 Directions Hwy 201 to Casa Rio Dr., North of Ontario

Type Building Lots
 Area Ontario - 1600
 City Ontario

Remarks GREAT LOT FOR YOUR NEW HOME!

Remarks Nice building site.



S # 98237020
 Status Sold
 Price \$20,000
 Address LOT 200 TUTTLE DR.
 Section N. ON 201, W. ON CHESTER, N. ON TUTTLE

Type Building Lots
 Area Ontario - 1600
 City Ontario

MLS # 98229232
 Status Sold
 Price \$22,000
 Address 000 Lot 4 S

Type Building Lots
 Area Ontario - 1600
 City Ontario

Directions HWY 201 toward Welser, Appx 2 ml. from Ontario turn L on Casa Rio Drive, property on L by new home

Remarks Close enough to town and to N. Freeway exit to make it very easy to get where ever you need to go from this affordable country location.

Remarks This is a nice size lot in a quality subdivision. Has CC & R's. Great location, close to Ontario and schools.



MLS # 98259741
 Status Sold
 Price \$23,000
 Address TBD Tuttle Dr.
 Directions South on 201, Turn Left on Tuttle Dr.

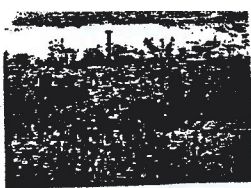
Type Building Lots
 Area Ontario - 1600
 City Ontario

MLS # 98213826
 Status Sold
 Price \$29,750
 Address TBD NW 11th Place
 Direction N on Oregon, S onto Former, W onto NW 11th Place

Type Building Lots
 Area Ontario - 1600
 City Ontario

Remarks Building Lot in Ontario! Come and get it!!

Remarks Zoned high density residential. Level 1.25 Acre by Beck-Kiwanis Park



98237007
Status Sold
Price \$32,000
Address LOT 1301 TUTTLE DR.
Direction N. ON 201, W. ON
CHESTER, N. ON
TUTTLE

Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98280201
Status Sold
Price \$34,900
Address TBD Casa Rio Drive
Directions N on Hwy 201 from
Ontario, W on Casa Rio
Drive (approx 3 miles N
of Ontario)

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks 2 plus acres in the country but ez access to town & the freeway, room for pets RV's

Remarks Building lot in Riata Ranchos Subdivision. Just over an acre of ground. Seller is also a builder and will be listing lot with spec home, or possible custom build.



No Photo Available

MLS # 98236988
Status Sold
Price \$35,000
Address LOT 1300 TUTTLE DR.
Direction N. ON 201, W. ON
CHESER, N. ON TUTTLE

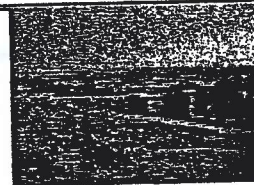
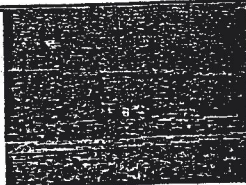
Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98226653
Status Sold
Price \$35,000
Address 410 Foothill Dr.
Directions West on Chester, cross
over Freeway, turn
South onto Foothill Dr.

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks 2.48 acres for your new home - country but convenient - manufactured homes are allowed - bring the animals too!

Remarks Country but Convenient. Nice lot. Manufactured homes -ok. well septic and electric are in.



MLS # 98242891
Status Sold
Price \$35,000
Address 4753 hwy 201
Direction N on Hwy 201 from
Ontario approx 9 miles
to sign

Type Building Lots
Area Ontario - 1600
City Ontario

MLS # 98244976
Status Sold
Price \$36,000
Address TBD Baker Rd
Directions Hwy 201 towards Weiser
, West on Chester, North
on Baker Rd to signs.

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks Lot has been a home site w/MH. MH in uninhabitable. Seller has price reflecting ground only. MH will need to be replaced with MH or stick built home.

Remarks Bring your builder. Lot overlooks the Ontario Valley.

S # 98209697
Status Sold
Price \$40,000
Address 0 Clark Blvd

Type Building Lots
Area Ontario - 1600
City Ontario

Directions Hwy 201 W on Morgan Av
S on Clark Blvd to lane to
property. Property East
of Clark Blvd.

Remarks This property sits down a long lane with lots of privacy
and a great view. Power would need to be brought to
the property and the road would need to be improved
to meet fire district standards.

MLS # 98248407
Status Sold
Price \$45,000
Address 00 FOOTHILL DR. LOT 2

Type Building Lots
Area Ontario - 1600
City Ontario

Directions N. ON 201, W. ON
CHESTER RD, CROSS
OVER FREEWAY, TURN S.
ON FOOTHILL. LOOK
FOR SIGNS

Remarks Great country living 3 minutes from city, 2+ acres with
building site and a great view. Manufactured homes
allowed with Deed restrictions.

S # 98248399
Status Sold
Price \$48,000
Address 00 FOOTHILL DR. LOT 1

Type Building Lots
Area Ontario - 1600
City Ontario

Directions N. ON 201, W. ON
CHESTER RD, CROSS
OVER FREEWAY, TURN S.
ON FOOTHILL. LOOK FOR
SIGNS

Remarks Great country living 3 minutes from city, 2+ acres with
building site and a great view. Manufactured homes
allowed with Deed restrictions

MLS # 98218213
Status Sold
Price \$72,000
Address 434 FOOTHILL
Directions N. ON 201, W. ON
CHESTER, S. ON
FOOTHILL

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks Good building lot with all the space you need and with
well, septic and electric already there! Only 3 minutes
to town - no covenants & manufactured allowed. Not
many available, this property can be split!

S # 98248344
Status Sold
Price \$80,000
Address 4605 Hyline Road

Type Building Lots
Area Ontario - 1600
City Ontario

Directions I-84 to Exit 374 turn right
on Olds-Ferry- 201 Turn
W onto Hyline Road to
sign after 4605 Hyline
Road

Remarks Gorgeous acreage that is ready for your dream home!
4.91 acres in a wonderful area with beautiful views!
There is electric to the property, and the Commission
has just approved the application for a non-farm
dwelling to be placed on the property! The leg work
has already been done for you! There are 5 shares of

MLS # 98177777
Status Sold
Price \$150,000
Address tbd Vista Dr.
Directions Hwy 201 to 20, to
Vista Dr.

Type Building Lots
Area Ontario - 1600
City Ontario

Remarks Rare building site close to Ontario and a great view of
the Valley. Water rights pending

No Photo
Available

No Photo Available

No Photo Available

S # 98169230
Status Sold
Price \$19,500
Address 5 Louise St
Directions 1 Mile East Of Vale on Hwy 20-26
Type Building Lots
Area Vale - 1625
City Vale

MLS # 98169246
Status Sold
Price \$19,500
Address 0 James Ln
Directions 1 Mile East of Vale on Hwy 20/26
Type Building Lots
Area Vale - 1625
City Vale

Remarks Rural Subdivision. Animals OK. Easy access to major highway. Level lots. Underground electric, gas, phone and cable. Buyer will put in septic and well. Mfg. Homes OK

Remarks Rural subdivision. Level lots. Underground electric, gas, phone & cable. Buyer to put in well and septic. Animals OK. Mfg, Homes OK. Easy access to Major Hwy.

No Photo Available

S # 98169248
Status Sold
Price \$19,500
Address 011 James Ln
Directions 1 Mile East of Vale on Hwy 20/26
Type Building Lots
Area Vale - 1625
City Vale

MLS # 98169221
Status Sold
Price \$20,000
Address 00 Louise St
Directions 1 Mile east of Vale on Hwy 20-26 1 Mile east of Vale on Hwy 20-26
Type Building Lots
Area Vale - 1625
City Vale

Remarks Rural Subdivision. Level lots. Underground electric, gas, phone and cable. Buyer to put in well and septic. Animals OK Mfg. Home allowed. Easy access to Major Hwy

Remarks Rural subdivision. Room for your animals. Mfg, Homes allowed. Easy access to Major Hwy. Underground utilities. Electric, gas, phone and cable. Buyer will put in well and septic.

No Photo Available

LS # 98169240
Status Sold
Price \$20,000
Address 0 Dustin Dr.
Directions 1 Mile east of Vale on Hwy 20/26
Type Building Lots
Area Vale - 1625
City Vale

MLS # 98245421
Status Sold
Price \$26,500
Address 0 Dustin Dr
Directions East of Vale on Hwy 20 -26 to Shadow Butte Eststes Subdivision.
Type Building Lots
Area Vale - 1625
City Vale

Remarks Rural Subdivision. Large level lot. Animals OK. Easy access to Major Hwy. Underground electric, gas, phone, cable. Buyer to put in well and septic. Mfg Homes OK

Remarks Easy access to major Hwy. Level lots. This parcel is the largest remaining lot. Electric, gas, phone and cable underground to every lot. Well and Septic to be put in by buver. This parcel has an Irrigation well.

No Photo Available

98262175
S Sold
ess \$26,500
tions tbd A St W
Vale, W on Graham
Blvd 1/4 to prop.

Type Building Lots
Area Vale - 1625
City Vale

arks 2.15 acres on the edge of city limits.

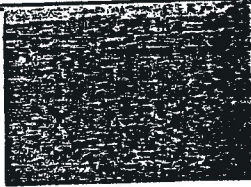
No Photo Available

MLS # 98273774
Status Sold
Price \$60,000
Address TBD Thousand Springs Rd
S

Type Building Lots
Area Vale - 1625
City Vale

Directi From Vale on Washington
ons St. W to Graham Blvd, W
to Ash St. N to Thousand
Springs Rd. to end of rd.

Remarks Nice building site. Seller splitting off this 5 acres from
their house parcel.



98208168
us Sold
e \$85,000
res tbd N 10th STREET

Type Building Lots
Area Vale - 1625
City Vale

cti North of Logan's Market o
n 10th Street North, east
of US 26 (1/4 mile from
the junction of US 20).

marks Approximately 680 feet of Malheur River frontage
within Vale City limits. Zoned residential; the seller
has drawn up plans for a 17 lot development, but
nothing has been submitted to local planning. The
Malheur is a non-navigatable stream, so property
boundary extends to thread of the river, subject to

INSTRUMENT NO. 2008 4544
Page 28 of 117 Pages

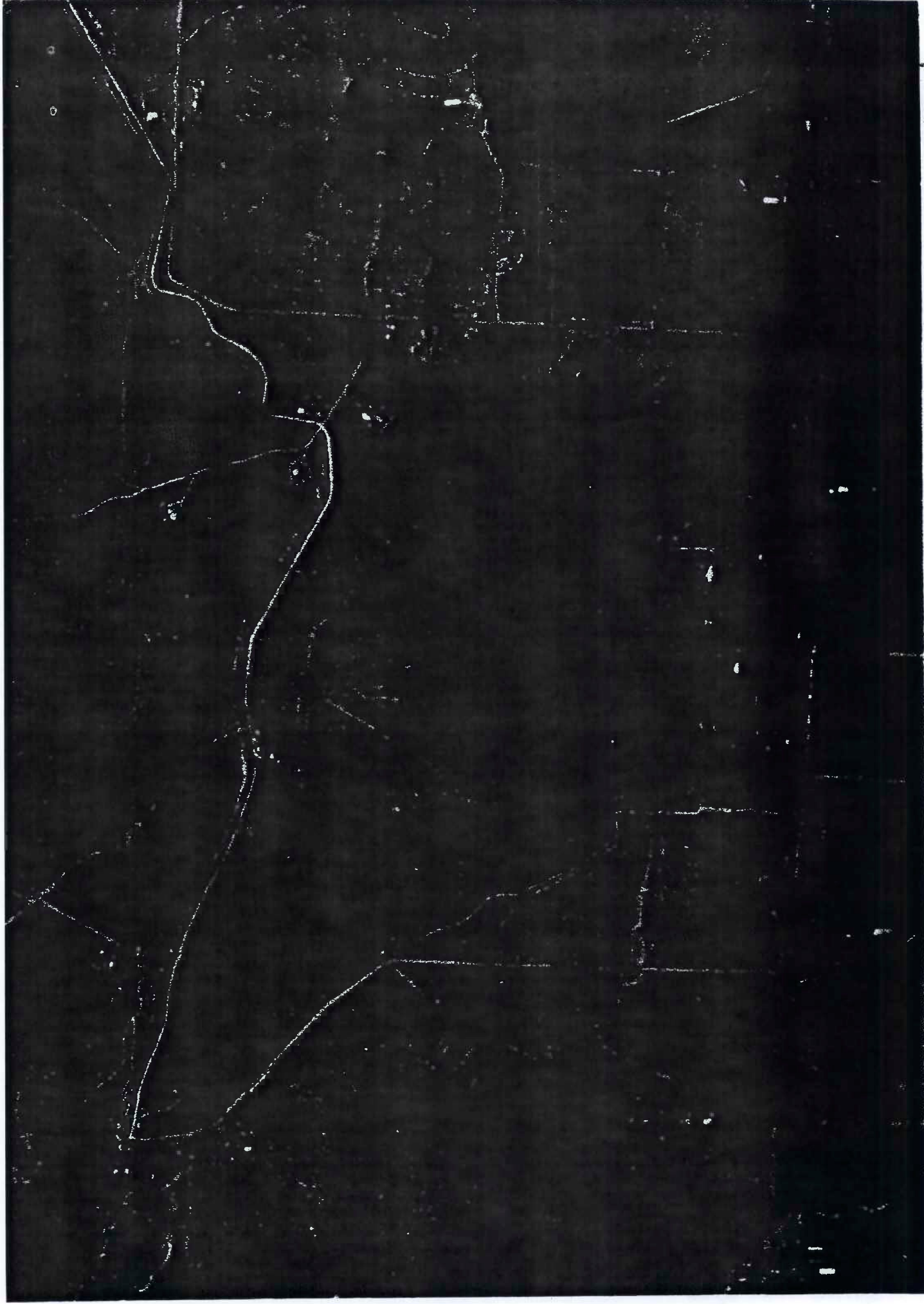


EXHIBIT PAGE 7 OF 7

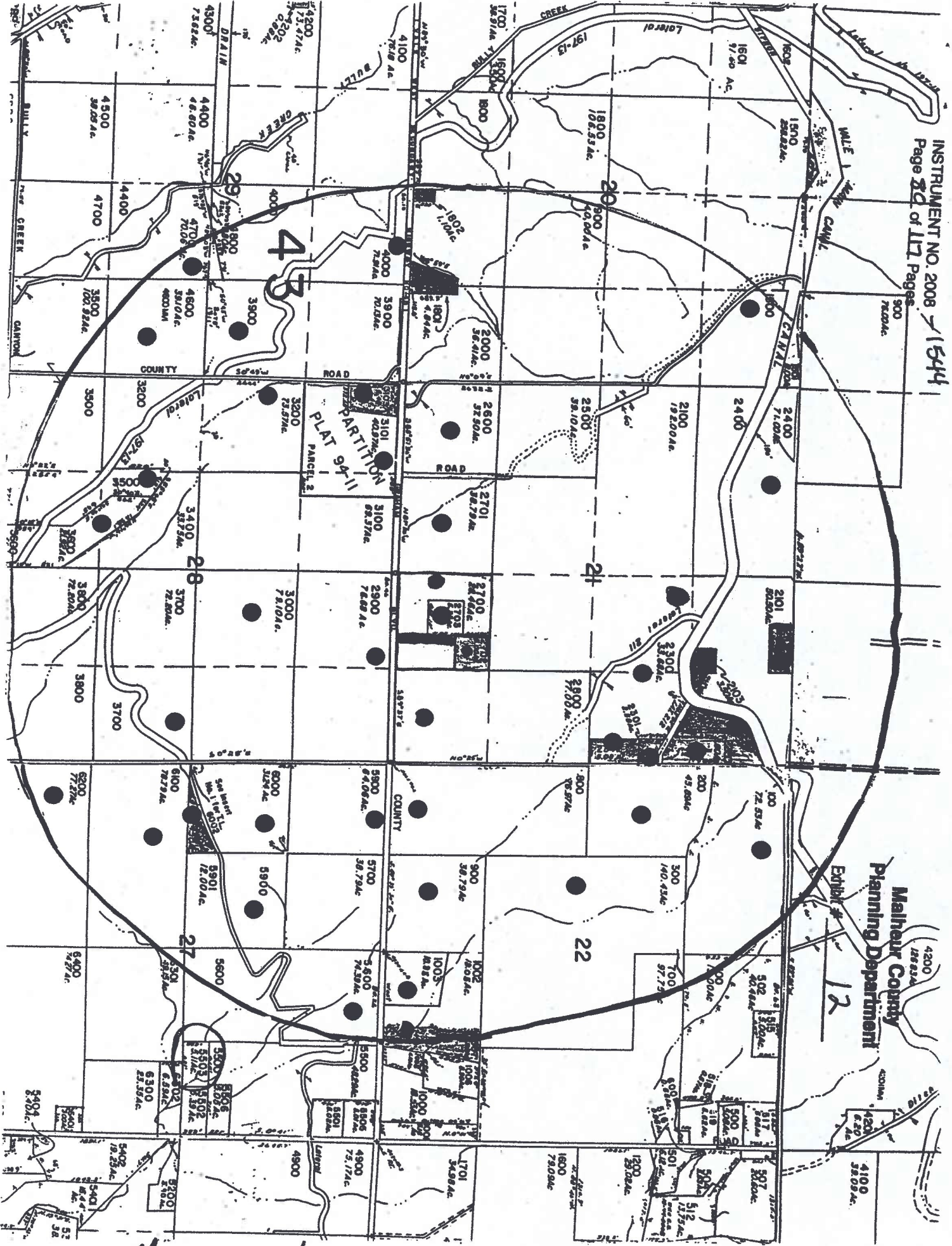
INSTRUMENT NO. 2008-1644
Page 7 of 117 Pages

I do not know when this picture was taken

HOUSES IN THE

Malheur County
Planning Department

Exhibit # 12



Map 1 of 1

LOCAL DESCRIPTION

A Parcel of land located in the southeast quarter of Section 21, Township 46 South, Range 20 East, Williams County, Oregon, is being surveyed and shown, more particularly described of the southeast quarter of the southeast quarter of said Section 21, as follows:

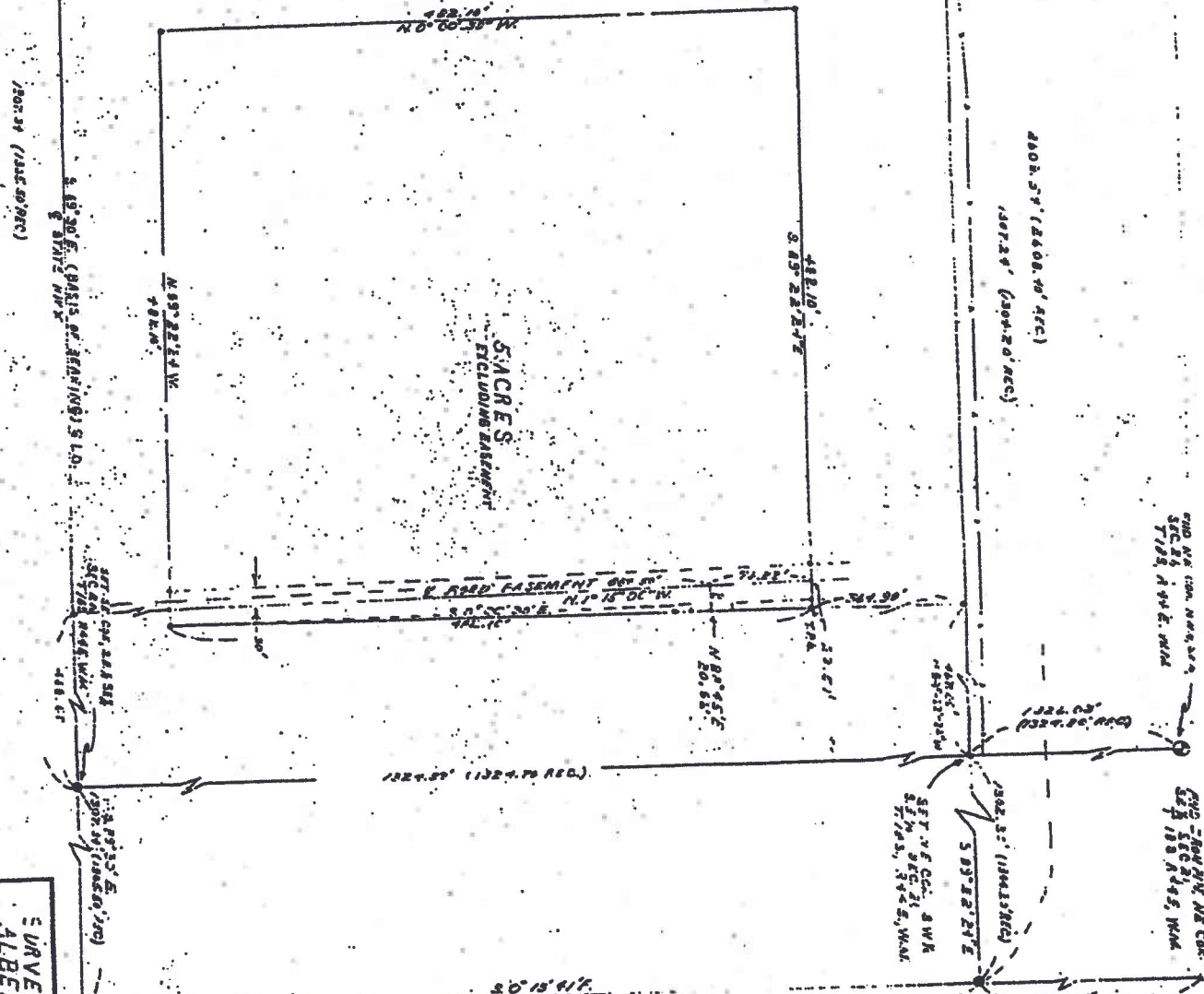
Traverse E. 89° 22' 30" W. 487.00 feet
 Travers E. of 001° 30' E. 247.00 feet to THE
 TRAIL POINT OF BOUNDARY OF SEC. 21, T. 46 S., R. 20 E.
 Travers E. of 23° 24' W. 482.10 feet
 Travers E. of 001° 30' W. 482.10 feet
 Travers E. of 89° 22' 30" E. 482.10 feet to
 THE TRAIL POINT OF BOUNDARY OF SEC. 21, T. 46 S., R. 20 E.
 Together with an acreage of 24.12, approximately
 foot wide, the description of which is given below
 as follows:

Beginning at a point on the south line of said Section, 24.12 feet west of the southeast corner of the southeast quarter of the southeast quarter of the southeast quarter of said Section 21, and running
 North 12° 15' 00" East 482.10 feet
 North 89° 22' 30" East 482.10 feet
 North 23° 24' West 482.10 feet
 North 001° 30' West 482.10 feet
 North 89° 22' 30" East 482.10 feet
 to said parcel 24.12 feet wide, the description of which is given below as follows:

LEGEND

- BOUNDARY MARKERS
- 1/4" DIA. SET
- 1/2" DIA. SET
- 3/4" DIA. SET
- 1" DIA. SET
- 1 1/2" DIA. SET
- 2" DIA. SET
- 3" DIA. SET
- 4" DIA. SET
- 6" DIA. SET
- 8" DIA. SET
- 10" DIA. SET
- 12" DIA. SET
- 14" DIA. SET
- 16" DIA. SET
- 18" DIA. SET
- 20" DIA. SET
- 24" DIA. SET
- 28" DIA. SET
- 32" DIA. SET
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- 992" DIA. SET
- 996" DIA. SET
- 1000" DIA. SET

SACRES
EXCLUDING EASEMENT



SURVEY FOR:
ALBERT ZUEGER
VALLE, OREGON

EDWARD'S ENGINEERING, INC.
2501 N. W. 10th St.
Portland, OR 97228
503.241.1234

N 89° 22' 30\"/>

INSTRUMENT NO. 72102

STATUTORY BARGAIN AND SALE DEED

ALBERT M. ZUEGER and MARGARET M. ZUEGER, husband and wife, Grantor,
conveys to AGNES C. ZUEGER, Grantee, the following described real
property:

Land in Malheur County, Oregon, as follows:
In Twp. 18 S., R. 44 E., W.M.:

Sec. 21: A parcel of land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, more
particularly described as follows:

Beginning at the Northeast corner
of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section;
thence N. 89° 22' 24" W. 467.00 feet,
thence S. 0° 00' 30" E. 364.90 feet,
to THE TRUE POINT OF BEGINNING.
thence S. 0° 00' 30" E. 482.10 feet,
thence N. 89° 22' 24" W., 482.10 feet,
thence N. 0° 00' 30" W., 482.10 feet,
thence S. 89° 22' 24" E., 482.10 feet,
to THE TRUE POINT OF BEGINNING.

TOGETHER with an easement for a roadway
30 feet wide, the centerline of which
is described as follows:

Beginning at a point on the South line
of said Section, 468.67 feet west of
the Southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$,
thence N. 1° 15' 00" W., 884.50 feet,
thence N. 88° 45' E., 20.86 feet,
thence S. 88° 45' W., 20.86 feet,
thence N. 1° 15' 00" W., 76.47 feet,
to the terminus thereof and a point
on the North line of said parcel
22.51 feet East of the Northeast
corner of said parcel.

The true consideration for this conveyance is ZERO DOLLARS and
other value given.

Until a change is requested, all tax statements shall be sent to
the following address: c/o Agnes C. Zueger, Rt. 1, Box 49, Vale,
Oregon 97918.

Dated this _____ day of December, 1979.

STATE OF OREGON)
County of Malheur)

The foregoing instrument was acknowledged before me on the
_____ day of December, 1979, by Albert M. Zueger and Margaret
M. Zueger, husband and wife.

Notary Public for Oregon
My commission expires: _____

PLACE OF ORDER)
County of Malheur)
Notary Public for Oregon
My commission expires: _____
12/30/79
Ref: [Signature]

INSTRUMENT NO. 2008 -1544
Page 82 of 117 Pages

RECORDING INFORMATION:

Prepared by:
BUTLER & LOONEY, P.C.
PO BOX 430 VALE OR 97918

After recording return to:
John Zueger
2128 Graham
Vale, OR 97918

Inst. No. ~~2006-2136~~
I certify that the within instrument of writing was received for record on the 28 day of March, 2006 at 3:15 O'clock P.M. FEE \$36
STATE OF OREGON, County of Malheur
DEBORAH R. DeLONG
County Clerk
By: Shirley Johnson Deputy

EASEMENT

JOHN A. ZUEGER, Grantor, hereby conveys to JADE THOMAS and SANDY THOMAS, Grantee, a permanent, nonexclusive easement for ingress and egress and for utilities over and across a parcel of land described on the attached Exhibit "A". This easement is for the benefit of the Grantee's property which is described on the attached Exhibit "B".

This Easement is granted subject to the following conditions:

1. That the Grantee and the Grantee's successors, being all persons who own any part of the Exhibit "B" property shall be responsible for the maintenance and upkeep of the roadway located on the Exhibit "A" parcel including providing all grader work and all gravel as needed but not less often than annually for the maintenance of the roadway in a good condition.
2. That the speed limit on the roadway for the entire Exhibit "A" property shall be 10 miles per hour and that the Grantee, the Grantee's successors and all persons using the roadway for access to the Grantee's property shall abide by that 10 mile per hour speed limit.
3. That the Grantee and the Grantee's successors shall hold and save the Grantor harmless from any loss or liability arising from the use of the Exhibit "A" property for access to the Exhibit "B" property.

In the event of the failure of the Grantee, the Grantee's successors and all persons using the roadway for access to the Grantee's property to abide by these requirements set forth above, then this Easement shall terminate and be of no further force or effect.

Dated: March 28, 2006.

John A Zueger
JOHN A. ZUEGER

Jade Thomas
JADE THOMAS
Sandy Thomas
SANDY THOMAS

EXHIBIT - PAGE 4 OF 7

71853

STATUTORY BARGAIN AND SALE DEED

ALBERT M. ZUEGER and MARGARET M. ZUEGER, husband and wife, Grantor, conveys to PHILLIP M. ZUEGER, Grantee, the following described real property:

Land in Malheur County, Oregon, as follows:

In Twp. 18 S., R. 44 E., W.M.:

Sec. 21: A parcel of land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, more particularly described as follows:

Beginning at the Northeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$;

thence North 89° 15' 00" West 467.00 feet;

thence South 00° 00' 30" East 467.00 feet;

thence South 89° 30' 00" East 467.00 feet;

thence North 00° 00' 30" West 467.00 feet

to the point of BEGINNING.

509 2750 10 9

TOGETHER with an easement for a roadway 30 feet wide, the center line of which is described as follows:

Beginning at a point on the South line of said Section 468.67 feet West of the Southeast corner, of the SW $\frac{1}{4}$ SE $\frac{1}{4}$;

thence North 01° 15' 00" West 884.50 feet;

thence North 88° 45' 00" East 20.86 feet to

a point on the west line of above described parcel of land, 28.18 feet north of the southwest corner.

The true consideration for this conveyance is ZERO DOLLARS and other value given.

Until a change is requested, all tax statements shall be sent to the following address: c/o Phillip M. Zueger, Rt. 1, Box 49, Vale, Oregon 97148

Dated this ___ day of December, 1979.

Albert M. Zueger

Margaret M. Zueger

STATE OF OREGON)
 : ss
County of Malheur)

The foregoing instrument was acknowledged before me this ___ day of December, 1979, by Albert M. Zueger and Margaret M. Zueger, husband and wife.

Notary Public for Oregon
My commission expires: _____

71853

4:30

Jim, J... ..

11-3-7

INSTRUMENT NO. 2008 -1544
Page 85 of 117 Pages

INSTRUMENT NO. 2006 -2136
Page 3 of 4 Pages

EXHIBIT "A"

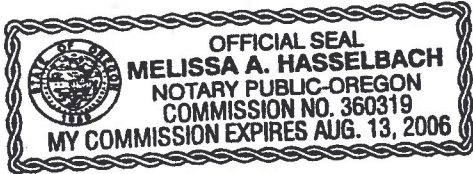
An easement 30 feet wide, the center line of which is described as follows:

Beginning at a point on the South line of Section 21, Twp. 18 S., R. 44 E., W.M. in Malheur County, Oregon, 468.67 feet West of the Southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, thence N. 1° 15' 00" W. 1,325.87 feet more or less to a point on the North line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, being the terminus thereof.

N
6
7

STATE OF OREGON)
)
) :SS
)
County of Malheur)

The foregoing instrument was acknowledged before me this 28 day of March, 2006,
by JOHN A. ZUEGER.



Melissa A Hasselbach
Notary Public for Oregon
My commission expires: 8/13/06

STATE OF OREGON)
)
) :SS
)
County of Malheur)

The foregoing instrument was acknowledged before me this 28 day of March, 2006,
by JADE THOMAS and SANDY THOMAS.



Laura E Hancock
Notary Public for Oregon
My commission expires: 11-17-06

RETURN TO N 5-7

EXHIBIT "B"

Land in Malheur County, Oregon, as follows:

In Township 18 South, Range 44 East of the Willamette Meridian:
Section 21: All that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ lying South of the Vale-Oregon Irrigation
main canal and West of the Vale-Oregon Irrigation Lateral No. 211
right of way;

AND the S $\frac{1}{2}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$.

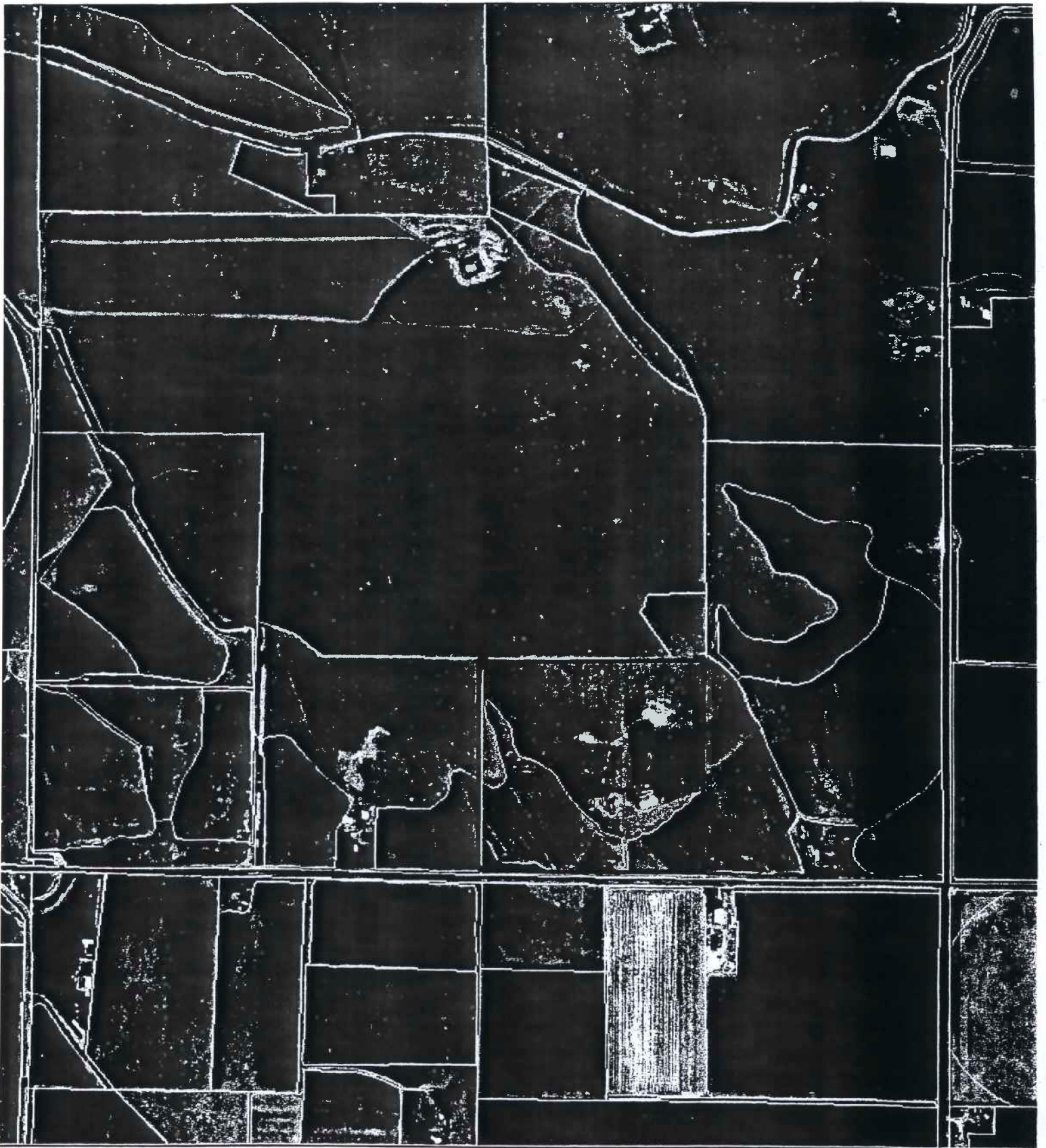
Map 1844C

Tax Lot 2100

Code 43

Reference 13385

EXHIBIT N
PAGE 7 OF 7



SDA

Malheur FSA

INSTRUMENT NO. 2008-1544
Page 88 of 117 Pages

April 17, 2007

1:9,000

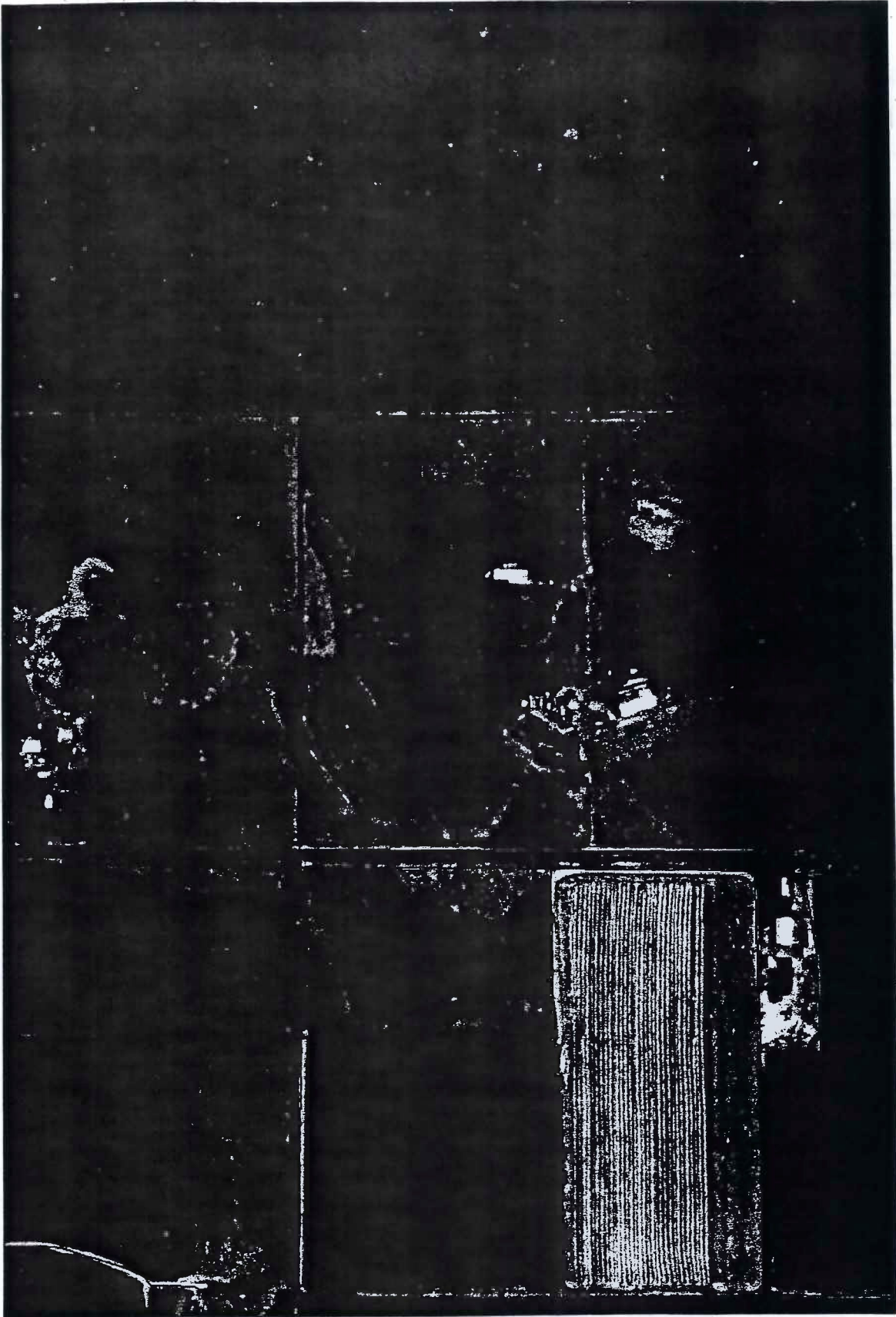
00 200 0 400 800

Feet



EXHIBIT 0 PAGE 1 OF 2

This acreage is for FSA program purposes only.
No warranty is made for any other use.



Malheur County FSA
Tract: #1927

0.0 Calculated Acres
Status: NHEL

March 09, 2006



Wetlands



EXHIBIT 0 PAGE 2 OF 2

This acreage is for FSA program purposes only.
No warranty is made for any other use.

1993
Zueger, Margaret - MC

WATER USER CENSUS

18

PT

Section A - FARM IDENTIFICATION AND DESCRIPTION

1. Name of Owner		2. Owner's Address	
3. Name of Operator (if different from 1)		4. Operator's Address	
5. Legal Description of Land			
6. County and State	7. Number of Years Operator Has Farmed This Tract	8. Farm Population <i>2</i>	9. Acres Irrigated by Sprinkler <i>9</i>

Section B - ACREAGE SUMMARY (Land Classes 1-5)

LANDS IN IRRIGATION ROTATION (Acres)	CLASSES 1-4	CLASS 5	TOTAL
11. Harvested cropland and pasture (from line 194)			<i>18</i>
12. Cropland not harvested and soil building crops			
13. Acres irrigated (lines 11 + 12)			<i>18</i>
14. Dry cropped, fallow, or idle			
15. Area in irrigation rotation (cultivation) (lines 13 + 14)			<i>18</i>
LANDS NOT IN IRRIGATION ROTATION (Acres)			
16. Dry cropped, idle, fallow or grazed			
17. Farmsteads, roads, ditches, drains			
18. Area not in irrigation rotation (lines 16 + 17)			
20. TOTAL IRRIGABLE AREA FOR SERVICE (lines 15 + 18)			<i>18</i>
23. Class 5 - Temporarily irrigated			

Section C - CROP PRODUCTION (Land Classes 1-5)

CROPS	ACRES	YIELD			CROPS	ACRES	YIELD		
		UNIT	PER ACRE	TOTAL			UNIT	PER ACRE	TOTAL
CEREALS	51 Barley		Bu		81 Beans, dry and edible		Cwt.		
	52 Corn		Bu		82 Cotton: Lint (Upland)		Bale		
	53 Oats		Bu		83 Cotton: Seed (Upland)		Ton		
	54 Rice		Cwt		84 Cotton: Lint (American-Pima)		Bale		
	55 Sorghums (sorgo, kaffir, milo, etc.)		Bu		85 Cotton: Seed (American-Pima)		Ton		
	57 Wheat		Bu		86 Hops		Ton		
					87 Peppermint		Lb		
FORAGE	61 Alfalfa hay		Ton		88 Spearmint		Lb		
	62 Other hay		Ton		89 Sugar beets		Ton		
	63 Irrigated pasture	<i>18</i>	AUM	<i>9.8</i>	90 Soybeans		Bu		
	65 Silage or ensilage		Ton						
	66 Crop residue used or sold: Beet tops		Ton						
	67 Stubble, stalks, etc.		AUM						
	68 Straw (all kinds)		Ton						

This information is collected to effectively administer, manage, and evaluate the Federal Reclamation Program. Data are used for economic analysis, program evaluation, and to respond to Congressional and other inquiries. Response to this request is required to obtain a benefit in accordance with Public Law 76-260. Public reporting burden for this form is estimated to average .33 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Chief, Publications and Records Management Branch, Code D-7920, Bureau of Reclamation, Denver Federal Center, PO Box 25007, Denver, CO 80225-0007; and the Office of Management and Budget, Paperwork Reduction Project 1006-0001.

PT
7
23

7-332 (8-89)
Bureau of Reclamation
1994

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Zueger, Margaret - MC

WATER USER CENSUS

18

PT

Section A - FARM IDENTIFICATION AND DESCRIPTION

1. Name of Owner		2. Owner's Address 2128 26th	
3. Name of Operator (if different from 1)		4. Operator's Address	
5. Legal Description of Land			
6. County and State Mal OR	7. Number of Years Operator Has Farmed This Tract 3	8. Farm Population 3	9. Acres Irrigated by Sprinkler 9

Section B - ACREAGE SUMMARY (Land Classes 1-5)

LANDS IN IRRIGATION ROTATION (Acres)	CLASSES 1-4	CLASS 5	TOTAL
11. Harvested cropland and pasture (from line 194)			18
12. Cropland not harvested and soil building crops			18
13. Acres irrigated (lines 11 + 12)			
14. Dry cropped, fallow, or idle			18
15. Area in irrigation rotation (cultivation) (lines 13 + 14)			
LANDS NOT IN IRRIGATION ROTATION (Acres)			
16. Dry cropped, idle, fallow or grazed			
17. Farmsteads, roads, ditches, drains			
18. Area not in irrigation rotation (lines 16 + 17)			18
20. TOTAL IRRIGABLE AREA FOR SERVICE (lines 15 + 18)			
23. Class 6 - Temporarily irrigated			

Section C - CROP PRODUCTION (Land Classes 1-5)

CROPS	ACRES	YIELD			CROPS	ACRES	YIELD		
		UNIT	PER ACRE	TOTAL			UNIT	PER ACRE	TOTAL
CEREALS	51 Barley		Bu		81 Beans, dry and edible			Cwt	
	52 Corn		Bu		82 Cotton: Lint (Upland)			Bale	
	53 Oats		Bu		83 Cotton: Seed (Upland)			Ton	
	54 Rice		Cwt		84 Cotton: Lint (American-Pima)			Bale	
	56 Sorghums (sorgo, kaffir, milo, etc.)		Bu		85 Cotton: Seed (American-Pima)			Ton	
	57 Wheat		Bu		86 Hops			Ton	
					87 Peppermint			Lb	
FORAGE	61 Alfalfa hay		Ton		88 Spearmint			Lb	
	62 Other hay	9	Ton	4	89 Sugar beets			Ton	
	63 Irrigated pasture	9	AUM	56	90 Soybeans			Bu	
	65 Silage or ensilage		Ton						
	66 Crop residue used or sold: Beet tops		Ton						
	67 Stubble, stalks, etc.		AUM						
	68 Straw (all kinds)		Ton						

EXHIBIT PAGE 2 OF 23

This information is collected to effectively administer, manage, and evaluate the Federal Reclamation Program. Data are used for economic analysis, program evaluation, and to respond to Congressional and other inquiries. Response to this request is required to obtain a benefit in accordance with Public Law 76-260. Public reporting burden for this form is estimated to average .33 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Chief, Publications and Records Management Branch, Code D-7920, Bureau of Reclamation, Denver Federal Center, PO Box 25007, Denver, CO 80225-0007; and the Office of Management and Budget, Paperwork Reduction Project 1006-0001.

Section C - CROP PRODUCTION (Land Classes 1-5) (Continued)

CROPS	ACRES	YIELD			CROPS	ACRES	YIELD		
		UNIT	PER ACRE	TOTAL			UNIT	PER ACRE	TOTAL
VEGETABLES				SEEDS	141 Alfalfa		Cwt		
101 Asparagus		Cwt			142 Clover		Cwt		
102 Beans (processing)		Ton			143 Corn		Cwt		
103 Beans (fresh market)		Cwt			144 Grass		Cwt		
104 Broccoli		Cwt			145 Lettuce		Cwt		
105 Cabbage		Cwt			146 Onion		Cwt		
106 Carrots		Cwt			147 Pea		Cwt		
107 Cauliflower		Cwt			148 Potato		Cwt		
108 Celery		Cwt			149 Sugar beet		Cwt		
109 Corn, sweet (processing)		Ton							
110 Corn, sweet (fresh market)		Cwt							
111 Cucumbers		Cwt							
112 Greens (kale, spinach, etc.)		Cwt							
113 Lettuce		Cwt							
114 Melons: Cantalopes, Muskmelons, etc.		Cwt							
115 Honey Ball, Honeydew, etc.		Cwt							
116 Watermelons		Cwt							
117 Onions, dry		Cwt							
118 Onions, green		Cwt							
119 Peas, green (processing)		Ton			161 Apples		Ton		
120 Peas, green (fresh market)		Cwt			162 Apricots		Ton		
121 Peppers		Cwt			163 Berries		Cwt		
122 Potatoes, early		Cwt			164 Cherries		Ton		
123 Potatoes, late		Cwt			165 Citrus: Grapefruit		Cwt		
124 Squash		Cwt			166 Lemons and Limes		Cwt		
125 Tomatoes (processing)		Ton			167 Oranges & Tangerines		Cwt		
126 Tomatoes (fresh market)		Cwt		168 Dates		Ton			
				169 Grapes, table		Ton			
				170 Grapes, other		Ton			
				171 Olives		Ton			
				172 Peaches		Ton			
				173 Pears		Ton			
				174 Prunes and Plums		Ton			
NURSERY				NUTS	181 Almonds		Ton		
131 Berry plants		M			182 Pecans		Cwt		
132 Flowers		M			183 Walnuts		Ton		
133 Flower bulbs and bulbets		M							
134 Fruit and nut trees		M							
135 Rhizomes, roots, cutms, etc.		M							
				191 Family Gardens & Orchards					
				192 TOTAL ALL CROPS					
				193 Less Multiple Cropped					
				194 TOTAL HARVESTED CROPLAND & IRRIGATED PASTURE					

Name of Persons Interviewed Ed Joel Date 10-12 1994

7-332 (1-91)
 Bureau of Reclamation

UNITED STATES DEPARTMENT OF THE INTERIOR
 Bureau of Reclamation

1995 WATER USER CENSUS 18.00
 Zueger, Margaret

Section A - FARM IDENTIFICATION AND DESCRIPTION

1. Name of Owner		2. Owner's Address 2128 Graham	
3. Name of Operator (if different from 1)		4. Operator's Address	
5. Legal Description of Land			
6. County and State MAL OR	7. Number of Years Operator Has Farmed This Tract 24	8. Farm Population 5	9. Acres Irrigated by Sprinkler 0

Section B - ACREAGE SUMMARY (Land Classes 1-5)

LANDS IN IRRIGATION ROTATION (Acres)	CLASSES 1-4	CLASS 5	TOTAL
11. Harvested cropland and pasture (from line 104)			18
12. Cropland not harvested and soil building crops			18
13. Acres irrigated (lines 11 + 12)			18
14. Dry cropped, fallow, or idle			18
15. Area in irrigation rotation (cultivation) (lines 13 + 14)			
LANDS NOT IN IRRIGATION ROTATION (Acres)			
16. Dry cropped, idle, fallow or grazed			
17. Farmsteads, roads, ditches, drains			
18. Area not in irrigation rotation (lines 16 + 17)			
20. TOTAL IRRIGABLE AREA FOR SERVICE (lines 15 + 18)			18
23. Class 5 - Temporarily irrigated			

Section C - CROP PRODUCTION (Land Classes 1-5)

CROPS	ACRES	YIELD			CROPS	ACRES	YIELD		
		UNIT	PER ACRE	TOTAL			UNIT	PER ACRE	TOTAL
CEREALS	51 Barley		Bu		81 Beans, dry and edible		Cwt		
	52 Corn		Bu		82 Cotton: Lint (Upland)		Bale		
	53 Oats		Bu		83 Cotton: Seed (Upland)		Ton		
	54 Rice		Cwt		84 Cotton: Lint (American-Pima)		Bale		
	56 Sorghums (sorgo, kaffir, milo, etc.)		Bu		85 Cotton: Seed (American-Pima)		Ton		
	57 Wheat		Bu		86 Hops		Ton		
					87 Peppermint		Lb		
FORAGE	61 Alfalfa hay		Ton		88 Spearmint		Lb		
	62 Other hay		Ton		89 Sugar beets		Ton		
	63 Irrigated pasture 25 18		AUM	9.3 150	90 Soybeans		Bu		
	65 Silage or ensilage		Ton						
	66 Crop residue used or sold: Beet tops		Ton						
	67 Stubble, stalks, etc.		AUM						
	68 Straw (all kinds)		Ton						

This information is collected to effectively administer, manage, and evaluate the federal Reclamation Program. Data are used for economic analysis, program evaluation, and to respond to Congressional and other inquiries. Response to this request is required to obtain a benefit in accordance with Public Law 76-260. Public reporting burden for this form is estimated to average .33 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Chief, Publications and Records Management Branch, Code D-7920, Bureau of Reclamation, Denver Federal Center, PO Box 25007, Denver, CO 80225-0007; and the Office of Management and Budget, Paperwork Reduction Project 1006-0001.

Section C - CROP PRODUCTION (Land Classes 1-5) (Continued)

CROPS	ACRES	YIELD			CROPS	ACRES	YIELD				
		UNIT	PER ACRE	TOTAL			UNIT	PER ACRE	TOTAL		
VEGETABLES		101	Asparagus	Cwt			141	Alfalfa	Cwt		
		102	Beans (processing)	Ton			142	Clover	Cwt		
		103	Beans (fresh market)	Cwt			143	Corn	Cwt		
		104	Broccoli	Cwt			144	Grass	Cwt		
		105	Cabbage	Cwt			145	Lettuce	Cwt		
		106	Carrots	Cwt			146	Onion	Cwt		
		107	Cauliflower	Cwt			147	Pea	Cwt		
		108	Celery	Cwt			148	Potato	Cwt		
		109	Corn, sweet (processing)	Ton	SEEDS		149	Sugar beet	Cwt		
		110	Corn, sweet (fresh market)	Cwt							
		111	Cucumbers	Cwt							
		112	Greens (kale, spinach, etc.)	Cwt							
		113	Lettuce	Cwt							
		114	Melons: Cantalopes, Muskmelons, etc.	Cwt							
		115	Honey Ball, Honeydew, etc.	Cwt							
		116	Watermelons	Cwt							
		117	Onions, dry	Cwt							
		118	Onions, green	Cwt							
		119	Peas, green (processing)	Ton					161	Apples	Ton
		120	Peas, green (fresh market)	Cwt					162	Apricots	Ton
		121	Peppers	Cwt					163	Berries	Cwt
		122	Potatoes, early	Cwt					164	Cherries	Ton
		123	Potatoes, late	Cwt					165	Citrus: Grapefruit	Cwt
		124	Squash	Cwt					166	Lemons and Limes	Cwt
		125	Tomatoes (processing)	Ton					167	Oranges & Tangerines	Cwt
		126	Tomatoes (fresh market)	Cwt					168	Dates	Ton
									169	Grapes, table	Ton
									170	Grapes, other	Ton
								171	Olives	Ton	
								172	Peaches	Ton	
								173	Pears	Ton	
								174	Prunes and Plums	Ton	
NURSERY		131	Berry plants	M				181	Almonds	Ton	
		132	Flowers	M				182	Pecans	Cwt	
		133	Flower bulbs and bulblets	M				183	Walnuts	Ton	
		134	Fruit and nut trees	M							
		135	Rhizomes, roots, cutms, etc.	M							
							191	Family Gardens & Orchards			
							192	TOTAL ALL CROPS			
							193	Less Multiple Cropped			
							194	TOTAL HARVESTED CROPLAND & IRRIGATED PASTURE			

Name of Persons Interviewed Dan J. Wright
 Title (Operator, Manager, etc.) DM

Date _____ 19____

1. Name of Owner INSTRUMENT NO. 2008 -1544 2. Name of Operator (if different) Page 96 of 117 Pages	2. Owner Address 2124 Oriham 4. Operator Address 6. Irrigable Acres for Service 8. Multicropped Acres 9. Irrigation Type (circle one if applicable) Sprinkler Drip
State and Counties	
7. Irrigated Acres: Agricultural 19 Non-Agricultural	

CROP PRODUCTION

CEREALS

CROPS	ACRES	UNIT	YIELD		CROPS	ACRES	UNIT	YIELD	
			PER ACRE	TOTAL				PER ACRE	TOTAL
51 Barley		Bu			54 Rice		Cwt		
52 Corn		Bu			56 Sorghums (sorgo, kafir, milo, etc.)		Bu		
53 Oats		Bu			57 Wheat		Bu		

FORAGE

61 Alfalfa hay		Ton			63 Irrigated pasture	18	AUM	6.6	120
62 Other hay		Ton			65 Silage or ensilage				

MISCELLANEOUS FIELD CROPS

81 Beans, dry and edible		Cwt			86 Hops		Ton		
82 Cotton: Lint (Upland)		Bale			87 Peppermint		Lb		
83 Cotton: Seed (Upland)		Ton			88 Spearmint		Lb		
Cotton: Lint (American-Pima)		Bale			89 Sugar beets		Ton		
Cotton: Seed (American-Pima)		Ton			90 Soybeans		Bu		

VEGETABLES

101 Asparagus		Cwt			114 Cantaloupe, etc.		Cwt		
102 Beans (processing)		Ton			115 Honey Bell, Honeydew, etc.		Cwt		
103 Beans (fresh market)		Cwt			116 Watermelon		Cwt		
104 Broccoli		Cwt			117 Onions, dry		Cwt		
105 Cabbage		Cwt			118 Onions, green		Cwt		
106 Carrots		Cwt			119 Peas, green (processing)		Ton		
107 Cauliflower		Cwt			120 Peas, green (fresh market)		Cwt		
108 Celery		Cwt			121 Peppers (all kinds)		Cwt		
109 Corn, sweet (processing)		Ton			122 Potatoes, early		Cwt		
110 Corn, sweet (fresh market)		Cwt			123 Potatoes, late		Cwt		
111 Cucumbers		Cwt			124 Squash		Cwt		
112 Greens (kale, spinach, etc.)		Cwt			125 Tomatoes (canning)		Ton		
113 Lettuce		Cwt			126 Tomatoes (fresh market)		Cwt		

CROP PRODUCTION - Continued

NURSERY

CROPS	ACRES	UNIT	YIELD		YIELD	
			PER ACRE	TOTAL	PER ACRE	TOTAL
37 Total Nursery (show yield in dollars)						

SEEDS

141 Alfalfa		Cwt		146 Onion		Cwt	
142 Clover		Cwt		147 Pea		Cwt	
143 Corn		Cwt		148 Potato		Cwt	
144 Grass		Cwt		149 Sugar beet		Cwt	
145 Lettuce		Cwt					

FRUITS

161 Apples		Ton		169 Grapes, table		Ton	
162 Apricots		Ton		170 Grapes, wine		Ton	
163 Berry		Cwt		171 Grapes, raisin		Ton	
164 Cherries		Ton		172 Grapes, other		Ton	
165 Grapefruit		Cwt		173 Olives		Ton	
166 Lemons and Limes		Cwt		174 Peaches		Ton	
167 Oranges and Tangerines		Cwt		175 Pears		Ton	
168 Dates		Ton		176 Prunes and Plums		Ton	
				177 Strawberries		Ton	

NUTS

181 Almonds		Ton		184 Pistachios		Ton	
182 Pecans		Cwt					
183 Walnuts		Ton					

John Zueger

INSTRUMENT NO. 2008-1544
Page 97 of 117 Pages

10-23

Ride 3 - 1997
UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
WATER USER CROP REPORT

OMB Approval No. _____
Expires _____

7-377 (1-86, (Proposed)
Bureau of Reclamation

Zueger, Margaret

18.00

1. Name of Owner		2. Owner Address	
3. Name of Operator (if different)		4. Operator Address	
5. State and Counties		6. Irrigated Acres for Service 18	
7. Irrigated Acres: Agricultural 18		8. Multicropped Acres	9. Irrigation Type (circle one if applicable) Sprinkler <input type="checkbox"/> Drip <input type="checkbox"/>

CROP PRODUCTION

CEREALS

CROPS	ACRES	UNIT	YIELD		CROPS	ACRES	UNIT	YIELD	
			PER ACRE	TOTAL				PER ACRE	TOTAL
51 Barley		Bu			54 Rice		Cwt		
52 Corn		Bu			56 Sorghums (sorgo, kaffir, milo, etc.)		Bu		
53 Oats		Bu			57 Wheat		Bu		

FORAGE

61 Alfalfa hay		Ton			63 Irrigated pasture	18	AUM	3.6	6418
62 Other hay		Ton			65 Silage or ensilage		Ton		

MISCELLANEOUS FIELD CROPS

81 Beans, dry and edible		Cwt			86 Hops		Ton		
82 Cotton: Lint (Upland)		Bale			87 Peppermint		Lb		
83 Cotton: Seed (Upland)		Ton			88 Spearmint		Lb		
84 Cotton: Lint (American-Pima)		Bale			89 Sugar beets		Ton		
85 Cotton: Seed (American-Pima)		Ton			90 Soybeans		Bu		

VEGETABLES

101 Asparagus		Cwt			114 Cantaloupe, etc.		Cwt		
102 Beans (processing)		Ton			115 Honey Bell, Honeydew, etc.		Cwt		
103 Beans (fresh market)		Cwt			116 Watermelon		Cwt		
104 Broccoli		Cwt			117 Onions, dry		Cwt		
105 Cabbage		Cwt			118 Onions, green		Cwt		
106 Carrots		Cwt			119 Peas, green (processing)		Ton		
107 Cauliflower		Cwt			120 Peas, green (fresh market)		Cwt		
108 Celery		Cwt			121 Peppers (all kinds)		Cwt		
109 Corn, sweet (processing)		Ton			122 Potatoes, early		Cwt		
110 Corn, sweet (fresh market)		Cwt			123 Potatoes, late		Cwt		
111 Cucumbers		Cwt			124 Squash		Cwt		
112 Greens (kale, spinach, etc.)		Cwt			125 Tomatoes (canning)		Ton		
113 Lettuce		Cwt			126 Tomatoes (fresh market)		Cwt		

This information is collected to effectively administer, manage, and evaluate the Federal Reclamation Program. Data are used for economic analysis, program evaluation, and to respond to Congressional and other inquiries. Response to this request is required to obtain a benefit in accordance with Public Law 78-280. Public reporting burden for this form is estimated to average .33 hours per response, including time for reviewing instructions, gathering existing data, reviewing the form, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Information Collection Officer, D-7824, Bureau of Reclamation, Denver, Colorado.

CROP PRODUCTION - Continued

NURSERY

CROPS	ACRES	UNT	YIELD				YIELD	
			PER ACRE	TOTAL			PER ACRE	TOTAL
137 Total Nursery (show yield in dollars)								

SEEDS

141 Alfalfa		Cwt			146 Onion		Cwt	
142 Clover		Cwt			147 Pea		Cwt	
143 Corn		Cwt			148 Potato		Cwt	
144 Grass		Cwt			149 Sugar beet		Cwt	
145 Lettuce		Cwt						

FRUITS

161 Apples		Ton			166 Grapes, table		Ton	
162 Apricots		Ton			170 Grapes, wine		Ton	
163 Berries		Cwt			171 Grapes, raisin		Ton	
164 Cherries		Ton			172 Grapes, other		Ton	
165 Grapefruit		Cwt			173 Olives		Ton	
166 Lemons and Limes		Cwt			174 Peaches		Ton	
167 Oranges and Tangerines		Cwt			175 Pears		Ton	
168 Dates		Ton			176 Prunes and Plums		Ton	
					177 Strawberries		Ton	

NUTS

181 Almonds		Ton			184 Pistachios		Ton	
182 Pecans		Cwt						
183 Walnuts		Ton						

John Snegle 9-17-97

INSTRUMENT NO. 2008 **1544**
Page **99** of **117** Pages

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1 Name of Owner Zueger, Margaret	2 Owner Address
3 Name of Operator (if different)	4 Operator Address INSTRUMENT NO. 2008-1544 Page 100 of 117 Pages
5 State and Counties	6 Irrigated Acres for Service
7 Irrigated Acres Agricultural <input checked="" type="checkbox"/> Non-Agricultural <input type="checkbox"/>	8 Multicropped Acres
9 Irrigation Type (circle one if applicable) Sprinkler <input type="checkbox"/> Drip <input type="checkbox"/>	

CROP PRODUCTION

CEREALS

CROPS	ACRES	UNT	YIELD		CROPS	ACRES	UNT	YIELD	
			PER ACRE	TOTAL				PER ACRE	TOTAL
51 Barley		Bu			54 Rice		Cwt		
52 Corn		Bu			56 Sorghums (sorgo, kafir, milo, etc.)		Bu		
53 Oats		Bu			57 Wheat		Bu		

FORAGE

61 Alfalfa hay		Ton			63 Irrigated pasture	10	AUM	7	30
62 Other hay		Ton			65 Silage or ensilage		Ton		

MISCELLANEOUS FIELD CROPS

81 Beans, dry and edible		Cwt			86 Hops		Ton		
82 Cotton: Lint (Upland)		Bale			87 Peppermint		Lb		
83 Cotton: Seed (Upland)		Ton			88 Spearmint		Lb		
84 Cotton: Lint (American-Pima)		Bale			89 Sugar beets		Ton		
Cotton: Seed (American-Pima)		Ton			90 Soybeans		Bu		

VEGETABLES

101 Asparagus		Cwt			114 Cantaloupe, etc.		Cwt		
102 Beans (processing)		Ton			115 Honey Ball, Honeydew, etc.		Cwt		
103 Beans (fresh market)		Cwt			116 Watermelon		Cwt		
104 Broccoli		Cwt			117 Onions, dry		Cwt		
105 Cabbage		Cwt			118 Onions, green		Cwt		
106 Carrots		Cwt			119 Peas, green (processing)		Ton		
107 Cauliflower		Cwt			120 Peas, green (fresh market)		Cwt		
108 Celery		Cwt			121 Peppers (all kinds)		Cwt		
109 Corn, sweet (processing)		Ton			122 Potatoes, early		Cwt		
110 Corn, sweet (fresh market)		Cwt			123 Potatoes, late		Cwt		
111 Cucumbers		Cwt			124 Squash		Cwt		
112 Greens (kale, spinach, etc.)		Cwt			125 Tomatoes (canning)		Ton		
113 Lettuce		Cwt			126 Tomatoes (fresh market)		Cwt		

This information is collected to effectively administer, manage, and evaluate the Federal Reclamation Program. Data are used for economic analysis, program evaluation, and to respond to Congressional and other inquiry. Response to this request is required to obtain a benefit in accordance with Public Law 78-290. Public reporting burden for this form is estimated to average .33 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Information Collection Office, D-7824, Bureau of Reclamation, Dev Federal Center, PO Box 23007, Denver CO 80225-0007; and the Office of Management and Budget, Paperwork Reduction Project 1008-0001, Washington DC 20503.

CROP PRODUCTION - Continued

NURSERY

CROPS	ACRES	UNT	YIELD				YIELD	
			PER ACRE	TOTAL			PER ACRE	TOTAL
Total Nursery (show yield in dollars)								

SEEDS

		UNT				UNT	
		Cwt		146 Onion		Cwt	
Alfalfa		Cwt		147 Pea		Cwt	
Clover		Cwt		148 Potato		Cwt	
Corn		Cwt		149 Sugar beet		Cwt	
Grass		Cwt					
Lettuce		Cwt					

FRUITS

		UNT				UNT	
Apples		Ton		189 Grapes, table		Ton	
Apricots		Ton		170 Grapes, wine		Ton	
Berries		Cwt		171 Grapes, raisin		Ton	
Cherries		Ton		172 Grapes, other		Ton	
Grapefruit		Cwt		173 Olives		Ton	
Lemons and Limes		Cwt		174 Peaches		Ton	
Oranges and Tangerines		Cwt		175 Pears		Ton	
Dates		Ton		176 Prunes and Plums		Ton	
				177 Strawberries		Ton	

NUTS

		UNT				UNT	
1 Almonds		Ton		184 Pistachios		Ton	
2 Pecans		Cwt					
3 Walnuts		Ton					

INSTRUMENT NO. 2008 -1544
Page 101 of 117 Pages

EXHIBIT PAGE 12 OF 23

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
WATER USER CROP REPORT

OMB Approval No. _____
Expires _____

Form 1-86 (Proposed)
Bureau of Reclamation

Zueger, John

18.

Name of Owner	2. Owner Address
Name of Operator (if different)	4. Operator Address
State and Counties	6. Irrigated Acres for Service 18
Irrigated Acres: Agricultural 18 Non-Agricultural	8. Multicropped Acres 5
INSTRUMENT NO. 2006-1544 Page 102 of 117 Pages	
9. Irrigation Type (circle one if applicable) Sprinkler <input type="checkbox"/> Drip <input type="checkbox"/>	

CROP PRODUCTION

CEREALS

CROPS	ACRES	UNT	YIELD		CROPS	ACRES	UNT	YIELD	
			PER ACRE	TOTAL				PER ACRE	TOTAL
11 Barley		Bu			54 Rice		Cwt		
12 Corn		Bu			56 Sorghums (sorgo, kaffir, milo, etc.)		Bu		
13 Oats		Bu			57 Wheat		Bu		

FORAGE

CROPS	ACRES	UNT	YIELD	CROPS	ACRES	UNT	YIELD
61 Alfalfa hay		Ton		63 Irrigated pasture	18	ALUM	4 72
62 Other hay		Ton		65 Silage or ensilage		Ton	

MISCELLANEOUS FIELD CROPS

81 Beans, dry and edible		Cwt		88 Hops		Ton	
82 Cotton: Lint (Upland)		Bale		87 Peppermint		Lb	
Cotton: Seed (Upland)		Ton		88 Spearmint		Lb	
Cotton: Lint (American-Pima)		Bale		89 Sugar beets		Ton	
85 Cotton: Seed (American-Pima)		Ton		90 Soybeans		Bu	

VEGETABLES

101 Asparagus		Cwt		114 Cantaloupe, etc.		Cwt	
102 Beans (processing)		Ton		115 Honey Ball, Honeydew, etc.		Cwt	
103 Beans (fresh market)		Cwt		116 Watermelon		Cwt	
104 Broccoli		Cwt		117 Onions, dry		Cwt	
105 Cabbage		Cwt		118 Onions, green		Cwt	
106 Carrots		Cwt		119 Peas, green (processing)		Ton	
107 Cauliflower		Cwt		120 Peas, green (fresh market)		Cwt	
108 Celery		Cwt		121 Peppers (all kinds)		Cwt	
109 Corn, sweet (processing)		Ton		122 Potatoes, early		Cwt	
110 Corn, sweet (fresh market)		Cwt		123 Potatoes, late		Cwt	
111 Cucumbers		Cwt		124 Squash		Cwt	
112 Greens (kale, spinach, etc.)		Cwt		125 Tomatoes (canning)		Ton	
113 Lettuce		Cwt		126 Tomatoes (fresh market)		Cwt	

CROP PRODUCTION - Continued

NURSERY

CROPS	ACRES	UNT	YIELD				YIELD	
			PER ACRE	TOTAL			PER ACRE	TOTAL
137 Total Nursery (show yield in dollars)								

SEEDS

141 Alfalfa		Cwt			146 Onion		Cwt	
142 Clover		Cwt			147 Pea		Cwt	
143 Corn		Cwt			148 Potato		Cwt	
144 Grass		Cwt			149 Sugar beet		Cwt	
145 Lettuce		Cwt						

FRUITS

161 Apples		Ton			169 Grapes, table		Ton	
162 Apricots		Ton			170 Grapes, wine		Ton	
163 Berries		Cwt			171 Grapes, raisin		Ton	
164 Cherries		Ton			172 Grapes, other		Ton	
165 Grapefruit		Cwt			173 Olives		Ton	
166 Lemons and Limes		Cwt			174 Peaches		Ton	
167 Oranges and Tangerines		Cwt			175 Pears		Ton	
168 Dates		Ton			176 Prunes and Plums		Ton	
					177 Strawberries		Ton	

NUTS

181 Almonds		Ton			184 Pistachios		Ton	
182 Pecans		Cwt						
183 Walnuts		Ton						

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 Page 103 of 117 Pages

10/14/99
 SECTION P 10/14/99

CROP PRODUCTION - Continued

NURSERY

CROPS	ACRES	UNIT	YIELD				YIELD	
			PER ACRE	TOTAL			PER ACRE	1
137 Total Nursery (show yield in dollars)								

SEEDS

141 Alfalfa		Cwt			146 Onion		Cwt	
142 Clover		Cwt			147 Pea		Cwt	
143 Corn		Cwt			148 Potato		Cwt	
144 Grass		Cwt			149 Sugar beet		Cwt	
145 Lettuce		Cwt						

FRUITS

161 Apples		Ton			169 Grapes, table		Ton	
162 Apricots		Ton			170 Grapes, wine		Ton	
163 Berries		Cwt			171 Grapes, raisin		Ton	
164 Cherries		Ton			172 Grapes, other		Ton	
165 Grapefruit		Cwt			173 Olives		Ton	
166 Lemons and Limes		Cwt			174 Peaches		Ton	
167 Oranges and Tangerines		Cwt			175 Pears		Ton	
168 Dates		Ton			176 Prunes and Plums		Ton	
					177 Strawberries		Ton	

NUTS

181 Almonds		Ton			184 Pistachios		Ton	
182 Pecans		Cwt						
183 Walnuts		Ton						

INSTRUMENT NO. 2008-1544
Page 104 of 117 Pages

key
D
15-72

3-77 (1-96) (Proposed)
 Bureau of Reclamation

1. Name of Owner		2. Owner Address <i>2129 Graham</i>	
3. Name of Operator (if different)		4. Operator Address	
5. State and Counties		6. Irrigated Acres for Service <i>18</i>	
7. Irrigated Acres: Agricultural <i>18</i> Non-Agricultural		8. Multicropped Acres <i>4</i>	9. Irrigation Type (circle one if applicable) Sprinkler Drip

CROP PRODUCTION

CEREALS

CROPS	ACRES	UNT	YIELD		CROPS	ACRES	UNT	YIELD	
			PER ACRE	TOTAL				PER ACRE	TOTAL
51 Barley		Bu			54 Rice		Cwt		
52 Corn		Bu			56 Sorghums (sorgo, kaffir, milo, etc.)		Bu		
53 Oats		Bu			57 Wheat		Bu		

FORAGE

CROPS	ACRES	UNT	YIELD	CROPS	ACRES	UNT	YIELD
51 Alfalfa hay		Ton		63 Irrigated pasture		ALM	
52 Other hay	<i>18</i>	Ton	<i>4</i>	65 Silage or ensilage		Ton	<i>72</i>

MISCELLANEOUS FIELD CROPS

81 Beans, dry and edible		Cwt		86 Hops		Ton	
82 Cotton: Lint (Upland)		Bale		87 Peppermint		Lb	
83 Cotton: Seed (Upland)		Ton		88 Spearmint		Lb	
84 Cotton: Lint (American-Pima)		Bale		89 Sugar beets		Ton	
85 Cotton: Seed (American-Pima)		Ton		90 Soybeans		Bu	

VEGETABLES

101 Asparagus		Cwt		114 Cantaloupe, etc.		Cwt	
102 Beans (processing)		Ton		115 Honey Ball, Honeydew, etc.		Cwt	
103 Beans (fresh market)		Cwt		116 Watermelon		Cwt	
104 Broccoli		Cwt		117 Onions, dry		Cwt	
105 Cabbage		Cwt		118 Onions, green		Cwt	
106 Carrots		Cwt		119 Peas, green (processing)		Ton	
107 Cauliflower		Cwt		120 Peas, green (fresh market)		Cwt	
108 Celery		Cwt		121 Peppers (all kinds)		Cwt	
109 Corn, sweet (processing)		Ton		122 Potatoes, early		Cwt	
110 Corn, sweet (fresh market)		Cwt		123 Potatoes, late		Cwt	
111 Cucumbers		Cwt		124 Squash		Cwt	
112 Greens (kale, spinach, etc.)		Cwt		125 Tomatoes (canning)		Ton	
113 Lettuce		Cwt		126 Tomatoes (fresh market)		Cwt	

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
WATER USER CROP REPORT

OMB Approval No. _____
Expires _____

7-377 (1-86) (Proposed)
Bureau of Reclamation

Zueger, John

18.00

1. Name of Owner		2. Owner Address <i>2129 Gr Lane</i>	
3. Name of Operator (if different)		4. Operator Address	
5. State and Counties		6. Irrigated Acres for Service <i>18</i>	
7. Irrigated Acres: Agricultural <i>18</i> Non-Agricultural		8. Multicropped Acres <i>5</i>	9. Irrigation Type (circle one if applicable) Sprinkler Drip

CROP PRODUCTION

CEREALS

CROPS	ACRES	UNT	YIELD		CROPS	ACRES	UNT	YIELD	
			PER ACRE	TOTAL				PER ACRE	TOTAL
51 Barley		Bu			54 Rice		Cwt		
52 Corn		Bu			56 Sorghums (sorgo, kafir, milo, etc.)		Bu		
53 Oats		Bu			57 Wheat		Bu		

FORAGE

61 Alfalfa hay		Ton			63 Irrigated pasture	<i>18</i>	AUM	<i>6</i>	<i>120</i>
62 Other hay		Ton			65 Silage or ensilage		Ton		

MISCELLANEOUS FIELD CROPS

81 Beans, dry and edible		Cwt			86 Hops		Ton		
82 Cotton: Lint (Upland)		Bale			87 Peppermint		Lb		
83 Cotton: Seed (Upland)		Ton			88 Spearmint		Lb		
84 Cotton: Lint (American-Pima)		Bale			89 Sugar beets		Ton		
85 Cotton: Seed (American-Pima)		Ton			90 Soybeans		Bu		

VEGETABLES

101 Asparagus		Cwt			114 Cantaloupe, etc.		Cwt		
102 Beans (processing)		Ton			115 Honey Ball, Honeydew, etc.		Cwt		
103 Beans (fresh market)		Cwt			116 Watermelon		Cwt		
104 Broccoli		Cwt			117 Onions, dry		Cwt		
105 Cabbage		Cwt			118 Onions, green		Cwt		
106 Carrots		Cwt			119 Peas, green (processing)		Ton		
107 Cauliflower		Cwt			120 Peas, green (fresh market)		Cwt		
108 Celery		Cwt			121 Peppers (all kinds)		Cwt		
109 Corn, sweet (processing)		Ton			122 Potatoes, early		Cwt		
110 Corn, sweet (fresh market)		Cwt			123 Potatoes, late		Cwt		
111 Cucumbers		Cwt			124 Squash		Cwt		
112 Greens (kale, spinach, etc.)		Cwt			125 Tomatoes (canning)		Ton		
113 Lettuce		Cwt			126 Tomatoes (fresh market)		Cwt		

CROP PRODUCTION - Continued

CROPS	ACRES	UNT	YIELD						
			PER ACRE	TOTAL					
NURSERY									
137 Total Nursery (show yield in dollars)									PF
SEEDS									
141 Alfalfa									
142 Clover		Cwt							
143 Corn		Cwt			146 Onion				
144 Grass		Cwt			147 Pea			Cwt	
145 Lettuce		Cwt			148 Potato			Cwt	
		Cwt			149 Sugar beet			Cwt	
FRUITS									
161 Apples		Ton			169 Grapes, table			Ton	
162 Apricots		Ton			170 Grapes, wine			Ton	
163 Berries		Cwt			171 Grapes, raisin			Ton	
164 Cherries		Ton			172 Grapes, other			Ton	
165 Grapefruit		Cwt			173 Olives			Ton	
166 Lemons and Limes		Cwt			174 Peaches			Ton	
167 Oranges and Tangerines		Cwt			175 Pears			Ton	
168 Dates		Ton			176 Prunes and Plums			Ton	
					177 Strawberries			Ton	
NUTS									
181 Almonds		Ton			184 Pistachios			Ton	
182 Pecans		Cwt							
183 Walnuts		Ton							

10-11-01
Phone

INSTRUMENT NO. 2008-1344
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EXHIBIT PAGE 18 of 23

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
WATER USER CROP CENSUS REPORT

Year 2002

INSTRUMENT NO. 2008 -1544
Page 108 of 117 Pages

Water District Vale Oregon Irrigation District

Ride 3

SECTION I - IRRIGATOR INFORMATION

Name of Owner Zeuger, John	b. Owner Address
Name of Operator (if different)	d. Operator Address

SECTION II - DISTRICT LANDS IN AN IRRIGATION ROTATION

1. Type of Service ¹ <input type="checkbox"/> Full <input type="checkbox"/> Supplemental <input type="checkbox"/> Temporary (mark one)	b. Agricultural Acres ² 18.00	c. Nonagricultural Acres ³	d. Multi cropped Acres
2. Acres irrigated by: Sprinkler: _____ Drip: _____	f. Acres irrigated but not harvested	g. Acres not irrigated (dry cropped, fallow, or idle)	

SECTION III - CROP PRODUCTION

a. CROPS	b. Acres	c. Unit	d. YIELD ⁴		a. CROPS	b. Acres	c. Unit	d. YIELD ⁴	
			PER ACRE	TOTAL				PER ACRE	TOTAL
CEREALS									
50 Barley (malt)		Bu			54 Rice		Cwt		
51 Barley (feed)		Bu			56 Sorghums (sorgo, kaffir, milo, etc.)		Bu		
52 Corn		Bu			57 Wheat		Bu		
53 Oats		Bu			58 Other Cereals (specify)		Bu		
FORAGE									
61 Alfalfa hay	18	Ton	3.0	54	63 Irrigated pasture		AUM		
62 Other hay		Ton			65 Silage or ensilage		Ton		
					70 Other forage (specify)		Ton		
MISCELLANEOUS FIELD CROPS									
81 Beans, dry and edible		Cwt			86 Hops		Ton		
82 Cotton: Lint (Upland)		Bale			87 Mint		Lb		
83 Cotton: Seed (Upland) ⁵		Ton			89 Sugar beets		Ton		
84 Cotton: Lint (American-Pima)		Bale			90 Soybeans		Bu		
85 Cotton: Seed (American-Pima) ⁵		Ton			91 Other field crops (specify)				
VEGETABLES									
101 Asparagus		Cwt			119 Peas, green (processing)		Ton		
102 Beans (processing)		Ton			120 Peas, green (fresh market)		Cwt		
103 Beans (fresh market)		Cwt			121 Peppers (all kinds)		Cwt		
104 Broccoli		Cwt			122 Potatoes, early		Cwt		
105 Cabbage		Cwt			123 Potatoes, late		Cwt		
106 Carrots		Cwt			124 Squash		Cwt		
107 Cauliflower		Cwt			100 Sweet Potatoes		Cwt		
108 Celery		Cwt			125 Tomatoes (canning)		Ton		
Corn, sweet (processing)		Cwt			126 Tomatoes (fresh market)		Cwt		
Corn, sweet (fresh market)		Ton			114 Cantaloupe		Cwt		
111 Cucumbers		Cwt			116 Watermelon		Cwt		
112 Greens (kale, spinach, etc.)		Cwt			115 Honey Ball, Honeydew, etc.		Cwt		
113 Lettuce		Cwt			127 Other vegetables (specify)		Cwt		
117 Onions, dry		Cwt							
118 Onions, green		Cwt							

NURSERY

a. CROPS	b. Acres	c. Unit	d. YIELD ¹		a. CROPS	b. Acres	c. Unit	d. YIELD ¹	
			PER ACRE	TOTAL				PER ACRE	TOTAL
37 Total Nursery (show yield in dollars)									
SEED CROPS									
41 Alfalfa		Cwt			146 Onion		Cwt		
42 Clover		Cwt			147 Pea		Cwt		
43 Corn		Cwt			148 Potato		Cwt		
44 Grass		Cwt			149 Sugar beet		Cwt		
45 Lettuce		Cwt			150 Other seeds (specify)		Cwt		
FRUITS									
61 Apples		Ton			170 Grapes, other		Ton		
62 Apricots		Ton			165 Grapefruit		Cwt		
58 Avocados		Ton			166 Lemons and Limes		Cwt		
63 Berries, except strawberries		Cwt			171 Olives		Ton		
64 Cherries		Ton			167 Oranges and Tangerines		Cwt		
68 Dates		Ton			172 Peaches		Ton		
59 Figs		Cwt			173 Pears		Ton		
69 Grapes, table		Ton			174 Prunes and Plums		Ton		
177 Grapes, wine		Ton			160 Strawberries		Ton		
176 Grapes, raisin		Ton			175 Other fruits (specify)		Ton		
NUTS									
181 Almonds		Ton			183 Walnuts		Ton		
182 Pecans		Cwt			184 Other nuts (specify)		Ton		
180 Pistachios		Ton							

1. Use separate sheets if more than one type of service is used.
2. Total of all irrigated acres listed, by individual crop, on this form.
3. Irrigated nonagricultural acres, include family orchards and gardens, hobby farms, landscaped areas, etc.
4. Enter either Yield Per Acre or Total Yield - not both.
5. Cotton seed is assumed to have been harvested on the same number of acres as lint.

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EXHIBIT E PAGE 21 OF 23

4/20/08

Producer Name and Address ID
ZUEGER 2678
2 GRAHAM BLVD
E, OR 97918-5617

INSTRUMENT NO. 2008 -1544
Page 111 of 117 Pages

E: The following statements are made in accordance with the Privacy Act of 1974(5 USC 552a). The Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, authorized the collection of the following data. The data will be used to determine eligibility for assistance. Furnishing the data is voluntary, however, without it assistance cannot be provided. The data may be furnished to any agency responsible for enforcing the provisions of the Act. The reporting burden for this collection of information is estimated to average 15 minutes per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0004), Washington, D.C. 20503. RETURN THIS COMPLETED FORM TO YOUR FSA COUNTY OFFICE.

Tract Number	CLU/Field	Ir Pr	Var/Type	Int Use	C/C Stat	Rpt Rptd Quantity	Determined Quantity	Crp Lnd	Planting Date	Prod Share	Prod Name	RMA Opt
3	1928	1	Ir	MIXFG IGS	Graze	I A	6.00		Y 04-01-2002	1.0000	JOHN ZUEGER	
		2	Ir	ALFAL	Forage	I A	13.10		Y 10-01-2000	1.0000	JOHN ZUEGER	
		3	Ir	ALFAL	Forage	I A	14.40		Y 10-01-2000	1.0000	JOHN ZUEGER	

Photo Number/Legal Description: 1928 P15R, S22, T18, R44

Cropland: 33.5 Farmland: 40.0

17	1927	1	Ir	GRASS ORG	Graze	I A	10.00		Y 03-01-1977	1.0000	JOHN ZUEGER	
		2	Ir	GRASS ORG	Graze	I A	3.40		Y 03-01-1977	1.0000	JOHN ZUEGER	

Photo Number/Legal Description: 1927 P15R, S21, T18, R44

Cropland: 12.6 Farmland: 40.0

Type	Prac	IU	Reported	Determined	C/C Type	Prac	IU	Reported	Determined	C/C Type	Prac	IU	Reported	Determined
XFG	IGS	I	GZ	6.00	ALFAL	I	FG	27.50		GRASS ORG	I	GZ	13.40	

PRODUCER'S CERTIFICATION: I certify to the best of my knowledge and belief that the acreage of crops and land uses listed herein are true and correct, and that all required crops and land uses have been reported for the farm as applicable. The signing of this form gives FSA representatives authorization to enter and inspect crops and land uses on the above identified land.

Producer's Signature

Date

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, sex, age, marital status, or disability.

EXHIBIT 2 PAGE 22 OF 23

ducer Name and Address ID
N ZUEGER 2678
2 GRAHAM BLVD
E, OR 97918-5617

INSTRUMENT NO. 2008 -1544
Page 112 of 117 Pages

E: The following statements are made in accordance with the Privacy Act of 1974(5 USC 552a). The Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, authorized the collection of the following data. The data will be used to determine eligibility for assistance. Furnishing the data is voluntary, however, without it assistance cannot be provided. The data may be furnished to any agency responsible for enforcing the provisions of the Acts. The reporting burden for this collection of information is estimated to average 15 minutes per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0004), Washington, D.C. 20503. RETURN THIS COMPLETED FORM TO YOUR FSA COUNTY OFFICE.

Tract Number	CLU/Field	Ir Pr	Var/ C/C	Int Use	C/C Stat	Rpt Unt	Reported Quantity	Determined Quantity	Crp Lnd	Planting Date	Prod Share	Prod Name	RMA Opt
3	0	Ni	DFAV				.00				1.0000	JOHN ZUEGER	
1928	1	Ir	KIXFG	IGS	Graze	I A	5.30		Y	04-01-2002	1.0000	JOHN ZUEGER	
	2	Ir	ALFAL		Forage	I A	14.20		Y	10-01-2000	1.0000	JOHN ZUEGER	
	3	Ir	ALFAL		Forage	I A	14.80		Y	10-01-2000	1.0000	JOHN ZUEGER	

Photo Number/Legal Descriptions: 1928 P15R, S22, T18, R44

Cropland: 34.3 Farmland: 40.0

7	0	Ni	DFAV				.00				1.0000	JOHN ZUEGER	
1927	1	Ir	GRASS	ORG	Graze	I A	10.00		Y	03-01-1977	1.0000	JOHN ZUEGER	
	2	Ir	GRASS	ORG	Graze	I A	3.40		Y	03-01-1977	1.0000	JOHN ZUEGER	

Photo Number/Legal Descriptions: 1927 P15R, S21, T18, R44

Cropland: 12.4 Farmland: 40.0

Type	Prac	IU	Reported	Determined	C/C	Type	Prac	IU	Reported	Determined	C/C	Type	Prac	IU	Reported	Determined
FG	IGS	I	GZ	5.30	ALFAL	I	FG	29.00	GRASS	ORG	I	GZ	13.40			

PRODUCER'S CERTIFICATION: I certify to the best of my knowledge and belief that the acreage of crops and land uses listed herein are true and correct, and that all required crops and land uses have been reported for the farm as applicable. The signing of this form gives FSA representatives authorization to enter and inspect crops and land uses on the above identified land.

Producer's Signature

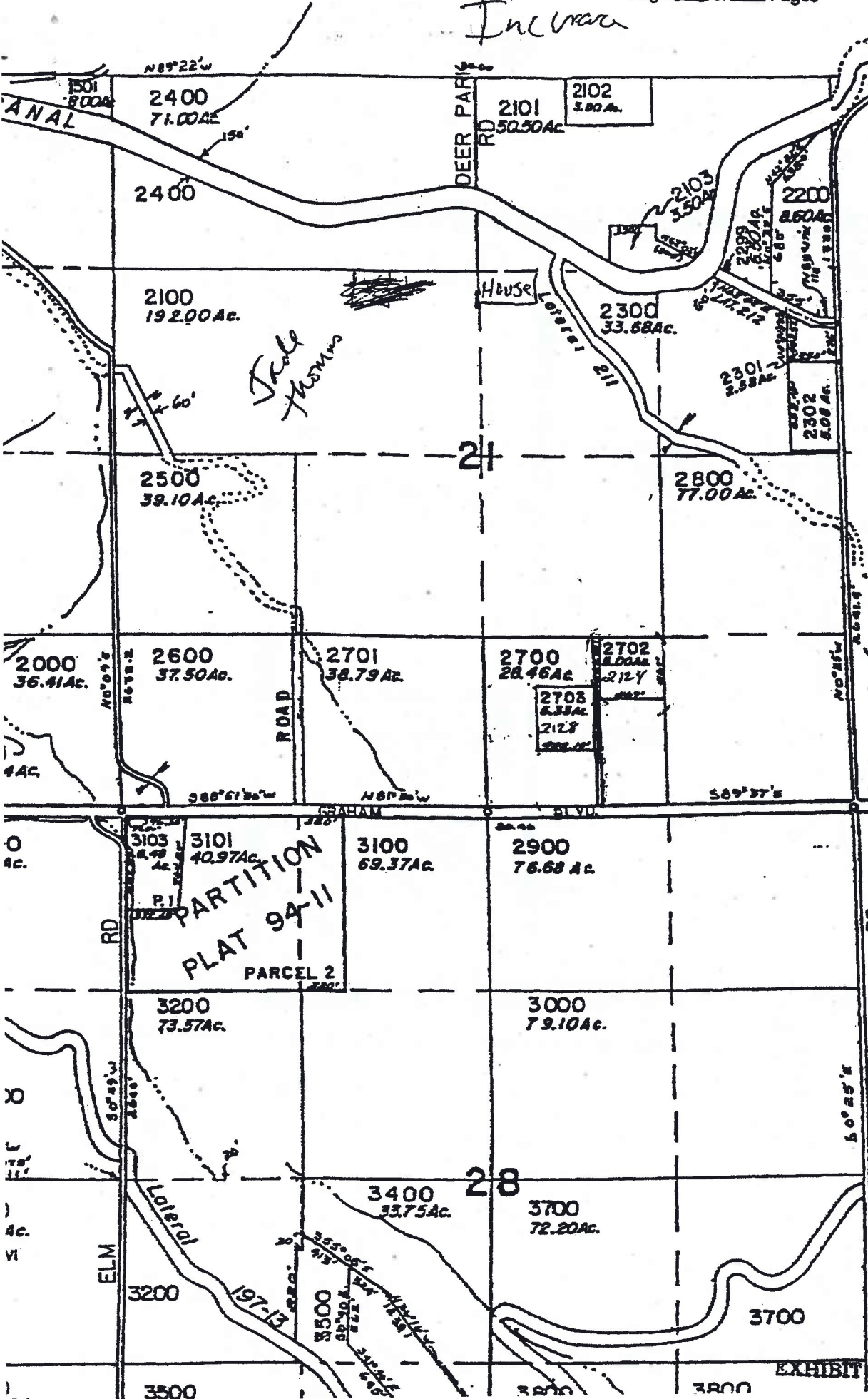
Date

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, sex, age, marital status, or disability.

EXHIBIT 7 PAGE 23 OF 23

18 44C

Inc. v. v. v.



- CANCELLED NO.
- 200
 - 1399
 - 1400
 - 2001
 - 3300
 - 4100
 - 4901
 - 4904
 - 4904U1 THRU
 - 4904U3
 - 5001
 - 5300
 - 5401
 - 5500
 - 5600
 - 5700
 - 5701
 - 6401
 - 6600
 - 7900

SEE MAP 18 44 D

PARCEL 7000

1. N0°4'W 406'
2. N89°56'E 30'
3. S70°24'E 1318'
4. N89°18'W 1272'
5. SOUTH 205'
6. S29°22'W 225'
7. S0°0'W 125'
8. S43°38'E 175'
9. SOUTH 1341'
10. S41°35'W 494'
11. S5°30'W 40'
12. S20°30'E 175'
13. WEST 1038'

EXHIBIT 1 PAGE 1 OF 1

TL 2700

TL 2702

TL 2703

TL 2700

5'

Easement Road



13'

8140

8140

TL 2900

Map # 184421

GRAHAM

SEE MAP 18S 44E 28

BLVD

GREENFIELD

1300
38.79 AC.

1400
28.46 AC.
Reg 13396

1500
5.33 AC.
13399
Wind

1600
5.00 AC.
13398
Rasmussen

Name	Tr Lot	Reg. No.
Zueger	1400 -	13396
Kind	1500 -	13399
Rasmussen	1600	13398

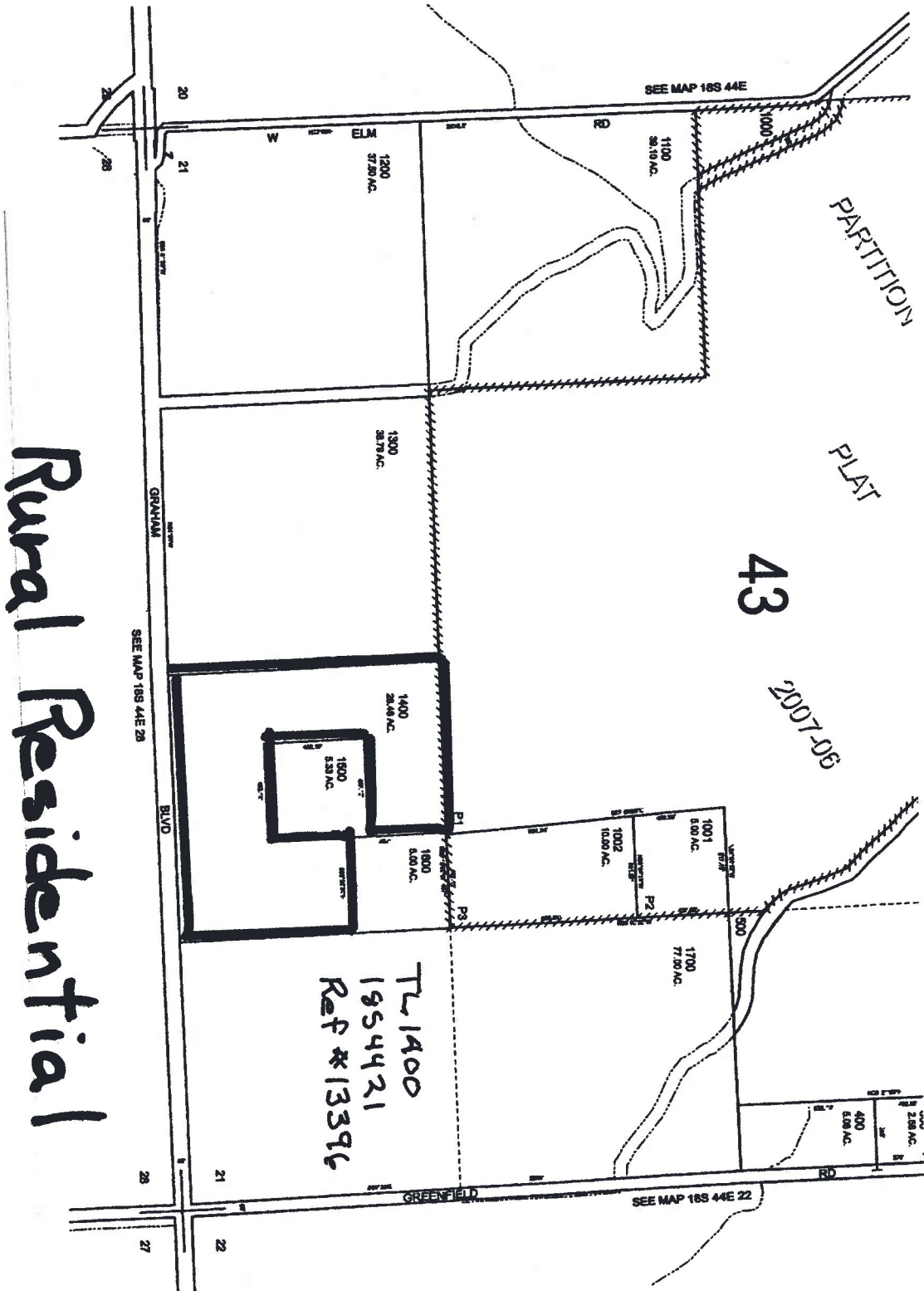
2004 Jues
1,1071.48

2005 Jues
174.09

2007 the
statements
will be sent
in Nov. 2007.

EXHIBIT S PAGE 1 OF 4

EXHIBIT 3



Rural Residential

STAFF REPORT

Zone change from Exclusive Farm Use (EFU) to Rural Residential (R-1) Planning Department file #2007-10-008

Applicant/Property Owner: John Zueger
2132 Graham Blvd.
Vale, Oregon 97918

Applicant's Representative: R. David Butler II
Butler & Looney, PC
P.O. Box 430
Vale, Oregon 97918

Property Identification: Tax lot 1400, Assessor's map 18S4421, 2132 Graham Blvd.
The parcel contains 28.46 acres and is composed of NRCS Capability Class III and IV soils and zoned Exclusive Farm Use pursuant to Statewide Planning Goal 3, *Agricultural Lands*. The parcel has 13 acres of water right.

Brief Background on the exceptions process: Malheur County Code, Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) specify that changing the zoning designation from Exclusive Farm Use to Rural Residential requires taking an "exception" to Statewide Planning Goal 3, *Agricultural Lands*. An exception to Statewide Planning Goal 14, *Urbanization*, is required for new rural residential areas when a minimum parcel size below 10 acres is requested. Statewide Land Use Planning Goal 2, Part II and OAR Division 4 authorize three categories of statewide planning goal exceptions:

1. **Physically Developed Exception.** A "physically developed" exception to Goal 3 must include findings of fact supported by substantial evidence and a statement of reasons demonstrating the *subject property* has been physically developed to uses not allowed by Goal 3 or ORS Chapter 215 to the extent that farm uses are impracticable. Uses established consistent with the Goal 3 cannot be used to justify the exception. The focus of a "physically developed" exception is on the proposed exception property.
2. **Irrevocably Committed Exception.** A "irrevocably committed" exception to Goal 3 must show that the area is irrevocably committed to the non-agricultural uses because the development on adjacent properties makes farm use of the proposed exception property impracticable. Therefore the focus of an "irrevocably committed" exception is on *existing* uses on the properties *adjacent* to the property that is the subject of the exception.
3. **Reasons Exception.** A "reasons" exception must show reasons why state land use laws should not apply. It must also include an alternative site analysis and it is necessary to discuss why other areas that do not require an exception cannot reasonably accommodate the proposed use. A reasons exception was not proposed in this application.

In order for Malheur County to approve a zone change it must adopt exceptions to all applicable statewide planning goals. The exceptions must be supported with findings of fact supported by substantial evidence and include a statement of reasons demonstrating how the standards for an exception are met. All exceptions are legislative actions and adopted as a component of the county comprehensive plan. Therefore an exception requires a planning commission hearing with a subsequent recommendation to the County Court and adoption by the County Court of an ordinance amending the comprehensive plan.

Specific Nature of Subject Application: This application proposes a “physically developed” and “irrevocably committed” to two statewide planning goals 3, *Agricultural Lands* and 14, *Urbanization*, to change the zoning designation of the subject property from Exclusive Farm Use (EFU) to Rural Residential (R-1) with a minimum parcel size requirement below 10 acres.

Specific Requirements to Approve The Subject Application:

Physically Developed Exception: To approve a “physically developed” exception to Goal 3, a county must find that the subject property has been physically developed to such an extent that uses allowed by Goal 3 are impracticable. Uses established in accordance with the goal cannot be used to justify such an exception.

Staff Comments: A local government decision approving a “physically developed” exception under OAR 660-004-025 to Goals 3 must establish that the property is actually developed with non-resource uses. The Applicant states “the property is “physically developed” citing two five acre parcels that were partitioned from the exception parcel when it was previously zoned F-2, General Farm Use, with a five acre minimum parcel size requirement. The focus of a “physically developed” exception is development on the *subject exception property* and whereas these two five acre parcels are not part of the exception property, they cannot be used to justify a “physically developed” exception for the subject parcel.

Irrevocably Committed Exception: To approve an “irrevocably committed” exception a county must find the subject property is committed to uses not allowed by the goal because of *existing adjacent uses*, and that other relevant factors makes the farm uses allowed by the goal impracticable. Whether land is irrevocably committed depends on the relationship of the exception area and the lands adjacent to it. The findings for a “irrevocably committed” exception therefore must address the following: (OAR 660-004-0028(2))

- (a) The characteristics of the *subject exception* area;
- (b) The characteristics of *adjacent* lands;
- (c) The relationship of the *subject lands* and the lands *adjacent* to it; and
- (d) Other relevant factors set forth in OAR 660-004-0028(6), i.e. *existing adjacent uses*, existing public facilities and services (water and sewer lines, etc), and parcel size and ownership patterns of the *exception area* and *adjacent lands*.

It is not required that every use allowed by the applicable goal be “impossible,” but it must be demonstrated that farm uses as defined in ORS 215 are *impracticable* because of the uses on adjacent lands. The test under the rule is not whether the property is capable of “commercial” levels of agriculture.

Staff Comments: OAR 660-004-0028(2)(a)(b) requires findings of fact address the characteristics of the *subject property* and *adjacent* parcels. In the application many of the proposed findings supporting an “irrevocably committed” exception are based on a “Sweeten” test map of 2000 acres and the property located within it. The “Sweeten” test is set forth in OAR 660-033-030 and is a conditional use approval criteria for a non-farm dwelling. Therefore the “Sweeten” test is not an approval criteria for an “irrevocably committed” exception and cannot be used to justify the proposed exceptions. Whether land is irrevocably committed depends on the relationship between the *subject property* and lands *adjacent* to it, considering the characteristics of the subject property, adjacent lands, the relationship between the two, and other relevant factors making agricultural use of the subject property *impracticable*. The application on page 28 describes the characteristics of adjacent lands as :

- “a) Land lying to the immediate east of TL 1400 is a 77.00 acre parcel includes 51 acres of waters rights and contains one dwelling.
- “b) Land lying to the immediate west of TL 1400 is a 38.79 acre parcel which includes 18 acres of water right and one dwelling.
- “c) Land lying to the immediate north of TL 1400 is a 192 acre parcel with no water right and contains one dwelling.

The two parcels located directly south of the subject parcel each have one dwelling located on them and contain 69 acres and 76 acres. These five parcels receive farm deferral. It is not required to adopt findings regarding farm deferral status. However, the fact of farm tax deferral is relevant evidence in determining uses on the adjacent property and whether these existing uses make it *impracticable* to put the subject property to farm use. The application does not propose findings of fact or a statement of reasons demonstrating the existing uses on adjacent lands make farm use of the subject property *impracticable*.

OAR 660-004-0028(6)(b) requires findings of fact addressing existing public facilities and services (water and sewer lines, etc.) The application states the subject property is in a rural area and services are relatively limited. That the development in the area lends itself to wells and subsurface sewage septic systems and the low density of the rural development in the area and the proposal to add four additional dwellings on the proposed exception parcel lends itself to the use of subsurface systems. The focus of OAR 660-004-0028(6)(b) is on whether existing public facilities and services on or near the subject property *commit the subject property to non-resources uses*, not on whether public facilities are available or required to serve the proposed non-resource uses.

OAR 660-004-0028(6)(c) and (d) requires findings addressing parcel size and ownership patterns of the proposed exception property and adjacent lands, and neighborhood and regional characteristics.

The mere presence of residential uses on EFU zoned properties adjacent to the exception parcel do not demonstrate the property is irrevocably committed to non-farm uses. In considering residential uses on adjacent properties, the application must identify in the findings the impacts between adjacent residential uses and the proposed exception property that make farm use of the property impracticable. The application's proposed findings and supporting evidence again rely on the "Sweeten" test map which is not an approval criteria for an exception to Goal 3. The application's Exhibit "B" indicates the majority of the parcels in the area surrounding the subject property are parcels larger than the subject parcel and currently in farm use.

OAR 660-004-0028(6)(b) requires findings regarding natural or man-made features or other impediments separating the proposed exception property from adjacent resource land that effectively impedes practical farm use of all or part of the property. The application cites two five acre parcels partitioned from the property when it was zoned F-2, General Farm Use, with a five acre minimum parcel size requirement and the road that accesses these parcels as man made features which impact the ability to farm the subject parcel. These parcels were created in compliance with the farm use zoning of the property at the time they were created and cannot be used as a justification for an exception.

The proposal is to create a zoning district where four parcels ranging in size from five to nine acres are to be created. OAR 660-004-0018(2) provides that for "physically developed" or "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a *single numeric minimum lot size*. Therefore the rural residential zone to accomplish what the application proposes will require a minimum parcel size requirement of five acres. This would allow the subject property to be subdivided into five lots.

OAR 660-004-0018(2)(b)(B) requires the zoning applied to the property shall limit uses, densities and services to those that "will not commit adjacent or nearby resource lands to non-resource use" and that "are compatible with adjacent or nearby resource uses." The application fails to explain why a zoning district with a parcel size requirement of five acres or the additional residential uses allowed under that zoning district will not "commit" adjacent lands to non-resource use and are "compatible" with resource uses in the area. However the proposed exception parcel originally contained 40 acres and two five acre parcels were partitioned from it pursuant to the F-2, General Farm Use zoning district with a five acre minimum parcel size requirement. The application states in one place that the creation of additional parcels will not impact farm use in the area however in another place states "The original 40 acre parcel has been the subject of property division actions which substantially impact the ability to economically farm the remaining EFU grounds" and "The placement of residences on or around the subject property severely restricts the ability to engage in viable farm use of the property." These two statements contradict each other.

Exception to Statewide Land Use Planning Goal 14, Urbanization

Oregon Administrative Rule (OAR) 660-004-0040(6) establishes that an exception to Statewide Land Use Planning Goal 14, *Urbanization* is required to create any new rural residential zone with a minimum parcel size below ten acres. OAR 660-014-0030 sets the approval criteria for an exception to Goal 14 for rural lands irrevocably committed to urban levels of development. A conclusion supported by reasons and substantial evidence, that rural land is irrevocably committed to urban levels

of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). A decision the land *has been built upon at urban densities* or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the exception area found to be irrevocably committed to urban levels of development must be clearly set forth in the justification for the exception.

OAR 660-004-0030(3) provides a decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

- (a) Size and extent of commercial and industrial uses;
- (b) Location, number and density of residential dwellings;
- (c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and
- (d) Parcel sizes and ownership patterns.

A conclusion that rural land is irrevocably committed to urban development shall be based on all of the above listed factors. The conclusion must be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development. More *detailed findings and reasons* must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

Staff Comments: Information concerning the exception parcel and the parcels adjoining it fail to support a conclusion the proposed exception parcel is either physically developed or irrevocably committed to urban use. The exception parcel is 28 acres with one dwelling. The adjacent parcels are 77 acres, 38.79 acres, 192 acres, 69 acres and 76 acres with a single dwelling located on each parcel. There are no urban facilities or services (water and sewer etc.) to the area and the area surrounding the proposed exception parcel is predominately larger parcels in farm use with a single dwelling located on them.

Another issue that was raised in one of the written comments that was submitted is "spot zoning." In the narrow sense of the term, spot zoning is the reclassification of a small area within a zoning district, where the rezoning does not conform with the comprehensive plan, serves no public purpose, and is primarily for the benefit of one individual parcel. Normally spot zoning is impermissible in instances where the amendment is designed to relieve a particular property from applicable zoning restrictions for the benefit of a particular property perhaps to the detriment to other property in the vicinity. Because our system of land use in Oregon is under such scrutiny with regards to compatibility with adjoining uses that it is not an issue in Oregon.

We actually do use spot zoning in a way when we rezone large units of land within the resource zones for other uses such as rural industrial (TVRR) or overlay zones for special circumstances (Larsen fireworks overlay).

In summary a built and committed exception must be supported by the actual development of the proposed exception area to uses that make the farm use of the parcel impractical (Cye Williams subdivision) and an irrevocable committed exception must be supported by the actual development of adjoining parcels to uses that make the farm use of the proposed exception area impractical.

ZONE CHANGE HEARING

Present for the first public hearing regarding a request for a zone change was Planner Jon Beal, Assistant Planner Bill Lawrence, Applicant John Zueger, Applicant's Attorney R. David Butler, Jim Thomas, Frank Thomas, Cathy Johnson, Sue Thomas, and Jim Johnson. Property Identification is: Tax Lot 1400, Assessor's Map 18S4421, 2132 Graham Blvd., Vale. Planning Department File #2007-10-008.

Judge Joyce opened the hearing.

There were no abstentions, or potential or actual conflicts of interest from the members of the Court. There were no ex parte communications divulged. Judge Joyce, Commissioner Wettstein, and Commission Nakano said they had visited the site.

There no objections to the jurisdiction or to any member of the County Court hearing the matter.

Judge Joyce stated: Failure to raise an issue may preclude raising it before LUBA. Failure to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the County Court to respond to the issue may preclude an action for damages in Circuit Court.

Judge Joyce asked for a staff report.

Planner Jon Beal presented his staff report as follows: This is the staff report for Planning Department action #2007-10-008; it is a zone change from Exclusive Farm Use to Rural Residential. The Applicant and the property owner is John Zueger, he is being represented by David Butler. Property Identification is tax lot 1400, Assessor's Map 18S4421; it's located at 2132 Graham Boulevard. The parcel contains 28.46 acres and is composed of NRCS Capability Class III and IV soils and is zoned Exclusive Farm Use pursuant to Statewide Planning Goal 3, Agricultural Lands. The parcel has 13 acres of water right.

A brief background on the exceptions process: The Malheur County Code, Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) specify that changing the zoning designation from Exclusive Farm Use to Rural Residential requires taking an exception to Statewide Planning Goal 3, Agricultural Lands. And, an exception to Statewide Planning Goal 14, Urbanization, is required for new rural residential areas when the minimum parcel size is below 10 acres. Statewide Planning Goal 2 authorizes three categories of statewide planning goal exceptions:

1. **Physically Developed Exception.** A physically developed exception to Goal 3 must include findings of fact supported by substantial evidence and a statement of reasons demonstrating the subject property has been physically developed to uses not allowed by Goal 3 or ORS Chapter 215 to the extent that farm uses are impracticable. Uses established consistent with Goal 3 cannot be used to justify this exception. The focus of a physically developed exception is on the proposed exception property.
2. **Irrevocably Committed Exception.** An irrevocably committed exception to Goal 3 must show that the area is irrevocably committed to the non-agricultural uses because the development on adjacent properties makes the use of the proposed exception property impracticable. Therefore the focus of an irrevocably committed exception is on existing uses on the adjacent property.
3. **Reasons Exception.** A reasons exception must show reasons why state land use laws should not apply. It must also include an alternative site analysis and it is necessary to discuss why other areas that do not require an exception cannot reasonably accommodate the proposed use. A reasons exception was not proposed in this application.

In order for Malheur County to approve a zone change it must adopt exceptions to all applicable statewide planning goals. The exceptions must be supported by findings of fact supported by substantial evidence and include a statement of reasons demonstrating how the standards for an exception are met. All exceptions are legislative actions and adopted as a component of the county comprehensive plan. Therefore an exception requires a Planning Commission hearing with a subsequent recommendation to the County Court and adoption by the County Court of

an ordinance amending the comprehensive plan. A hearing was held before the Planning Commission. The Planning Commission had six members that night; the chairman did not vote. The vote adopting the findings denying the application was 4 to 1 and the vote denying the application was 3 to 2.

Specific Nature of Subject Application: This application proposes a physically developed and irrevocably committed exception to two statewide planning goals, Goal 3, Agricultural Lands and Goal 14, Urbanization, to change the zoning designation of the subject property from Exclusive Farm Use to Rural Residential with a minimum parcel size requirement below 10 acres.

Specific Requirements to Approve The Subject Application:

Physically Developed Exception: To approve a physically developed exception to Goal 3, a county must find that the subject property has been physically developed to such an extent that uses allowed by Goal 3 are impracticable. Uses established in accordance with the goal cannot be used to justify an exception. A local government decision approving a physically developed exception under the Oregon Administrative Rules must establish the property is actually developed to non-resource uses. The Applicant states, the property is physically developed citing two 5-acre parcels that were partitioned from the exception parcel when it was previously zoned F-2, General Farm Use, with a five acre minimum parcel size requirement. The focus of a physically developed exception is development on the subject exception property and whereas these two 5-acre parcels are not part of the exception parcel, they cannot be used to justify a physically developed exception for the subject parcel.

To approve an irrevocably committed exception the county must find the subject property is committed to uses not allowed by the goal because of existing adjacent uses, and that other relevant factors makes the farm uses allowed by the goal impracticable. Whether land is irrevocably committed depends on the relationship of the exception parcel to lands adjacent to it. The findings for a irrevocably committed exception must address: the characteristics of the subject exception area; the characteristics of adjacent lands; and the relationship of the subject lands and the lands adjacent to it; and other relevant factors set forth in the administrative rules, which are the existing adjacent uses, existing public facilities and services, such as water and sewer, and parcel size and ownership patterns of the exception area and adjacent lands.

It is not required that every use allowed by the applicable goal be impossible, but it must demonstrate that the farm uses defined in ORS 215 are impracticable because of the uses on adjacent lands. The test under this rule is not whether the property is capable of commercial levels of agriculture or can be adjoined with other adjacent properties to farm. The Oregon Administrative Rule requires findings of fact addressing the characteristics of the subject property and adjacent lands. In the application many of the proposed findings supporting an irrevocably committed exception are based on a "Sweeten" test map of 2000 acres and the property located within it. The "Sweeten" test is set forth in OAR 660-033-030 and is a conditional use approval criteria for non-farm dwellings. Therefore the "Sweeten" test is not an approval criteria for irrevocably committed exception and cannot be used to justify the proposed exceptions. Whether land is irrevocably committed again depends on the relationship between the subject property and lands adjacent to it, considering the characteristics of the subject property, the adjacent lands, the relationship between the two, and other relevant factors. The application on page 28 describes the characteristics of adjacent lands as: lands lying to the immediate east of tax lot 1400 is a 77.00 acre parcel which includes 51 acres of waters rights and one dwelling; lands lying to the immediate west of the subject parcel is a 38.79 acre parcel which includes 18 acres of water right and one dwelling; lands lying to the immediate north of the subject parcel is a 192 acre parcel with no water right and it also contains one dwelling.

The two parcels located directly south of the subject parcel each have one dwelling located on them and contain 69 and 76 acres. These five parcels receive farm use deferral. It is not required to adopt findings regarding farm use deferral status. However, the fact of farm use deferral is relevant evidence in determining uses on the adjacent property and whether these existing uses make it impracticable to put the subject parcel to farm use. The application does not propose findings of fact or a statement of reasons demonstrating the existing uses on adjacent properties make the farm use of the subject property impracticable.

OAR 660-004-0028(6)(b) requires findings of fact addressing existing public facilities and services such as water and sewer lines. The application states the subject property is in a rural area and services are relatively limited. That the development in the area lends itself to wells and subsurface sewage septic systems and the low density of the rural development in the area and the proposal to add four additional dwellings on the proposed exception parcel lends itself to subsurface sewage systems. The focus of the administrative rule is on whether the existing public facilities and services on or near the subject property commit the subject property to non-resources uses, not whether public facilities are available or required to serve the proposed non-resource uses.

OAR 660-004-0028(6)(c) and (d) requires findings addressing size and ownership patterns of the proposed exception property and adjacent lands, and neighborhood and regional characteristics. The mere presence of residential uses on EFU zoned properties adjacent to the exception parcel do not demonstrate the parcel is irrevocably committed to non-farm uses. In considering residential uses on adjacent properties, the application must identify in the findings the impacts between adjacent residential uses and the proposed exception property that make farm use of the property impracticable. The application's proposed findings and supporting evidence again rely on the "Sweeten" test map which is not an approval criteria for an exception to Goal 3. The application's exhibit "B" indicates the majority of the parcels in the area surrounding the subject property are parcels larger than the subject parcel and currently in farm use.

OAR 660-004-0028(6)(b) requires findings regarding natural or man-made features or other impediments separating the proposed exception property from adjacent resource land that effectively impedes practical farm use of all or part of the property. The application cites two 5-acre parcels partitioned from the property when it was zoned F-2, General Farm Use, with a five acre minimum parcel size requirement and the road that accesses these parcels as man made features which impact the ability to farm the subject parcel. These parcels were created in compliance with the farm use zoning of the property at the time they were created and cannot be used as a justification for an exception.

Public member Douglas Dean joined the meeting.

The proposal is to create a zoning district where four parcels ranging in size from five to nine acres are to be created. OAR 660-004-0018(2) provides that physically developed or irrevocably committed exceptions to goals, residential plan and zoning designations shall authorize a single numeric lot size. Therefore the rural residential zone to accomplish what the application proposes will require a minimum parcel size of five acres. This would allow the subject property to be subdivided into five lots.

OAR 660-004-0018(2)(b)(B) requires the zoning applied to the property shall limit uses, densities and services to those that will not commit adjacent or nearby resource lands to non-resource use and that are compatible with adjacent or nearby resource uses. The application fails to explain why a zoning district with a parcel size requirement of five acres or the additional residential uses allowed under that zoning district will not commit adjacent lands to non-resource uses and are compatible resource uses in the area. However the proposed exception parcel originally contained 40 acres with two 5-acre parcels were partitioned from it pursuant to the F-2, General Farm Use zone. The application states in one place the creation of additional parcels will not impact farm use in the area however in another place states, the original 40 acre parcel has been the subject of property division actions which substantially impact the ability to economically farm the remaining EFU grounds and, the placement of residences on the subject property severely restrict the ability to engage in farm use of the property. These two statements contradict each other.

Finally, an exception to Statewide Goal 14, Oregon Administrative Rule (OAR) 660-004-0040(6) establishes that an exception to Statewide Planning Goal 14, Urbanization, is required to create any new residential zone with a minimum parcel size below ten acres. The OAR sets the approval criteria for an exception to Goal 14 for rural lands irrevocably committed to urban levels of development. A conclusion supported by reasons and substantial evidence, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard, that is, that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands. A decision the land has been built upon at urban densities or irrevocably committed to an urban level of

development depends on the situation at the specific site. The exact nature and extent of the exception area found to be irrevocably committed to urban levels of development must clearly set forth the justification for the exception.

The OAR provides a decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record that address: the size and extent of commercial and industrial uses; the location, number and density of residential dwellings; the location of urban levels of facilities and services, including water and sewer facilities; and parcel sizes and ownership patterns.

A conclusion that rural land is irrevocably committed to urban development shall be based on all of the above listed factors. The conclusion must be supported by a statement of reason explaining why the facts support the conclusion that the land is committed to urban uses and urban level development rather than a rural level of development. It goes on to state more detailed findings and reasons must be provided to demonstrate the land is committed to urban development than would be required if the land is currently built upon at urban densities.

Information concerning the exception parcel and the lands adjoining it fail to support a conclusion that the proposed exception parcel is either physically developed or irrevocably committed to urban use. The exception parcel is 28 acres with one dwelling. The adjacent parcels are 77 acres, 38.7 acres, 192 acres, 69 acres and 76 acres with a single dwelling located on each parcel. There are no urban facilities such as sewer and water in the area and the area surrounding the proposed exception parcel is predominately larger parcels in farm use with single dwellings located on them.

Another issue that was raised in one of the written comments that was submitted is spot zoning. In the narrow sense of the term, spot zoning is the reclassification of a small area within a zoning district whereas the rezoning does not conform to the comprehensive plan, serves no public purposes, and is primarily for the benefit of one individual parcel. Normally, spot zoning is impermissible in instances where the amendment is designed to relieve a particular property from applicable zoning restrictions for the benefit of that particular property, perhaps to the detriment of other properties in the vicinity. Because of our land use system in Oregon is under scrutiny with regards to compatibility with adjoining uses that spot zoning is not really an issue in Oregon. We actually do use spot zoning in a way when we rezone large units of land within resource zones for other uses such as rural industrial, an example would be TVRR; or overlay zones for special circumstances, an example would be the Larson's fireworks overlay.

In summary, a built and committed exception must be supported by actual development of the proposed site to uses that make the farm use impractical. An example of that was the Cy Williams subdivision when we did our original zoning. An irrevocably committed exception must be supported by actual development when adjoining parcels to make the farm use of the proposed exception parcel impractical.

Judge Joyce asked for applicant/proponent testimony.

David Butler: Judge, I first have a question for the Court. The staff report that was just read into the record, is that dated?

Jon Beal: No, there's not a date on it.

David Butler: When was it generated? I didn't receive a copy of this.

John Zueger: Me either.

Jon Beal: It's pretty much the same staff report...

David Butler: No it's not.

Jon Beal: ...as the one that was submitted.

David Butler: No it's not, there's new information in that report. When was it generated?

Jon Beal: Last week probably, but all I did was rewrite the staff report to make it a little easier to read it.

David Butler: Copies were apparently not sent to Mr. Zueger and certainly not sent to me so it's awfully hard for me to respond when I haven't been provided with that report. So that's the first objection I'm going to raise is to the staff report; if it's going to be generated it needs to be provided to the applicant and it's clear that I'm applicants counsel and it hasn't been provided to either of us, so that puts us at a great disadvantage.

I'm not going to take a bunch of time to go through the application booklet that you have. In terms of the reasons exceptions, or rather the exception process that is before the County Court today, this application was developed around two concepts. And, the first concept was: that the property had been built and developed; and the second concept was: that the property was irrevocably committed. I maintain, on behalf of the applicant that these two exceptions processes still are applicable to this property. Perhaps the easiest exhibit to use was submitted at the planning and zoning commission, and it was applicants exhibit number "T". And I see Commissioner Wettstein may have it there, one of them, well they're both, I think, regular size sheets. The first sheet is an irrigation district map and the second sheet is a blow-up of that map.

Ms. Belnap left the meeting.

As you can see from the first sheet of exhibit "T" were talking about a parcel that is 28.46 acres. I've highlighted it here on my map in green; you can see the configuration of the property. Our argument before the Planning Commission was that in fact the property had been built and developed because I was looking at the entire parcel, the entire original 40 acres, and of that, two 5-acre parcels had been partitioned out and homes built upon those parcels. Mr. Beal has cited the OAR's indicating that you cannot include or consider a permitted use such as a partition, a non-farm partition, a non-farm dwelling, as a basis for a built and developed argument. My response back to that is: 1. you can't ignore the fact that in this 40 acre parcel there are now two 5-acre parcels with residences built on it and in addition to that, this is page 2 of exhibit "T", there are actually three parcels in the 40 acres. One is located in this northeast corner, one is located in the center, and the applicant's current residence is located here on the west central portion. Now, I've struggled with the concept of, what is built and developed that justifies an exception? And I haven't heard, really, a good definition from anyone as to what really is a built and developed factual basis to justify an exception to be granted. I'd like Mr. Beal to answer that. What is a, give me an example of what is a built and developed parcel of ground in Malheur County that justifies that parcel being rezoned from Exclusive Farm Use to Rural Residential. I would like to think as one of the attorneys here in Malheur County that is frequently involved in land use work that I would have some concept, but the more I get into this process the more confused I've become. And so, if this is not built and developed because of what has happened on the original 40 acres, perhaps Mr. Beal can answer that question; I don't know what it is apparently.

We also have to look at the concept of irrevocably committed. And, part of the Planning Department's summary that was read into the record today talked about adjoining properties, adjacent properties. But what we also have to take into consideration is, let's go back to the first page, not just this ground that surrounds the 40 acres and lies south of Graham Boulevard, we've got to look at these two because those are truly the adjoining properties. Those properties have homes on them, they're 5-acre parcels. We can't discount and ignore that. My argument to the Planning Commissioners was that would be like saying, I can put three steers in the back of my little Nissan truck and tell you that it's going to handle the very same as if the bed were empty. That's not the case. When we've got two other residences in addition to the third residence that's here on this property, it's going to impact farm uses. And, as Mr. Beal indicated, is the farm use, which is the allowed use on these 28.46 acres, is that farm use impracticable? Our application seeks to create, now I'm on exhibit "T", page 2, seeks to create one, two, three, four parcels; but the staff report said the addition of four residences, I'm pretty sure that's what I heard. That's not correct. There are already three homes on this property. We're seeking to create one, two, three, four parcels; one of those parcels would contain the applicant's current residence; one would be this parcel I'm pointing to on the upper northwest corner; one is down here in the southwest corner, if you will; and the other is in this southeast portion. Of those three parcels that would not have residences, I've highlighted in yellow, you'll notice, one, two, three of those parcels all have dry ground without a water right on them. And our application is seeking to locate residences within those areas where there's no water right so that we're not disturbing irrigable acres; it can be done

in this particular instance. One thing that I'm grappling with is that if this is not a built and developed parcel, and if this is not an irrevocably committed parcel, which we propose that it is, then I think it is entirely possible that there may be reasons exceptions which justify this as a basis for an exception to be found. Since I don't have the staff report, I'm going to quote from the staff report that was generated in the Tom Butler application: A reasons exception must show reasons why state land use laws should not apply. It must include an alternative site analysis to show why a particular site is justified for an exception is necessary to discuss why other areas that do not require an exception cannot reasonably accommodate the proposed use. That is the building of three other homes. Conclusory or arbitrary criteria that result in potential alternative sites being eliminated are insufficient. Market demand for rural housing cannot be used for a reasons for rural development except where it can be shown there are reasons based upon the economic analysis in the plan, and that's referring to the County Comprehensive Plan, for the type of density of housing proposed which requires this particular location on resource lands. Again, I thought I had a grasp on this but apparently I don't, and so I'd like the Planning Department to point out to me in the County Comprehensive Plan where there is an economic analysis portion that says, these types of properties are not necessary in Malheur County. Because that's apparently the approach that's being advocated by the Planning Department, we don't need them. And so, here's my Option B to the County Court today. If the County Court says well, we don't see that it's either built and developed, or irrevocably committed, then I think you have the authority and the power to say, but this may be potentially a reasons exception that justifies the granting of a request to rezone from EFU to Rural Residential and therefore Mr. Applicant, Mr. Zueger, why don't you take your application and hammer it into a reasons exception and at that point in time it can go, I guess, and I don't have Stephanie Williams here, but I presume she would tell you it goes back to the Planning Commission for re-review because it's now a new application and then potentially back before you in the future. I think that could be a Plan B in this case, but we're still of the position that it must be built and developed or irrevocably committed. I found it quite interesting that the Planning Commissioners themselves were split on what is this. I did hear that Mr. Beal cited in the staff report that there were split votes as to exactly what this was and it was fairly apparent that they were struggling with an acceptance or a denial vote to the County Court today. And so that is our summary to you today. I don't intend to call Mr. Zueger to testify about this but we wanted to give you a Plan B option and that is that this could potentially be revised and revisited. Thank you.

Judge Joyce asked for opponent testimony.

Jim Johnson: Same thing, I don't want to live in town. I try to run a livestock business and I don't want to try to do that in an urban setting. And, we're concerned about water, there isn't enough. We spend a lot of money trying to keep wells going. We just don't think that there needs to be a bunch more houses in that area when it's Exclusive Farm Use. I mean there's a reason why we zone this stuff...

Commissioner Wettstein: Where's your home?

Jim Johnson: ...I really don't have a lot to say, I just...

Judge Joyce: Could you show us where the home is on this...

Commissioner Wettstein: Where's your property...

Judge Joyce: ... on this...

Jim Johnson: East.

Judge Joyce: (looking at map) This is Graham Boulevard right here. David, I've got a question for you too while you're here (directed to David Butler)...

Jim Johnson: This right here, yeah.

Judge Joyce: That's yours?

Jim Johnson: Uh huh.

Judge Joyce: (still directed to David Butler)... Is there a road going up through here?

David Butler: All the way through.

Judge Joyce: All the way through.

David Butler: North to south.

Judge Joyce: North to south.

David Butler: As well as a second road...

Judge Joyce: Is this a fairly new home...

David Butler: ... right here.

Judge Joyce: ... right here...

David Butler: ...yes...

Judge Joyce: ... on that point.

David Butler: ... new home, new home, new original home.

Judge Joyce: Is there concrete blocks up here somewhere?

David Butler: You know, I don't know about that. John is there concrete blocks up in this area somewhere?

John Zueger: Yeah, they're all marked.

Judge Joyce: Right here?

John Zueger: On this corner right there.

Judge Joyce: That's where they're at? Okay, so this is your...

John Zueger: Yeah.

Judge Joyce: This is yours Jim?

Jim Johnson: Right.

Commissioner Wettstein: So you're between this property and Greenfield Road.

Jim Johnson: Pardon me.

Commissioner Wettstein: You're between this property and Greenfield Road.

Judge Joyce: This is his.

Jim Johnson: Yes.

Judge Joyce: This is his house here.

Commissioner Wettstein: And that's Greenfield.

Judge Joyce: That's Greenfield.

Unknown: How many acres is that?

Unknown: That's his, yeah.

Inaudible.

Judge Joyce: I would assume.

Unknown: Yeah, okay.

Jim Johnson: I think this kind of thing is irresponsible and short sighted, to start taking this Exclusive Farm Use land; it just doesn't make sense to me. I know it goes on everywhere and I think it's wrong and I think this is wrong. And that's really about all I have to say.

Cathy Johnson: I just have a question. We have been fighting this on this piece of property for about ten years. And the only thing that got him the permission that I understood to build those two other houses was Proposition 37. Now, we just rescinded a whole bunch of that in an election in November. What gives him the legal right, you know, because of that to go on and keep portioning this property off?

Commissioner Wettstein: That's not right is it Jon?

Jon Beal: No, this...

David Butler: No, that's not correct...

Jon Beal: ... those approval of those dwellings was pursuant to a 5 acre zoning district but no Measure 37 claim was filed for this property here...

Cathy Johnson: They weren't filed, but we were told that he could file if...

Jon Beal: No he couldn't file.

Cathy Johnson: We were told by the Planning Commission that he could file, that he had a claim.

Jon Beal: No his, well, anyone can file a Measure 37 application. But his acquisition date was...

Judge Joyce: Precluded that from happening.

Jon Beal: Yeah, really precluded him from...

Judge Joyce: So it would be...

Jon Beal: If his mother had filed then she would have had the right (inaudible)

Cathy Johnson: The right to do it...

Jon Beal: (inaudible)

Cathy Johnson: Well when I went into the Planning Commission and asked about this, I was told that he did have a right, that we probably didn't have a whole lot of leg to stand on at the time.

Jon Beal: No, that's not true. Because he really didn't have any, he couldn't have gained anything from a Measure 37 application, and he didn't sign so (inaudible)

Cathy Johnson: Why was I told that then?

Jon Beal: Was this at the Planning Commission meeting?

Cathy Johnson: This was in this office right across, no, this was in the office.

Jon Beal: Oh, then you must have, now then, probably what I told you was that if his mother had filed it, you know her acquisition date was prior to zoning...

Cathy Johnson: No, there was no mention of mother, him or anything that way.

Jon Beal: Then we must have misunderstood each other, because no, he's never had any, he never filed a Measure 37 and nothing...

Cathy Johnson: No, I know he didn't, but we were told he, it could be is what I was told.

Jon Beal: We must have misunderstood each other then because he didn't...

Cathy Johnson: So Proposition 37 has nothing to do...

Jon Beal: Nothing to do with this.

Cathy Johnson: In no way, shape, or form...

Jon Beal: No, not at all.

Cathy Johnson: Why? Is my question.

Jon Beal: I could go into a long explanation. Measure 37...

Cathy Johnson: Yeah.

Jon Beal: Measure 37 allows you to go back to what the zoning requirements were at your date of acquisition (inaudible).

Cathy Johnson: Right.

Mr. Beal: Now, Mr. Zueger's date of acquisition, I can't bring it right off of my head, but it's been in the last...

Commissioner Wettstein: I think it was in '77, originally (inaudible)

Jon Beal: The mother had it, but when Mr. Zueger, the applicant, got it, was probably nine months ago or a year ago. So there were no, and then that's the date of acquisition, that means that any regulations that came into effect after...

Cathy Johnson: So, because he now owns the property, and his mother no longer...

Jon Beal: Yeah.

Cathy Johnson: This is the difference.

Jon Beal: This is the difference.

Cathy Johnson: Okay. Nobody's ever explained that to us.

Jon Beal: It's all based on date of acquisition. His date of acquisition, like I say, was maybe a year ago or something like that, I can't tell you right off, but he wouldn't have had any, Measure 37 wouldn't have benefited him on it. But now his mother, it would have.

Cathy Johnson: Well this was before. This was back when they were going to put the first house up on the hill.

Jon Beal: Well maybe she still owned the property.

Cathy Johnson: Oh she did, I know she did.

Jon Beal: Then she would have, she could have filed a Measure 37 claim.

Cathy Johnson: Yeah, because I was told that at the time. I didn't realize that the change had been made.

County Counsel Stephanie Williams joined the meeting.

Sue Thomas: I have the concern of the water but also when we start subdividing and houses go in, whether they're five acre parcels or something, they're going to say, well ghee, we've got acreage, we can bring in a horse, we can bring in rotten hay that we're trying across the road to get rid of the weeds and they're bringing stuff in and then all of a sudden what comes about is they're in a residential area, we're in a farm area, you can't start your machines before 8:00 in the morning and you can't load hay at midnight because your disturbing the residents. These are the concerns I have for being out in a farm area and subdividing into residential. I just wanted to put that in. Thank you.

Judge Joyce asked for public agency testimony. There was none.

Judge Joyce asked for staff summary and recommendation.

Jon Beal: As far as the comments about the staff report, the only thing I changed on it was I pulled out court citations and stuff like that to make it read a little easier, and I addressed the fact that spot zoning that was raised in the letter that was submitted is not really an issue in Oregon land use law anymore. But other than that, I don't feel there's any new information in that.

Built and committed. The way the OAR states is that its, built and committed means development on the subject parcel. Therefore, I don't see how you can use two 5-acre parcels that are under separate ownership even though at one time they were a portion of the subject parcel. And as I've said, an example of built and committed when we did the original zoning in Malheur County was Cy Williams subdivision, where we went in and showed that the property was already subdivided into small parcels with facilities and stuff on it. If a reasons, if they seek a reasons exception, then it would, the Planning Commission did not review a reasons exception, this application was only put in for a built and committed and irrevocably committed, and therefore if they wanted to change the application to a reasons exception then they would have to go back through the Planning Commission, that's my opinion. And I don't have anything more.

Judge Joyce asked for rebuttal testimony.

David Butler: Gentlemen, I've made a few notes to myself as I've listened to the opponent testimony, and I'm hearing a couple of common themes from Mr. Johnson and Sue Thomas. Those themes include this concept of a

clash between urban use and rural development, and one of the answers to that is that if property is rezoned and if parcels are created as the applicant proposes, then there's going to be that statutory language in the deed that says, your new piece of ground that's zoned rural residential is subject to the surrounding farm uses, which includes dust and noise and smoke and all of those things that are attendant with farm uses and you take this property with those uses around it. And so, that helps in the concept of when a person buys a piece of property that's zoned rural residential out in the county and that is surrounded by exclusive farm use or exclusive range use property, they know that there's going to be balers started up at 4 a.m., they know that there's going to be ditch burning, and they know that there's going to be trackhoes working on the laterals and things of that nature. And so, they buy with that in mind.

There's also this concern about water. And we have in the application as exhibit "H" four pages of information from the Water Resource Department talking about the well logs and we've attached a good portion of those well logs, exhibit "H" pages 2 and 3 to page 1 of exhibit "H" and talking about what our exempted uses on page 4, and our position is that the County Court can't engage in gross speculation as to what could potentially happen with regard to domestic water. In fact, our position is that we've provided hard information to the County Court in this exhibit "H" that shows that there is sufficient water in this area and for anybody to come in and say that the addition of three potential new domestic uses is going to have a negative impact without something to back that up, without some hard evidence before the Court, that's just gross speculation. In fact, with these other two residences, which have been built on the other two 5-acre parcels, if there was a problem it should have manifested itself and they could have come in with that evidence today, and I don't hear it, I don't see it. And so, if these other two residences, which have been recently built, would have had a negative affect upon water use of the aquifer, we should have had something before the Court today in terms of well logs or other remedial measures that were taken by those impacted individuals and I've heard nothing other than we're worried about the impact but nothing to substantiate that.

As I indicated initially, if the County Court is inclined to say, well we can't quite see how this is either built and developed or irrevocably committed then I've proposed an Option B to you and we stand by that. Thank you.

Jim Johnson: When these residences start building up, and they except that there's going to be dairy smells and dust and farm machinery, how many times have we all seen that that goes by the wayside. As soon as those people are there they forget all about that stuff. Oh yeah, we know we're coming into a farm area and that's okay. We don't mind the smell of manure, we expect to have that. We don't mind the baler running in the middle of the night, we're all good with that. That's bologna.

Cathy Johnson: I've got a question, just a question. Does that also go onto the second person that buys that piece of property? Now see, one of these houses up there has had one owner and was sold again to someone else. Does that...

Commissioner Wettstein: It follows the deed doesn't it Jon?

Cathy Johnson: Does that follow the deed?

Jon Beal: In the chain of title.

Judge Joyce: Excuse me, but are we talking about the right to farm?

Cathy Johnson: No, no. That you aren't going to complain about the dust and the manure and all that stuff, does that follow (inaudible)

David Butler: She's getting at the language that's put in the deed that says, as I referred to, you are buying a piece of property that's surrounded by farm use, and the answer is, Stephanie's nodding her head yes and as Mr. Beal has indicated yes, that is in the chain of title, that is a part of the deed, that stays in there permanent.

Cathy Johnson: I just wanted to know. I didn't understand that.

Sue Thomas: I must be about that big.

There was no further testimony. Judge Joyce closed the hearing. The second hearing will be held March 5, 2008 at 11:00 a.m.

DOG SHELTER COMMITTEE

Ms. Williams mentioned that the dog shelter committee is still meeting, but may not have anything prepared to submit to the budget board in May.

COURT ADJOURNMENT

Judge Joyce adjourned Court.

ZONE CHANGE HEARING

Present for the second public hearing regarding a request for a zone change were County Counsel Stephanie Williams, Planner Jon Beal, Assistant Planner Bill Lawrence, Applicant John Zueger, Applicant's Attorney R. David Butler, Dennis Hall, Cathy Johnson, Sue Thomas, and Jim Johnson. Property Identification is: Tax Lot 1400, Assessor's Map 18S4421, 2132 Graham Blvd., Vale. Planning Department File #2007-10-008.

Commissioner Wettstein opened the hearing.

There were no abstentions, or potential or actual conflicts of interest from the members of the Court. There were no objections to the jurisdiction or to any member of the County Court hearing the matter.

Commissioner Wettstein stated: Failure to raise an issue may preclude raising it before LUBA. Failure to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the County Court to respond to the issue may preclude an action for damages in Circuit Court.

Commissioner Wettstein asked for a staff report.

Mr. Beal stated he had nothing further to add from the first hearing.

Commissioner Wettstein asked for proponent testimony.

David Butler: Gentlemen, good morning, I'm not going to tell you anything that hasn't been previously said, other than I will indicate that over this past weekend as part of my continuing legal education requirements I have to meet, I watched a series of tapes from a seminar recorded on October 26 of last year, Real Estate 2007: Legal Tools For The Future, most of which is totally inapplicable to land use planning. However, there was a gentleman from Ashland who spoke, Chris Hearn, on permitting. Mr. Hearn gave a rather interesting discussion of Oregon's land use laws and how they came about under the direction of Tom McCall and the affect of those land use laws. And then, he talked about some executive orders issued by Governor Kulongoski between 2001 and 2003, which were aimed at attempting to change Oregon's land use laws and to essentially stimulate the economy based upon the restrictive nature of land use planning in the State of Oregon as compared to other states. And some examples were given how Governor Kulongoski had said we need to, and the directive was given to DLCD, we need to be 1. More user friendly; and 2. Not create an impossible standard, that was the quote, an impossible standard, for land use owners to have to try and meet in their various applications.

Now what does that have to do with Mr. Zueger? When we met two weeks ago I indicated to the Court and I had a little plat map with some highlighted portions on it that our position was that the application could be viewed as either a built and developed or an irrevocably committed piece of property, which would thereby grant a, or find the basis for granting of a request for the exception to be found and for this property be rezoned so that three more homes could be built upon the parcels that were identified on that piece of paper.

I also gave you another option, and that I guess is sort of Plan B, and Plan B was that if the County Court felt that they weren't comfortable with the concept of either a built and developed or an irrevocably committed approach, then we had yet a third approach, and that's called reasons exceptions. And, you as County Commissioners have the opportunity then today to say, well if we don't except built and developed or irrevocably committed we do find however that there may be a basis upon which a reasons exception could be considered and therefore, Mr. Zueger and Mr. Butler take your application and hammer it from what it is currently into a reasons exception application and route it back through since it's a new application, route it back through the Planning Commission and we may see you again. So that's what's before you today. As I indicated I don't have any further new information or evidence to present, I think it's all before the County Court in this instance. I anticipate there may be opposition testimony and may need the opportunity to address that in rebuttal. Other than that I had nothing further to add. Mr. Zueger, anything further to add today?

John Zueger: Not at this time, no.

Commissioner Wettstein: (inaudible) define again what you meant on the reasons exception.

David Butler: There are three, Commissioner Wettstein, there are three different ways in which an exception can be found.

Commissioner Wettstein: Okay, I got the built and developed and irrevocably committed and I want you to re-explain the reasons exception.

David Butler: Reasons exception is a separate section under the Oregon Administrative Rules that looks at different criteria. As Mr. Beal in the staff report indicated, built and developed looks at the actual chunk of ground itself and what has been done to it. You might recall that two weeks ago I indicated the concept of having an elephant in the back of my little truck, you can't ignore the fact that it's going to affect the truck or in this case, the three homes which currently are sited as well as the two roads and everything else that's occurred to this property is affecting the practicability of farming this ground. That's the built and developed process. Irrevocably committed looks at what happened, or what is happening around the property and the interrelationship between the property and adjoining neighbors, and in this instance, adjoining neighbors are going to have to also include those two separate parcels which were created, those five acre parcels that sit right smack in the middle of Mr. Zueger's property, that sort of wraps around it in the snail shell fashion. But the reasons exception looks at other criteria to determine if there is something else, if there is something else unique about the property that would justify a finding, an exception finding. I don't believe the staff report addressed reasons exceptions because it wasn't part of the original application, and I'm not certain if I brought with me the language for reasons exceptions, let me just quickly check. The summary talks about, the third type of exception is a reasons exception which must show reasons why state land use laws do not apply, and then it goes on to talk about it was not proposed in this particular application. And, I don't believe I have any further of the OAR's with me.

Commissioner Wettstein: I think you made reference if we were to accept that it would have to go back before the Planning Commissions, is that what I heard?

David Butler: It would be a new application because, if we're looking at a new focus on why an exception could be found, in other words, if the Commissioners and the Court said, we don't find, for instance, that it's a built and developed or an irrevocably committed basis, but there may be reasons and therefore, Mr. Zueger, as applicant, take this document and address the reasons exception criteria. That would be a new application because it's going to have a new focus on the facts of this particular application and the criteria. And so I anticipate what that would mean would be, it would have to run back before the Planning Commission and they'd have to review it. Now, I imagine Ms. Williams could answer this question too, it's possibly that the County Court could also say, bring it back before us. I'm thinking back on the Pam Holloway matter which came on appeal before the Court last year. In that case I represented Ms. Holloway on the appeal, she had on her own filed an application for a non-farm dwelling and it was denied at the Planning Commission stage. She came to me and we filed an appeal, and in that appeal it was discovered that we were looking at a different focus, a different portion of the ground and why an application should be granted. And as I recall in that instance the County Court said, it looks like a new application because it's focusing on a different portion of the property, even though it's the same acre, so send it back in front of the Planning Commission, and that's what we did. So if this Court today were to say, a reasons application may have a new focus and therefore we have two choices: send it back before the Planning Commission for their re-review, or; I guess option B is: bring it back here before the County Court and we can re-review it. I see you have two different options there.

Commissioner Wettstein: That's what I wanted, that's what I was wanting defined.

David Butler: Other than that I don't have anything further to add this morning.

Commissioner Wettstein asked for further proponent testimony. There was none.

Commissioner Wettstein asked for opponent testimony. There was none. Cathy Johnson stated: What more is there to say than what we already said.

Commissioner Wettstein asked for public agency testimony. Mr. Beal stated there was none other than what was in the application.

Commissioner Wettstein asked for a summary and staff report and recommendation.

Jon Beal: I really don't have anything to add to the findings I proposed in the staff report. I think that for built and committed you have to develop findings that the property is actually built and committed to uses that make the farming of the property impractical; and irrevocably committed focuses on development on adjoining properties and whether they commit the property to non-farm use. But other than that I don't have any more comments.

Commissioner Wettstein asked for any rebuttal testimony. There was none.

Commissioner Wettstein closed the hearing and explained no further testimony could be heard unless the hearing was re-opened. The Court then deliberated.

Ms. Williams asked the Court to make a tentative decision and then County staff could prepare a document with findings for them to adopt next week.

Commissioner Nakano explained that he has looked at the area three different times. Going west on Graham Boulevard, the first four miles on the right hand side the parcels are anywhere from 5 to 40 acres, and there are a lot of them. There are a lot of nice homes through that area. The left hand side is largely farmland and the ground appears productive. With Measure 37 there were quite a few applications filed and a few homes could be built, but Measure 49 has put a stop to things. In looking at Mr. Zueger's property as farm use, the income that the County would get is nil, you can't grow sugar beets there, or potatoes, or whatever; but it does appear to Commissioner Nakano that it would be an ideal parcel to build a couple of homes on.

The road was discussed. A subdivision or partition plat would require a developmental review by the Planning Commission. The developer would be required to build the roads and the County would maintain them.

Commissioner Nakano asked Mr. Zueger if the scrap metal debris would be removed before the building of any new homes. Mr. Zueger explained the scrap metal was his and it would be removed if the parcel was sold.

The irrigation return-flow to the neighbor's property was discussed. Johnson's property does have a water right but a portion of the 12 acre property does not receive water without the return-flow due to the way the water runs.

Cathy Johnson asked if the property line would be surveyed. Mr. Beal stated that when a plat is done the property would have to be surveyed.

The lot size was discussed. Commissioner Wettstein stated he didn't have opposition to developing the property but didn't want five homes built on the property. Mr. Beal explained that the OAR requires a specific minimum lot size be designated with a zone change. Mr. Butler explained that the application's Exhibit "G" proposed three lots; 5 acres, 6.5 acres, and 9.0 acres. Only one home could be built upon each lot.

Commissioner Nakano made a motion to tentatively approve the zone change with a minimum lot size of 5 acres; the property cannot be divided into more than four homesites, including Mr. Zueger's current homesite. Commissioner Wettstein seconded and the motion passed. County staff will prepare an order for the Court's adoption next week.

Sue Thomas clarified that the existing three houses will not fall in the minimum 5 acre requirement, which is correct. However, Mr. Zueger's home will fall within the minimum 5 acre requirement.

COURT ADJOURNMENT

Court was adjourned.

Applicant: John Zueger
2132 Graham Blvd.
Vale, OR 97918

Owner: Same

Representative: David Butler
Butler & Looney PC
P O Box 430
Vale, OR 97918

An exception to Statewide Planning Goal 3, Agricultural Lands, and Goal 14, Urbanization, and an amendment to the Malheur County Comprehensive Plan and Zoning Maps changing the zoning designation of a 28.46 acre unit of land from Exclusive Farm Use (EFU) to Rural Residential (RR). Planning Department file #2007-12-024.

There were no abstentions from the Commission. Larry Wilson and Robin Froerer-Myers stated they had attempted to view the property but could not find the markers. There was no additional ex parte contact to report by Commission members.

After polling the Commissioners concerning review of the application materials and staff report, and site inspection of the property, Mr. Butler stated that the applicant had no objections to the jurisdiction of anyone on the Commission.

Preliminary Staff Report: Mr. Butler stated that the applicant was willing to stipulate to the staff report and waive its reading to expedite the hearing; however, Stephanie Williams responded that the staff report was part of the formal hearing and could not be waived by the applicant. Jon Beal then read the preliminary staff report. See attached staff report.

Applicant Testimony:

David Butler -- I'm not going to take a lot of time to go through and talk about built and developed, irrevocably committed or reasons exceptions, because you have heard the staff report. I do think it is important to talk about this concept that if two five-acre parcels have been partitioned out of this 40-acre parcel back when it was zoned F-2, and we cannot consider that as Mr. Beal cites, because that was an allowed conditional use, I would like to draw an analogy that I think you can understand. I drive a Nissan truck. If I put my stock rack on my truck and load three steers in the back end of it, and ask that you ignore those steers and tell me that truck is still safe to drive and will handle just the same as before, that is what we are doing in this very situation. In this application, we have three homes built upon what was originally a 40 acre parcel that was the Zueger property. In order to ignore the homes, two roadways, one going to Mr. Zueger's parcel and one is a roadway that runs completely north to south, 1300 some odd fee, with an easement access to the north property as well as to the other homes on the property, utilities, three wells, three septic systems, outbuildings, etc. That's the three steers in the back of my Nissan. You simply can't ignore that and say this still remains a piece of property that you can say is not built and developed to the point where it is more akin to a rural residential ground

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than it is to farm ground. I am going to have Mr. Zueger make a few comments to you, simply because my throat is sore. I would like Mr. Zueger first to address how long he has been acquainted with or associated with this property, the 40 acres.

John Zueger -- Since 1978, at least 30 years.

David Butler -- The remaining tax lot 1300 is 28 some odd acres of ground, correct?

John Zueger -- True.

David Butler -- Of that 28 acres of ground, Mr. Zueger, how many acres do you have water right on?

John Zueger -- At this time, 13 acres.

David Butler -- I am going to have Mr. Zueger hand to Mr. Lawrence a proposed applicant's Exhibit T. This is a little clearer map, an irrigation map. The first page came from Vale Irrigation District and I have highlighted the 40-acre parcel. You can see on this first page a tax lot in the northeast corner which is blank, there is a home built on that property. There is a tax lot in the very center of the property, where the original Zueger home was located. There is a road that leads up to both of these tax lots and it punches on through to the northern property. If you flip to the legal size page of Exhibit C, just for reference purposes, I have highlighted in yellow all the property, except for that northeast corner, that does not contain water rights currently. The pink line running north to south is the access or easement road which I have indicated to you. That road services the old Zueger home as well as that northeast corner which has no water right whatsoever, as well as an easement to the property lying north of it. Also, on the far western edge, you will see what looks like a little tadpole, that is Mr. Zueger's current residence, part of tax lot 1400, and he has, although it is not well replicated, I should have highlighted with pink, a separate road which parallels his property line as well. So there is a second road on this piece of property. If you want to keep this right in front of you, that might make it a little clearer. Mr. Zueger, of the 13 acres of water right that you have, what is your understanding, and from your application, the soil classification in terms of Class 3 or Class 4 soils, do you know?

John Zueger -- Well, it is very low. If you have ever seen a rock pile, this is the place to be.

David Butler -- I would assert to the Planning Commission this evening, and as part of our application (page 2), that Mr. Zueger's property is Class 4 and Class 3, but if you look at it, the vast majority of this is Class 4 soils and the vast majority of it only contains 13 acres of water rights. So, we don't have 28 acres of water right, we have 28 acres composed mainly of Class 4 soils, a rock pile like John describes, with 13 acres of water. Mr. Zueger, of Tax Lot 1400, where you have 13 acres of water, how has that irrigated ground been used to your knowledge?

John Zueger -- As far as I know, it has always been in pasture.

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David Butler -- As I was there this evening, I saw 3 head of cattle. Are you able to run cattle on the property on a year-round basis?

John Zueger -- Not totally on the pasture, no.

David Butler -- You also do some custom work, is that correct?

John Zueger -- I have in the past.

David Butler -- I think you store some of your custom equipment in the storage sheds and buildings that are located on your property.

John Zueger -- Sure.

David Butler -- Just for reference purposes, turn to Exhibit O of the application, that's a sat map. This is an older sat map, because you will notice that there are two houses missing on it. But you can see the road that leads to the original homesite, and about a third of the way up, in the red box, you will see a whole series of structures, hopefully you found them.

Lynn Findley -- We don't have a red box.

Kathy Clarich -- I think he is talking about page 2 of Exhibit O.

David Butler -- Yes, page 2 of Exhibit O. If you see the red box, about a third of the way up, you see a series of structures. Those are the farm structures which I have made reference to. So, not only do we have three residences on the property, we have some farm structures as well. Mr. Zueger, in terms of being able to farm Tax Lot 1400, are you able to farm Tax Lot 1400 with the homes, buildings, roads, your private road, etc. How do you farm it?

John Zueger -- There is really not much to consider for farm practices. It is basically hobby farming, which contains pasture and having a few cattle, that's basically all it supports.

David Butler -- In the book in front of you, if you will turn to Exhibit G, that's Mr. Zueger's . . .

Larry Wilson -- Can I ask a question before you go on?

David Butler -- Sure.

Larry Wilson -- 1400, that's off of this proposed . . .

David Butler -- 1400 is the tax lot. If you look at Exhibit G, top left-hand corner, it says 1400. Tax Lot 1400 curls around, or cups around the other parcels.

During discussion it was determined that some of the Commissioners received applications that were not photocopied in color.

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Larry Wilson -- Just to the west of you, is that Curtis'?

John Zueger -- Yes.

Larry Wilson -- And you have a driveway going up to your house, along the property line, on your side?

John Zueger -- Yeah.

David Butler -- That's what I meant to indicate, that we have two roads on this property, the one that runs up to John's on the west end, and the one that you see on Exhibit G, that runs the entire north-south length of his property, servicing both tax lot 1500, 1600 and granting an easement access to lands to the north. How many septic systems are on these properties shown in Exhibit G, Mr. Zueger?

John Zueger -- Three individual sites.

David Butler -- And how many domestic wells are there?

John Zueger -- Four.

David Butler -- Would you be able to put, for instance, a feedlot on this property and not run into a situation where you would be interfering with potential contamination of an individual's domestic well?

John Zueger -- There is the potential, sure.

David Butler -- Are you inclined to do that?

John Zueger -- No, I am not inclined to do that.

David Butler -- I would like you to talk about the property due east of you. Who owns that property?

John Zueger -- Johnson owns that parcel.

David Butler -- Has your property ever been farmed in conjunction with Johnson's property?

John Zueger -- Not that I know of.

David Butler -- So, not since '77 for certain.

John Zueger -- Right.

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David Butler -- Have you ever gone to him and talked about selling him off a portion of your ground?

John Zueger -- Not exactly, no.

David Butler -- Has he come to you and asked about buying a portion of your ground to expand his operation?

John Zueger -- No, but he could I suppose.

David Butler -- Mr. Johnson has issued a letter that is Staff Exhibit #1, and it says "our 12 acre field to the west of our house bordering this proposed subdivision, is now partially irrigated by run off tail water from the Zueger property, which will also be lost. Is that accurate? Is that what's going to happen - they are going to lose their irrigation water from your property.

John Zueger -- No, it always runs that direction.

David Butler -- In fact, isn't there a pick up ditch that carries in on over into Johnson's property?

John Zueger -- Yeah, I can't stop it from going that way.

David Butler -- As I understand it, Mr. Zueger, some of the water runs down toward Graham Blvd. and is picked up in the culvert there at Graham Blvd.

John Zueger -- There are millions of gallons. Mike Curtis is on the east, it runs down the barrow pit, I pick it up, and I dump it again on Johnson's, it all goes out on the corner of Graham and Greenfield. Millions of gallons run right by his house.

David Butler -- So, the proposed creation of some lots in Exhibit G, is that going to affect Mr. Johnson's irrigation water whatsoever?

John Zueger -- Not that I can see.

David Butler -- How about the folks to the west of you? Who are those folks?

John Zueger -- Curtis is on the west side.

David Butler -- And is your proposal going to affect Curtis in any fashion in terms of the irrigation?

John Zueger -- Irrigation and/or farming. There is no farming in the area.

David Butler -- Have the Curtis' come to you and said we would like to purchase a piece of your property to add to our farm?

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John Zueger -- No, not at this time.

David Butler -- Have you approached them and said why don't you buy a piece of my ground to hook up to your property?

John Zueger -- It's for sale, sure.

David Butler -- Mr. Zueger, if there were more lots created, more homesites developed, could that impact farm practices on Curtis' or on Johnson's property exactly adjacent to you to the east and west?

John Zueger -- Not that I could see.

David Butler -- For instance, do the neighbors exactly adjacent to you, do they aerial spray their lands?

John Zueger -- No.

David Butler -- Have you seen them do anything that has had to be changed now that there are one, two, three residences on this 40-acre parcel?

John Zueger -- Not that I know of.

David Butler -- Let's talk about who owns the land to the due north of you. Who owns that?

John Zueger -- Jay Thomas.

David Butler -- How often is this roadway used by Thomas' to access their property?

John Zueger -- At the moment, it is not.

David Butler -- Do they use it at all to access their property?

John Zueger -- No, but there are two sites that were approved last year, a 10 and a 5 acre, that have access with that road.

David Butler -- So, you anticipate that road will be used in future?

John Zueger -- That was the plan.

David Butler -- How do the neighbors on the east, north and west sides of you use the property? What kind of farm use is it?

John Zueger -- We have a lot of lizards and a few coyotes.

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David Butler -- How about crops, what kind of crops?

John Zueger -- No crops that I know of, except a little bit of grazing in the spring.

David Butler -- Pasture is what you are saying, then?

John Zueger -- No, just basically grazing and sagebrush off the irrigated ground.

David Butler -- Mr. Beal said there are parcels due south of you, but due south of you is Grant Blvd., is that correct?

John Zueger -- It's a whole different world on the other side of Graham Blvd and Greenfield. That's when the farming does begin, true.

David Butler -- Tell the Commissioners why that is, because some of them don't know this ground.

John Zueger -- Exhibit E shows all the water rights in that area. It shows real clear all the white area on the east side, north side and west side, no water rights are available, there's no timber, and no potential for farming. It is a good location below the canal, and you can see the canal on the north end way up there. A high plateau sits up there, and my proposal is potential building sites.

David Butler -- What's the topography of your property, Tax Lot 1400? What does it do, because we don't want to have the mistaken impression it is flat.

John Zueger -- It's not flat. It's a plateau with rolling hills, nothing flat.

David Butler -- Does it slope towards Graham Blvd. at the bottom?

John Zueger -- Right, it slopes to Graham Blvd., but we are still above the canal.

David Butler -- The Commissioners have Exhibit T in front of them, it has all this highlighted yellow ground. I would like you to describe how this highlighted yellow ground supports farming on your Tax Lot 1400. In other words, is that ground necessary for you to continue to run water on the irrigated acres? Does that make sense?

John Zueger -- Not quite.

David Butler -- All right, can you continue to run water on those 13 acres and build in the yellow spots?

John Zueger -- Sure.

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David Butler -- And it won't affect your farming on those 13 acres that have water.

John Zueger -- No. it will have no affect on farming.

David Butler -- None whatsoever?

John Zueger -- Right.

David Butler -- By building in those yellow spots, is that going to have an impact, that you have been able to identify, on your immediate neighbors east, north and west of you?

John Zueger -- Not that I know of.

David Butler -- Let's talk about the issue of domestic wells. In Staff Exhibits 1 and 2, it is mentioned twice that there are concerns about domestic water in this area. Both Sue Thomas and the Johnsons have said that they are concerned that putting potentially three more homes and three more wells here is going to affect the water. What research, Mr. Zueger, have you done on that issue?

John Zueger -- I met with Mr. Robert Maggart from Baker County Water Resource Dept, he is the Watermaster in Baker. We met at my place on April 11th, thereabouts, and I told him the situation. His job is to determine whether there is any interference on anybody else or any prior interference at any time. He said there was no contest that he could see. And if there was, there had to be some documentation of any past problems. He said as far as he knows, there has been no interference.

David Butler -- We have submitted Exhibit H which is his letter and well logs for the area. Did you discuss these documents with him?

John Zueger -- Yeah, sure. He had to have those to make a determination of his findings.

David Butler -- What did you have to do to get water to your own residence?

John Zueger -- Just put in the pipeline

David Butler -- A well?

John Zueger -- No, the well has been there 30 years.

David Butler -- How deep is your well?

John Zueger -- Sixty feet.

David Butler -- And gallons per minute?

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John Zueger -- Eight that I know of.

David Butler -- Have you seen fluctuations in your well?

John Zueger -- No.

David Butler -- How about the old Zueger home in the center of the property, have you seen fluctuations in that water?

John Zueger -- No.

David Butler -- How long have you known that well to be in existence and operation?

John Zueger -- There again, 30 years.

David Butler -- Some concerns have been raised by these same individuals who have authorized the letter about a precedent, that by authorizing and approving the application, you are setting a dangerous precedent. Any time a conditional use is authorized, you are setting a precedent. Any time that any action is authorized, the precedent is set. The failsafe you have is that each of the cases that come before you by application must be heard on a case by case, factual basis. So, although every case sets precedent, I would urge the Commissioners to also consider that ever case in fact specific, each piece of property is fact specific. In addition, I don't really buy the argument that you will see a floodgate of these kinds of applications happening, because, number one, this represents over a year's worth of work. An individual comes to me and says I would like to apply for a zone change and Comprehensive Plan amendment in order to create a new series of rural residential parcels that are developable. We are going to spend a significant amount of time and resources analyzing, reviewing, factfinding and a lot of money. So, I don't think you are going to see, because I am somewhat of a gatekeeper myself, as to what kind of applications come before the Commission. To the best of my knowledge, and you can sure correct me if I am wrong, only one other application has come before the Commission. In terms of the argument of spot zoning, that's the same argument as setting a precedent, very same response from me. You are creating a spot zone, of course you are. We already have a spot zone. We have a piece of property with three homes on it, two approved to the north and one dwelling. We have in the yellow boxes before you on Exhibit T, one proposed tax lot which is entirely dry. It could be developed, it has no relationship whatsoever to supporting the irrigated acres below it, or anything around it. In the far bottom right corner, that would be the southeast corner, Mr. Zueger is proposing a lot what would be nine acres in size, and if you look at that, the vast majority of that is dry ground, also a prime building site. And then finally, if you look to the center, we have that little triangular piece that is also dry. The Commission has expressed concerns in the past about taking irrigated ground out of production. I have heard the term used, no net loss of farm ground. Our proposal is this, there is not a net loss of farm ground because, although zoned exclusive farm use, we can identify the areas that have no water rights that can be built upon and the people who will then acquire these parcels will have the opportunity to intensively use that ground so that they have their little piece of heaven with a parcel and a pony,

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just like everybody else wants to have. Mr. Zueger, do you have any other comments for the Commission?

John Zueger -- I think we covered it.

David Butler -- Thank you. Any questions from the Commissioners?

Lynn Findley -- I have a couple of questions. I'm not sure if this is for you or for Jon. In the summary . . .

David Butler -- Is that the staff report?

Lynn Findley -- This is the summary that Jon read earlier.

David Butler -- I don't have the summary, I have the staff report.

Larry Wilson -- Jon, do you have a copy of that summary for them?

Jon Beal provided a copy of the Staff Summary to the applicant and his attorney.

Lynn Findley -- My question is, on the last paragraph on page 3, it starts out "The proposal is to create a zoning district where four parcels ranging in size from five to nine acres . . ." and the last line says, "This would allow the subject property to be subdivided into five lots." I assume you are using the minimum parcel size of five acres. But it is not your intention to do this?

David Butler -- No, not at all. The reason Mr. Zueger has proposed the shape that you see in Exhibit G is because that creates one parcel in the southeast corner that is a big rectangle, it has some water, some dry ground, it would be a good development site. He creates a trapezoid around his own property, which would have some dry ground and some irrigated ground. He creates in the northwest corner a funny-shaped parcel which is entirely dry. And finally, he creates another funny-shaped parcel in the bottom center portion that is primarily irrigated but has some dry ground as well. That was done just simply trying to create some parcels that would accommodate a home, a well, a septic system and maintain the water on the property currently. That doesn't mean that it is carved in stone that way, but that was his proposal. If we have to shift the shapes a little bit to change the size of the lots, that can be done. Part of the reason the southeast lot is the shape that it is, is because of that access road. It makes a perfect boundary right there on the western border. The other pieces form a "C", and Mr. Zueger simply said, let's cut them up in this fashion. We are not trying to create any parcel that has an advantageous benefit over the other, we are trying to maintain the water and create some sites that could be built upon, so these people can build and still farm those irrigated acres.

Larry Wilson -- What are you proposing for a water delivery system to all of these parcels?

John Zueger -- Irrigation water?

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Larry Wilson -- Yes, will everyone have a separate system?

John Zueger -- As you see, it runs that way now, and that will not be interfered with, as far as I know.

Larry Wilson -- So, you will have a system of easements or something?

John Zueger -- Right, I will have to write up easements as the property gets split. Break the easements off too.

Larry Wilson -- You are not planning on a separate headgate for each?

John Zueger -- You can't.

Larry Wilson -- Refresh my memory, was that approved with the Vale Irrigation District? Did they have a problem with that?

John Zueger -- No.

David Butler -- We have checked with Vale, and they are perfectly comfortable because we are not shifting the water at all. It stays right where it's at (*inaudible*).

Lynn Findley -- It irrigates 13 acres?

John Zueger -- Right, 13 acres. I am only looking at 3 spots, where you would get five if you split the whole thing. I am looking at basically three spots, two would have irrigation. The road divides the one completely, and the last one that would have any concern would be that one in the very center, and there would have to be an easement written up saying this person gets three acres of water. The water all runs that way, has for years, and will continue to run that way.

Larry Wilson -- You don't see any problem when they start having to measure those individually? How do you propose that?

John Zueger -- I suppose that could be a problem, sure. But, easements are supposed to eliminate that.

David Butler -- I think the answer is going to be, if the water has to be on Parcel One, Parcel Two, Parcel Three, first we have to know how many acre feet is allotted for that parcel, and then we would have to know how much water is coming down the ditch so we can apply it to the appropriate parcel. Drawing an analogy on my own property, I have 21 acres with 19 acres of water, and I have to know how much water is coming down the ditch when I split it with my neighbor, am I getting a quarter or a half cfs, so that we can apply it to the appropriate properties, because we are sharing the water in the ditch. It can be done, we just make the adjustment at the weir and we know how much is coming down the ditch, and from there it gets applied to the property.

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Larry Wilson -- I don't know the proportions of the irrigated land, but I would say that Class 3 and 4 soils are the biggest portion in Malheur. Read the AFC books that these ratings come from. I don't have it in front of me, but sugar beets and all that kind of stuff, so it is not, as you made reference, low value soils.

John Zueger -- I was referring to these spots, and not farm ground itself.

Larry Wilson -- But, I am talking about the farm ground. Currently, if you had a 40 acre piece, you wouldn't be able to do what you did before, we wouldn't be allowed to do that. And yes, we have talked about no net loss of farm ground. Some of the questions we are going to ask you is trying to satisfy our minds. We are trying to make it uniform around the county, allow people to do what they would like to do, and stay within the boundaries of LCDC. It may or may not be what we personally believe in, but we have to follow those guidelines. Other than that northern 5-acre parcel, they all have some amount of water with them. That road through there now, is it a 30 foot all weather road?

John Zueger -- Yes, sir. It is maintained by the person in the back, snow, gravel, etc..

Larry Wilson -- Do you have approval from the fire department. I know when you get over a certain length, you have to have turn-outs or turn-arounds at the ends. We have run into that frequently as of late.

David Butler -- Those currently exist on the three homes there. We have sufficient turn-around radius for emergency service vehicles. Of course, any property that is serviced off of that 30 acre road will have to have the very same road in and turn-around so that emergency service vehicles can get in and out.

Kathy Clarich -- Did you say the maintenance of that road is done by the parcel to the north?

John Zueger -- Yes, he wanted to access behind me, so in exchange for the road access, he would maintain snow, gravel and future pavement, whatever. If he wants access, he has to keep it fully maintained. That's with Jay Thomas, I'm sure it is in here, but I would have to find it. The road has been there for 30 years. Jay asked me for access two years ago, so we added an amendment to give him access.

Lynn Findley -- You mean the easement to get back to that north property?

John Zueger -- Right.

Lynn Findley -- Whether the property is zoned correctly or incorrectly is a debatable issue. You have dry ground that isn't irrigated, is it good, viable farm ground, probably not. I don't disagree with you. But we are charged with trying to follow the goals that are identified. How to you respond to the fact that, based on Mr. Beal's summary, the physically developed section doesn't particularly apply? We have to be able to apply those exceptions and say that we either

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recommend it or not recommend it, so does it stand the red-face test? If the OAR specifically says we cannot count excepted uses, which the two partitions are excepted uses in an EFU, so how do you do that?

David Butler -- My answer to that is this: If you read the Staff Report, uses established in accordance with the goal cannot be used to justify such an exception. Under OAR (citation) the uses allowed by the principal goal does not exclude, meaning does include, conditional uses, that is, non farm dwellings, allowed in resource zones. Okay, so we are not going to look at the non-farm dwellings, but what comes in conjunction with that? Three septic systems, four wells, two roads, utilities and farm buildings and other things which are on the property, which, back to my analogy of the three steers in the back of my truck, you can't ignore. They are there. And because you can't ignore them, you have to say: do those items discount the farm ground? Do those things that come consistent with them make this a piece of ground that should be considered as built and developed to the point where it justifies an exception to treat it as Rural Residential rather than Exclusive Farm Use ground? I believe it does. Furthermore, the purpose of this entire process is to create two other parcels with water rights, that have a building site available, and will not end up in a net loss of irrigated lands. The corner in the northwest portion doesn't have water. You could build just about anywhere there and you are not going to affect anything. But it is these two that you are probably most concerned with that have water, and our answer is: yes, we can maintain that water, we can continue to put what little bit of water there is on that property and we can still build in the yellow spots that I have highlighted for you, and we can still have as good, if not a better, piece of farm ground, even though it is now zoned Rural Residential. Isn't the whole purpose of this to try to keep ground in production, whether it is zoned Rural Residential or Exclusive Farm Use? What we are going to get is an increase in the tax base because it goes from EFU to RR and we are going to have people who are going to go in and use that to its highest and best potential use.

Larry Wilson -- Also, the three goal exceptions, the second one that focuses on the adjacent properties . . .

David Butler -- That's the irrevocably committed.

Larry Wilson -- Right, the irrevocably committed exception. How are you saying that the existing uses on the property adjacent to the proposed site make it appropriate to apply restrictions to Goal 3 to the subject property?

David Butler -- In this particular instance, we have three potential exceptions we can pursue. Built and developed, irrevocably committed or reasons exception. We chose to address both built and developed and irrevocably committed. I feel that the built and developed is probably the more persuasive of the exceptions processes, although I think there are arguments for irrevocably committed as well. That being that we have things which have occurred on this property which interrelate to how the properties next door are used. Is it likely that the folks to the west of the property, I think that is Curtis, are going to attempt to connect their farm operation up with what is left of tax lot 1400? No, because they are cut off by Mr. Zueger's road. If you look at Exhibit T, their water is right down here beside Mr. Zueger's road, so it is not likely that they are going

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to be trying to farm that property. If we go over to Johnson's place, they have a lot of water in this 40, but the water down here on Zueger's is just this little bit right here. That's what I asked Mr. Zueger if there was any discussion of trying to farm these pieces together, no there isn't. Johnsons have used their property separately from Zueger's, Zueger's property has been used separately. How about to the north, no water to the north at all, no reason for the owner to the north to incorporate any of Zueger's property either. So we have to look at the inter-relationship between Zueger ground and the ground around it to the east, north and west. I would argue, and I disagree with the Staff Report, to look at those acreages south of Graham Blvd. They are sitting on the other side of the state highway, they are not going to be farmed in conjunction with the Zueger property, they never have been. So, to say they are a part of farm ground and we should consider them is to say let's ignore the fact that Graham Blvd. runs right through there.

Larry Wilson -- A lot of people farm on both sides of the road.

David Butler -- Sure they do.

Lary Wilson -- It doesn't create an impediment or barrier. Does it?

David Butler -- I believe it does somewhat, because water doesn't run from Zueger property across Graham Blvd. and that direction. It parallels into a pickup ditch and then goes on down from there. Their property is farmed completely differently, in fact, if you drive out there you will notice there is a bunch of pivots out there. It is farmed completely differently from how this property is farmed. So, in response to the question, I believe the facts are most supportive of a built and developed argument, less supportive of the irrevocably committed argument.

Bill Lawrence -- Mr. Chairman and Mr. Butler, just for the record, I would like to make sure that this water rights exhibit is listed as number 3, following the two letters. This sayss "Exhibit T",

David Butler -- I have already labeled it as Exhibit T.

Bill Lawrence -- Okay. We'll leave it Exhibit T.

Proponent/Opponent Testimony.

Interested Party: Marji Lind
 2128 Graham Blvd.
 Vale, OR 97918

Marji Lind -- I'm not certain if I want to speak in opposition or in favor. My husband and I bought John and Lori's old house. I had spoke to John prior to this and I just have, not necessarily opposition, but a concern. The original well that feeds out house is at the very bottom, so we have an easement. It's actually not on our 5-acre lot, it's on the bottom corner by Graham Blvd. between Johnsons and the property in question. My main concern is if there three more homes are built, with sewers and drainfields put in, is there a potential to contaminate our

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existing well that is already at the bottom where the water naturally flows? That's my main concern. The other request I have, should this pass and he is able to divide it, for those of us that would be affected by new homes, would there be a chance we could have an input on CC&R's to protect our property value so that somebody couldn't just come in and put a really old trailer house or something, and allow scrap iron and things like that to be piled up that would take away from our property value.

Larry Wilson -- I can answer that. It would be strictly voluntary on Zueger's part. He's the one that has to put restrictions on it or not, or involve you guys. That's strictly up to him. I think I was involved when those other two parcels were split off. In the past there were concerns about water. How is your domestic well?

Marji Lind -- As far as I know, it has always functioned very well. There is a lot of water. We have five acres of irrigation water that goes along with our property, so I use the irrigation water for the grounds.

Larry Wilson -- Do you know how many gallons?

Marjo Lind -- I don't, we never had it measured when we bought it.

Proponent: John W. Faw
 3940 Halliday Rd.
 Vale, OR 97918

John Faw -- I grew up in this country, near this property, and I know this property well. You will never raise sugar beets or potatoes on that dirt. I am south of the road there, on better soil, and it's marginal for row crop, at best. This is not sugar beet row crop ground. I have four domestic wells on my place and we are within just over a quarter-mile, and they vary in depth from 45 feet to 650, so there is ground water out there. We had septic tanks for a number of houses out there as well, that soil will take them. There have been feedlots out there, dairies out there, we have never had any trouble with anybody's well, even with all of those, and there was a lot of cattle out there at one time. I had a little extra insight on those just from local knowledge. And this is pretty rough ground.

Proponent: Tom Cochran
 1179 SW 10th Ave.
 Vale, OR 97918

Tom Cochran -- We own the 10-acre parcel directly north, that this access road services. My wife and I don't see a problem with this at all. Our ground is dry, we will need to drill a well. It's like he said, it's not that good of farm ground.

Larry Wilson -- And it's your sole responsibility for the road?

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Kathy Clarich -- No, that's Jay Thomas. If Jay doesn't maintain it, then he doesn't have access.

Tom Cochran -- It's a very good road.

Lynn Findley -- It's a good road to the gate

Tom Cochran -- It's a good road past the gate. He put a road all the way through to our 10 acres and the 5-acre parcel, clear to the end of that.

Additional Staff Report:

Jon Beal -- Agricultural soils are defined in Goal 3 as Class 1 through 6 soils. NRCS maps show the proposed exception parcel is composed of Class 3 and 4 soils and are therefore considered agricultural soils. Both the built and developed exception and the irrevocably committed exception focus on existing development on the exception parcel and adjacent lands that make farming of the exception parcel impractical. The subject parcel and the adjacent parcels range from 28 to 192 acres, with a single dwelling on each. Also, whether the subject property can be farmed with adjacent properties is not an approval criteria set forth in the goal or the rules. The applicant has stated that the proposed development on the subject parcel will not have any affect on farming the subject property or adjacent properties. However, in the application they state the original 40-acre parcel has been the subject of property divisions which substantially impact the ability to economically farm the remaining EFU grounds and also the placement of residences on or around the subject property severely restrict the ability to engage in viable farm use of the property. If two 5-acre parcels substantially impact the ability to economically farm the remaining ground, and the placement of residences on or around the subject parcel severely restrict the ability to engage in farm use, it is reasonable to assume that additional development will further impact farm use in the area. I don't think you can consider dwellings and the required facilities such as wells, septic tanks and accessory uses, as two separate uses, one that you can use to support a built and developed exception and one that you cannot. I also don't think a road to the south of the subject property makes those properties to the south not adjacent properties or contiguous to the property. Roads are usually easements with the property rights running out to the middle of the road.

Applicant Rebuttal Testimony:

Davis Butler -- On Exhibit C, you can see the box in the middle and you can see that the vast majority of what's inside that box is 11D21. So, when we talked about farm ground in eastern Oregon and we talked about classes 1 thru 6, that 11D is Class 4 soils, and as you get gradually higher to Class 5 and Class 6, they get worse. Not only do we have Class 4 soils, but we have topography issues here, and we have a lack of water. So, if you look at that box on Exhibit C, you see just a tiny bit on the eastern side, top and bottom, that is a different class, all the rest of it is Class 4 soils with these topography and lack of water issues. So, I think that's very important, and we are not talking about row crop ground. We have heard from Mr. Faw who knows this

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property from living adjacent to it, and knowing what you can or can't grow out there. I think that is very important.

Kathy Clarich -- I have a question, since we got these letters about the wells and people are concerned about that. On Exhibit H, the letter from the gentleman from Baker City, on page 1, it says it would take an aquifer study and pump testing to determine if there is any level of interference, and talks about whether there is anything connected to the neighboring water. I guess you addressed the fact that he has good water, but if I understand it, the aquifer is above him, and until somebody drills into that aquifer above him, it is not going to affect his water level and his well.

David Butler -- It depends on the direction in which the aquifer flows. Aquifers flow just like a river, so we would have to know (1) which direction does it flow. You are assuming that it is flowing north to south and that if someone drills on the north end, that affects the folks on the southerly end. If this were a piece of ground located close to the river, then it would flow naturally down towards the river, because the river draws the ground waters towards it. But we are a long ways from the river so we don't know which direction this aquifer flows. Mr. Maynard doesn't provide us insight, they don't have that information. We do have well logs, and the well logs give us the ability to say, what was the level of first water, what is the level of static water, what is our draw down, and then we can figure out the hydraulic pressure of these wells. Fortunatley, we see some pretty good wells in this area. As Mr. Faw said, four wells on that property, some shallow and some deep, and that's not uncommon for that bench ground. I live, as the crow flies, probably about 1½ miles from this site. My well is 35 feet deep and I can run it all day long. But, the neighbor just to the east of me has a well several hundred feel deep, and they have fair water. It just depends upon the layer of the aquifer that you are in and how much recharge it gets. Since we don't know the direction of the flow of this aquifer, I can't say whether drilling on the north would affect somebody on the south, or vice versa.

Larry Wilson -- I have an exception. I live about two miles south of Cairo and about a mile from the Snake River, and I assumed my water went straight to it, but it flows towards Mitchell Butte. At any rate, without doing tests, there is no way to tell.

John Zueger -- Like he stated when I met with him, there has to be some documentation and a study. Nobody is trying to turn anybody's water off. Like he says, you could drill a well every five feet, and it's up to you to find your water. Nobody is trying to take water away.

Close Public Hearing

Additional Comments and Written Testimony. There were no additional comments or written testimony to report.

Robin Froerer-Myers -- Many people want to have a rural residence. I am all for trying to build homes in the country, I think it's a great idea, but I don't want to step into a hornet's nest.

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Larry Wilson -- Right now, the way it is, he will the EFU rating on both parcels. If you had a dry parcel, we have been allowing a parcel to be split off. Essentially, there will be five or six homes. I am not necessarily opposed because we need places, but this isn't consistent in my mind with what we have been approving. There are basically farms around this. Closer in to Vale it is more congested, and I can see a wreck coming with water on an easement basis. Owyhee doesn't want to mess with that anymore, everybody has to have their own headgate and weir.

Bob Martin -- I am of understanding on the Owyhee, if they split up a section like that, it is up to original owner to set that up with one gate. The irrigation company is not going to go in and put in four headgates.

Lynn Findley -- The irrigation company is not going to do it, but somebody is, because they will be requiring individual measuring devices.

Larry Wilson -- What Jay Chamberlain has told us, and granted, this isn't on Owyhee, but the measuring days are coming on everything. It may be 10 years, I don't know when, but he said the ones that are just plain headaches are the small parcels.

Lynn Findley -- I live about three miles from this, on a similar slope with water rights, and the corners without water rights are probably Class 6 or 7 soils. The stuff with water rights isn't very good, it would be a good gravel pit, and it grows great pasture. But, the bottom line is what this would do is create islands of different zones. Whether it is zoned right or not, I don't know. That's not for me to answer. But there are places all over this county, 75 acre piece of ground with 40 acres of water, 35 acres without water. What's the difference between all the rest of those and this one? We have to go back and apply the exceptions, did it meet the exceptions, and Mr. Butler had some good arguments.

Larry Wilson -- Jon or Bill, does this fall into a subdivision, when there are more than three parcels?

Jon Beal -- That is something you wouldn't address until after property zone was changed and they came in to subdivide it. The lady that asked about the conditions, that's not something that would come up until after the property was zoned. So it's not something you are going to need to address.

Larry Wilson -- This is kind of like that committee thing we have been working on. It would allow us to do these, but I am just . . .

Lynn Findley -- This essentially would be a spot zone change, and then it would be taking exception to densities because the state density is 10 acres and we are going to go with rural residential with something less?

Jon Beal -- Yes, if you go below 10, then you have to do the exceptions.

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Larry Wilson -- If we were surrounded with more densely populated parcels, it would be easier to do.

Lynn Findley -- As you look at the Sweeten map, even though we are not supposed to use it, the corridor along Graham Blvd. running west from Vale is dotted pretty heavily with houses. Once you get past Birch, about two miles out of town, then the densities, when you get away from Graham, dry up.

Margaret Tiffany -- It's kind of tricky, because we are breaking ground here. This doesn't seem to meet the criteria.

Larry Wilson -- On that Bellows property, can you remember what the soils were, I know it was zoned EFU, but it was an expired gravel pit.

Jon Beal -- I think it was 7 or something like that.

Larry Wilson -- And most of it was too steep to build on anyway.

Jon Beal -- It doesn't fall within 1 to 6.

Larry Wilson -- And it had absolutely no water rights. Isn't that about the only rural subdivision we have done in quite a while?

Jon Beal -- Yes.

Lynn Findley -- If our goal is to make a recommendation to the County Court on a zone change, we have to be able to say why we would recommend the zone change for or against. What we would be creating is a spot zone change for this parcel. And we would have to prove it by the physically developed or the irrevocably committed, we would have to say it met that criteria. While a do agree it's probably a good place to put houses, we ought to have some rural development in there, we have to apply the laws and goals. And I have a hard time making that stretch.

Larry Wilson -- If it were even like 5 and 6 and up, it would make a lot of difference. Granted, it's not a farm, the way it's broken up.

Lynn Findley -- Goal 3 says viable farm ground. This is not viable farm ground.

Robin Froerer-Myers -- So, if it's not viable farm ground, can we use that as criteria to approve it?

Jon Beal -- Whether the property is commercial agriculture or not, is not something we can use.

Lynn Findley -- The last zone change we had, we went through and looked at whether it met the three categories of goal exceptions and based our recommendation on whether it met the goal

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exceptions or not, and that was the recommendation we made to the county court. So, I assume that is the process we need to use tonight.

Jon Beal -- Yes, and the Staff Report with the proposed findings. The conclusion from those is that it does not meet the built and developed or irrevocably committed exceptions for either Goal 3 or Goal 14. Mr. Butler's proposed findings support that it does meet those exceptions for Goal 3 and Goal 14.

Larry Wilson -- What scares me about trying to say it meets the exception to Goal 3 is the fact that there is a whole lot of 3 and 4 ground that is a little unlevel. If it was a whole lot steeper and no water rights on the biggest share of it, 5 or 6, I think we would be in the clear. It's closer to meeting the urbanization deal, on the one hand, that area isn't irrevocably committed to urban uses rather than farm uses. Most of the parcels around there are good sized, even though some of them don't have water, especially to the north. But the rest of them are fairly good sized parcels. I guess on the other hand, if you had five houses right out in the middle of those, they would be more of a nuisance to surrounding farms than vice versa. Closer in to town there is a whole lot more development.

Robin Froerer-Myers -- If he changed the zoning, you know how we have the stipulation when we approve one that they basically can't go against farming practices, does that pertain to this if you change that zoning, or it doesn't pertain to this any longer?

Jon Beal -- You could put it in as a condition, but by law we are only required to put that on non-farm dwellings conditional use.

Lynn Findley -- I have a hard time using the argument that it is irrevocably committed and then you look at it and it is rural. I can't make the switch and say it's both. And as I read the document, it talks about how it is a rural setting but it is irrevocably committed. I have a hard time making that leap between the two.

Robin Froerer-Myers -- Is it something that we have to decide tonight? Can we table it and go out and look at it more? Or is that something we don't normally do?

Larry Wilson -- We could, but I don't know what we would find other than I guess we have to decide, should it be irrevocably committed to an urban use rather than farm use?

Stephanie Williams -- He is arguing both, physically developed and irrevocably committed, and it's not uncommon to argue both simultaneously.

Jon Beal -- And I stated that in the staff report. Most of the time you will see exceptions that are both built and developed and irrevocably committed. What you have to remember is that the built and developed means the subject property is built and developed to uses that make farming the property impracticable. Irrevocably committed focuses on the development on adjacent properties that makes farming on the subject property impracticable. So, that's where you have

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to look at what that development is and does that development make farming the subject property impracticable.

Bob Martin -- It really doesn't change, because he is going to keep the irrigated ground as agricultural.

Discussion among Board Members.

Larry Wilson -- It doesn't make this ground unfarmable. To that test, it doesn't meet up. If it had 4 or 5 houses on 20 acres on two or three sides of it, we would be looking at a different story. We need some of those, and this would probably be a good spot for it, but I don't know that it meets this test right now.

Bob Martin -- Actually, I like how they had it laid out. It wouldn't take anything away from it.

Discussion among Board Members.

Larry Wilson -- Well, I don't think we have a reason to hold it up, really.

Lynn Findley -- We are making a recommendation to the County Court. So, do we accept the staff report or not accept the staff report, is the question. If we accept the Staff Report, then we are saying that it doesn't meet the criteria for a built and developed exception or an irrevocably committed exception. To recommend a zone change, it has to meet one of those two.

Larry Wilson -- We can still accept the staff report and exhibits and findings of fact, but then in our reason for either accepting or turning it down, we address those. Is that correct?

Jon Beal -- The findings in the staff report say that it does not meet the irrevocably committed or built and developed exceptions, and the reasons are stated there in the form of findings. If you adopt that, then that would be the findings of fact and supporting evidence for a recommendation of denial. If you adopt the applicant's application, the findings that they proposed would support a finding that the property does meet the irrevocably committed exception.

Discussion among Board Members.

Stephanie Williams -- All of it is in the record, but what you are supposed to do is make a findings of fact to support your decision.

Jon Beal -- And you have two proposed findings of fact in front of you. The staff report is proposed findings of fact supported by evidence and reasons that the property does not meet the built and developed or irrevocably committed exceptions for either Goal 3 or Goal 14. The findings of fact and the evidence presented in the application support the finding that the property does meet those exceptions for both Goal 3 and Goal 14. What you would do is adopt either one set of findings or the other and make the recommendation to the County Court based on that set of findings.

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Lynn Findley -- While I agree that this is viable property for housing, I think it is, I think it's a good spot to do that. I do not agree with the findings of fact established in the application, and I concur with the findings of fact that it didn't meet the exception criteria. Whether it is properly zoned or not is not our question, whether it is a good place to build is not our question. I don't believe it met the criteria identified for the exceptions of physically developed or irrevocably committed.

Lynn Findley made a motion to approve the staff report, exhibits and findings of fact presented by the Planning Department staff. Margaret Tiffany seconded the motion. The Chairman called for a roll call vote, and the Commissioners responded as follows:

<i>Robin Froerer Myers</i>	--	<i>Yes</i>
<i>Bob Martin</i>	--	<i>No</i>
<i>Lynn Findley</i>	--	<i>Yes</i>
<i>Kathy Clarich</i>	--	<i>Yes</i>
<i>Margaret Tiffany</i>	--	<i>Yes</i>

Lynn Findley made a motion to recommend to the County Court that the application for zone change be denied. Kathy Clarich seconded the motion. The Chairman called for a roll call vote, and the Commissioners responded as follows:

<i>Robin Froerer Myers</i>	--	<i>No</i>
<i>Bob Martin</i>	--	<i>No</i>
<i>Lynn Findley</i>	--	<i>Yes</i>
<i>Kathy Clarich</i>	--	<i>Yes</i>
<i>Margaret Tiffany</i>	--	<i>Yes</i>

Larry Wilson -- What about my vote?

Jon Beal -- You could either make or break a tie.

Larry Wilson -- Okay, I am not going to vote to make a tie.

Lynn Findley -- So, process wise, the County Court is going to get this anyway and look at it. Is that correct?

Jon Beal -- Right. You just made the recommendation. On legislative actions, the Planning Commission holds a hearing and makes a recommendation.

Lynn Findley -- The County Court will get it and deal with it however they see fit.

