



# Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

4/20/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: Jefferson County Plan Amendment  
DLCD File Number 012-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, May 03, 2010

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

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

\*NOTE: The Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Jon Skidmore, Jefferson County  
Jon Jinings, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

# Notice of Adoption

In person  electronic  mailed

DATE  
STAMP

DEPT OF

APR 13 2010

LAND CONSERVATION  
AND DEVELOPMENT

For All Other Agencies

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Jefferson County**

Local file number: **09-PA-05**

Date of Adoption: **April 7, 2010**

Date Mailed: **April 8, 2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: **11/24/09**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The Jefferson County Board of Commissioners adopted an ordinance amending the Comprehensive Plan Map for specific property changing the designation from EFU to Range Land (RL). The ordinance also amended the County Zoning map changing the zoning of the subject property from EFU-A1 to RL.

Does the Adoption differ from proposal? **No**

Plan Map Changed from: **Exclusive Farm Use** to: **Range Land**

Zone Map Changed from: **EFU-A1** to: **RL**

Location: **Property is approximately 1.75 miles west of Culver and 250 feet due east of the Crooked River Arm of Lake Billy Chinook.** Acres Involved: **40.92**

Specify Density: Previous: **N/A** New: **N/A**

Applicable statewide planning goals:

1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?  Yes  No

If no, do the statewide planning goals apply?  Yes  No

If no, did Emergency Circumstances require immediate adoption?  Yes  No

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

Irrigation District

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Local Contact: **Jon Skidmore**

Phone: **(541) 475-4462** Extension:

Address: **85 SE "D" Street**

Fax Number: **541-325-5004**

City: **Madras**

Zip: **97741**

E-mail Address:

**jon.skidmore@co.jefferson.or.us**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18**

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

**BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON FOR  
THE COUNTY OF JEFFERSON**

**IN THE MATTER OF AN AMENDMENT TO THE )  
JEFFERSON COUNTY COMPREHENSIVE PLAN )  
MAP AND ZONING MAP FOR PROPERTY ) Ordinance No. 0-038-10  
DESCRIBED AS 12-12-23, Tax lot 300 (Wert, 09-PA-05)**

**WHEREAS**, Stephen Wert owns approximately 40.92 acres of land west of Culver identified on Tax Assessor’s Map 12-12-23 as tax lot 300 and identified as 6057 SW Iris Lane, Culver.

**WHEREAS**, the owner submitted an application to change the Comprehensive Plan Designation for the subject property from Exclusive Farm Use to Range Land; and

**WHEREAS**, the owner submitted an application for a Zone Map Amendment from Exclusive Farm Use-A1 (EFU-A1) to Range Land (RL); and

**WHEREAS**, the Jefferson County Planning Commission held a public hearing on January 27, 2010 at which time they considered the staff report, accepted testimony on the application, closed the public hearing yet kept the written record open for specific timelines for the general public and the applicant to submit additional written arguments; and

**WHEREAS**, at a public meeting on February 25, 2010, the Jefferson County Planning Commission deliberated the proposal and found that the proposal was consistent with the Comprehensive Plan, Zoning Code, statewide planning goals and Oregon Administrative Rules, and by a vote of five (5) in favor and none opposed, voted to recommend that the Board of Commissioners approve the amendment; and

**WHEREAS**, the Jefferson County Board of Commissioners conducted a public hearing on March 24, 2009 and accepted testimony on the application. At the conclusion of the hearing, the Board closed the record and deliberated on the application. After considering the Planning Commission recommendation and testimony, the Board voted unanimously to AFFIRM the Planning Commission recommendation;

**NOW THEREFORE**, the Jefferson County Board of Commissioners hereby **ORDAINS** as follows:

**1. Adoption of Comprehensive Plan Map Amendment**

The Comprehensive Plan Map is amended to change the Plan Designation of Property described on Assessor’s Map 12-12-23, Tax lot 300 from Exclusive Farm Use to Range Land. Exhibit A is the Comprehensive Plan Map amendment adopted by this ordinance.

2. **Adoption of Zoning Map Amendment**

The Zoning Map is amended to change the Zoning of property described as Assessors Map 12-12-23, Tax lot 300 from Exclusive Farm Use A-1 (EFU-A1) to Range Land (RL). Exhibit B is the Zoning Map amendment adopted by this ordinance.

3. **Adoption of Findings**

The Comprehensive Plan Map and Zoning Map Amendments are in conformance with applicable statewide planning goals, administrative rules, Comprehensive Plan and Zoning Ordinance, as set forth in the findings of fact and conclusions set forth in the Staff Report attached hereto as Exhibit C.

4. **Severability**

The provisions of this ordinance are severable. If any section, subsection, sentence, clause or phrase of this ordinance or any exhibit thereto is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance or exhibits thereto.

5. **Effective Date**

These amendments being necessary for immediate implementation, an emergency is declared to exist, and the specified amendments shall therefore take place and be effective on April 7, 2010.

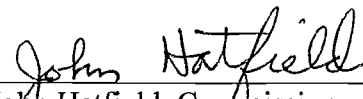
**Dated** this 7<sup>th</sup> day of April, 2010.

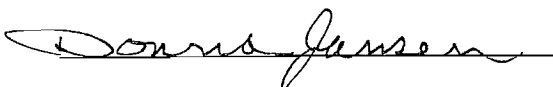
BOARD OF COMMISSIONERS:

  
 \_\_\_\_\_  
 Wayne Fording, Commission Chair

  
 \_\_\_\_\_  
 Mike Ahern, Commissioner

Attest:

  
 \_\_\_\_\_  
 John Hatfield, Commissioner



**Appeal Information**

Planning Casefile #09-PA-05

This decision may be appealed to the Land Use Board of Appeals within 21 days of the Jefferson County Board of Commissioners Decision. Oregon Revised Statute (ORS) 197.830 sets forth the review procedures. Copies of the Board of Commissioners decision and the state statute are available from the Community Development Department located at 85 SE "D" Street, Madras, Oregon 97741.

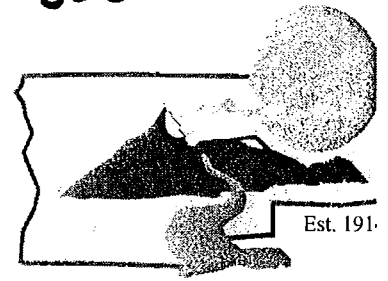
Board of Commissioners adoption date: April 7, 2010

The complete file is available for review at the Jefferson County Community Development Department. For further information, contact the Community Development Department. Phone (541) 475-4462.

**JEFFERSON COUNTY**  
**COMMUNITY DEVELOPMENT DEPARTMENT**

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85 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-4462 • FAX: (541) 325-5004



**March 24, 2010 BOCC Hearing**

**STAFF REPORT**  
**CASEFILE 09-PA-05**

**Owner:** Steve Wert  
2590 Courtney Driver, Suite 1  
Bend, OR 97701

**Attorney:** Liz Fancher  
644 NW Broadway Street  
Bend, OR 97701

**Request:** Applicant requests approval of a Comprehensive Plan Map Amendment from Exclusive Farm Use to Range Land and a Zoning Map Amendment from Exclusive Farm Use (EFU-A1) to Range Land (RL).

**Tax Lot:** 12-12-23, tax lot 300.

**Account Number:** 3435

**Location:** The subject property is located approximately 1.7 miles west of the City of Culver and approximately 700 feet east of the Crooked River Canyon.

**Comprehensive Plan**

**Designation:** Exclusive Farm Use

**Zoning:** EFU-A1.

**Size:** The property is approximately 40.37 acres in size. The property is crossed by SW Pike Road.

**Property**

**Description:** The subject property is approximately 40.37 acres in size based on discussions with and documentation from County Surveyor Gary DeJarnatt. According to the information provided by the applicant the property consists of Class VI – VIII soils. The property consists of relatively level rocky ground that leads west to the

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very upper canyon rim wall. The land west of the cliff (below) slopes downward at a steep pitch towards SW Pike Road. The vegetation on the property consists of sage and other brushes, bunch grasses and junipers. There are numerous rock outcroppings and generally rocky soil throughout. The property has no irrigation rights.

**Lot Legality:** The lot was created through a minor partition in 1979. The County Planning Division wrote a letter to the applicant on September 21, 2005 explaining that the lot was legally created.

**APPLICABLE STANDARDS:** Part 5 of the 2007 Jefferson County Comprehensive Plan, Chapter 8 of the 2007 Zoning Ordinance.

**FINDINGS OF FACT:**

**A. A Comprehensive Plan Map amendment is required to change the designation of the property from Exclusive Farm Use to Range Land although both are agricultural plan designations. Since the application involves one lot, it is a quasi-judicial land use decision. 2007 Jefferson County Comprehensive Plan Part 5, Quasi-Judicial Amendments, states that in order to be approved, the proposed amendment must:**

*Comprehensive Plan Part 5, Quasi-Judicial Amendments:*

1. *Comply with applicable Statewide Planning Goals, Oregon Revised Statutes and Administrative Rules, or comply with requirements for an exception to the goal(s);*

**Finding:** As the applicant notes the most notable, applicable Statewide Planning Goal is Goal 3, Agricultural Lands. Both the existing and proposed zoning districts are Goal 3-compliant, exclusive farm use zoning districts. Both zones preserve and maintain agricultural land as required by State law. The applicant's proposed Comprehensive Plan Map Amendment and accompanying zone change request is consistent with Goal 3 which requires that zoning applied to agricultural land shall limit uses which can have significant adverse effects on agricultural and forest land, farm and forest uses or accepted farming or forest practices. The proposed plan map amendment to RL and accompanying rezone request to RL will not allow uses that will have adverse impacts upon agricultural lands, farm uses or accepted farming practices in the area. There are no forest practices or operations in the area.

Per state law agricultural land is defined as containing soils in classes I – VI as identified in the Soil Capability Classification System of the United States Soil Conservation Service. The applicant's property consists of approximately 46.8% Class VII & VIII soils according to the submitted materials. The remainder of the property (53.2%) consists of Class VI soils. Based on this information the property will continue to be protected as required by state law although the true agricultural potential of the site is marginal.

The applicant also identifies that there is a Goal 5 resource protection overlay that affects the western side of the subject property. The overlay zone protects Golden Eagle Nesting Site Number 3 as documented in the County's Goal 5 program. Based on the applicant's submitted material any future development of the site (single family residence) would occur on the east



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side of the subject property thereby avoiding the quarter mile sensitive habitat area that surrounds the “Bridge Cliff” Golden Eagle nest site.

The proposal complies with Goal 1 as the County has notified surrounding property owners as required by 906 of the Jefferson County Zoning Ordinance as well as notified interested agencies and parties of the January 27, 2009 hearing in front of the Jefferson County Planning Commission. Further, the County Commission will hold a hearing providing additional opportunity for comment.

Goal 2 requires that the County rely on an adequate factual basis and findings to make this land use decision. This staff report provides such findings based on an adequate factual basis. The other Statewide Goals do not apply directly to the proposed zone change. Goal 12 (Transportation Planning Rule) is addressed later in this staff report.

In terms of the applicable Oregon Revised Statutes the applicant states, “The proposed change does not violate any provision of the Oregon Revised Statutes.” In review of the applicable section of the ORS (ORS 215) staff agrees with the applicant, the proposed plan amendment from one agricultural protection designation to another does not violate any provision of the ORS.

The Oregon Administrative Rules provide specific requirements for different types of agricultural zoning districts and further regulates uses within such zones. The applicant’s proposed plan map designation change from EFU to RL does not violate any state rules. Further, any future uses will be reviewed for consistency with County regulations which implement the Administrative Rules.

Opponent Gary Harris has argued that OAR 660-033-0030 applies to the County’s review of the Wert application. OAR 660-033-0030 is a rule that tells Jefferson County how to determine what land is “agricultural land.” The rule has no role in the review of this map change request because the Wert property has already been classified “agricultural land” and will retain that status after approval of this zone change and plan amendment application. Nothing in OAR 660-033-0030 requires EFU A-1 zoning rather than RL zoning. Both zones protect agricultural land at levels above those required by State law. Additionally, OAR 660-033-0030(5) regarding farm income has been repealed. The Oregon Supreme Court found it violated State statutes that define farm use to be an activity that is intended, by the farmer, to make a profit. *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

The applicant is not requesting approval of a goal exception.

*Comprehensive Plan Part 5, Quasi-Judicial Amendments:*

2. *Comply with all applicable Comprehensive Plan goals and policies; and.*

**Finding:** A comprehensive plan provides a general and long-range vision for the future development of a community. A plan sets goals and general policies that are typically used to guide the county in developing specific zoning ordinance requirements. As a result, comprehensive plan language is not, necessarily, an approval criterion for quasi-judicial land use applications. This is the case even when an ordinance requires that a land use decision comply with the comprehensive plan. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 209-10 (2004); *McGowan v. City of Eugene*, 24 Or LUBA 450, 546 (1993); *Neuenschwander v. City of*

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*Ashland*, 20 Or LUBA 144, 154 (1990); *Bennett v. City of Dallas*, 17 Or LUBA 450, 546, *aff'd* 96 Or App 645, 773 P2d 1340 (1989).

Oregon law provides that a county should review comprehensive plan language in its context and determine whether the language was intended to serve as an approval standard.<sup>1</sup> Policy 1.1 of Goal 2 of the Jefferson County Comprehensive Plan specifically states that plan policies are not mandatory approval criteria for the Wert application. It says:

*1.1 Comprehensive Plan policies are to be viewed as guiding statements, but are not mandatory approval criteria that will be applied to individual land use applications. The Plan policies are implemented through zoning, land division and transportation regulations.*

The County's plan policies, therefore, are not mandatory approval criteria.

Another factor that helps determine if a plan policy is a mandatory approval criterion is whether policies are stated in mandatory terms. The word "shall" is mandatory language and typically indicates that a policy is a mandatory approval standard. When the term "should" or "may" is used, the plan language is not typically an approval criterion. *GMK Developments, LLC v. City of Madras*, 225 Or App 1, 199 P3d 882 (2008)(Goal 2's guideline that says that land use plans "should fit together" to "form a consistent whole" is not mandatory approval criterion for such plans); *1000 Friends of Oregon v. City of Newberg*, 49 Or LUBA 626 (2005)(plan policies that say a city "should" consider do not create approval standards).

The following Comprehensive Plan policies have been considered by the County in making its zone change decision:

*Goal 3, policy 1: Protect agricultural and range land which presently is under production, or has the potential to be productive.*

*Goal 3, policy 1.1: The County will preserve agriculture lands through Exclusive Farm Use Zoning, as required by state statute. Exclusive Farm Use lands shall include land that is predominantly agricultural capability classes I through VI, and lands in other classes which are interspersed or are necessary to permit farm practices to be undertaken on adjacent or nearby lands.*

*Goal 3, policy 1.2: Lands within the North Unit Irrigation District boundary should be zoned Exclusive Farm Use A-1. Dwellings that are not in conjunction with farm use should not be permitted in the A-1 zone in order to prevent adverse impacts to farming practices.*

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<sup>1</sup> *Monogios and Co. v. City of Pendleton*, 194 Or App 201, 94 P3d 118 (2004)(plan language that established a park classification system did not constitute approval standards for park development even though the plan used mandatory language ["shall"] and stated a minimum size of 30 acres for a community park); *Stewart v. City of Brookings*, 31 Or LUBA 325, 328 (1997); *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995); *Tektronix, Inc. v. City of Beaverton*, 18 Or LUBA 473 (1989); *Standard Insurance Co. v. Washington County*, 16 Or LUBA 30 (1987); *Citizens for Better Transit v. Metro Service District*, 15 Or LUBA 482 (1987).

Goal 3, policy 1.3: *Nonirrigated lands that are predominantly composed of agricultural capability class VI through VIII soil that is within or in close proximity to the North Unit Irrigation District boundary may be zoned Exclusive Farm Use A-2.*

Goal 3, policy 1.4: *Unirrigated agricultural land outside the boundaries of the North Unit Irrigation District that is composed of predominantly of Class IV through VII soils should be zoned Range Land.*

The applicant's proposal is to change the underlying Plan Designation for the subject property from Exclusive Farm Use to Range Land. By changing the Plan Designation and zoning from EFU A-1 to RL, the property will continue to meet the intent of the above policies.

### **Policy 1**

In terms of Policy 1 the change from Exclusive Farm Use to Range Land will continue to protect "agricultural land" as that term is defined in state law. If approved, the proposal will apply a plan designation and zoning to the subject property that is more reflective of the capability of the land.

### **Policy 1.1**

Policy 1.1 says that the county will preserve agricultural lands, as defined by Goal 3, through Exclusive Farm Use zoning as required by State law. The EFU A-1, EFU A-2 and RL zones are the EFU zones that protect agricultural land. This policy states the requirements of State law for agricultural land. The policy has been met by the Wert application.

The Wert zone and plan change will comply with Policy 1.1 because the RL zone is an exclusive farm use zoning district. While the RL zone does not include the term "EFU" in its title it is an exclusive farm use zoning district. The zoning rules that apply to RL land are the same as apply to the EFU A-1 zone, an EFU zoning district with a few exceptions. Both the RL and the EFU A-1 zone contain the zoning restrictions required by State law in exclusive farm use zoning district. The primary difference between the zones is that the RL zone imposes more stringent lot size requirements for new lots and to establish farm-related dwellings than applied by the EFU A-1 zone. State law requires these restrictions. The EFU A-1 zone prohibits nonfarm dwellings but that prohibition is not required by State law.

Policy 1.1 states that EFU lands shall include land that is predominantly classes I – VI and lands in other classes necessary to permit farm practices on nearby or adjacent lands. The subject property consists of class VI, VII and VIII soils according to the applicant. A slight majority of the property consists of class VI soil making the property agricultural land. The Range Land plan designation and RL zone are exclusive farm use zones and will provide the protection intended by Policy 1.1.

Based on the following language from page 14 of the comprehensive plan, "Lands in the Range Land zone are predominantly composed of Class IV through VII soils" it is appropriate to zone this property RL and to apply the larger lot sizes required by State law for that zoning district and plan designation. Further, based on the capability of the different soils onsite, there is very little potential for the land to be agriculturally productive considering the soil classes, terrain and lack of irrigation except for grazing. Class VI soils have "severe limitations that make them generally

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unsuited to cultivation and limit their use to pasture and range.” As the BEST soil on site is class VI, there is no irrigation and there are extremely steep sloped areas on site, the County finds that the Range Land plan designation and zoning is appropriate based on the capability of the land.

**Policies 1.2 through 1.4**

Policies 1.2 through 1.4 provide nonbinding, general guidance to the County regarding the location of the EFU zones: EFU A-1, EFU A-2 and RL. The policies are to be considered but are not binding approval standards because:

1. The policies all use the words “should” or “may” rather than the word “shall.”
2. Policy 1.2 and Policy 1.3 conflict if they are read as being mandatory approval criteria. If mandatory, Policy 1.2 requires all land in the boundary of NUID to be zoned EFU A-1. Yet, Policy 1.3 says that certain non-irrigated land inside the NUID boundary may be zoned EFU A-2.
3. The County’s zoning map shows that Policies 1.2 through 1.4 are not mandatory criteria. The zoning map shows that other factors, in addition to the policy guidelines, were used to select the boundaries of the EFU zoning districts. For instance,
  - A. Policy 1.2 calls for land inside the NUID boundary to be zoned EFU A-1. The map shows, however, that the EFU A-1 zone has been applied to lands outside of the NUID boundary. It is evident that the Crooked and Deschutes Rivers, rather than the NUID boundary, were used as the western boundary of most of the A-1 zoning district; and
  - B. Large areas of land inside the NUID boundary are designated and zoned RL, Range Land.
4. The County’s zoning ordinance’s purpose statement provides descriptions of the EFU zoning districts that are written to help guide zone change decisions. This indicates that the comprehensive plan policies are not the final and only word on the topic and, instead, are guidelines to be used with other laws and considerations to select the correct exclusive farm use zoning district.

**Policy 1.2**

When read together with plan text regarding the agricultural zones, Plan Policy 1.2 tells the County that the EFU A-1 zone is to be applied to protect high value, irrigated agricultural soils. The plan says that “[i]rrigated land within the NUID boundary is predominantly composed of Class II and III soil, and is primarily zoned EFU A-1.”

The Wert parcel contains class VI, VII and VIII soils. It lacks irrigation water rights. It is located toward the outer boundaries of the District and cannot obtain service from the District due to the lack of water rights and District infrastructure. The Wert parcel contains steep slopes of 40% to 80% that are not suitable for irrigation. It is not the type of land the county intended to include in the EFU A-1 zone as shown by Section 301.1 of the Jefferson County zoning ordinance. Section 301.1 says that the A-1 zone “has been established to preserve areas containing predominantly irrigated agricultural soils for existing and future farm uses related to the production of agricultural crops or products.”

The Wert property is located near the jurisdictional boundary of NUID and west of NUID's outer service boundary. It does not contain the Class II and III soils expected in the EFU A-1 zone. The Wert property does not qualify for inclusion in the service boundary of NUID. As a result, the Wert property has none of characteristics expected to be found on land in the EFU A-1 zone.

Policy 1.2 is a non-binding guideline that does not require the Wert property to retain EFU A-1 zoning because:

1. Jefferson County does not apply the EFU A-1 zone to all land inside the NUID boundary. Land inside the NUID boundary is zoned EFU A-2 and RL.
2. Policy 1.3 says that land inside or near the NUID boundaries can be zoned EFU A-2. Policy 1.2, therefore, cannot be read to require all land inside NUID boundaries to be zoned EFU A-1.
3. The County applies A-1 zoning to land outside the NUID boundary. This violates Policy 1.2 if it is read as a mandatory approval criterion because A-1 zoning should only be applied inside the District.
4. Policy 1.2 uses the word "should" not the word "shall."

### **Policy 1.3**

The subject property is non-irrigated, consists of soils classes VI-VIII and is within the jurisdictional boundaries, but outside the outer service boundary, of the North Unit Irrigation District. Based on Policy 1.3 in Chapter 3 of the Comprehensive Plan, the property may be zoned Exclusive Farm Use A-2. However, per section 803.2(I) of the Zoning Ordinance applications for rezoning areas to EFU A-2 must be at least 500 acres in size and meet other requirements that limit the locations of this zone, the least restrictive EFU zone. The applicant proposes to change the designation and zoning of the land to RL, a more restrictive EFU zone than the EFU A-2 zone. Based on the capability and characteristics of the land, the County finds the RL zone to be an appropriate plan designation.

Policy 1.3 says that non-irrigated lands with predominantly Class VI through VIII soils within or near the NUID boundary may be zoned EFU A-2. This policy is a non-binding guideline because:

1. Policy 1.3 cannot provide the exclusive, mandatory approval criteria for zoning decisions because JCZO 803.2(I) contains more restrictive mandatory approval criteria for this particular zone that would prevent land that Policy 1.3 requires be zoned EFU A-2 from being zoned EFU A-2.
2. If Policy 1.3 is mandatory, it requires all land within the NUID boundary of a certain type to be zoned EFU A-2. Policy 1.2 says this same land should be zoned EFU A-1. Both zones cannot be applied to the same property.
3. If Policy 1.3 is mandatory, it conflicts with Policy 1.4. A mandatory Policy 1.3 would require non-irrigated land located outside of the NUID boundary to be zoned EFU A-2 that a mandatory Policy 1.4 would require to be zoned RL.
4. Policy 1.3 uses the word "may" not the word "shall."

### **Policy 1.4**

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Policy 1.4 in Chapter 3 of the Comprehensive Plan states that lands outside the North Unit Irrigation District with Class IV through VII soils should be zoned Range Land. The subject property consists of lands with Class VI and worse soils typical of range land properties. However, the Wert property is not outside the jurisdictional boundary of the North Unit Irrigation District. The County finds that in reviewing this policy the intent must be considered. According to Section 301.1 of the County's zoning ordinance the purpose of the County's RL zone is to recognize and preserve areas containing predominantly non-irrigated agricultural soils which are being used, or have the capability of being used, for livestock grazing. The record shows that the Wert property is non-irrigated and that the soils are range land soils that are capable of being used for livestock grazing.

How agricultural lands have been mapped in the past help explain the meaning of Policy 1.4. A review of the County's zoning map and the District's jurisdictional boundary shows that large tracts of land within the jurisdictional boundary of the District are zoned RL, most likely due to their lack of irrigation service and poor soils. Based on discussions with various staff, the intent of the policy is to assure that productive, irrigated soils (classes I – IV) are protected for truly productive agricultural purposes. Obviously, productive farm ground with irrigation should remain protected as such. However, the subject property is not productive farm ground, contains poor soils and has no irrigation rights with no real potential to obtain water rights or be productive. As the Wert property is located close to the outer boundary of the District, adjacent to public land that has similar range land characteristics as found on the Wert property and in close proximity to vast areas of land zoned RL, it is appropriate to apply RL zoning to the Wert property.

Policy 1.4 says that lands outside the boundaries of the North Unit Irrigation District boundary should be zoned RL if composed predominantly of Class IV through VII soils. This policy is a non-binding guideline because:

1. Lands inside NUID's jurisdictional boundary are zoned RL.
2. Policy 1.3 allows some land located outside the NUID boundary to be zoned EFU A-2. If Policy 1.4 were mandatory, no land outside the District boundary could be zoned EFU A-2.
3. Lands outside NUID's jurisdictional boundary that lack irrigation and that appear to have range land soils have been zoned EFU A-1, rather than RL.
4. The policy uses the word "should" not the word "shall."

The manager of the North Unit Irrigation District provided comments to the file regarding the potential of this property to be served by irrigation from NUID. Mr. Michael Britton, General Manager for NUID notes that the district will not provide water to the site for the following reasons:

- There are no water rights appurtenant to the property and the district has none available. Another land owner in the district would need to transfer their rights to the property for irrigation water to be provided.
- This property was excluded from water delivery based on the Bureau of Reclamations's evaluation of the soils on the property finding it contains "non-arable, non-irrigable" soils. The Bureau and NUID chose to use the District's water resource for other more productive property and excluded the subject property from its delivery area.
- There is no way currently to get water to the property even if it were available and the property was worthy of irrigation. The closest canal to serve the property is 0.6 of a mile

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from the subject property. In order to provide water to the lot, “delivery would be up gradient thru an extremely rocky area, which would make installation of a pipeline nearly impossible. It would also involve obtaining easements through at least two properties.

**Policies 1.3 and 1.4**

When read in context, policies 1.3 and 1.4 show that the intent of the exercise of applying specific zoning districts to specific lands was to apply zoning based on the capability of the lands. This intent is further reflected by the language of Section 301.1 of the County’s zoning ordinance that describes the purpose of each exclusive farm use zoning district. Land with good soils and irrigation were to be protected by the most stringent agricultural zoning, EFU A-1. Land with poor soils and no irrigation may be zoned RL or EFU A-2. Although today’s zoning is an attempt to zone according to capability there wasn’t a site by site analysis done, rather there was a general approach to applying zoning to different areas. When zoning according to capability it is appropriate to review such designations when better information is available for individual sites. Section 8.03.2I prohibits zone changes to EFU A-2 for areas less than 500 acres. Therefore, based on the characteristics of the subject property, the fact that it doesn’t contain water rights and the guidelines for RL land in the Comprehensive Plan, the County finds it reasonable to apply a Range Land designation to this property. Further, the County finds the proposal is consistent with the applicable goals and policies of the Comprehensive Plan. If approved, this application will not remove any land from agricultural production or interfere with existing farming operations.

**Comprehensive Plan Text re Water Rights for Land in NUID Boundary**

Opponent 1000 Friends of Oregon appears to believe that Mr. Wert’s property cannot be zoned RL because it is inside the NUID boundary and the comprehensive plan says that new water sources or transfers could increase the productivity of non-irrigated land. While the Wert property is inside the NUID’s boundary it is not and will not be served by the District due to its poor soils and lack of delivery system in this part of the District. The Wert property contains soils that are so poor that most may never qualify for irrigation water rights because they are nonagricultural soils and irrigating these lands would, most likely, not be a beneficial use of water. Taken together, these facts show that the Wert property will never obtain the characteristics of an EFU A-1 zoned property and will never merit an EFU A-1 zoning label.

*Comprehensive Plan Part 5, Quasi-Judicial Amendments:*

3. *Be necessary due to changes in physical, economic or social conditions, population growth, or development patterns which require an adjustment in the land use designations in the area where the amendment is proposed.*

**Finding:** The applicant states that there have been changes to state law that “have made it increasingly difficult and expensive for owners of rural land to obtain water rights to irrigate agricultural land. Limits have been placed on groundwater drilling.” The argument is that these changes to state law make it extremely difficult to use the subject property for agricultural uses that the EFU-A1 zoning seeks to protect. This is true as NUID has a limited amount of water rights and obtaining new water rights is extremely difficult. Therefore, the subject property has no true ability to obtain water rights. The property can not be managed for productive agricultural uses without such water rights. Therefore, it is necessary to apply a zoning designation consistent with the capability of the land.

Goal 2 of the Statewide Planning Goals requires that Jefferson County rely on findings of fact in land use decisions. Staff finds that due to the fact that additional, more precise information has been provided related to the classification of the soils on site, it is necessary to utilize that information in implementing land use regulations and applying Plan Designations and Zoning throughout the County.

Staff finds that there have been changes in social conditions that warrant the proposed change.

**B. The proposal involves changing the Zoning Map designation from EFU-A1 to RL. Jefferson County Zoning Ordinance Section 803.2 contains the approval criteria for zoning map amendments, as follows:**

*An amendment to the Zoning Map may be approved if it complies with the approval criteria in this Section. The burden of proof is on the applicant to submit sufficient information to demonstrate that the application complies with the approval criteria. For instance, a traffic impact study in accordance with Section 421 may be needed to show compliance with criterion (F).*

*A. The zoning designation will conform to the Comprehensive Plan Map designation;*

**Finding:** The application includes a request to change the Comprehensive Plan Map designation from Exclusive Farm Use-A1 to Range Land. Range Land is the Comprehensive Plan designation for the RL Zoning District. If the Comprehensive Plan Map amendment is approved the proposed zoning will be consistent with the Comprehensive Plan Map designation. As discussed the proposed designation and zoning are consistent with the capability of the land.

*B. The amendment is consistent with other Zoning Ordinance requirements including, but not limited to, wildlife habitat, bird habitat and riparian protection standards;*

**Finding:** As mentioned earlier in this staff report, the western side of the property is within a Sensitive Bird Habitat Overlay Zone. The overlay zone protects Golden Eagle Nesting Site Number 3 as documented in the County's Goal 5 program. Based on the applicant's submitted material any future development of the site (single family residence) would occur on the east side of the subject property thereby avoiding the quarter mile sensitive habitat area that surrounds the "Bridge Cliff" Golden Eagle nest site. There are no other wildlife habitat or riparian protection standards that affect the lot. All applicable Zoning Ordinance requirements for rezoning property are addressed in this report.

Opponent Gary Harris argued that the application cannot be approved because it would constitute "spot zoning." There is no legal requirement that prohibits what Mr. Harris calls "spot zoning" other than the County's zoning ordinance requirement that says 500 acres is the minimum area that can be rezoned to EFU A-2 zoning. The County's zoning map shows that the County's zones are applied, in many cases, to small areas of the County. In T9S, R13E one small parcel is zoned RL and is surrounded by EFU A-1. Additionally, the Wert parcel is close to and connected to RL-zoned federal land by one intervening parcel of federal land that has



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rangeland soils and vegetation. This makes RL a logical zoning designation for the Wert property.

- C. *The amendment will cause no significant adverse impact to other properties in the vicinity due to factors such as water quality, drainage, air quality or noise;*

**Finding:** The proposed zone change will not cause significant adverse impacts to other properties. The proposed RL zoning still protects agricultural lands. In this case, the applicant may request a non-farm dwelling on the subject property if approved for RL zoning. However, a possible non-farm dwelling on RL zoned property will not introduce significant adverse impacts to water quality, drainage, air quality or noise. Staff finds there will be no significant adverse impacts to other properties in the vicinity based on the proposed zone change.

- D. *The amendment will not force a significant change in or significantly increase the cost of farming or forest practices on surrounding resource land;*

**Finding:** The proposed zone change in itself will not force a significant change in or significantly increase the cost of farming or forest practices on surrounding resource land. Again, the applicant is simply requesting to change the type of agriculturally protective zoning that applies to the property from EFU-A1 to RL zoning. As mentioned above, if approved, the RL zoning would allow a non-farm dwelling to be proposed on the subject property. All land use applications for non-farm dwellings on RL zoned property must meet county review criteria including the criteria listed in 301.6(I) which requires:

*The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;*

The proposed zone change will not force a significant change in or significantly increase the cost of farming practices on surrounding lands (there is no forest use on the surrounding properties or anywhere near the subject property). Any future land use application for a non-farm dwelling will need to demonstrate that the dwelling will not adversely affect farm operations in the area as required by 301.6(I).

Additionally, if a nonfarm dwelling is approved, the County code and State law will require that a waiver be signed that will prevent future residents of the nonfarm dwelling to relinquish their right to object to accepted farm practices. JCZO 301.6; ORS 215.293. ORS 30.936 to 30.937 also protects farmers from nuisance complaints regarding accepted farm practices even if a waiver is not signed.

Opponent Gary Harris claims that allowing nonfarm dwellings on agricultural land is raising the value of agricultural parcels. Mr. Harris' data, however, lacks sufficient detail to allow the County to reach that conclusion. At best, the evidence shows that the value of large tracts of farm land has increased. The reasons for the increase may include any number of factors, such as the ability of the parcels to be developed with farm and farm help dwellings and their ability to produce crops. As all or almost all irrigated, productive farms are zoned A-1 and cannot be developed with non-farm dwellings, it is not reasonable to conclude that an increase in the prices

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of those properties is based on their ability to be developed with nonfarm dwellings as the parcels lack the ability for such development.

Data from the Department of Land Conservation and Developments 2006-2007 Farm Report to the Oregon Legislature, its most recent farm report, shows that the number of nonfarm dwelling approvals in Jefferson County is so small that it is extremely unlikely that nonfarm dwellings have raised the price of farm land in Jefferson County much less have substantially increased the cost of farm practices. From 2003 to 2007 only three nonfarm dwellings were approved. This number is small compared to the 26 primary farm dwellings and 11 lot of record dwellings approved by the County in this same time period.

Land divisions typically increase the value of land. The farm report shows that Jefferson County farmers have divided and created many new farm parcels while only a few new non-farm parcels were created in the 2003 to 2007 time frame. In that period, 32 new farm parcels were created and only 4 new non-farm parcels were created. It, therefore, is far more likely that farm divisions have affected farm prices than non-farm divisions. Even if non-farm divisions were the cause of price increases for farm land, the approval of RL zoning will not inflate land costs for farm land through land division because the RL zone prohibits a non-farm land division and the Wert parcel is too small to qualify for a farm division in the RL.

- E. Adequate public safety, fire protection, sanitation, water and utility facilities and services are available or will be provided to serve uses allowed in the proposed zone;*

**Finding:** The area is served by the County Sheriff and the Culver Fire District. Water lines from Deschutes Valley Water District serve the property. Power is provided to the property from Pacific Power. The property has a County approved septic system. These services are sufficient to provide for the uses permissible in the RL zoning district.

- F. The uses allowed in the proposed zone will not significantly affect a transportation facility identified in an adopted Transportation System Plan by:*
- 1. Changing the functional classification of an existing or planned transportation facility;*
  - 2. Allowing 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*
  - 3. Reducing the performance standards of the facility below the minimum acceptable level identified in the Transportation System Plan (LOS C). A Traffic Impact Study in accordance with Section 421 may be required to show compliance with this standard.*

**Finding:** The proposal is to rezone 40+ acres from EFU A-1 to RL. It is likely that the applicant will follow this request, if approved, with a non-farm dwelling application. An additional residence will generate approximately 10 trips per day per the ITE manual. This amount of additional traffic will not significantly affect a transportation facility and a Traffic Impact Study is not required. The addition of a non-farm dwelling will not significantly affect the existing transportation systems in the area. No traffic impact for this proposal is required due to the fact that the change from one agricultural zoning district to another agricultural zoning

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district will not increase development potential on the lot to a degree that would introduce substantial traffic volumes.

- G. *If the proposed amendment is for a smaller minimum lot size in an existing Rural Residential zone, the application shall meet the requirements for an exception to statewide planning Goal 14; and*

**Finding:** The property is not in an existing Rural Residential zone, so this criterion is not applicable.

- H. *If the proposed amendment involves taking an exception to statewide planning Goals 3 or 4 to rezone the property from Exclusive Farm Use A-1, Exclusive Farm Use A-2, Range Land or Forest Management to a Rural Residential zone, the minimum lot size shall be at least ten acres unless the application meets the requirements for an exception to statewide planning Goal 14 in accordance with OAR 660-004-0018.*

**Finding:** The proposal does not involve requesting an exception to statewide planning goals 3 or 4. This criterion is not applicable.

- I. *The following criteria shall be met if the proposed amendment involves rezoning the property to Exclusive Farm Use A-2:*
1. *The area to be rezoned is at least 500 acres and consists of lawfully created parcels;*
  2. *At least 50 percent of each parcel proposed to be rezoned is made up of agricultural capability class VI – VIII soil;*
  3. *The area lies east of the Crooked River, Lake Billy Chinook and the Warm Springs Indian Reservation;*
  4. *No water rights are available to the parcels proposed to be rezoned; and*
  5. *The area is within three miles of a school or school bus route.*

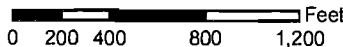
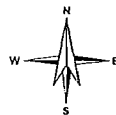
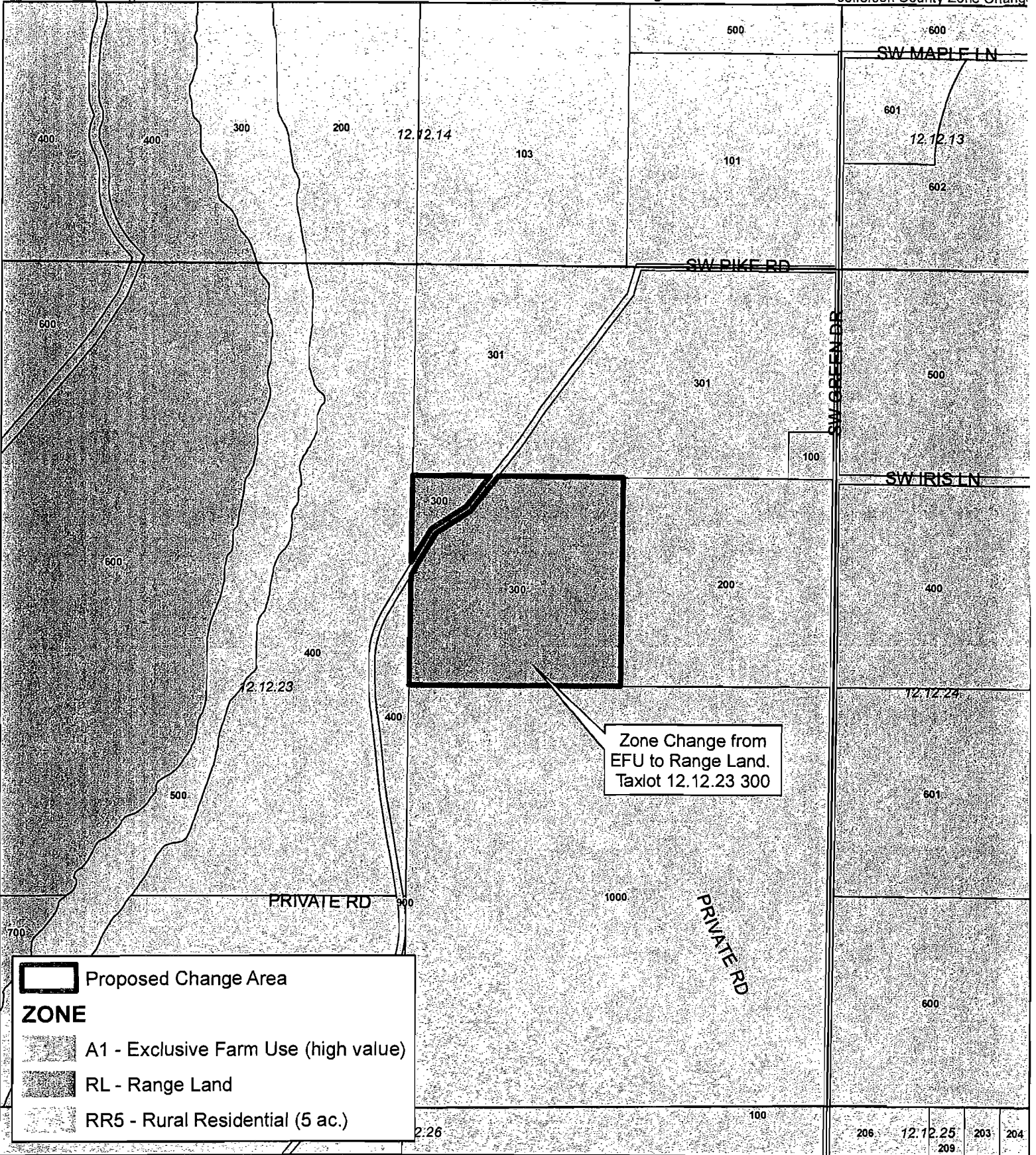
**Finding:** The proposal is to rezone the property to RL, not EFU A-2, so these criteria are not applicable.

**CONCLUSION:** This staff report has addressed all of the relevant County and State requirements for a Comprehensive Plan Map Amendment and Zone Map Amendment.

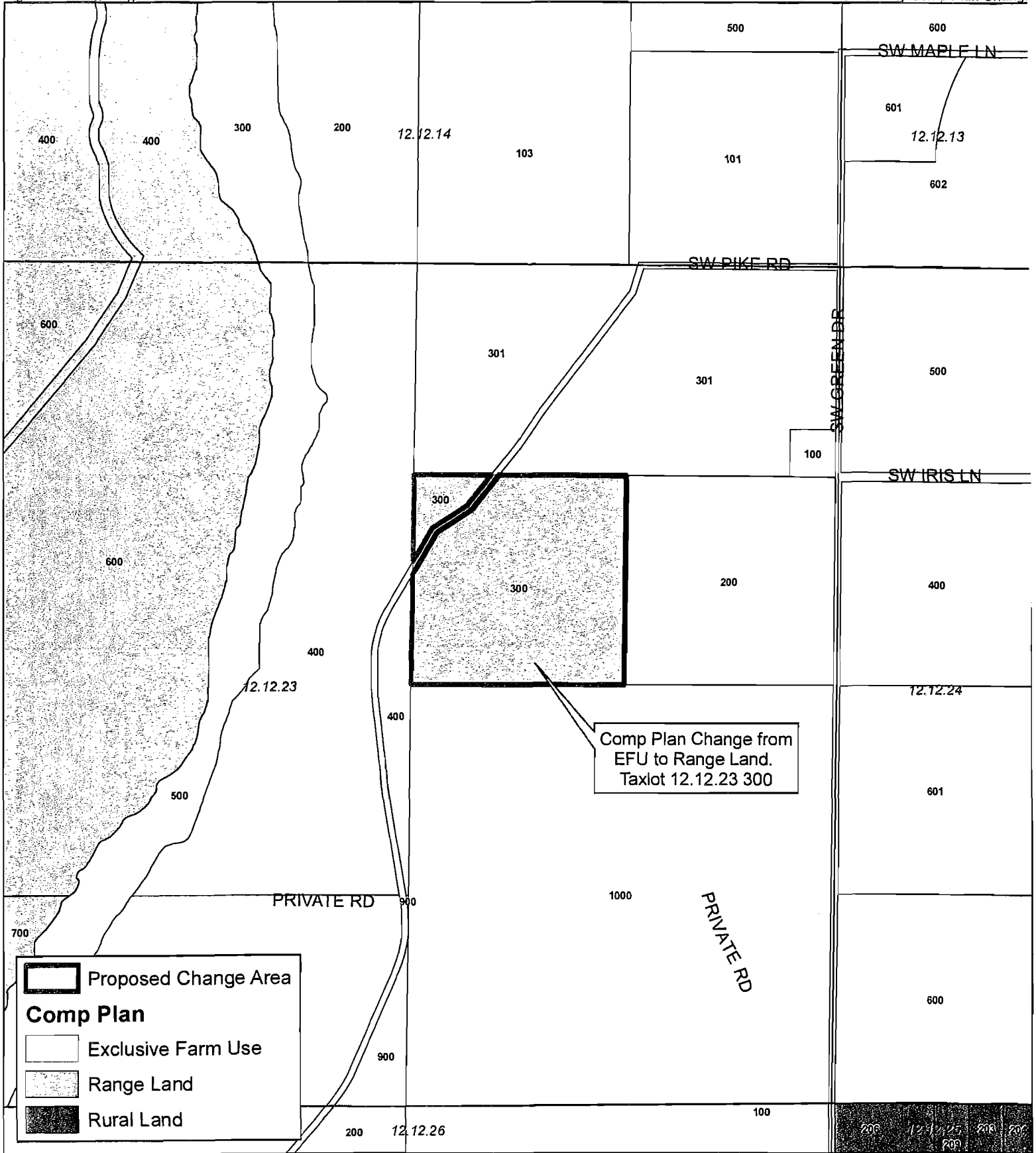
The applicant has provided detailed information as to why the subject property is more appropriately planned and zoned Range Land versus Exclusive Farm Use (EFU-A1). The applicant has provided information regarding to the soils type (Soils Class VI – VIII), the lack of irrigation water, inability to obtain such water and the general terrain all of which when combined preclude use of the land for productive agricultural use. Based on these characteristics the subject property contains limited grazing and rangeland potential. The applicant is requesting to change the plan designation from one agricultural protection zone to another and staff finds that the applicant has demonstrated why the RL plan designation and zoning is more appropriate than the EFU-A1 zoning.

EXHIBIT C

**RECOMMENDATION:** Staff and the Planning Commission recommend that Casefile 09-PA-03, an application for a Plan Amendment and Zone Change to change the plan designation from Exclusive Farm Use to Range Land and change the zoning from EFU-A1 to RL on property described as 12-12-23, tax lot 300 (Account 3435) be approved.



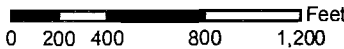
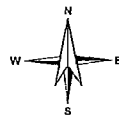
Jefferson County uses GIS data in support of its internal business functions and the public services it provides. These GIS data, which Jefferson County distributes, may not be suitable for other purposes or uses. It is the requestor's responsibility to verify any information derived from the GIS data before making any decisions or taking any actions based on the information. Jefferson County shall not be held liable for any errors in the GIS data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. Jefferson County assumes no legal responsibility for this information.



**Proposed Change Area**

**Comp Plan**

- Exclusive Farm Use
- Range Land
- Rural Land



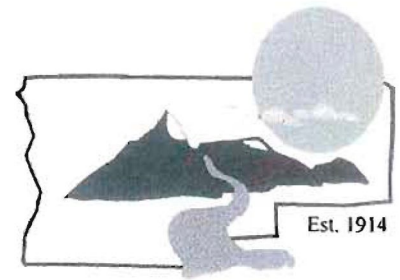
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# JEFFERSON COUNTY

## COMMUNITY DEVELOPMENT DEPARTMENT

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April 12, 2010

Plan Amendment Specialist  
Department of Land Conservation & Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

Subject: Jefferson County Adoption Ordinances O-037-10 & O-138-10

Please find one hard copy of each of the adoption ordinances referenced above enclosed. Jefferson County Ordinance O-037-10 adopted a series of zoning ordinance amendments to permit wind energy facilities in different zoning districts throughout the County. Jefferson County Ordinance O-138-10 adopted a Plan Map amendment and Zoning Map amendment to change the plan designation and zoning for a specific piece of property from Exclusive Farm Use A-1 to Range Land.

One CD has been provided which contains copies of both ordinances. The file titled "09-PA-01, Wind Energy Systems" contains Ordinance O-037-10. The file titled "09-PA-05, Wert" contains Ordinance O-038-10. It seemed wasteful to use two CDs. If you would like Word versions of any of these documents electronically please contact me at [jon.skidmore@co.jefferson.or.us](mailto:jon.skidmore@co.jefferson.or.us).

Thank you!

A handwritten signature in blue ink, which appears to read "Jon Skidmore".

Jon Skidmore, AICP  
Planning Director / CDD Manager

JEFFERSON COUNTY  
AFFINITY DEVELOPMENT DEPT.  
85 S.E. "D" STREET  
MADRAS, OREGON 97741

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04/12/2010



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FIRST-CLASS MAIL



ZIP 97741  
041111212088

Attention: Plan Amendment Specialist

Department of Land Conservation & Development

635 Capitol Street NE, Suite 150

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