



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



September 25, 2009

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 2, October 1-2, 2009, LCDC Meeting**

REVIEW OF A DIRECTOR'S DECISION TO APPEAL TO THE LAND USE BOARD OF APPEALS (LUBA)

JEFFERSON COUNTY

I. RECOMMENDATION

The director recommends, based on the information contained in this report, that the commission authorize the department to proceed with the appeal of a Jefferson County decision to the Land Use Board of Appeals. The department filed a Notice of Intent to Appeal with LUBA on September 21, 2009. It was necessary for the department to file the Notice of Intent to Appeal because the 21-day filing period expired prior to the commission's next scheduled meeting.

II. CASE SUMMARY

This case involves a Jefferson County decision affecting about 40-acres of rural land located immediately west of and adjacent to the City of Madras urban growth boundary. The subject property is also within the area proposed to be designated as urban reserve by Jefferson County and the city of Madras.

The subject property was originally included in an exclusive farm use plan and zone designation. In 2004 the applicant requested that Jefferson County approve an exception to re-designate the property from Exclusive Farm Use to Rural Residential, R-2 with a two-acre minimum lot size. The department objected and the county ultimately approved an exception to provide for a designation of Rural Residential, RR-10 with a 10-acre minimum lot size. The department did not agree that any exception could be justified but ultimately decided that the approved RR-10 designation was not as egregious the proposed RR-2 designation and did not pursue an appeal.

The county's current decision approves an exception to statewide planning Goal 14 (*Urbanization*) to convert the subject property from a Rural Residential RR-10 designation with a 10-acre minimum lot size to a Rural Residential RR-2 designation with a 2-acre minimum lot size.

Prior to the county hearing on this matter, the department provided written comments expressing concerns to the county decision makers. Among those concerns, the department advised that a Goal 14 exception is particularly difficult to justify. The department's letter also raised concerns with the applicant's contention that the proposal is consistent with Goals 9 and 10 to promote economic development through providing opportunities for desired high-income housing. The department's letter stated that Goals 9 and 10 are not a basis for this type of approval. The department expressed further concerns with the applicant's suggestion that rezoning to a higher rural residential density near the urban growth boundary is necessary to provide for a complete transportation network to serve lands inside the Madras urban growth boundary. Please see the department's May 26, 2009 letter (attached) for a detailed response to that issue.

The county declined to accept the department's advice and on September 2, 2009, the Jefferson County Board of Commissioners adopted findings approving the proposed zone change.

Pursuant to LCDC commission rules (OAR 660-001-0220), the department notified the applicant and Jefferson County of its intent to appeal Jefferson County's decision. In that notice, the department indicated that an opportunity exists to appear before the commission to discuss the merits of the department's appeal. Parties were also informed about the factors in OAR 660-001-0230(3) upon which the commission will base its decision on whether or not to direct the department to proceed with an appeal.

III. APPEAL FACTORS

To proceed with an appeal, the commission must base its decision on one or more of the following factors from OAR 660-001-0230(3):

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify state planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;
- (e) Whether the case advances the objectives of the agency's Strategic Plan;
- (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

IV. ANALYSIS

(a) Whether the Case will Require Interpretation of a Statewide Planning Statute, Goal or Rule

This case involves the interpretation of Statewide Planning Goal 14 (Urbanization) and OAR Chapter 660, Division 14, because the decision approves a Goal 14 exception to re-zone rural residential lands. This case also involves peripheral interpretations of Statewide Planning Goals 9, 10, 11 and 12 because the county bases the decision on arguments related to economic development, housing, public facilities and transportation.

(b) Whether a Ruling in the Case will Serve to Clarify State Planning Law

A ruling in this case will clarify the appropriate application of OAR 660-014-0040 to cases proposing to re-zone rural residential lands. A ruling will also explain the role, or lack thereof, of Goals 9, 10, 11, and 12 in the review of a Goal 14 exception involving rural residential lands.

(c) Whether the Case has Important Enforcement Value

Although department staff has observed other rural residential conversions in this portion of Jefferson County, the department is not prepared to recommend enforcement actions.

(d) Whether the Case Concerns a Significant Natural, Cultural or Economic Resource

The 40 acres in question are not considered agricultural or forest land. The department is not aware that the property is inventoried or recognized as a significant natural, cultural or economic resource.

(e) Whether the Case Advances the Objectives of the Agency's Strategic Plan

This appeal advances the objectives of the Agency's Strategic Plan by helping to ensure that rural residential areas remain rural in nature. The appeal also advances those objectives by helping to ensure that lands identified for future urban development are protected for efficient urban development patterns.

(f) Whether there is a Better Way to Accomplish the Objective of the Appeal, such as Dispute Resolution, Enforcement Proceedings or Technical Assistance

The parties to the appeal may identify or propose an alternative method of accomplishing the objective of the appeal prior to the hearing date and/or during testimony to the commission. No alternative method of resolving the issues has been identified.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the commission support the director's recommendation and proceed with appeal of the Jefferson County land use decision.

Proposed Motion: I move that the commission authorize the department to appeal the subject decision from Jefferson County to the Land Use Board of Appeals because the information included in this report demonstrates that OAR 660-001-0230(3) (a), (b) and (e) apply.

Alternative motion: I move the commission not authorize the department to appeal the subject decision from Jefferson County because _____.

Attachments: Jefferson County Final Decision
DLCD Comment Letter dated May 26, 2009

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

**IN THE MATTER OF AN AMEND-)
MENT TO THE ZONING MAP AND)
AN EXCEPTION TO STATEWIDE)
PLANNING GOAL 14)**

Ordinance No. 0-099-09

WHEREAS, Joel Fuller owns a 39-acre parcel identified as Tax Lot 11-13-11-500 located off of Belmont Lane adjacent to the west edge of the Madras City Limits and north of the Sunnyside Estates subdivision, also located within the Madras City Limits. The property is zoned Rural Residential RR-10 on the Jefferson County Zoning Map, with a ten-acre minimum lot size requirement. The owner submitted an application for a Zoning Map amendment and an exception to statewide planning Goal 14 in order to rezone the property to Rural Residential RR-2 to establish a two-acre minimum lot size; and

WHEREAS, the Jefferson County Planning Commission held a public hearing on June 25, 2009, at which time they considered the staff report and accepted testimony on the application; and

WHEREAS, the Planning Commission found that the proposal was consistent with the Comprehensive Plan, statewide planning goals and Oregon Administrative Rules, and by a vote of 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 August 12, 2009, and accepted testimony on the application. No persons appeared at that time to testify in opposition to the application or submitted written testimony in opposition. 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 Zoning Map Amendment**

Jefferson County hereby AMENDS the Zoning Map to change the zoning of tax lot 11-13-11-500 from Rural Residential RR-10 to Rural Residential RR-2.

2. **Adoption of Exception**

Jefferson County hereby takes an exception to Statewide Planning Goal 14 for tax lot 11-13-11-500, and incorporates the justification for the exception into Appendix II of the Comprehensive Plan.

3. Adoption of Findings

The Board of Commissioners hereby find that the amendments and exception 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 Supplemental Findings attached hereto as Exhibit A and by this reference incorporated herein and in the Staff Report attached hereto as Exhibit B and by this reference incorporated herein. To the extent the findings set forth in Exhibits A are inconsistent with the findings in Exhibit B or are in addition to the findings of Exhibit B, the findings of Exhibit A shall control.

Dated this 2nd day of September, 2009.

BOARD OF COMMISSIONERS:

John Hatfield
John Hatfield, Commission Chair

Mike Ahern
Mike Ahern, Commissioner

Wayne Fording
Wayne Fording, Commissioner

Attest:

Donna Janson

Appeal Information

Planning Casefile #08-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: September 2, 2009

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.

Exhibit A
Supplemental Findings
Jefferson County Board of County Commissioners
Joel Fuller 08-PA-05

I. Record

The Board finds that the record includes the entire record that was before the Planning Commission, a packet of exhibits (A – E) that was introduced by the Applicant's attorney before the Board at the August 12, 2009 hearing and minutes and the recordings of the board hearing, the board deliberations and the board adoption of this decision and the decision itself.

II. Findings of Fact and Conclusions

Basic Findings: The Board wishes to correct the findings found on Page 1 of the Staff Report to state that the property is located just north of Sunnyside Estates subdivision (not the Sunrise Estates subdivision as set forth on Page 1 of the Staff Report).

Findings in Response to OAR 660-014-0040(3)(a): The Board amends the findings on Page 14 of the Staff Report responsive to OAR 660-014-0040(3)(a) to strike the word "adjacent" from the third line in the third paragraph.

Additional Findings for Goal 9 Compliance: The Board amends the findings with regard to Goal 9 on Page 12 of the staff report to find that Goal 9 *is* applicable as it relates to the nature of rural residential lot size as providing a draw to upper-income people who can help support and drive economic development within the community.

Additional Findings in Support of Exception and in Response to OAR 660-014-0040 and the Department of Land Conservation and Development and the City of Madras: Because OAR 660-004-0040(7)(i) characterizes newly applied rural residential zoning allowing for parcel sizes of less than 10 acres as "urban" development, the applicable standard for a Goal 14 exception is found at OAR 660-014-0040.¹ See *Doherty v. Morrow County*, 44 Or LUBA 141 (2003), *DLCD v. Umatilla County*, 39 Or LUBA 715 (2001).

With regard to OAR 660-014-0040(2), in response to DLCD's (the Department) comments regarding adequacy of reasons for the reasons exception, the Board finds that the reasons criteria does not provide a measureable criterion of approval and that the criterion allows the Board a considerable amount of discretion in determining the adequacy of the reasons justifying the application. The Department states that Goal 9 "most often" focuses on building prosperity through job creation on lands within an urban growth boundary. That response does not indicate that an inside the UGB strategy is the only manner in which economic development can be

¹ The standards of OAR 660-014-0040(3)(a), (b) and (c) largely restate and duplicate the standards set forth in OAR 660-014-0020(2). As noted in *Doherty*, the standards of OAR 660-014-0040(2) and (3) become the relevant criteria in cases such as this that propose urban uses on rural lands. Therefore, the criteria of OAR 660-014-0040 are addressed in lieu of the OAR 660-014-0020 criteria.

supported. In this case, the new jail is located outside the UGB and is recognized as providing stable, new job opportunities for the community. In addition, DLCD's response fails to recognize a need to supply desired housing for upper-income individuals on lots sized larger than allowed in a UGB and the connection that attracting such human capital to an area has for providing jobs within a UGB. This particular property is well suited to supply that need, given its proximity to the City of Madras and the City's indication that this land is not desirable to be developed at urban densities due to concerns about developing at urban densities and providing urban services to the property.

With regard to the Department's response to the second reason, the Department fails to recognize the unique infill nature of the subject property that bridges approved urban subdivisions located within the City of Madras UGB immediately to the northeast and to the south and that contemplate further development on the subject property to provide that bridge. In this case, it is the City that determined a need under the unique circumstances concerning the geography in this case for a road to cross the property to link up existing city streets. These adjacent properties are already proposed for urban development in a manner that requires such a connection; accordingly, it is not appropriate and makes no sense to say that these connections must wait until the subject property is eligible to be brought into the UGB. The Board agrees with the Applicant's assertion that the City has expressed an intent that the subject property should never be brought into the UGB, as noted above.

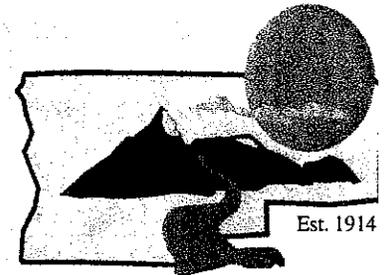
With regard to the consistency of the proposed zone change with the urban reserve designation of the property, the Board finds that the subject application was submitted prior to the effective date of the plan amendment and that it is not affected by the urban reserve designation. Furthermore, even if the urban reserve were to be applicable to the subject proposal, the County's comprehensive plan, specifically urban reserve Plan Policy 4.2, expressly allows for a limited number of RR-2 zone changes as a transition to the urban reserve zoning. The Board takes official notice that that policy has been approved by the Department and acknowledged by LCDC. Given that the number of zone changes within the urban reserve to RR-2 are limited to that finite number applied for prior to the effective date of the urban reserve, there is no basis for the Department's supposition that allowance of these few 2-acre lots will have any measurable impact on the population allocation between urban and rural areas within Jefferson County.

In response to the City of Madras' comments, the Board finds first that under state law the applicant's submittal is not dependent upon the existence of plan policy 4.2 and that in any event, the policy is not applicable to the subject proposal, having been made prior to the effective date of the urban reserve adoption. Moreover even if plan policy 4.2 were applicable, the City's letter of June 17, 2009 misquoted the urban reserve plan policy 4.2, as banning any land division of less than 10 acres. In fact, the adopted version of urban reserve plan policy 4.2 expressly recognized as a transition to the urban reserve zoning a limited opportunity until the effective date of the urban reserve for property owners, such as the applicant, to apply for RR-2 zoning, consistent with the urban reserve zone.

The Board finds that this application is driven by the unique facts related to this particular application, such as its infill location adjacent on three sides to the existing city limits or proposed rural industrial development, its relationship to existing or proposed urban infrastructure on adjacent properties within the UGB, the fact that the subject parcel is part of a tract that is physically cut-off by development or proposed development from any property currently in farm uses, and the fact that the subject parcel falls within the transitional rules for the urban reserve and that it does not establish a precedent applicable across the board for allowing 2-acre zoning in the rural areas within the County.

JEFFERSON COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

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



June 25, 2009 Hearing

STAFF REPORT
CASEFILE 08-PA-05

Applicant/ Joel Fuller
Owners: 701 W. 58th Street
Anchorage, Alaska 99503

Agent: Bruce White
Bruce W. White, Attorney, LLC
P.O. Box 1298
Bend, Oregon 97709

Request: A request to change the Zoning Map designation from Rural Residential RR-10 to Rural Residential RR-2; and take an Exception to Statewide Planning Goal 14, which requires a Comprehensive Plan amendment. If approved, the property could support a maximum of nineteen 2-acre lots.

Tax Lot: 11-13-11-500

Account
Number: 1295

Location: The subject property is located just north of the Sunrise Estates subdivision, west of the City of Madras urban growth boundary (UGB), and just east of the City of Madras'-owned Industrial Reserve property.

Planning
Designation: Rural Land

Zoning: Rural Residential RR-10.

Size: The property is approximately 39 acres.

Lot Legality: The property is a legal lot of record, which was reconfigured through an application for a Plan Amendment through Casefile 03-BA-09.

Exhibit B

APPLICABLE STANDARDS: Part 5 of the 2007 Jefferson County Comprehensive Plan, Sections 304 and Chapter 8 of the 2007 Zoning Ordinance; ORS 197.625(3), ORS 197.732, OAR 660-004-0018, OAR 660-004-0022, OAR 660-004-0040, and OAR 660-012-0060.

FINDINGS OF FACT:

A. A Zone Change is required to change the zoning of the property from RR-5 to RR-2. A Comprehensive Plan amendment is required as well, as the proposal involves the rezone of exception lands. 2007 Jefferson County Comprehensive Plan Part 5, Quasi-Judicial Amendments, states that in order to be approved, the proposed amendment must:

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 of this writing, the County's Comprehensive Plan is under appeal and has not been acknowledged by DLCDC. Consequently, the Statewide Planning Goals are directly applicable to the application. Compliance with the Goals is addressed in Finding C. As part of this application, the applicant is requesting an exception to Statewide Planning Goal 14. Oregon Revised Statutes (ORS) 197.732 states that a local government may adopt an exception to a goal, subject to compliance with [administrative] rules adopted by LCDC. The Administrative Rule requirements for taking an exception are addressed in Findings D and E.

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

Finding: The following Comprehensive Plan policies are applicable:

Goal 6, policy 1.4: *Subdivisions and partitions should be designed in a manner so that runoff will be retained on site and not flow into streams, roads, or adjacent properties.*

Goal 6, policy 1.7: *Impacts to surrounding lands should be considered before lands are rezoned. Impacts should be mitigated whenever possible, such as by providing buffers between different types of land use activities.*

Finding: Impacts related to Goal 6 include those that would affect the quality of the air, water, and land resources in the County. During review of a future subdivision, the applicant will be required to demonstrate that the individual lots can support on-site septic systems through site evaluations. Approval of the proposed zone change does not guarantee that all of the lots permitted under the new zoning designation will be suitable for on-site septic systems.

The subject site has sloping topography, and containing runoff onsite can be attained using methods such as drainage swales or detention ponds. The property is adjacent to land owned by the City of Madras and zoned Industrial Reserve, and is separated from active farming further west by the railroad. Land to the east and south is developed with residential uses, which are compatible with the proposed lower density residential land uses proposed in this application.

Goal 10, policies:

- 1 *Sufficient rural residential land should be provided to meet the need to accommodate population growth and the demand for rural home sites outside city limits.*
 - 1.1 *Rural residential areas should have minimum lot or parcel sizes of from 2 to 20 acres. These sizes typically permit septic disposal systems while not increasing densities beyond levels which would conflict with other rural and agricultural uses.*
 - 1.2 *Increasing the density in existing rural residential areas is preferable to rezoning new areas, except when the existing area is in close proximity to a city and increasing the density would limit the ability of parcels to be used for future urban development.*

Finding: The site is currently zoned for 10-acre minimum lot sizes, approved through Board Order O-59-04 on May 26, 2004, when the applicant received approval for a Plan Amendment and Zone Change from EFU to RR-10, based on the findings that the property was irrevocably committed because it borders the Madras City Limits on two sides and a railroad on the third side. The County also approved an exception to Statewide Planning Goal 3 through the approval.

The proposal conforms to Policy 1, 1.2, as the zone change would provide rural residential land outside the City Limits, with 2-acre minimum lot sizes, and provides opportunities for increased density for residential development as opposed to rezoning new areas. The application complies with Policy 1.1, as the proposed zoning will allow 2 acre lots, typically the minimum to allow onsite septic disposal systems.

- 2.2 *"Whenever possible, areas proposed to be rezoned for rural residential development should be located near or adjacent to existing rural residential development, but should not be in a location where a city is likely to expand unless the minimum lot size will be ten acres or larger. Divisions of rural residential land near a city should include a shadow plat to show how the land can be efficiently redeveloped at an urban scale if annexed."*

Finding: The site is located within an existing rural residential area. While the site is within the Madras URA, the URA was not adopted (effective) until December 1st, after the applicant filed this application, and further, the URA has not yet been acknowledged by the State.

Policy 2.2 states that a shadow plat should be provided and the applicant will be required to provide a Conversion Plan for review by the City and County, in order to assure that the property can be divided in the future to meet City densities at the time of subdivision as the property is within the City's Urban Reserve Area. As shown on the Concept Plan submitted by the applicant (Exhibit 6 of the applicant's burden of proof statement), if approved, the new zoning designation would allow a maximum of nineteen lots¹, averaging 2 acres each. When read with

¹ Based on the size of the 39-acre subject site, RR-2 zoning would allow a maximum of 19 lots. However, as illustrated in the applicant's Concept Plan (exhibit 6 of their submittal), because of road right of way, only eighteen lots are likely to be developed on the property.

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policy 1.2, it is preferable to increase densities in existing rural residential areas rather than rezone new areas, and the proposal is consistent with this policy. Based on these findings, the proposal complies with Goal 10, policy 2.2 above.

2.3: *"Areas proposed to be rezoned for rural residential development should have adequate water, road access, law enforcement, fire protection and schools."*

Finding: As stated on page 21 of the applicant's burden of proof statement, the subject can be served with necessary public facilities and services. Deschutes Valley Water District can provide water to the subject site. Law enforcement is provided by the County Sheriff. Fire protection is provided by Jefferson County Rural Fire Protection District #1, and schools are provided throughout the Madras area from the Jefferson County School District 509J. A school bus route is available near the subject property. Therefore, the proposal complies with the Goal 10, policy 2.3.

Goal 11, policy 1: "The presence or availability of water from the Deschutes Valley Water District should not be the basis for allowing increased density or a smaller minimum lot size than would otherwise be approved if water service were not available."

Finding: The availability of Deschutes Valley Water District (DVWD) water is not a determinative factor. Future lots of 2 acres are adequate to support a domestic well if DVWD water was not available; therefore the proposal is consistent with Goal 11, policy 1.

Goal 11, policy 3: "Public facilities and services should be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air, and water."

Policy 3.1: "Public facilities and services proposed for areas outside urban growth boundaries should be provided at levels appropriate for rural rather than urban uses."

Finding: Public facilities and services are provided at levels and in areas appropriate for such uses based on public laws, budgets, and public support for land, air, and water capacity. Adequate water capacity is available through the DVWD. The public facilities and services at the site are considered rural, because they do not require an urban level of services such as a sanitary sewer or developed storm drainage system, or urban level police, fire, or other services typically provided by a city. The property is within the fire protection district, and is served by public utilities, including electric, phone, and water that currently serve the adjacent Sunnyside Estates subdivision. Based on these findings, Goal 11 policy 3 is satisfied.

Goal 12, policy 1: "Adequate access should be required for all new development and proposed new lots or parcels."

1.1: "Road access to new development should be adequate to safely handle the anticipated traffic load."

Finding: Because the property is within the City's Urban Reserve Area, the developer will likely be required to meet City road and access standards, and dedicate additional right of way when a subdivision occurs in the future. The property currently accesses Belmont Lane through local streets through Sunrise Street. Additional access may be developed in the future, with the

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construction of near-by approved developments such as Park Place and Sun Ridge (to the northeast of Tax Lot 500), via H Street and G Street.

Belmont Lane is listed as a Minor Collector in the County's TSP. Inside the City, J Street (Belmont Lane's extension within the City Limits) is listed as a Major Collector in the City's TSP. The level of traffic identified in the County TSP for minor collectors is 500 to 2,500 average daily trips (ADT). The City's TSP does not specify levels of traffic for major collectors. The proposed zone change would allow an additional 16 lots over the level of development allowed under the current zoning, and an additional 153 ADT. According to the ITE Manual, an additional 16 p.m. peak hour trips would be generated. Given the relatively low volume of traffic generated by the proposal, the type of traffic – residential traffic – is consistent with the functional classification of the collector streets.

Belmont Lane is a slightly rolling roadway near the subject site, which may require improvements because of limited sight distance for turning movements. Improvements will be assessed at the time of subdivision. Additionally, there are improvements listed for the J Street/Culver Highway intersection within the Madras TSP. Depending on when the subject site is developed, the applicant may be required to contribute to the improvement of the intersection based on a proportional share of the impacts of the additional lots.

Goal 13, policy 1: Conservation of energy should be considered when an application is submitted to rezone property.

1.1: Areas proposed to be rezoned to industrial, commercial or rural residential should be in close proximity to existing cities or rural communities in order to reduce transportation energy costs.

Finding: This proposal complies with Goal 13 policies, as the area to be rezoned is located in close proximity to the City of Madras. Increasing the density in this area may reduce transportation energy costs because the site is adjacent to the Madras City Limits, and driving may be minimized.

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's burden of proof statement provides that the proposed change is necessary due to changes in economic and social conditions in the Madras area. The proposal is for rezoning that would allow for up to 16 additional homesites on lots averaging 2 acres in size that would support higher-end homes.

In the applicant's justification for a "Reasons" exception (pages 8 and 9 in the applicant's burden of proof statement), the applicant notes that with changing demographics in the Madras community, there are limited housing options for those seeking upscale housing. This was recognized by the City of Madras in its 2002 urban growth boundary expansion (Introduction – Periodic Work Task #1A and B, Page 2). It has again been recognized by the City of Madras in its April 2007 Urbanization Study (ECONorthwest, Madras Urbanization Study, Final Report, April 2007, Pages 2-4, 4-17, 4-27, 4-31).

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The economic benefits of providing for higher-end housing is noted in the 2007 Madras Urbanization Study, adopted by the City of Madras in December 2007, as follows:

“When a variety of housing types (including housing types that are commensurate with all income levels) are represented in a community, workers need not leave the community where they work to find the needed housing type of their choice. Thus, a community is able to attract a variety of people, creating diversity of citizenship and a diverse tax base. Conversely, the failure of a community to provide land for needed housing types cause communities to fail to maintain its work force, fail to attract business, fail to achieve or maintain diversity of citizenship, unnecessarily burdens social services (or conversely burdens social services in other communities), and contributes unnecessary vehicle miles traveled outside of the community to find needed housing types. When a community fails to provide an adequate amount of land for higher-income households, for example, demographics may be created that place a disproportionate burden on social services, without the attendant tax base to support the provision of such services.” (Madras Urbanization Study, page 4-17.)

The applicant also points to trends in in-migration to Central Oregon, and additionally, the Deer Ridge Correctional Facility located approximately 3 miles outside the Madras City Limits and UGB, as a driving factor in creating the need for additional higher end housing. Although the economy has slowed, and housing prices are falling, representative of the current economy, there will nonetheless be the need for higher end housing choices, once the economy improves.

Additionally, the applicant discusses a second economic reason, or changing environment, that warrants the requested Plan Amendment/ Zone Change. The proposal, if approved, would provide for street connectivity for adjacent urban development - development at a higher density and with a smaller minimum lot size of 2 acres will allow for extension of roads across the subject property and a portion of the adjacent Tax lot 100 to the north in a manner that would allow for such a street to connect the streets in the Sunnyside Estates subdivision with the streets in the proposed SunRidge subdivision. The approval for SunRidge requires that a connecting road be built between the roads in proposed Phase V of the SunRidge development and the roads in the Sunnyside Estates development to the south. SunRidge decision, as modified, Condition 3. M-07-7. The smaller lot sizes would allow for a grid-like pattern of street connections between Sunnyside Estates and SunRidge that would not be possible with the larger lots sizes of the RR-10 zone. A proposed map is shown in Exhibit 4 of the applicant's submittal.

The changing economic conditions, combined with adjacent development patterns that require connectivity in order for development to proceed, provide justification for the proposed zone change, in accordance with Criteria 3.

B. The proposal involves changing the Zoning Map designation from RR-10 to RR-2. 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

Exhibit B

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 Comprehensive Plan Map designation for the property is currently Rural Land; following the zone change, the designation will remain Rural Land. Both RR-2 zoning and RR-10 zoning are allowable under the Comprehensive Plan designation of Rural 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: The proposal's compliance with other applicable JCZO requirements is addressed throughout this staff report. The site is not within a wildlife or bird habitat, or near a riparian protection area.

- 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: As noted in the applicant's burden of proof statement (page 19), the characteristics and potential impacts from the zone change are similar to the existing impacts of the property with its current zoning of RR-10. Sewage disposal systems must meet DEQ requirements to serve each of the lots proposed. Subdivision regulations require that a drainage plan be submitted demonstrating that all runoff will be retained on site before a plat creating new lots is signed by the County and recorded. According to the County Engineer, the site does appear to be able to accommodate a drainage system that will retain all runoff on site.

At the time of subdivision, road improvements will be required to ensure adverse impacts associated with the development are adequately mitigated. If approved, the proposed amendment will likely not result in conflicts in terms of noise. Single family residential uses are generally not viewed as noise generators, but are characterized more as noise-sensitive uses.

The amendment will not adversely impact other properties in terms of drainage, air quality, and noise. Factors such as water quality and transportation can be assessed at the time of subdivision, and improved to mitigate negative effects prior to allowing development on the property. In addition, the 2-acre lots will provide a buffer between the 7,500 square foot lots to the east from the more rural land to the west and north. Therefore, the proposal complies with Criteria C.

- 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: Directly north of the subject site is approximately 87 acres of land zoned EFU A-1. The site is owned by the applicant, is not currently being farmed, and lies outside the Madras UGB. The property was at one time farmed in conjunction with the subject property. As detailed in the applicant's burden of proof, farming on this tract was unsuccessful, and no farming has occurred since 1991. Water rights were transferred off the property in 1994. A 40-

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acre portion of that property was included in the Madras City limits in the original City Charter and in the 1947 Charter, but was later removed.

The EFU A-1 land to the north does have the ability to be farmed in terms of soils and availability of irrigation. However, the subject site is already designated and zoned for rural residential development. Under the current zoning, the property could support approximately 3 lots; under the proposed zoning, the property could support an additional 16 lots. Because the subject site is already zoned and designated for residential uses, the addition of 16 additional residential lots will not materially affect the cost of farming practices on surrounding resource land, as the land is somewhat separated from other larger tracts of resource land by the railroad, is separated from a nearby irrigation canal, and is adjacent to the subject site which is already zoned and designated for rural residential development.

Given the separation of the property from agricultural activity on surrounding lands and its proximity to the City, approval of this request will not result in a loss of opportunity land that could be added to existing farming operations, nor will the rezone adversely affect nearby resource lands. Therefore, the proposal complies with Criteria D.

- 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 Jefferson County Rural Fire Protection District #1. Water is available through the Deschutes Valley Water District, and electricity is available through Pacific Power to serve the additional lots. A drainage plan will be required at the time of subdivision, to ensure that runoff is contained onsite and that surface water does not adversely affect neighboring properties.

As part of review of a future subdivision, septic evaluations will be necessary, and all lots may not be able to support onsite septic systems. Sewage disposal will be accommodated through on-site septic systems, which must meet Department of Environmental Quality (DEQ) requirements. Public sewer cannot be extended to serve land outside the UGB, and a community sewer system is not allowed to serve the site.

It is not necessary to show that adequate sanitation can be provided before the property can be rezoned – this can be assessed when a subdivision application is submitted. A subdivision plat cannot be signed by the County Sanitarian until it has been determined that each lot can be served by a septic system. Therefore, if adequate sewage disposal meeting DEQ requirements is not possible, the lots cannot be created regardless of the minimum lot size allowed by the zone. With regulations in place ensuring adequate review at subdivision, the application complies with Criteria E.

- 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*

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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: Rezoning the subject property from RR-10 to RR-2 will not change the functional classification of an existing or planned transportation facility, as the request will add an additional 153 ADT to the roadways. This addition will not change the functional classification of the adjacent roadway, as noted in previous findings. Rezoning the subject property from RR-10 to RR-2 will not change standards implementing a functional classification system. The proposed plan amendment and zone change does not propose to change or implicate changes to any transportation facility or the manner in which such facilities are classified. Therefore, this criterion is likewise not applicable to the proposal.

Criteria F(2) requires that the comprehensive plan and zoning map amendments will not allow levels or types of land uses that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility. With this proposal, the affected roadways are:

- Culver Highway (ODOT Highway 361)
- SW Belmont / J Street
- Roadways in the adjacent subdivisions and the subject property

With regard to the Culver Highway (Highway 361), the 1999 Oregon Highway Plan, as amended, designates the Highway as a District Highway² (1999 Oregon Highway Plan, Appendix D). District Highways are defined to be facilities of County-wide significance that function largely as county and city arterials or collectors. The management objective is to provide for safe and efficient, moderate to high-speed continuous-flow operation in rural areas reflecting the surrounding environment and moderate to low-speed operation in urban and urbanizing areas for traffic flow and for pedestrian and bicycle movements. Inside Urban Business Areas, mobility is balanced with local access (1999 OHP, pages 41-42).

As found in the applicant's Transportation Impact Analysis (TIA), the additional levels of traffic that would be generated in connection with the proposed plan amendment and zone change for the subject properties will be consistent with the classification of the Culver Highway as a district highway. The additional traffic generated by the proposed zone change would be local traffic and to the extent that traffic were to use the Culver Highway, it would be consistent with the function of the Culver Highway as a collector in the local street network, providing a link between the network of County and City collectors and local streets that would serve the subject property and other destinations. Access to the Culver Highway would be limited to approved local road accesses, such as at J Street and H Street. Because of intervening development between the subject property and the Culver Highway, there would be no direct access from the subject property onto the Culver Highway.

Belmont Lane is listed as a Minor Collector in the County's TSP. Inside the City, J Street (Belmont Lane's extension within the City Limits) is listed as a Major Collector under the City's

² The updated TSP of the City of Madras indicates that the truck route is contemplated as being a 4-lane, limited access expressway in the future. However, the OHP has not been amended to reflect that status.

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TSP. The purpose of a minor collector is to connect local traffic to arterials and major collectors and arterials, while providing some degree of access to adjacent lands. The purpose of a major collector is to link arterials with the local street system.

In this case, the level of traffic contemplated in the County TSP for minor collectors is 500 to 2,500 average daily trips (ADT). The level of traffic contemplated in the City TSP for major collectors is not specified. The proposed zone change would allow an additional 16 lots and an additional 153 ADT and according to the ITE Manual, an additional 16 ADT during the PM peak hour. Given the low volume of traffic on these streets, the addition of this amount of traffic will be consistent with the functional classifications of these streets. The type of traffic – residential traffic – is consistent with the functional classification of the collector streets.

With respect to access, the newly created lots of the subject subdivided property would be accessed by local streets so there would be no new points of access directly onto a collector if the proposed zone change were to be approved. The development area would access the streets within the property itself, streets in the existing and proposed Sunnyside Estates and SunRidge developments and the extension of H Street to the Culver Highway. Residential traffic would be consistent with the kinds of traffic that are contemplated by the affected local streets. The addition of 16 residential lots – or 153 ADT or 16 PM peak trips -- to the local street network set and the streets within the proposed zone change would be consistent with the levels of travel contemplated on local streets. No direct access from the property will be made to collectors or other higher order streets.

The applicant's TIA analyzed the affected intersections to determine whether the amount of traffic exceeds the capacity of an intersection, as expressed in the relevant TSP during the planning period. In this case, the relevant TSPs are assumed to be the ODOT's Oregon Highway Plan (with respect to the Culver Highway), the County TSP (as it relates to a segment of Belmont Lane) and the City of Madras TSP.

The performance of each of these intersections, with traffic added by the increased density of RR-10 to RR-2 has been analyzed as part of the TIA. With the completion of the improvements called for in the City of Madras TSP for the J Street/ Culver Highway intersection, the relevant performance standards are met during the assumed planning period.

Because the subject site is within the City of Madras's proposed URA, the applicant will likely be required to submit a Conversion Plan to the City at the time of subdivision. During subdivision of the property, the road alignments, necessary right of way, and improvement requirements will be determined, based either on Jefferson County Road Design Standards, Section 12.18.090, or City of Madras standards.

- 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 proposal is to establish a smaller minimum lot size within the existing Rural Land zone. Therefore, the applicant has provided findings addressing the need for an exception to Goal 14, provided under Findings D and E.

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- 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 involves an exception to rezone the property from RR-10 to RR-2. The requirements for taking an exception to Goal 14 are addressed in Findings D and E.

- I. *The following criteria shall be met if the proposed amendment involves rezoning the property to Exclusive Farm Use A-2....*

Finding: The proposal is to rezone the property to RR-2, not EFU A-2, so the standards in Section I do not apply to the application.

C. The application must comply with the Statewide Planning Goals. The Goals are found in OAR 660-015.

Statewide planning Goal 1 requires that the county provide the opportunity for citizens to be involved in the planning process. Notice of the public hearing to consider the proposal was mailed to all property owners within 750 feet of the subject property and interested parties. Citizens are provided the opportunity to comment on the application in a minimum of two public hearings, one before the Planning Commission, and another before the Board of County Commissioners. Providing the opportunity for public input complies with Goal 1.

The revised Comprehensive Plan and Zoning Ordinance set out procedures and regulations for land use decision-making, in compliance with Goal 2.

Goal 3 requires the preservation and maintenance of agricultural lands. Agricultural lands are defined as being predominantly composed of agricultural capability Class I – VI soils in eastern Oregon. The site was approved for rural residential zoning designation through an Exception to Goal 3 in 2004 through Board Order O-59-04. The subject site is zoned and designated for rural residential development, so Goal 3 is not applicable to the proposal.

The purpose of Goal 4 is to conserve forest land. The subject property is not forest land so is not subject to Goal 4. There are no designated Goal 5 resources on or near the property, so Goal 5 is not applicable.

Goal 6 requires that the air, water and land resources of the state be maintained or improved. The proposal is to develop a rural residential subdivision with 16 more lots than can currently be provided, which will have a minimal impact on air quality. Sewage disposal will be accommodated through on-site septic systems, which must meet Department of Environmental Quality (DEQ) requirements. Public sewer cannot be extended to serve land outside the urban growth boundary, and a community sewer system is not allowed. Prior to approval of a future subdivision, the developer will need to show that each lot can be served by a septic system. A subdivision plat cannot be signed by the County Sanitarian until he has determined that each lot can be served by a septic system. Therefore, even if the proposal is approved and the density for the subject site is increased, there is no assurance that all the lots could ultimately be developed,

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prior to site evaluations. There are no streams or other water resources in the vicinity that would be adversely affected by the proposed rezone.

The property is not subject to any significant natural hazards (Goal 7). There are no known geologic faults in the County, and the earthquake hazard is considered to be moderate. The property is not needed to meet the recreational needs of the citizens of the county, so the proposal does not conflict with Goal 8. Goal 9 requires jurisdictions to provide adequate opportunities for economic development. No industrial or commercial uses have been proposed, so Goal 9 is not applicable.

Goal 10 requires that sufficient buildable lands be provided in urban and urbanizable areas to provide for the housing needs of the citizens of the state. The property is in a rural area, so Goal 10 requirements to meet housing needs are not applicable. Goal 11 requires that cities or counties develop a public facility plan for areas within a UGB containing a population greater than 2,500. The property is not within a UGB.

Goal 12 requires jurisdictions to provide a safe, convenient and economic transportation system. Although the proposed rezone would not change the functional classification of surrounding roadways, as noted in the applicant's traffic impact analysis. Specific transportation improvements necessary to accommodate the impact of the development proposal will be addressed at the time of subdivision.

The proposal conserves energy because the property is within just over a mile from the City of Madras' City Limits, so energy expended for transportation will be minimized, in accordance with Goal 13.

Goal 14 requires local governments to provide for an orderly and efficient transition from rural to urban land uses, and to accommodate urban population and employment inside urban growth boundaries while ensuring the efficient use of land. The subject property is directly to the west of the Madras UGB. Goal 14 is addressed further in Findings D and E.

Goals 15-19 do not apply to the subject property, as they are focused on the Willamette River and coastal areas.

D. OAR 660-004-0040(7)(i) states:

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 ten acres, or*
- (B) *Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements for an exception to Goal 14 in OAR 660, Division 014. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."*

Finding: The proposal is to rezone the property to RR-2, with a two acre minimum lot size; the proposal does not comply with subsection (A). Therefore, an exception to Goal 14 is required in accordance with subsection (B).

E. OAR 660-014-0040 contains the requirements for taking an exception to Goal 14:

- (1) *As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.*
- (2) *A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.*

Finding: The applicant asserts that there are two reasons which justify an exception to Goal 14: (1) that pursuant to Statewide Planning Goal 9 – Economic Development - there is a need to provide for high-end housing with rural amenities to help attract people of means to the community and to compete with other cities in Central Oregon to supply housing desirable to persons relocating to Central Oregon; and (2) that pursuant to Goals 11 and 12 development of the property at smaller lot sizes facilitates the completion of a network of urban streets to connect adjacent properties within the existing UGB and within the City Limits of the City of Madras.

As noted previously in this staff report, there are limited housing options for those seeking upscale housing in the Madras community, as recognized was by the City of Madras in its 2002 urban growth boundary expansion, and again in the Madras URA project.

The applicant notes that providing housing for people with higher incomes can facilitate economic development by providing capital and expertise for business enterprises. Providing an attractive place for such persons to live can make the difference in whether they choose to and become a part of the community or not.

The applicant provides evidence from the Madras Urbanization Study, indicating that the key factor fueling the need for higher end homes is the trend toward in-migration to Central Oregon and the need to compete with other communities to supply the needs of such new residents. (Madras Urbanization Study, Page 4-27). The most specific example of this is the opportunities presented by the new Deer Ridge Correctional Institution, located in the Madras area, which opened in September 2007. The Community Impact Study (CIS) for the proposed facility specifically found that the opening of the Deer Ridge facility and the higher wages it would bring would create a need to provide for higher end homes in the Madras community, in order to compete with housing opportunities provided in nearby communities in Central Oregon (CIS, Phase III, Pages 9, 22).

It should be noted that the Deer Ridge Correctional Facility is located approximately 3 miles outside of the City of Madras and outside the Madras Urban Growth Boundary. Therefore any need for higher-end housing that is driven by the prison is based on a use that is not contained within an existing UGB.

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The applicant's second reason for requesting the exception to Goal 14 is regarding the need for street connectivity for adjacent urban development. According to the applicant, development at a higher density and with a smaller minimum lot size of 2 acres will allow for extension of roads across the subject property and a portion of the adjacent Tax lot 100 to the north in a manner that would allow for such a street to connect the streets in the Sunnyside Estates subdivision with the streets in the proposed SunRidge subdivision. The approval for SunRidge requires that secondary access be built between the roads in proposed Phase V of the SunRidge development and the roads in the Sunnyside Estates development to the south (SunRidge decision, as modified, Condition 3. M-07-7) If approved, the smaller lot sizes developed on the subject site would allow for a grid-like pattern of street connections between Sunnyside Estates and SunRidge that would not be possible with the larger lots sizes of the RR-10 zone. A proposed Concept Plan is shown in Exhibit 6 of the applicant's submittal.

(3) *To approve an exception under section (2) of this rule, a county must also show:*

(a) *That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;*

Finding: The proposed residential use of the subject property cannot be reasonably accommodated by expansion or intensification of uses within the Madras UGB or other rural residential areas. The residential zoning within the UGB has minimum lot sizes substantially smaller than the 2-acre lot size zoning proposed here, and the application of Goal 10 regarding needed housing would likely preclude development on the larger lot sizes that some people prefer. Recent subdivisions within the City of Madras have largely been proposed for smaller urban-sized lots of about 10,000 square feet or under. See, e.g., Miller Crossing, Madras Decision SD-06-10 (50 lot- subdivision with lots between 7,500 to 8,866 square feet in size), SunRidge, City of Madras Decision SD-06-11 (111-lot subdivision with lots between 7,500 to 11,562 square feet in size).

The lots in the first phase of the Yarrow master planned community range between 6,226 square feet and 16,439 square feet, with 17 of the 27 lots in the first phase being less than 10,000 square feet in size. While the Madras Urbanization Study recognizes that the amenities provided by master plan communities within the UGB will satisfy the need for upper end homes, the study recognizes that only "a portion" of such need should be expected to be met by such planned communities (Madras Urbanization Study, Page 4.39).

With regard to whether the proposed use can be accommodated on other rural residential exception lands, other rural residential lands that would allow for 2-acre lots are not available for such use. For example, the adjacent RR-2 lands are built out within the Country View Estates subdivision. Similarly, the RR-2 lands on the east side of Highway 97 in Section 31 are largely built out with the North Madras Heights subdivision. South of the Madras UGB, the Canyon View Estates Subdivision, made up of RR-2 zoned lands is largely built out as is the adjacent Madras Ranchos subdivision, made up of RR-5 zoned lands.

Furthermore, a street connection between the proposed SunRidge subdivision and the existing Sunnyside Estates subdivision, as required by Condition 3 of the modified SunRidge decision, is not possible without traversing the subject property. No connection can be made with the access

street in Sunnyside Estates, as contemplated in the SunRidge decision (see p. 5) without the road link provided by the subject property outside the UGB. (See Exhibit 6.) The smaller lot sizes provided by the RR-2 zoning facilitates making a road connection across the property in a manner that supports providing urban services to the adjacent urban uses within the City of Madras and its UGB.

(b) That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

- (A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and*
- (B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.*

Finding: The economic, environmental, social and energy consequences resulting from the proposed development is not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural land in the area, given the absence of adjacent farming and irrigated ground, the topography of the property, the isolation of the property by roads, infrastructure, existing development, topography from other farm ground, its proximity to other developed subdivisions with small lots in the area within the City limits.

With respect to OAR 660-014-0040(3)(A), at 39 acres, developed with up to 19 homesites, the amount of land and the proposed housing density is not excessive and in fact covers less overall ground than other rural residential developments in the area, such as the Madras Ranchos and the Canyon View Estates subdivisions. The subject property is not irrigated and has not been in agricultural use in recent years, so approval of this request will not result in displacement of any agricultural uses. Given the separation of the property by the railroad and the irrigation canal from agricultural activity on surrounding lands and its proximity to the City, approval of this request will not result in a loss of opportunity land that could be added to existing farming operations.

The proposed development is not limited by the air, water, energy and land resources available at the site.

(a) The proposed development will not adversely affect air quality, as the homes will not emit noxious gases and likely will be heated by electric heat, which is available to the site.

(b) From contact with Deschutes Valley Water district, it does not appear that the District would have any water capacity limitations in serving the project from its existing lines that already provide service to the site. (See Exhibit 7 to the burden of proof.)

(c) Urban development is not limited by energy resources at or available to the site. As

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demonstrated by the letter from Pacific Power, the site can be served by electricity, which can heat the dwellings on the proposed lots. (See Exhibit 8 to the burden of proof statement.)

(d) Urban development is not limited by land resources at the site. The land does not contain any wetlands that would limit development. The proposed development would lie on sloping, un-irrigated property that is well suited to development.

The proposed zone and plan designation change will not have a more adverse effect on the air, water, energy and land resources of properties in the surrounding area than if the development were located elsewhere for the same reasons given above. Because the site can be served with services or can be improved to serve the level of development expected on the site, the air, water, energy, and land resources of the surrounding area will not be negatively affected by the proposal, in compliance with OAR 660-014-0040(3).

- (c) *That Goal 2, Part II(c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:*
- (A) *Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and*
 - (B) *Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.*

Finding: The subject site is isolated from nearby farm uses by the railroad and the irrigation canal and by the intervening industrial land owned by the City of Madras. It is adjacent to residential lands that are planned for development at urban densities to the east.

The proposal complies with Criteria (c)(A), as the future development would not detract from the ability of existing cities and districts to provide services. The City would not be expected to provide sewer service to the properties. The homes on the new lots would be served by on-site septic systems, which would be evaluated by the County. Deschutes Valley Water serves the entire surrounding rural area and would be able to serve residential uses at the property. The property is adjacent to two developing subdivisions that front on developed City roads with adequate capacity. Additionally, development of the property at 2-acre densities can facilitate extension of a street grid network connecting adjacent properties within the City limits in a manner that can be a benefit to providing urban services within the City limits.

With respect to Criteria (c)(B), the potential for continued resource management at present levels for nearby resource lands is somewhat minimized by the fact that there is no active farming on adjacent farmland to the north, nor has there been farming on the property for several years, according to the applicant. The closest farming activities take place to the west of the railroad tracks, the main irrigation canal, and the City's industrial-zoned land. Given the lack of farming on adjacent lands and the substantial buffer between the farm lands to the west, development of the property will not adversely affect present levels of resource management of those lands. Additionally, the relatively low density development would provide a buffer between the urban residential development to the east and the farmland to the west.

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- (d) *That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and*

Finding: As stated in previous findings, all necessary public facilities are in place, and are available for future development at levels that can support the RR-2 development. The applicant will likely be required to upgrade the transportation system serving the development area at the time of subdivision.

- (e) *That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.*

Finding: The proposal is consistent with criteria e, as the Comprehensive Plan and the City of Madras's Urban Reserve Area requirements have been evaluated in determining whether the proposal is consistent with requirements of the Comprehensive Plan and with coordination between the City and County. Existing policies in the County's Comprehensive Plan point to the need for some larger lots near the City of Madras. Goal 10 Housing, policy 1.2 states, "Increasing the density in existing rural residential areas is preferable to rezoning new areas, except when the existing area is in close proximity to a city and increasing the density would limit the ability of parcels to be used for future urban development." In this case, the applicant is proposing to increase the density within an existing rural residential area, rather than use resource lands to satisfy the demand for 2-acre lots. Additionally, at the time of subdivision or partition of the subject site, the applicant will be required to provide a Conversion Plan, to illustrate how the property will transition into City densities.

- (3) *Uses, density and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in Section (4) of the rule and OAR 550-004-0020 through 660-004-0022.*

Finding: The applicant's proposed zoning of RR-2 requires a further exception from Goal 14. Accordingly, applicant has applied for an exception to Goal 14 for 2-acre minimum lot sizes and has addressed the relevant criteria in this Burden of Proof related to Goal 14.

(4) *Reasons Exceptions:*

- (a) *When a local government takes an exception under the Reasons section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses to only those that are justified in the exception.*

Finding: As noted in this burden of proof statement, these provisions apply with respect to the "reasons" exception from Goal 14. The reasons exception was sought in order to allow for minimum lot sizes on the subject property of less than 10 acres. Applicant's proposed zoning of RR-2 is consistent with the reasons exception applied for in that the highest and best use in the RR-2 zoning allows for single-family residential uses and allows for minimum lot sizes consistent with those used to justify the exception.

CONCLUSION: The application complies with the requirements for an exception to Statewide Planning Goal 14 in OAR 660-004-0022, as the applicant has provided justification for the need for additional 2-acre lots within the immediate vicinity of the City of Madras, and this need cannot be reasonably accommodated by land inside the City of Madras's UGB, or other existing rural communities, in compliance with OAR 660-004-0020(2)(b). The subject site is immediately adjacent to the City of Madras UGB and separated from active farming by land zoned for future industrial uses and the railroad.

The application complies with the requirements in OAR 660-014-0040 for taking an exception to Goal 14 to allow lots less than ten acres in size as the applicant has provided adequate justification for taking an exception. The applicant has provided justification for a reasons exception, including (1) the need to provide for high-end housing with rural amenities to help attract people of means to the community and to compete with other cities in Central Oregon to supply housing desirable to persons relocating to Central Oregon; and (2) that pursuant to Goals 11 and 12 development of the property at smaller lot sizes facilitates the completion of a network of urban streets to connect adjacent properties within the existing UGB and within the City Limits of the City of Madras.

As shown throughout this staff report, the proposal complies with all other applicable requirements, such as the Jefferson County Comprehensive Plan, ORS 197.625(3), ORS 197.732, and relevant Statewide Planning Goals.

During a future subdivision for the property, the applicant may need to make improvements to the adjacent transportation system, and show that individual lots can accommodate drainage, onsite septic systems, and other necessary facilities, and additionally, illustrate compliance with Madras Urban Reserve Area requirements through a Conversion Plan.

RECOMMENDATION: Staff recommends that Casefile 08-PA-05, an application for a Zone Change and Exception to Statewide Planning Goal 14 to rezone tax lot 11-13-11-500 from Rural Residential RR-10 to Rural Residential RR-2 be approved.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

888 NW Hill Street, Suite 2

Bend, Oregon 97701

(541) 318-2890

Fax (541) 318-8361

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

May 26, 2009

Susanna Jubler
Jefferson County Community Development Department
85 SE "D" Street
Madras, Oregon 97741



RE: Local File 08-PA-05 zoning map amendment from Rural Residential-10 (RR-10) to Rural Residential-2 (RR-2).
DLCD File: AJEFF 007-09.

Ms. Jubler:

The department would like to thank Jefferson County for the opportunity to review and comment on the land use proposal referenced above. The applicant in this case is requesting to convert about 39 +/- acres from a RR-10 designation with a 10-acre minimum lot size to a RR-2 designation with a 2-acre minimum lot size.

It is our understanding that the subject property is located directly west of the city of Madras, Oregon. It is also our understanding that the applicant is pursuing an exception to Statewide Planning Goal 14 (*Urbanization*) in order to up-zone the subject property and allow for a greater level of residential development.

Planning Rural Residential Exception Areas

The subject property was converted from an exclusive farm use designation to a rural residential designation in 2004. At this time the property was placed in a RR-10 designation pursuant to OAR 660-004-0040(7), which requires new rural residential exception areas to have a minimum lot or area size of at least 10-acres unless an exception to Goal 14 can be justified.

The applicable criteria for a Goal 14 exception are found at OAR 660-014-0040. The review criteria have been identified in the applicant's material so we will not entirely restate them here. Among other things, the rule requires the county to find that there are "reasons" why the policies in goals 3, 4, 11 and 14 should not apply. OAR 660-014-0040(2). As well as, why the proposed urban development can not be accommodated in or through the expansion of existing urban growth boundaries or by intensification of development in existing rural communities. OAR 660-014-0040(3)(a).

Our review of the provided material indicates that the applicant principally relies on two assertions to respond to the provisions of OAR 660-014-0040: 1) That there is a need to

Susanna Jubler, Jefferson County

May 26, 2009

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provide high end housing opportunities pursuant to Statewide Planning Goal 9 to promote economic development; and 2) that the property should be up zoned to provide for transportation connections to better serve lands inside the Madras urban growth boundary.

The first assertion appears to blend Statewide Planning Goals 9 (*Economic Development*) and 10 (*Housing*), both of which are considered urban Goals to be satisfied inside urban growth boundaries. We are not aware of any economic development strategy built on furnishing rural residential living opportunities. Instead, Goal 9 most often focuses on building prosperity through job creation on lands inside an urban growth boundary.

ORS 197.303 and Goal 10 define “needed housing” to mean “...housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels...” Rural residential is not a recognized housing type and cannot be considered to be “needed” under Goal 10.

The proposed use should be considered to be 19 new homesites, nothing more and nothing less. There is nothing remarkable or extraordinary about an interest in marketing homesites. Should a need for an additional new 19 homes emerge in the local community the need can easily be satisfied within or through the expansion of an existing urban growth boundary.

The second assertion appears to blend Statewide Planning Goals 11 (*Public Facilities and Services*) and 12 (*Transportation*). Urban facilities should, ordinarily, be located in urban areas. Serving urban lands is not a basis to provide additional rural residential opportunities. Constructing additional street connections can be delayed until to subject property is eligible to be included within the Madras urban growth boundary.

Relationship with the City of Madras Urban Growth Boundary

As you know, urban growth boundaries are developed to provide cities with adequate amounts of urban or urbanizable land for the various land use categories over a 20-year planning horizon. At the heart of an urban growth boundary (ugb) discussion is a population forecast that anticipates how much a community will grow. The population forecast is the primary indicator of what is needed by the city to provide an adequate residential land supply.

State law requires that counties prepare a population forecast that identifies how much future growth the entire county is expected to received. Please see ORS 195.036. Counties must coordinate with affected cities to determine what percentage of that overall county growth will be experienced inside urban growth boundaries and what portion will be received outside of urban growth boundaries. Each jurisdiction adopts a population forecast reflecting its coordinated share of the overall number. Pursuant to ORS 197.015(6) a plan is “coordinated” when the needs of all levels of governments, semi-

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public and private agencies and the citizens of Oregon have been considered and accommodated as much as possible.

We understand that Jefferson County and the city of Madras have worked towards establishing a coordinated population forecast to serve as a basis to expand the city's urban growth boundary. This forecast must assume that in the next 20-year planning horizon there will be a certain amount of population in Jefferson County and that a good portion will reside in Madras. The portion allocated to Madras forms the basis for the city's residential land needs for the next 20-years.

We believe that the county has an obligation to consider whether amending its comprehensive plan to allow additional development opportunities on rural lands outside the urban growth boundary will be consistent with the current coordinated population forecast. The county should be aware that amendments to the comprehensive plan to allow additional residential opportunities in rural areas may change the allocation of population growth provided to the city.

Furthermore, we are not convinced that this proposal would be consistent with the efforts of Jefferson County and the city of Madras to establish an urban reserve area pursuant to OAR Chapter 660, Division 21.

Transportation Planning Rule

Amending the county comprehensive plan and zoning map to offer additional development opportunities on rural land has the potential to impact the transportation system. The Transportation Planning Rule (TPR), otherwise known as OAR Chapter 660, Division 12 describes how local governments must consider the potential for impacts to the transportation system. Please see OAR 660-012-0060.

Conclusion

The department does not believe that the criteria for a Goal 14 exception has been satisfied. We are particularly doubtful that findings can show that additional housing units cannot be accommodated in or through the expansion of an existing urban growth boundary.

We recommend that the existing RR-10 Zoning designation be retained.

Thank you for this opportunity to comment. We request that this letter be entered into the record of these proceedings and that we receive a copy of the decision. If additional information is provided at the hearing, we ask that the hearing be continued, pursuant to ORS 197.763(4)(b), to allow us time to review the new information and respond if necessary. If you have any questions please contact me at (541) 318-2890.

Susanna Jubler, Jefferson County

May 26, 2009

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Respectfully,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jon Jirings
Regional Representative

BRUCE W. WHITE, ATTORNEY, LLC

September 29, 2009

By Email and Courier

Land Conservation and Development Commission
c/o Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301

Re: DLCD v. Jefferson County, LUBA Appeal 2009-106
Jefferson County Ord. 0-099-09
Fuller Goal 14 Exception and Zone Change – RR-10 to RR-2 (08-PA-05)

This office represents Joel Fuller, the applicant in an application before Jefferson County for a reasons exception to Goal 14 to allow lot sizes of less than 10 acres and a zone change from RR-10 to RR-2 for a 39-acre parcel adjacent to the City of Madras UGB. That application was approved by Jefferson County on September 2, 2009 (File number 08-PA-05, Ordinance No. 0-099-09). The Department of Land Conservation and Development (the Department) appealed that approval to the Land Use Board of Appeals (LUBA) on September 21, 2009 and now seeks approval for that appeal from the Land Conservation and Development Commission (the Commission) pursuant to ORS 197.090. For the reasons set forth herein, Mr. Fuller urges the Commission to not authorize the Department's appeal. This letter constitutes applicant's response to the Department's authorization request, as allowed under OAR 660-001-0230.

Background: The subject property lies in Jefferson County adjacent on its south and east sides to the City of Madras city limits and UGB. Prior to the rezone approved on September 2, 2009 in this case, the subject property was zoned RR-10. The property is located on a rise overlooking the City of Madras to the east and has been owned by the Fuller family since the 1970s, either individually or through a family corporation.

The Fuller property is surrounded on three sides by existing and planned urban or industrial development.¹ To the east and south inside the Madras City limits are properties zoned R-1 for 7,500-square foot residential lots. To the south, the Sunnyside Estates (Phase I) subdivision is partially developed with 7,500 square foot lots and a city street stubbing into the south property boundary. The property to the northeast that touches the subject property at its northeast corner has been approved for subdivision and platting into 142 lots (ranging in size from 7,500 to 11,082 square feet) as the SunRidge subdivision. The Fuller property lies between those City subdivisions and because of the unique topography and land use pattern of the area a condition of approval for SunRidge requires a street connection across the Fuller property to connect the street system of those developments. The adjoining undeveloped property to the west is owned by the City of Madras and is zoned Rural Industrial for industrial use. The property to the north is

¹ The property also entirely encloses a 1-acre parcel developed with a residence.

owned by applicant and is zoned A-1 (EFU). That parcel could not be farmed economically and the irrigation rights were removed in 1994. That parcel is entirely isolated from other EFU lands, being bounded by the Madras city limits on the east side² and to the south, the railroad tracks on the west and a canyon and roadway to the north. The railroad tracks and irrigation canal to the west provide a substantial separation and buffer from irrigated agricultural lands lying to the west. An aerial photo of the Fuller parcel and the surrounding lands is included as Exhibit 1.

The property was recently designated as urban reserve for the City of Madras. However, from numerous statements made by City of Madras officials during that process, it is very clear that the City has no desire to include the subject property inside the City's UGB at any time in the future, preferring to provide urban infrastructure and expansion of its UGB on the east edge of the City. The applicant has previously taken action seeking to require the City to proceed directly to expand its urban growth boundary, to no avail. See, e.g., *GMK et al v. City of Madras*, 57 Or LUBA 81 (2008), 225 Or. App. 1, 199 P3d 882 (2008) (challenge to the City's urbanization report), City of Madras Urban Reserve, DLCD Order 0001768, July 2, 2009, (objection to the City and County adoption of the URA).

Rather than continue to fight the City of Madras on bringing the property into the UGB, Mr. Fuller sought approval in the proceeding being appealed to change the zoning from RR-10 to RR-2 to allow a transition from urban lots to EFU zoning to the west but in a way that would not overtax City of Madras services. This is a reasonable compromise that allows the applicant increased development potential, does not require the City to upgrade sewer infrastructure on the city's west side, provides for a desired street connection between the Sunnyside Estates and SunRidge properties adjoining applicant's property within the UGB and also meets a demand for larger lot sizes than can be provided inside the City limits, while providing for a common-sense transition from immediately adjacent urban-size residential lots to larger rural farm properties to the west.³

When the County adopted its urban reserve area on November 12, 2009, the adoption included a transitional comprehensive plan policy allowing for zone changes on URA designated lands to lot sizes of less than 10 acres so long as the zone change was filed prior to December 1, 2008. The Department did not object to that transitional language in its acknowledgement review, and accordingly, the provision will be acknowledged by the Department with the ultimate acknowledgement of the URA plan amendment.⁴ The subject zone change was filed pursuant to that provision.

Analysis: Mr. Fuller proposes to subdivide the subject property into 2-acre lots. The Jefferson County Zoning Ordinance has an acknowledged 2-acre rural residential zone. However, the Commission administrative rule adopted in October 2000 requires an exception to Goal 14 in

² As shown on the attached aerial photo, the City limits juts into the middle of the flat plateau area of this parcel.

³ As part of this compromise, Mr. Fuller would be willing to relinquish its urban reserve zoning upon receipt of final RR-2 zoning.

⁴ The City of Madras did not favor that transitional language and opposed the Fuller zone change on that basis, but otherwise did not object to the proposed zone change.

order for Jefferson County to use its 2-acre zone for property designated as rural residential after October 2000. OAR 660-004-0040(7)(i). The subject property was designated as rural residential on the comprehensive plan in 2004 through a post-acknowledgement plan amendment process.

The treatment of 2-acre lots as urban uses in OAR 660-004-0040(7)(i) is illusory for the simple reason that the Department and the Commission do not allow for 2-acre lot sizes as urban uses within UGBs. In numerous cases, the Department has informed cities that lot sizes of 1 acre or less are not urban uses and are therefore not permissible within UGBs. See, e.g., City of Forest Grove Acknowledgment Order (lot sizes of 1 acre are not small enough to be urban), and March 19, 2009 letter of Jennifer Donnelly, DLCDC Regional Representative (lot size of ½ acre is too large to be urban). In the recently enacted safe harbor rule for UGB expansions, the Commission specified an overall minimum lot size of 4 residential housing units per acre for cities of 2,501 to 10,000 people. OAR 660 Division 24, Table 1. Given this stark reality, it is hard to say with a straight face that what Mr. Fuller proposes is an urban use that violates Goal 14. It appears that the Department wishes to have it both ways: to argue within UGBs that parcels of greater than ½ acre are not urban, but outside UGBs to argue that any parcel of less than 10 acres on recently designated residential exception lands is urban. This is a model that has no internal consistency or integrity and is not what was required by the Oregon Supreme Court in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 724 P2d 268 (1986).

If ever there were a case to be made for 2-acre transitional zoning, this case is it. In proposing the zone change to 2 acres, Mr. Fuller fully addressed the reasons exception criteria and provided reasons based upon common sense and the unique circumstances present to justify his case. DLCDC argues that those reasons are not good enough. Under the Department's reasoning, it is hard to see how any exception could ever be granted from Goal 14 for rural residential uses.

Appeal Factors

(a) Whether the Case will Require Interpretation of a Statewide Planning Statute, Goal or Rule.

The case involves interpretation of Goal 14 and the exceptions to Goal 14 under Goal 2 for rural residential development.

(b) Whether a Ruling in the Case will Serve to Clarify State Planning Law.

The appeal will not serve to clarify state law in that the case turns on facts that are unique to this particular circumstance. In addition, if successful, an appeal would perpetuate the inconsistency noted above in the Commission's rules as to what constitutes urban residential uses.

(c) Whether the Case has Important Enforcement Value.

Because of the unique locational facts in this case in terms of the subject property's relation to adjacent properties, this case does not establish a precedent that can be used by other landowners

as a basis for applying for an exception to Goal 14. Furthermore, the urban reserve amendments to the Jefferson County Comprehensive Plan preclude application for further zone changes from RR-10 to RR-2 on UAR-designated land. Therefore, this case presents no enforcement value.

(d) Whether the Case Concerns a Significant Natural, Cultural or Economic Resource.

The property is already zoned for rural residential use and accordingly does not contain significant agricultural resources.⁵ There are no designated Goal 5 resources on the property. The property is not designated for commercial or industrial use under Goal 9. Accordingly, this criterion is not implicated.

(e) Whether the Case Advances the Objectives of the Agency's Strategic Plan.

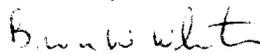
Applicant has not been able to access a copy of LCDC's Strategic Plan and therefore cannot fully comment on this. However, given the disparity between what is viewed as being urban for purposes of residential development within a UGB and what is urban for purposes of residential development outside UGBs, it is difficult to see how this case advances a singular plan objective. With regard to protecting future redevelopment of the property, in the unlikely event that urban development were to occur on the property, the Jefferson County code requires Mr. Fuller to develop a redevelopment plan to accommodate future urban development.

(f) Whether there is a Better Way to Accomplish the Objective of the Appeal, such as Dispute Resolution, Enforcement Proceedings or Technical Assistance.

Applicant is not familiar with the Department's objective in this case. To the extent the Department is concerned about the 2-acre zoning being inconsistent with the urban reserve designation, the applicant is willing to relinquish the urban reserve designation.

Conclusion: The Department's appeal of this case illustrates much of what is wrong with Oregon's inflexible, rule-laden land use system. Mr. Fuller has proposed a common-sense development supported by reasons as required. However, planning in Oregon is becoming an exercise in bean-counting based upon unrealistic objectives and not on intuitive common sense. This case cries out for the exercise of common-sense. In that light, we urge you to not authorize the Department's appeal. Certainly there must be better cases than this for the Department to spend its precious resources on. Thank you for your consideration of these comments.

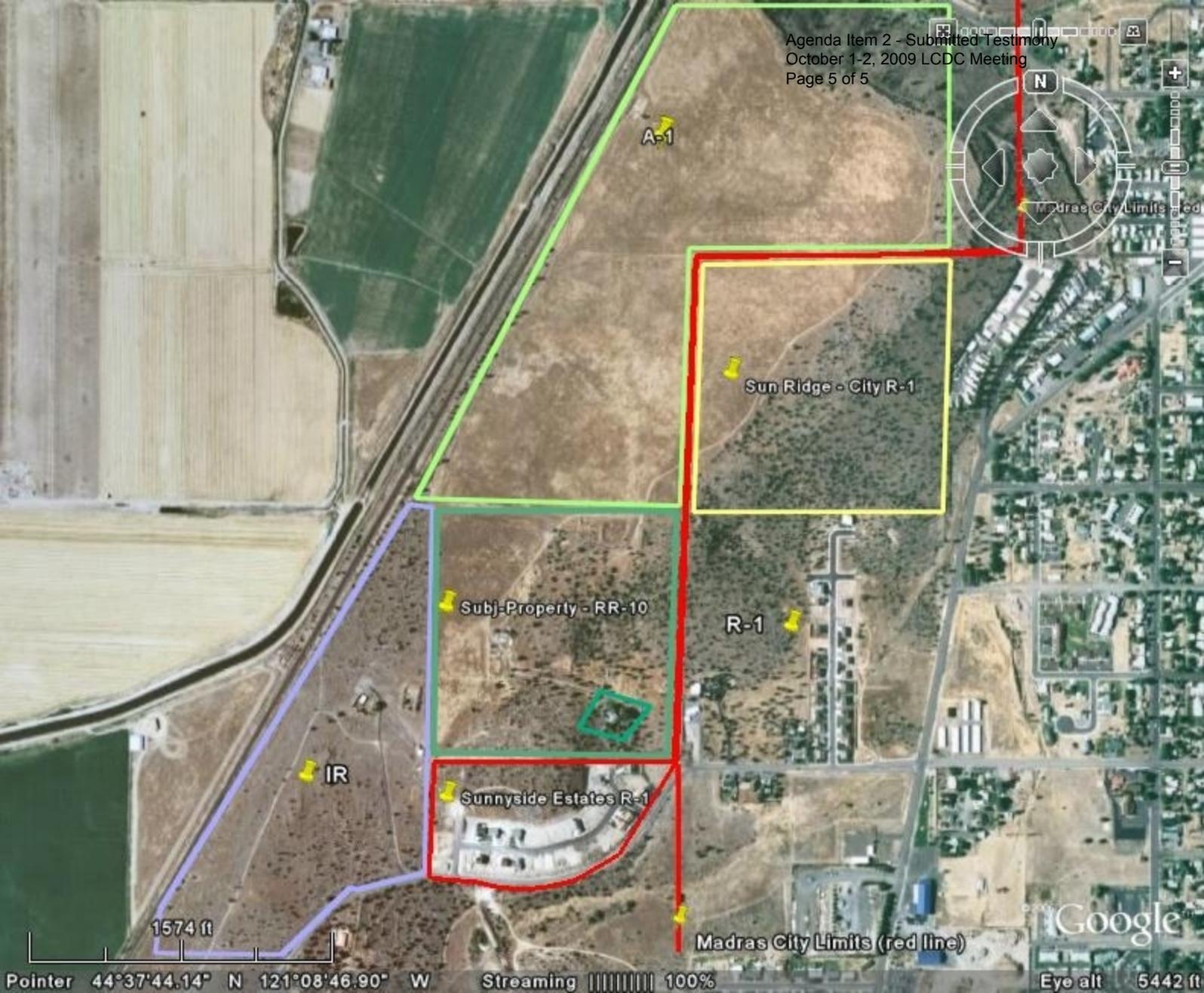
Sincerely,



Bruce W. White

c. Jefferson County Board of County Commissioners
Client

⁵ Much of the property is made up of the slope ascending to the rim that overlooks the western edge of Madras (see aerial photo). The documentation justifying the exception to Goal 3 showed that over 60% of the parcel was made up of Class VII soils.



1574 ft

Pointer 44°37'44.14" N 121°08'46.90" W

Streaming 100%

Eye alt 5442 ft