

JAN 25 2005 *4:15pm*

UMATILLA COUNTY  
RECORDS  
THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Amending )  
Comprehensive Plan to ) ORDINANCE NO. 2004-19  
Include Goal 3 Exception )  
Justification for Non-Resource )  
Land for Perkins )

WHEREAS the Board of Commissioners has adopted a Comprehensive Plan for Umatilla County;

WHEREAS an application was received from Terry A. Perkins requesting Umatilla County to amend the Comprehensive Plan to include a Goal 3 exception justification to change the designation from resource land to non-resource land, and also requesting to change Comprehensive Plan designation and Zoning Classification for applicant's property;

WHEREAS the Umatilla County Planning Commission held a public hearing on November 18, 2004 to review the application and the proposed amendment to the plan and zoning and recommended that the Board of Commissioners adopt the amendments and approve the application;

WHEREAS the Board of Commissioners held a public hearing on December 15, 2004, to consider the proposed amendments, and voted for the approval of the application and the amendments.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Umatilla County Comprehensive Plan, adopted May 9, 1983, be further amended as follows:

I. The Comprehensive Planning Map is amended to change the designation of the subject property from North/South County Agriculture (resource lands) to Rural Residential (non-resource lands), including on Map C, page XVIII-335C, and Comprehensive Plan Map E.

II. (To be inserted in section for Goal Exceptions Statement for Rural Residential, Central County Developed/Committed Exceptions, at end of Exception Area #3 - McKay Creek-McKay Reservoir, Pg XVIII-335)

## Goal Exception Statement

RURAL RESIDENTIAL REASONS EXCEPTION AREA A (Perkins Property),  
10-acre minimum lot size, see Map C on Page XVIII - 335C.

Total Acres: 51

Number of Parcels: 1

Number of Existing Dwellings: 1

### Background/Summary

The Perkins Rural Residential Area is approximately 51 acres in size and is located approximately five miles south of the City of Pendleton on the east side of State Highway 395. The property is bordered on the west by Happy Trails subdivision, a developed and committed residential area, and on the east by McKay Reservoir and McKay Creek National Wildlife Refuge. The property is identified by the Umatilla County Assessment and Taxation Department as being Tax Lot 1N32-10A-100.

Access to the 51 acre parcel is by Conestoga Drive, which is a public road where it traverses the Happy Trails Subdivision and a private easement road otherwise. There is presently one residence, several outbuildings, and corrals located on the property. Electricity and telephone service is available.

The soil on the property consists of equal proportions of 68D and 67B with a classification of IIIe. Since the land is not irrigated and since there are no water rights applicable to the property, there are no high value soils on the property. The land has no vegetation other than grasses.

No municipal services for domestic water or sewage disposal are available to the property. The property is located in the Riverside District, which contracts for fire protection with the City of Pendleton Fire Department.

The property is uniquely located between a rural residential subdivision and a wildlife refuge/reservoir. Developing the property to ten-acre parcels would serve as a good transition between the four-acre lots in the adjacent subdivision and the wildlife refuge. Establishment of four additional residences on the parcel would allow for more efficient and profitable use of the land which cannot be otherwise used for commercial farm purposes due to the location, slopes, and soils.

The property's close proximity to State Highway 395 facilitates energy conservation. The Comprehensive Plan and Buildable Lands

Inventory for the McKay Creek and McKay Reservoir, Area 3, Sub-Area E indicates that as of 1995 the area was built out at 61%. As of 2004, the area is almost entirely built out, with the adjacent Happy Trails Subdivision 100% built out.

Findings and Conclusions:

A. OAR 660-004-0020(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

OAR 660-004-0022(2) Rural Residential Development: A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area. For the reasons stated elsewhere in this section, the County finds that there is a strong market demand in Umatilla County for residential uses of the type allowed by the proposed rezone in this application. The County acknowledges, however, that OAR 660-004-0022(2) requires that approval of the application must be based not only on market demand, but on additional criteria set out in the rule.

The County finds that the criteria set out in the OAR 660-004-0022(2) are satisfied for the following reasons:

First, the market demand proven is not just a market demand for housing, but a demand for rural uses in farming and livestock on small ten acre parcels in association with housing and residential uses. Second, past urban and rural population patterns and distributions are continuing, and that the past distribution pattern for urban and rural populations that resulted in complete build-out of the four-acre and two-acre residential developments adjacent to the subject property will, therefore, continue and result in complete build-out of the rezoned area. Third, the housing type and cost characteristic of residences on the property is unique because an owner with a desire to pursue agricultural uses in conjunction with residential uses on smaller tracts can do so without making the much larger expenditure necessary for land zoned in larger tracts better suited for commercial agricultural use. The subject property is unique and better suited for rural residential use than are other lands zoned for resource use because

of its proximity to other such residential uses, its proximity to roads and utilities, and other public services, its proximity to the McKay Creek Reservoir and wildlife preserve, and its relative uselessness for commercial agricultural use due to soil type, location, size, and absence of irrigation water rights.

The exception is also supported by the following statement in the County's Comprehensive Plan (Technical Report), p B-31:

Lands near suburban and rural residential areas experience accelerated development pressures. Special measures are employed to lessen the burden on normal farming practices near residential development. . . . Identified rural residential designations should also aid in stopping needless conversion of valuable farm lands. Lot size minimums in rural residential areas should also compliment agricultural operation, generally requiring large lot minimums. In addition, less productive farm lands should be the first areas converted to rural residential development.

The exception will allow residential uses on unproductive farm lands in larger rural residential lot size with a minimum of ten acres and will thereby serve to ease the pressure to convert valuable farm lands to residential uses. *Bridges v. City of Salem*, 19 Or LUBA 373 (1990); *1000 Friends of Oregon v. Marion County*, 18 Or LUBA 408 (1989).

B. OAR 660-004-0020(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal:

1. OAR 660-004-0020(2)(a) Reasons why the state policy embodied in the applicable goals should not apply; For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 014, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

a. An inventory table was provided that showed Umatilla County private property land classifications with acreage and percentages. Based on these percentages, a determination was made that there is an insufficient number of parcels available for rural residential use in the County. Referencing an Oregon Outlook (April 2003) report, the number of households has increased more rapidly than the number of people in this state and county. Therefore, the demand for designated rural residential parcels is larger than the supply and the supply is not adequate to satisfy

the county's demand for the next 20 years. Data in the inventory table was obtained from the Umatilla County Planning Department and Umatilla County Assessment and Taxation computer records. Umatilla County has not reevaluated its 20-year supply of rural residential lands. The County Comprehensive Plan has not had a significant number of amendments to convert exclusive farm use land to rural residential land since the Plan was adopted in 1985. The Oregon Outlook report does not specifically address Umatilla County, but does provide a trend for the State of Oregon.

b. The second point as to why Goal 3 should not apply to this land involves a parcel size significance. There is a land value difference between larger acreage commercial-level farms and smaller acreage hobby-farms, even though both include farm use. It is not commercially feasible to operate a commercial level farm on 50 acres. Finally, rural residential areas cannot be provided in urban areas or on large resource tracts and the best use of the subject property would be rural residential/non-resource.

The subject property does not appear to have been utilized as a commercial farming operation due to its poor soils and slopes. Since the property has no water rights, both soil types are classified as non-high value soils. The RR-10 zone would continue to allow most agricultural uses and the minimum dwelling density would allow four additional single family dwellings.

c. Most of the parcels in the county currently designated for rural residential use, are assessed for farm deferral. This supports the popular desire for rural living and the practice of conducting small scale farming activities. Farm deferral assessment, however, provides little measure in determining the type or intensity of farm use or whether land should be classified as resource land or non-resource land.

d. Locating rural residential areas adjacent to areas where commercial farming is not possible will allow the continuation of the most economic management practices for resource production. Also, the local economic benefits from the use of the land for rural residential purposes outweighs the benefits that would be realized by a resource classification.

The subject property is located in a unique area adjacent to existing rural residential (non-resource) lands and a wildlife refuge/reservoir. The 10-acre minimum lot size would appear to be an adequate buffer and good transition between the two-four acre lots in the existing subdivisions and the refuge.

If the property is subdivided, the location of the potential four new dwellings should be considered to minimize any adverse impact to the wildlife refuge. The U.S. Fish and Wildlife Service, wildlife refuge management agency, were notified of this exception proposal. No comments were received in the public hearing approval process.

Establishment of four additional residences would not appear to have a significant impact to the area economy, but would allow for more efficient use of the land that could otherwise not be used for commercial farm purposes.

e. Geographic Location Factors: Fortunately, most of the County's rural residential parcels have, over the years, developed in specific areas that are associated either with the County's urban areas or with the County's transportation systems. This makes the task of defining and justifying rural residential areas much less difficult.

Tax Lot 100's close proximity to Highway 395 facilitates energy conservation. The location lying between Highway 395 and McKay Reservoir is much preferable to an otherwise random placement of rural residential uses in the rural area of the County.

In summary, the Goal 3 policies would not appear to apply to the subject property because the 51-acre property cannot operate as a commercial level farm. The sloping land and non-high value soils also contribute to this determination. The property, however, could operate in a similar capacity as smaller rural residential hobby farms if developed. This would allow a more efficient and better use of the land. The location of the subject property appears to be suitable for the proposed RR-10 zoning classification.

2. OAR 660-004-0020(2)(b) Areas that do not require a new exception cannot reasonably accommodate the use;

a. 660-004-0020(2)(b)(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;

The area for which the exception is taken is identified on Map C, Page XVIII - 335C. Application to alternative sites would include resource lands that are not irrevocably committed or physically developed and would require a full new exception to

statewide planning goals. There are no alternative areas that do not require a new exception.

b. 660-04-0020(2)(b)(B). To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be discussed:

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

This exception is justified because of demand for designated rural residential parcels in excess of the lands identified as committed lands. It is projected that the rural lands currently zoned for rural residential uses under committed exceptions will be inadequate to satisfy the small farm and rural residential growth demands for the next 15-20 years. The County's objective in satisfying this demand is not to encourage new small parcel rural development in areas that should be preserved for resource use, but rather to permit the development of those areas that have minimal resource use and will have minimal impact on resource use to accommodate the demand for rural residential growth.

The subject property is adjacent to rural residential developed and committed land identified in the County's Comprehensive Plan and Buildable Lands Inventory (1995) as McKay Creek-McKay Reservoir, Area 3, Sub-Area E. The County's Rural Residential Buildable Lands Inventory demonstrates that in 1995, the entire McKay Creek-McKay Reservoir, Area 3 (including all sub-areas) was built out at 61%. A review of the current rural addressing map indicates that the two subdivisions that make up Sub-Area E--Happy Trails Addition and Rancho Vista Addition--are mostly built out. Happy Trails Addition is 100% built out and Rancho Vista Addition is mostly built out. Some of the vacant lots in Rancho Vista Addition may not be buildable due to slope or size.

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



Zoning and comprehensive plan maps indicate there are no lands irrevocably committed to nonresource use in the surrounding area that could accommodate the use. The density of uses on the existing adjacent rural residential subdivisions cannot be increased without taking a Goal 14 exception. In addition, there are no urban services (sewer or water) that could support a higher density of development.

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

Land within an urban growth boundary (UGB) cannot be divided into large lot rural tracts to meet the demand for rural residential lifestyles. No evaluation of available land in the Pendleton UGB was presented. Rural Residential development is considered a rural use under Administrative Rule if the minimum lot size is not less than 10 acres. Therefore, the application of the RR-10 zoning to lands outside a UGB would be considered an allowed rural use. Since rural uses are allowed outside of urban growth boundaries, and the intent for having a UGB is to provide for a transition from urban to rural uses, it is not deemed appropriate to accommodate 10-acre rural residential lands as a rural use in a UGB. There are certainly some lands within urban growth boundaries in this county that contain larger acreage and some that contain rural uses as well. There is a need for the County to provide a supply of rural residentially designated lands outside a UGB based on the demand for this type of lifestyle in this County.

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

Yes. The proposed use is rural residential development that can be accommodated by individual on-site septic systems and wells. Since neighboring rural residential development has occurred without the provision of a public facility, it would seem reasonable that the limited amount of residential development that could occur with the exception could also be accommodated by individual on-site septic systems and wells. No public facilities are available in this area.

3. 660-004-0020(2)(c) The long-term environmental, economic, social and energy consequences resulting from the use at the site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.



The subject property has not been used for commercial agricultural purposes. Therefore, there would be no adverse consequences to economics resulting from the exception. A positive social and energy consequence is demonstrated by the demand for rural residential uses apart from cities and urban growth areas.

4. 660-004-0020(2)(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. Compatible is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

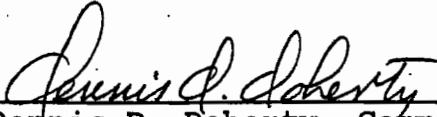
Land use compatibility with adjacent resource use was not determined to be a serious concern since the property is confined to a specific location between an existing nonresource area and a resource area.

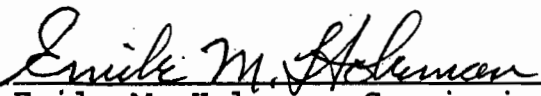
The addition of four possible dwelling sites would appear to be compatible with the existing adjacent subdivision. No adverse impacts were identified in the consideration of Factor 3, therefore no measures to mitigate impacts are identified with the consideration of Factor 4.

III. The Zoning Classification for the subject property is changed from Exclusive Farm Use (EFU-160 acre minimum lot size) to Rural Residential (RR-10 acre minimum lot size).

DATED this 25th day of January, 2005.

UMATILLA COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Dennis D. Doherty, Commissioner

  
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Emile M. Holeman, Commissioner

  
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William S. Hansell, Commissioner

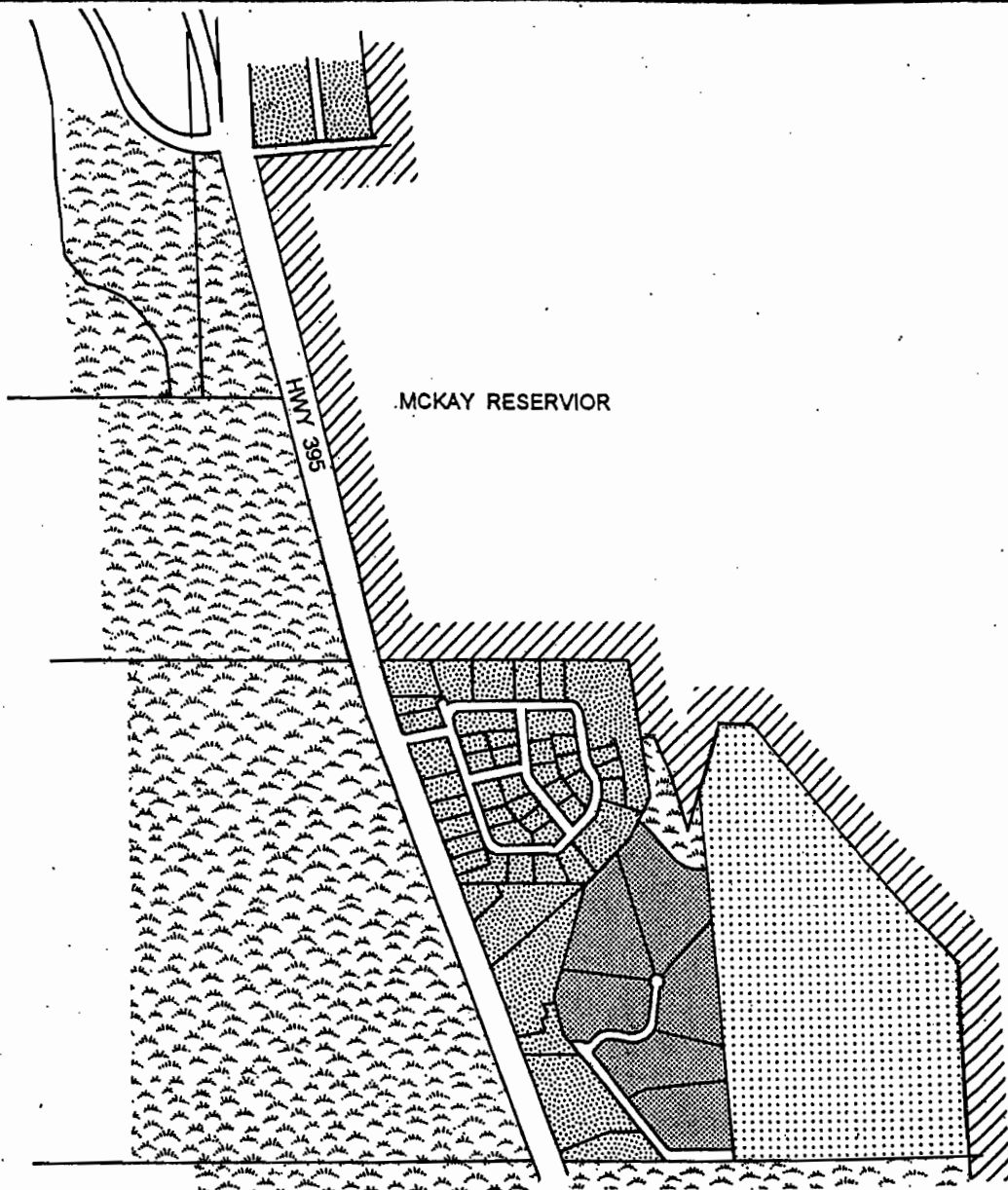


ATTEST:  
OFFICE OF COUNTY RECORDS

*Jean Hemphill*




Records Officer






**LEGEND**

**RURAL RESIDENTIAL PLAN DESIGNATION**

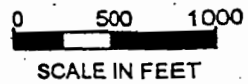
-  RR-2 (Rural Residential 2 acre minimum zoning classification)
-  RR-4 (Rural Residential 4 acre minimum zoning classification)
-  RR-10 (Rural Residential 10 acre minimum zoning classification)

**NORTH & SOUTH COUNTY AGRICULTURAL PLAN DESIGNATION**

-  EFU (Exclusive Farm Use 160 acre minimum zoning classification)

 **FEDERAL LAND**

**DWELLING**



**DEVELOPED & COMMITTED LAND**

**MCKAY CREEK - MCKAY RESERVOIR, AREA 3, SUB-AREA E**

