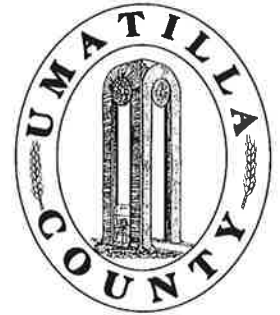


Umatilla County

Department of Land Use Planning



AGENDA

Umatilla County Planning Commission
Public Hearing
Thursday, February 26, 2015, 6:30 p.m.
Justice Center Media Room
Pendleton, OR

Members of Planning Commission

Randy Randall, Chair
Gary Rhinhart, Vice-Chair
John Standley
Tammie Williams
Don Wysocki
David Lee
Don Marlatt
Suni Danforth
Cecil Thorne

Members of Planning Staff

Tamra Mabbott, Planning Director
Carol Johnson, Senior Planner
Shane Finck, Planner

1. Call to Order

2. New Hearing:

CONDITONAL USE REQUEST #CUP-1244-15, High Desert Marine, Applicant/Property Owner: The applicant requests approval of a night watchman-caretaker dwelling on land identified as Tax Lot 1001 Map 5N 28 27B. The property is located on the south west intersection of Bensel Road and State Highway 395 approximately three miles north of the City of Hermiston, southeast of the City of Umatilla. The hardship dwelling standards of approval are found in the Umatilla County Development Code Retail Service Commercial Zone Section 152.247 (K), 152.615 and 152.616(X).

3. New Hearings:

NON-FARM DWELLING REQUEST LAND USE DECISION, #LUD-176-14, NF Land, LLC,
Applicant/Property Owner: The applicant requests approval of a non-farm dwelling on land identified as Tax Lot 102, Map 5N3622 and Tax Lot 902, Map 5N3623. The property is located on the north side of the North Fork of the Walla Walla River Road just east of the intersection with Powerline Road, approximately four miles southeast of the City of Milton-Freewater. The non-farm dwelling standards of approval are found in the Umatilla County Development Code Exclusive Farm Use Section 152.059 (K) (8), (10) & (11).

NON-FARM DWELLING REQUEST LAND USE DECISION, #LUD-177-14, NF Land, LLC,
Applicant/Property Owner: The applicant requests approval of a non-farm dwelling on land identified as Tax Lot 3300, Map 5N36. The property is located along the north side of the North Fork Walla Walla River Road approximately one mile east of the intersection with Powerline Road. The property is approximately five miles southeast of the City of Milton-Freewater. The non-farm dwelling standards of approval are found in the Umatilla County Development Code Exclusive Farm Use Section

4. Status of Appeals or Board actions.

Next Scheduled Meeting: *(location to be determined)*

Thursday, March 26, 2015, 6:00 p.m., Justice Center Media Room, Pendleton, OR *or*
Stafford Hansell Government Center, 915 SE Columbia, Hermiston, OR

Umatilla County

Department of Land Use Planning



NOTICE OF PUBLIC HEARING UMATILLA COUNTY PLANNING COMMISSION

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

YOU ARE HEREBY NOTIFIED as the applicant, adjacent property owner or affected governmental agency of a Public Hearing to be held before the Umatilla County Planning Commission on **Thursday, February 26 2015 at 6:30 p.m.** in Justice Center Media Room, 4700 NW Pioneer Place, Pendleton, OR.

CONDITONAL USE REQUEST #CUP-1244-15 High Desert Marine, Applicant/Property Owner: The applicant requests approval of a night watchman-caretaker dwelling on land identified as Tax Lot 1001 Map 5N 28 27B. The property is located on the south west intersection of Bensel Road and State Highway 395 approximately three miles north of the City of Hermiston, southeast of the City of Umatilla. The hardship dwelling standards of approval are found in the Umatilla County Development Code Retail Service Commercial Zone Section 152.247 (K), 152.615 and 152.616(X).

For further information concerning the above request, please contact Tamra Mabbott at the Umatilla County Planning Department, 216 SE 4th Street, Courthouse, Pendleton, Oregon 97801; telephone 541-278-6246; email tamra.mabbott@umatillacounty.net

Opportunity to voice support or opposition to the above proposal, or to ask questions, will be provided. Failure to raise an issue in a hearing, either in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to that issue, precludes appeal to the Land Use Board of Appeals based on that issue. Copies of applications, documents and evidence pertaining to the hearing listed above, and all relevant criteria are available for inspection at no cost and will be duplicated at printing cost. A copy of the staff report will be available for inspection or duplicated at least seven days before the hearing. Hearings shall be governed by Section 152.772 of the Umatilla County Land Development Code.

DATED THIS 12th day of FEBRUARY 2015
UMATILLA COUNTY DEPARTMENT OF LAND USE PLANNING

**UMATILLA COUNTY PLANNING DEPARTMENT
PRELIMINARY FINDINGS AND CONCLUSIONS
High Desert Marine CONDITIONAL USE PERMIT, # C-1244-15
Map # 5N 28 27B, Tax Lot # 1001, Account # 144876**

1. **APPLICANT:** Roderick and Carolyn McKenzie dba High Desert Marine, 32917 Bensel Road, Hermiston, OR 97838
2. **OWNER:** Roderick & Carolyn McKenzie, 32917 West Walls Road, Hermiston, OR 97838
3. **LOCATION:** The property is located on the southwest corner of the intersection of Highway 395 and Bensel Road approximately three miles north of the City of Hermiston. Situs address is 32917 Bensel Road.
4. **ACREAGE:** 3.83 acres
5. **COMP PLAN:** Industrial and Commercial
6. **ZONING:** Light Industrial (LI) and Retail, Service, Commercial (RSC)
7. **REQUEST:** To allow for a park model RV to be occupied by a caretaker/nightwatchman.
8. **BACKGROUND:** Mr. and Mrs. McKenzie have owned the business since 1980. A Park Model RV has been in place since that time. In Fall 2013 Code Enforcement county code enforcement staff conducted an in-depth review of zoning and solid waste compliance along Highway 395 North. As part of that process, it was discovered that the Park Model RV was never permitted. The McKenzie's were advised of options to bring the property into compliance with the county code. One option was to file a CUP application for a manufactured home. Another option was to discontinue use of the Park Model. The McKenzie's took the second option and have since filed this CUP to permit a caretaker dwelling.

Recently, Planning Commission engaged in a discussion about Park Model RV's, specifically whether they agreed the code definition clearly recognized them as a dwelling and, if they should be permitted outside of an RV Park. Planning Commission concluded generally that a Park Model RV was not equivalent to a dwelling and should not be permitted as such in a residential zone. However, Planning Commission agreed that a park Model RV could be used as a caretaker/night watchman structure in a commercial and industrial zone. The commission advised staff to move ahead with formal amendments to the code to clarify their interpretation.

Since the time the McKenzie's asked the occupant to leave the Park Model RV, they have been burglarized and robbed numerous times. This has caused a serious hardship on the business. The McKenzie's are considering selling the business and would like to resume use of the Park Model RV for security. At this point they would prefer not to invest in a more expensive manufactured home, especially given that the RV has functioned very well as a security measure, at least until the time it was no longer occupied at night.

8. **ACCESS & ROAD TYPE:** The property has an existing, direct access to Bensel Road, an asphalt county road.
9. **EASEMENTS:** No easements were noted on the application.
10. **LAND USE:** The property has a large retail store which offers marine supplies and service, fishing supplies, boat and snowmobile repair, ATV sales and canopies.
11. **ADJACENT LAND USE:** Adjoining land to the south is zoned light industrial and is the location of the Hermiston speedway race track. The parcel to the west is zoned Light Industrial with an Aggregate Resources Overlay Zone and has a sand and gravel operation. Land to the north is in the Umatilla Urban Growth Area and is zoned F1 with a commercial plan designation. Land to the east, across highway 395 is zoned industrial and contains vacant parcels and some parcels farther east developed with industrial uses.
12. **BUILDINGS:** The property has a shop building, pump house, storage shed and outdoor storage of inventory. The park model RV dwelling is currently located south of Bensel Road, in the location with the park model RV has been used for a night watchman for many years.
14. **UTILITIES:** Umatilla Electric provides electrical service and Sanitary Disposal provides garbage service to the property.
15. **WATER/SEWER:** There is an exempt well on the property that currently supplies water to the office. A septic system for the office is also located on the property. The manufactured home will share the existing well and use the existing septic system.
16. **IRRIGATION:** The property is not located within an irrigation district.
17. **FLOODPLAIN:** The property is not located within a flood hazard area.
18. **PROPERTY OWNER & AGENCY NOTICES SENT:** February 12, 2016
19. **COMMENT DUE DATE:** Planning Commission Hearing February 26, 2015
20. **AGENCIES:** Department of Environmental Quality, State Building Codes Agency, State Water Resources, Umatilla County Assessor, Umatilla County Public Works, Hermiston Rural Fire District, Umatilla Rural Fire District.
21. **COMMENTS:** No comments submitted to date.
22. **STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE. In the Light Industrial Zone, a caretaker dwelling is allowed with A CONDITIONAL USE PERMIT. 152.303(1).** The applicant has filed for a conditional use permit.

§ 152.616 (X) STANDARDS FOR REVIEW FOR CONDITIONAL USES:

(X) Dwellings (as an accessory use) for the owner or operator of each existing permitted use.

(1) If a mobile home is to be used, the mobile home shall be skirted and set up to have the appearance of a residential dwelling;

The park model RV has been used as a caretaker night watchman residence for many years. It is skirted and set up to look semi-permanent and has the appearance of a residence. The location of the manufactured home will be approximately where the RV was set up.

(2) A yard area, including landscaping, shall be maintained around the dwelling;

There is an existing parking area and lighting.

(3) Any mobile home used as an accessory dwelling shall be removed within 30 days after the principal use on the property ceases;

This shall be included as a condition of approval.

(4) Complies with other conditions necessary as provided in § 152.615.

See 152.304 below.

§ 152.304 LIMITATIONS ON USES IN THE LIGHT INDUSTRIAL ZONE.

(A) All business, commercial and industrial activities, and storage allowed in an LI, Light Industrial, Zone shall be conducted wholly within a building or shall be screened from view from adjacent public roads or surrounding properties in farm, residential or commercial zones, unless the entire activity is conducted more than 500 feet from said surrounding property or road. Outdoor storage of farm and forest products or equipment shall not be subject to this limitation;

The existing business is conducted primarily within the large shop. Outdoor storage of boats, canopies and other supplies is outside of the building within the fenced area. This outside storage has been part of the business since the business was established in the 1970's. A Park Model RV has been used as a night watchman dwelling since 1980.

(B) All off-street loading areas shall be screened from view if adjoining properties are in a residential zone; There is adequate parking in front of the Retail Store. Parking for the Park Model RV occupant will be next to the structure.

(C) All noise, vibration, dust, odor, smoke, appearance or other objectionable factors involved in any activity shall comply with appropriate state and federal regulations.

The caretaker dwelling will not create any objectionable activity relative to noise, vibration, dust, odor, smoke or appearance.

§ 152.615 ADDITIONAL CONDITIONAL USE PERMIT RESTRICTIONS

In addition to the requirements and criteria listed in this subchapter, the Hearings Officer,

Planning Director or the appropriate planning authority may impose the following conditions upon a finding that circumstances warrant such additional restrictions:

(A) Limiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such environmental effects as noise, vibration, air pollution, glare or odor. The dwelling and the occupants of the dwelling will not produce excess noise, vibration, or glare or odor. Additional conditions are not imposed. Therefore, restricting hours of operation is not necessary and additional conditions are not imposed.

(B) Establishing a special yard, other open space lot area or dimension. The applicant's site plan shows the area proposed to be used for the manufactured home. The east side of the property will be an open area.

(C) Limiting the height, size or location of a building or other structure. No other structures are proposed. Additional conditions to limit the height, size or location of a building or structure are not imposed.

(D) Designating the size, number, location and nature of vehicle access points. There is an existing access to the property from Bensel Road.

(E) Increasing the required street dedication, roadway width or improvements within the street right of way. Bensel Road is a 60' wide county right-of-way and therefore the application complies with County TSP access easement width requirement.

(F) Designating the size, location, screening, drainage, surfacing or other improvement of a parking or loading area. The applicant has provided a site plan depicting the approximate location of the manufactured home. Where there are no water rights on the property, landscaping is not proposed.

(G) Limiting or otherwise designating the number, size, location, height and lighting of signs. No signage is proposed for the dwelling. Therefore this standard is not applicable.

(H) Limiting the location and intensity of outdoor lighting and requiring its shielding. No new lighting is proposed, except for standard lighting for a residence. Any outdoor lighting must be directed away (shielded) from residential neighboring properties and is an imposed condition.

(I) Requiring diking, screening, landscaping or other methods to protect adjacent or nearby property and designating standards for installation and maintenance. The property is zoned industrial and commercial. The Park Model RV is located primarily within the industrial zone. It is also located inside a tall, fenced area. Screening and diking is not necessary. The property is currently fenced around the perimeter.

(J) Designating the size, height, location and materials for a fence. The fence around the parcel is constructed of noncombustible chain link fencing material. Additional conditions for fencing are not imposed.

(K) Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources. The property is zoned commercial and light industrial and has no irrigation water rights. The area is devoid of vegetation, has no water rights, wildlife habitat or other significant natural resources. An exempt well located on the property will be used for potable water. Therefore, since there are no significant natural resources present on the property, further limitations through conditions requiring additional protection and preservation are not necessary.

(L) Parking area requirements as listed in §§ 152.560 through 152.562 of this chapter. Parking requirements for industrial uses are linked to the square footage of a (business) building's public space and the number of employees. The proposed caretaker dwelling is not a building with public space. However, parking would be necessary for residents of the dwelling. Parking area for occupant of the dwelling is adjacent to the Park Model RV and is also within the security fence area.

DECISION: BASED UPON THE ABOVE STATED FINDINGS AND CONCLUSIONS, THIS REQUES MAY BE APPROVED AND IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

Precedent Conditions:

1. Provide a site plan showing the location and setback (from property lines) of the Park Model RV, parking area for occupants of the dwelling, exterior lighting for the dwelling and landscaping if proposed.
2. Obtain a zoning permit from Umatilla County Planning Department.
3. Applicant shall be responsible to comply with all appropriate State permits including, but not limited to, those from Department of Environmental Quality and State Building Codes.

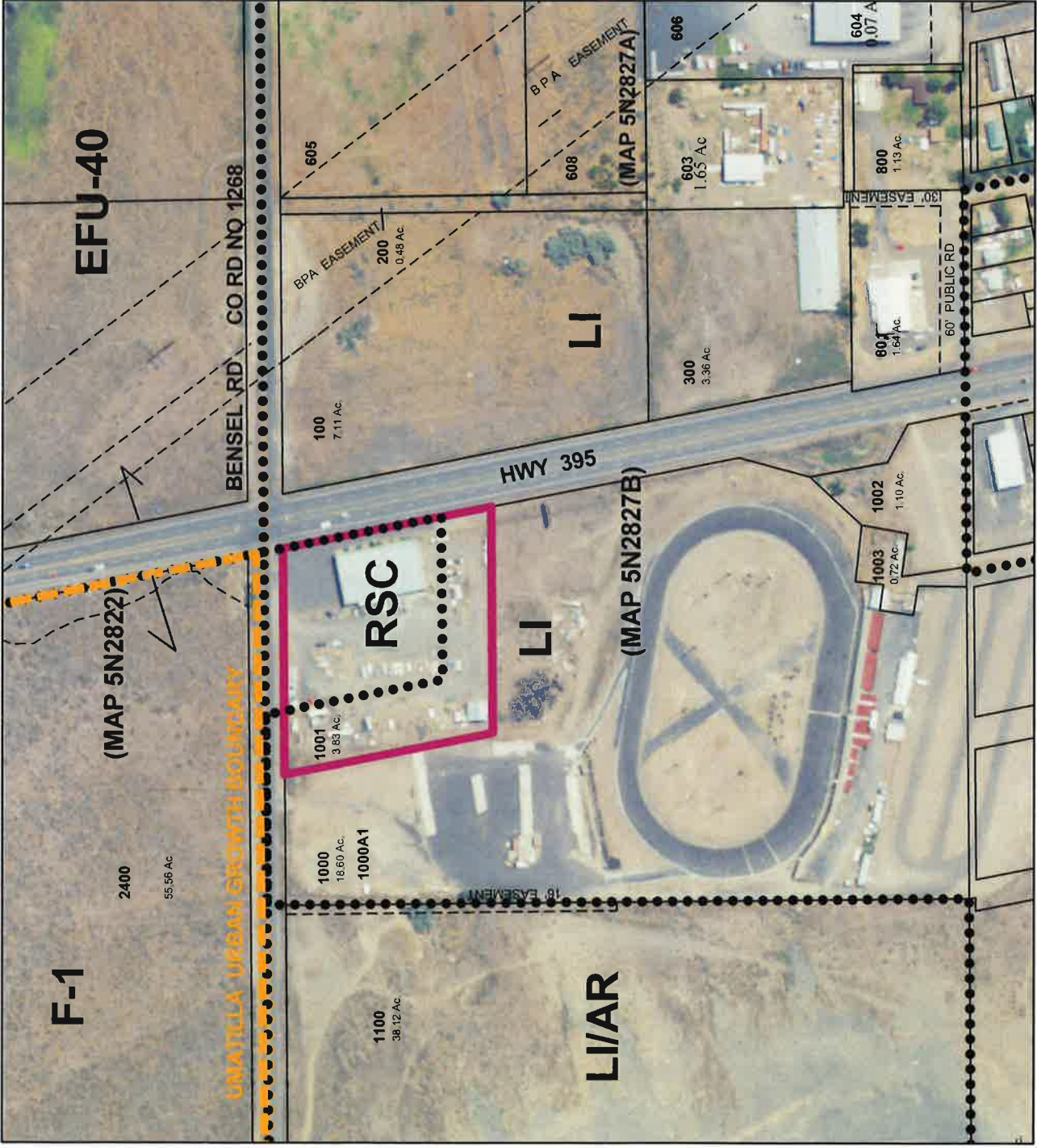
Subsequent Conditions:

4. Construction of any signs shall comply with the County Sign regulations in Sections 152.545 through 152.548.
5. The Park Model RV shall only remain as a secondary use to the business and shall be removed within 60 days of the date the business ceases operations.

UMATILLA COUNTY PLANNING DEPARTMENT

Dated _____ day of _____, 2015

Randy Randall, Chairman
Umatilla County Planning Commission



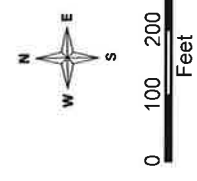
CONDITIONAL USE REQUEST #C-1244-15
 HIGH DESERT MARINE/ROD MCKENZIE, APPLICANT/OWNER
 MAP 5N2827B, TAX LOT 1001

Subject Parcel

2014 AERIAL PHOTO

PROPERTY OWNERS WITHIN
 NOTICE OF SUBJECT PARCEL

- MAP 5N2822
- 2400 USA BUREAU OF LAND MGT
- MAP 5N2827A
- 605 A & K INDUSTRIAL DEVELOPMENT LLC
- 608 A & K INDUSTRIAL DEVELOPMENT LLC
- MAP 5N2827B
- 100 GARY HUGHES, L.L.C.
- 200 MEDELEZ BENITO JR ET AL (AGT)
- GARY HUGHES L.L.C.
- 300 MEDELEZ MARIA L (AGT)
- GARY HUGHES L.L.C.
- 1000 MEDELEZ MARIA L (AGT)
- SATKO PEGGY
- TARR BRYCEN AGT
- 1000A1 JR ZUKIN CORP
- DBA MEADOW OUTDOOR ADVERTISING
- 1001 MCKENZIE RODERICK J & CAROLYN
- 1002 PARKINS VAUGHN E & TAMARA R
- 1003 SATKO PEGGY
- TARR BRYCEN AGT
- 1100 LOGSDON NORRIS

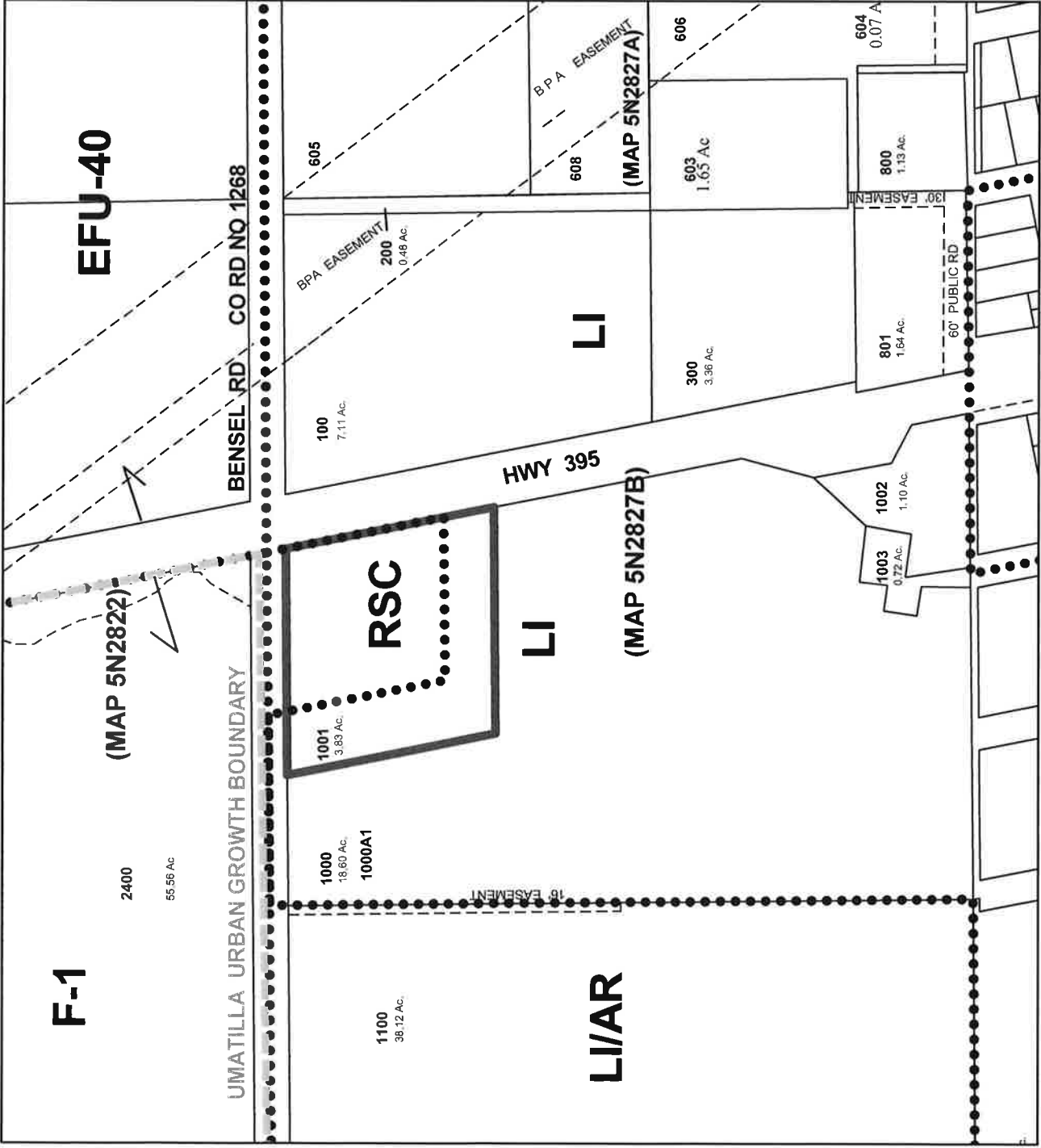


DATE: 2/3/15

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PROPERTY OWNERS WITHIN
NOTICE OF SUBJECT PARCEL

- MAP 5N2822
2400 USA BUREAU OF LAND MGT
- MAP 5N2827A
605 A & K INDUSTRIAL DEVELOPMENT LLC
608 A & K INDUSTRIAL DEVELOPMENT LLC
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GARY HUGHES L.L.C.
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TARR BRYCEN AGT
1000A1 JR ZUKIN CORP
DBA MEADOW OUTDOOR ADVERTISING
1001 MCKENZIE RODERICK J & CAROLYN
1002 PARKINS VAUGHN E & TAMARA R
1003 SATKO PEGGY
TARR BRYCEN AGT
1100 LOGSDON NORRIS



CONDITIONAL USE REQUEST #C-1244-15
HIGH DESERT MARINE/ROD MCKENZIE, APPLICANT/OWNER
MAP 5N2827B, TAX LOT 1001

Subject Parcel

DATE: 2/3/15

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NF LAND, LLC LAND USE DECISION, #LUD-176-14
FEBRUARY 26, 2015
PLANNING COMMISSION HEARING
PACKET LIST

1. Staff Memo to PC, pages 1 & 2
2. Property Vicinity Map, page 3
3. Applicant's Site Plan Map, page 4
4. 2000-acre Impact Study Area Map, page 5
5. Staff Report-Preliminary Findings, pages 6-15
6. Application for a Permit to Use Ground Water, pages 16-34
7. OWRD Proposed Final Order Water Rights Application No. G-17604, pages 35-49
8. OWRD Comment Letter from Greg Silbernagel, Watermaster, District 5, and NF Land LLC, Application Map for Permit to Use Groundwater, pages 50 & 51
9. Comment Letter from Jim O'Connell, Caprine, page 52 & 53
10. Comment Letter from NF Land LLC, by Sam Hobson, Member, page 54
11. Staff's 21-day Letter and P-1 Road Standard Diagram, pages 55-60
12. OWRD Letter from Greg Silbernagel, Watermaster, District 5, and OWRD Final Order Water Rights Application No. G-17604, pages 61-63
13. Additional Justification (letter), from Attorney Patrick Gregg, for NF Land, LLC Land Use Decision, Non-farm Dwelling Applications, pages 64-67

Umatilla County

Department of Land Use Planning



February 18, 2015

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

MEMO

To: Umatilla County Planning Commissioners
From: Carol Johnson, Senior Planner
Re: February 26, 2015, Planning Commission Hearing,
NF Land, LLC, Applicant/Property Owner
Land Use Decision, #LUD-176-14
Tax Lot 102, Map 5N 36 22 and Tax Lot 902, Map 5N 36 23
Land Use Decision, #LUD-177-15
Tax Lot 3300, Map 5N 36
cc: Doug Olsen, County Counsel
Tamra J. Mabbott, Planning Director

Sam Hobson, managing partner of NF Land, LLC, has requested approval of two non-farm dwellings on lands owned along the north side of the North Fork Walla Walla River Road. Non-farm dwelling approvals are processed through a Land Use Decision application and typically follow an administrative review process consisting of public notice followed by a comment period with the opportunity to request a public hearing. The Land Use Decisions for the NF Land requests followed the administrative process.

During the 21-day comment period the Planning Department received comments from the applicant, an adjacent notified property owner and from Oregon Water Resources, a notified public agency. These comments raised staff's concerns about NF Land satisfying certain non-farm dwelling approval standards in Umatilla County Development Code (UCDC) Section 152.059 (K) (8), (10) & (11) as follows:

1. The non-farm dwellings must satisfy the requirement that "the dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use."

Potential impacts identified by the neighboring farming operation will need to be addressed by additional justification satisfying that the non-farm dwellings will not significantly change or increase the cost of accepted farming practices on nearby lands.

1

2. Additional justification is necessary to satisfy the stability standard on whether the cumulative impacts from non-farm dwellings make it more difficult for farm uses in the area to continue, due to diminished opportunities to expand, purchase or lease farmland.
3. The proposed non-farm parcels are within the 500+ acres benefitting from water rights within the OWRD Proposed Final Order. This presents difficulties about how the proposed non-farm dwellings satisfy whether the non-farm dwellings would be on land generally unsuitable for farming. Therefore, provide additional justification on why the proposed non-farm parcels are unsuitable for farming, in light of OWRD's Proposed Final Order.

Staff concluded that the NF Land, LLC application requests should be directed to the Planning Commission for Final Decisions. To assist the Planning Commission in making these decisions the Commissioners' packets include, in part: vicinity maps, the staff report-preliminary findings, comment letters, water rights information, correspondence, and additional justification submitted by Patrick Gregg, the applicant's attorney. The Planning Commission decision to approve, or deny, the NF Land, LLC land use requests must be supported by facts the Planning Commission believes, and relies upon, to prepare the Final Findings and Conclusions.

PROPERTY OWNERS WITHIN 750' NOTICE
AREA FROM SUBJECT PARCELS

MAP 5N36

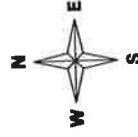
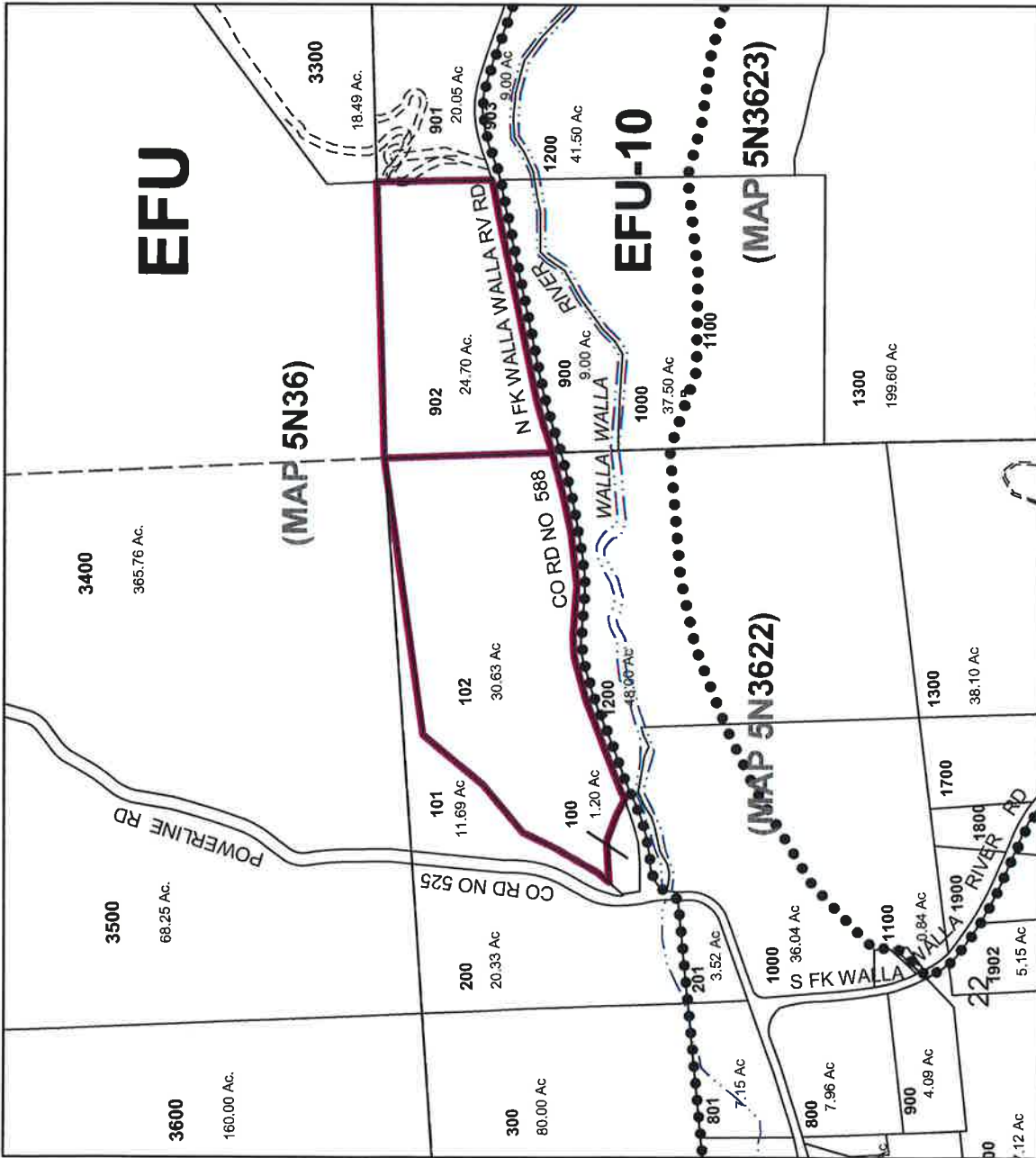
- 3300 NF LAND LLC
- 3400 WEISSENFLUH MARILYN
- 3500 FEDERAL LAND BANK OF SPOKANE
- LEE PATRICIA(TRS) ETAL (AGT)

MAP 5N3622

- 100 BLUE MOUNTAINS LLC
- 101 C/O NF LAND LLC
- 102 WEISSENFLUH MARILYN
- 200 NF LAND LLC
- FEDERAL LAND BANK OF SPOKANE
- 201 LEE PATRICIA (TRS) ETAL (AGT)
- 300 LANE TERRI L & JACK R
- FEDERAL LAND BANK OF SPOKANE
- 801 LEE PATRICIA (TRS) ETAL (AGT)
- 1000 HALLMARK PARVIN L & ELLEN M (TRS)
- 1200 BULLOCK LOREN G (3/4) & BULLOCK JERRY (1/4)
- BULLOCK LANCE

MAP 5N3623

- 900 AFDAHL BRIAN
- 901 CAPRI WALLA WALLA LLC
- 902 NF LAND LLC
- 903 LANE DAN J & DANA
- 1000 BULLOCK LANCE D & DARCY
- 1100 BULLOCK LANCE D & DARCY J
- 1200 KNIFONG DANIEL & PAMELA



DATE: 11/17/14

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LAND USE DECISION #LUD-176-14
NF LAND LLC, APPLICANT/OWNER
MAP 5N3622, TAX LOT 102 & MAP 5N3623, TAX LOT 902

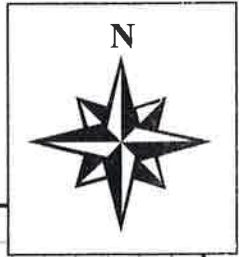
SUBJECT PARCELS



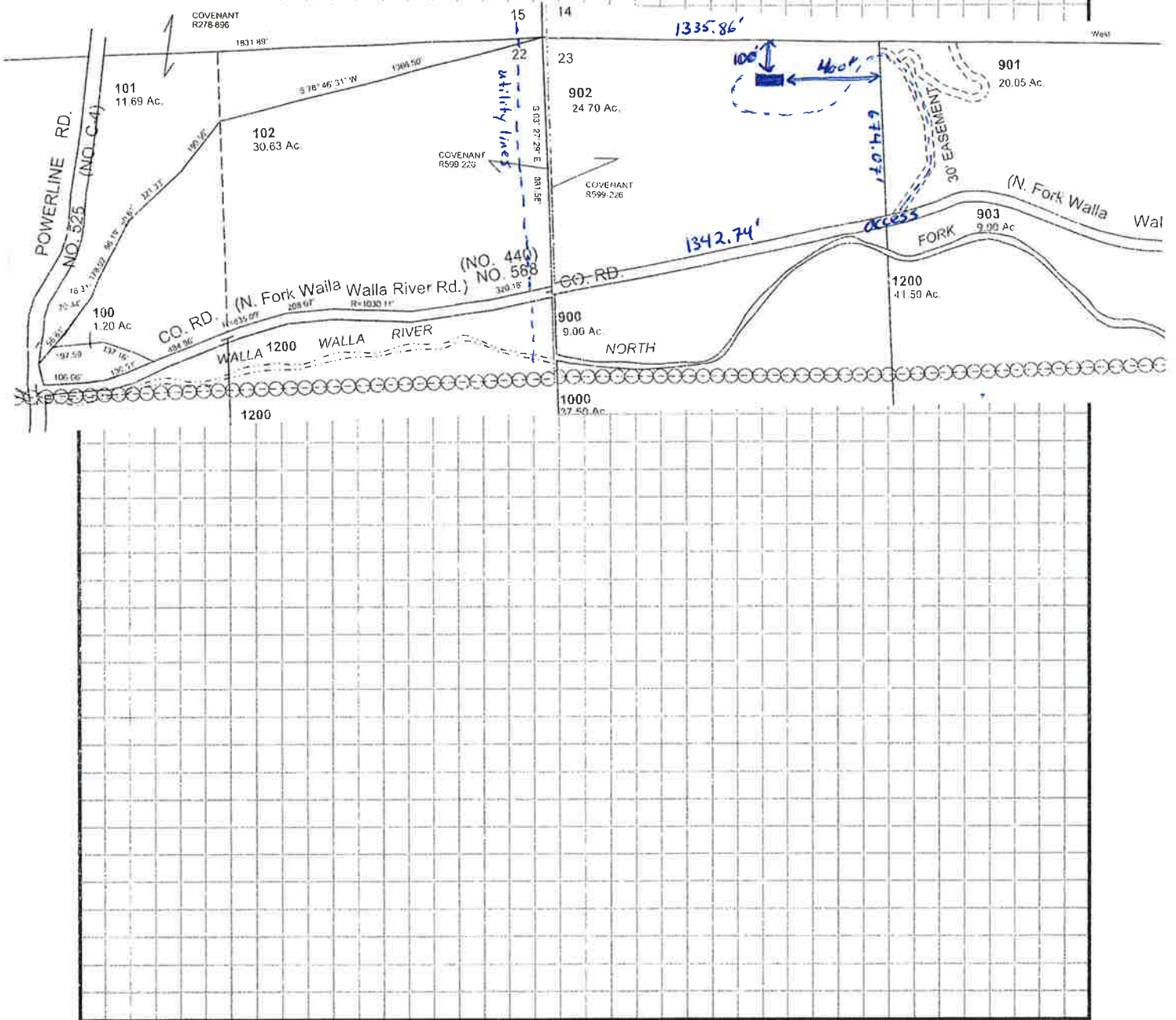
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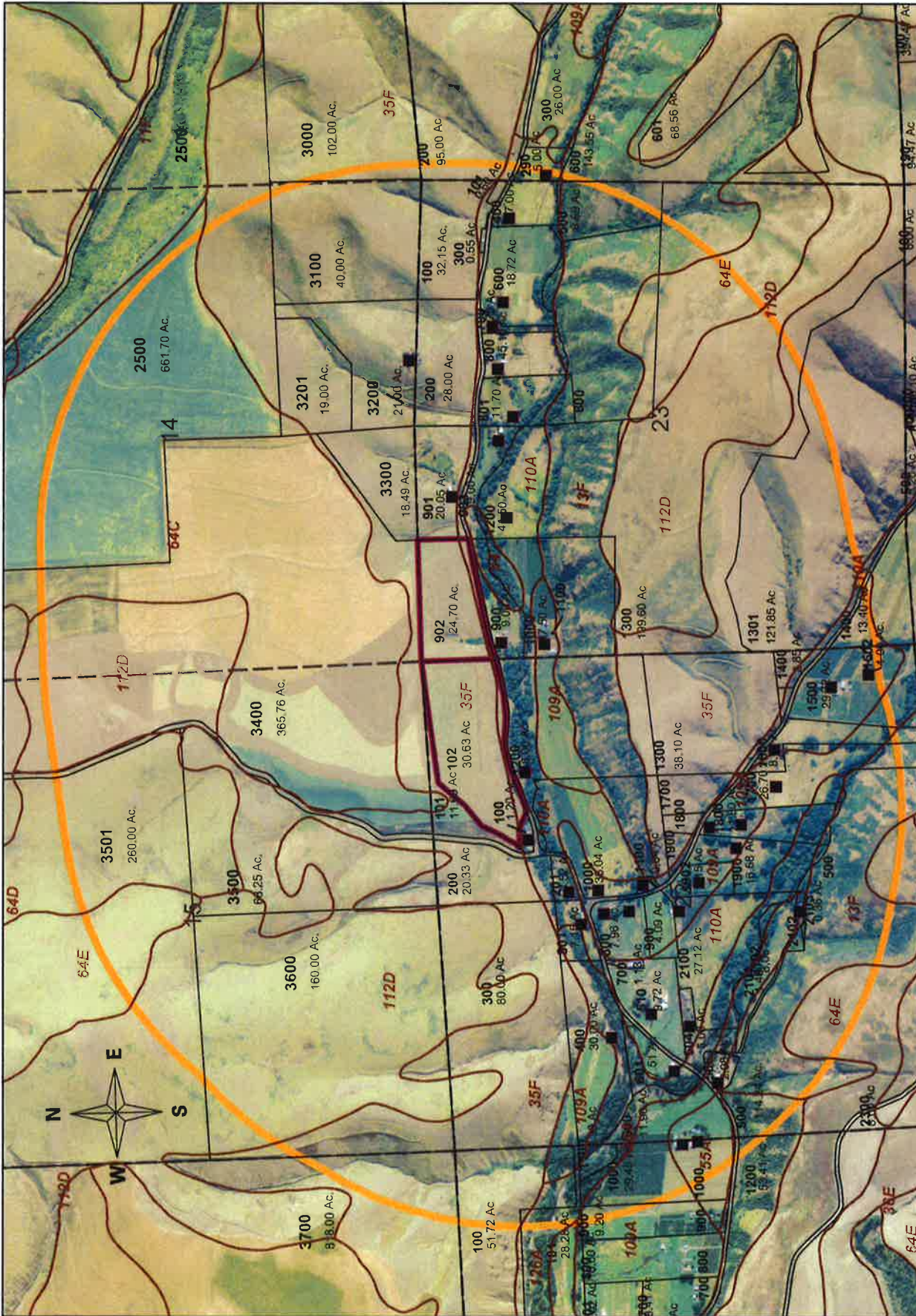
Exhibit B, "Site Plan"

Please include the details listed under item (c) found in Section 4 (on preceding page)



Scale: 1" = 400'
Location and dimensions for dwelling and driveway are approximate





**NF LAND LLC, 2000 AC. IMPACT STUDY AREA
MAP 5N3622 TAX LOT 102 & 5N3623 TAX LOT 902**

- SUBJECT PARCELS
- 2000 ACRE TEMPLATE AREA
- PARCELS
- SOIL BOUNDARY
- DWELLING



2012 AERIAL PHOTO
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**UMATILLA COUNTY PLANNING DEPARTMENT
PRELIMINARY FINDINGS AND CONCLUSIONS
NF LAND LLC NON-FARM DWELLING
LAND USE DECISION REQUEST #LUD-176-14
MAP #5N 36 22, TAX LOT #102, ACCOUNT #164885, and
MAP #5N 36 23, TAX LOT 902, ACCOUNT #134194**

1. **APPLICANT:** NF Land, LLC, Sam Hobson, 2885 Sanford Avenue SW 321711, Grandville, MI 49418-1342
2. **OWNER:** Same as above.
3. **REQUEST:** In 1991 and again in 2008 the subject property was approved for a non-farm dwelling. Both the 1991 and the 2008 non-farm dwelling approvals were never completed or developed by the then property owner. The 2008 approval time period recently lapsed and the current applicant/property owner has applied once again for approval of a non-farm dwelling. (The applicant also is pursuing a second application for a non-farm dwelling on a parcel located to the northeast.)
4. **LOCATION:** The property is located on the north side of the North Fork of the Walla Walla River Road approximately 5 miles to the southeast of the City of Milton-Freewater.
5. **SITUS**
/ADDRESS: The property is undeveloped and an address has not been issued at this time.
6. **PARCEL**
ACREAGE: Tax Lots 102 and 902 = 55.33 acres.
7. **TAX CODE:** The Tax Code is assigned by the County Tax Office. Each Code Area has various taxing rates depending upon the services provided. The Tax Code for this parcel is 07-07, which has the following taxing definitions: General County, Umatilla Co Bond, School District #7 Milton Freewater, Education Service District (ESD), BMCC, BMCC Bond, Port Of Umatilla, Cemetery District 3 Milton-Freewater and the Umatilla Special Library District.
8. **COMP PLAN:** North/South Agricultural Region Plan Designation.
9. **ZONING:** Exclusive Farm Use (EFU, 160-acre minimum)
10. **ACCESS:** Access is from North Fork Walla Walla River Road. A county road approach permit will need to be verified or obtained for access to the county road.

11. **ROAD TYPE:** North Fork Walla Walla River Road, County Road No. 588, is a paved two lane county road.
12. **EASEMENTS:** No other easements were listed on the application.
13. **LAND USE:** The subject property is zoned EFU but limited for farm production.
14. **ADJACENT USE:** Properties farther to the north are primarily planted in grains. The property immediately to the east is planted in wine grapes. Along the river and county road are parcels in tree fruit, hay and pasture.
15. **SOIL TYPES:**
The applicant's property proposed for the non-farm dwelling has no irrigation water rights and consists of the following non high-value soil type:

Map Unit	Description	Land Capability Class	
		Dry	Irrigated
35F	Gwin-Rock outcrop complex, 40 to 70 percent slopes	VIIc	---

The study area consists of the following list of soil types:

Map Unit	Description	Land Capability Class	
		Dry	Irrigated
112D	Waha silty clay loam, 12 to 25 percent slopes	IVe	---
64E	Palouse silt loam, 20 to 35 percent slopes	VIe	---
35F	Gwin-Rock outcrop complex, 40 to 70 percent slopes	VII	---
110A	Veazie cobbly loam, 12 to 25 percent slopes	IVs	IIIc
84	Riverwash	VIIIw	---
109A	Venzie silt loam, 0 to 3 percent slopes	IVs	IIc
13F	Buckcreek-Gwin Association, 45 to 70 percent slopes	VIIe	---
128A	Yakima silt loam, 0 to 3 percent slopes	IVs	IIc
126A	Xerofluvents, 0 to 3 percent slopes	VIIw	---
55A	Mondovi silt loam, 0 to 3 percent slopes	IIc	I

Soil Survey of Umatilla County Area, 1989, NRCS. The suffix on the Land Capability Class designations are defined as "e" – erosion prone and "c" climate limitations (Survey, page. 172).

16. **BUILDINGS:** There are no buildings on the property.
17. **UTILITIES:** The area is served by Milton-Freewater Power for electrical power, and

Century Link for telephone service.

18. WATER/

SEWER: The subject property is not currently developed with a domestic well or septic system.

19. RURAL FIRE: The property is not within a taxed fire district but has the option to subscribe to the Milton-Freewater Fire Department.

20. IRRIGATION: There are no irrigation water rights on the property.

21. FLOODPLAIN: The property is not located within a Special Flood Hazard Area.

22. PROPERTY OWNERS

AND AGENCIES NOTIFIED: February 4, 2015

NOTIFIED AGENCIES: Department of Environmental Quality, DLCD, Oregon Department of Water Resources, Oregon Department of Ag, Umatilla County Assessor, Umatilla County Road Department, Walla Walla Watershed, City of Milton-Freewater Power and Century Link

23. PLANNING COMMISSION HEARING DATE: February 26, 2015

24. COMMENTS RECEIVED: Three comments were received during the administrative review, 21-day comment period. The first comment received was from notified property owner and neighbor Jim O'Connell of Capri Vineyard. Due to the area's proximity to wildlife it is necessary for the Capri property to have a high fence around the perimeter of the vineyard to prevent deer from entering the property and eating grape leaves and fruit. Mr. O'Connell acknowledged that the applicant has a right of access to the properties through his property but his big concern is about an increase in vehicle trips resulting from the approval of the dwelling requests. It is his belief that the proposed dwellings will result in more vehicle trips across his vineyard property and increase the risk of crop loss to his farming operation as a result of access gates being left open.

A second comment was received from a notified agency, the Oregon Department of Water Resources (OWRD). The comments from District 5 Watermaster, Greg Silbernagel, are informational. The OWRD comment letter includes a copy of the map submitted with the applicant's 2012 water rights application. According to OWRD the 2012 water rights application requests development of 15 wells. The map submitted with the OWRD application shows the NF Land, LLC properties along the North Fork Walla Walla River Road and includes the parcels now proposed for consideration as non-farm dwelling parcels. OWRD issued a Proposed Final Order on November 4, 2014, to allow up to 6.74 [6.47] cfs. The protest period for the Proposed Final Order ended on December 19, 2014, with no protests filed. The Final Order will allow up to 14 [15] wells on 517.9 acres and includes the properties considered for non-farm status.



Comments were received from the applicant requesting clarification of a non-farm dwelling approval timeline and an amendment to Precedent Condition 3 to change certain access road improvements.

In response to these comments the NF Land, LLC, Land Use Decision, #LUD-14-176, is directed to the Umatilla County Planning Commission for Final Decision.

25. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE FOR LAND USE DECISIONS, The criteria to establish a Non-Farm Dwelling in the EFU Zone are found in Section 152.059 (K)(8), *Non-Farm Dwelling*. The following applicable standards are indicated by underlined text, responses follow in standard text.

§ 152.059 LAND USE DECISION

In an EFU zone the following uses may be permitted through a land use decision via administrative review (§152.769) and subject to the applicable criteria found in §152.617. If approved, a county zoning permit (§152.025) is required to finalize the decision.

(K) DWELLINGS.

The following permanent, single family dwellings may be authorized in an EFU zone. The dwellings may be conventional “stick built,” modular homes, manufactured homes or mobile homes meeting the definition of a dwelling and the standards in §152.013(B)(5). All farm dwelling applications are subject to review and comment by the Department of Land Conservation and Development. Permits for dwellings approved under this section are valid for four years. A permit extension for an additional two years may be obtained.

(8) *Non-farm dwelling.* A non-farm dwelling permitted in ORS 215.284 and subject to the following criteria:

- (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
- (b) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land considerations, drainage and flooding, vegetation, location and size of tract.
 - (i) A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and
 - (ii) A lot or parcel or portion of a lot or parcel is not generally unsuitable simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not generally unsuitable. A lot or parcel or portion of a lot or parcel is presumed to be suitable if it is composed predominately of Class I - VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

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(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not generally unsuitable simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not generally unsuitable. If a lot or parcel is under forest assessment, it is presumed suitable if, in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

The largest commercial farming occurring within the 2,000 acre impact study area consists of growing grain crops north of the subject property on less severe slopes. In addition there are tree fruits, grapes and some hay and pasture areas mainly along the river where there are better soils and irrigation water is available.

Farming practices and activities for growing grain crops typically include cultivation, seeding, fertilizing, weed spraying, and harvesting of crops, which commonly includes the use of farm equipment such as tractors, spray attachments, and machinery and trucks for harvest. These farming practices occur at specific times of the year and not necessarily on a daily basis. The applicant's parcel is comprised of slopes of between 40 to 70 percent and therefore, due to steep slopes and poor soil quality the parcel has not been in farm production. (These soil conditions exist on the other steep south facing hill sides nearby.)

The area on the parcel where the applicant believes a dwelling could be developed is an area that is flat compared to the rest of the parcel. Access to the property and possible dwelling site is provided by an existing access easement extending from the county road across the Capri property. Under the Rules a parcel or portion of a parcel is presumed to be suitable for farming if composed predominately of Class I - VI soils; likewise a parcel containing Class VII soils is presumed to be unsuitable. The applicant's entire parcel is comprised of Class VII soils and lacks irrigation water. Therefore, the applicant's proposed non-farm dwelling would be situated upon a parcel that is generally unsuitable land for the production of farm crops and livestock, considering terrain, and adverse soils. For these reasons the Umatilla County Planning Department finds that the criteria are met.

(Lands managed for forest use occur farther to the east at higher elevations than the subject property. Therefore, it is reasonable to believe that changes in forest practices or an increase in the cost of forest practices would not occur.)

- (c) The dwelling will not materially alter the stability of the overall land use pattern of the area;
 - (i) In determining whether a proposed non-farm dwelling will alter the stability of the overall land use pattern of the area, a county shall consider the cumulative impact of

non-farm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in § 152.059 (K) (10) (OAR 660-033-0130 (4)(a)(D).) If the application involves the creation of a new parcel for the non-farm dwelling, a county shall consider whether creation of the parcel will lead to creation of other non-farm parcels, to the detriment of agriculture in the area by applying the standards (impact test) set forth in § 152.059 (K) (10). See the impact test in Section 152.059 (K) (VIII) below.

(ii) The dwelling complies with such other conditions as the governing body or its designate considers necessary. See the proposed conditions, listed below.

(d) New easements, private roads or public right-of-ways, must meet at a minimum, the Option 1 design standard as depicted in the County Transportation Plan Figure 7-2A (30 foot right of way with 16 foot travel lane). Whenever possible, new roads should not be placed upon agricultural land as defined by prior policies; The applicant's plan shows an access easement road across the neighboring property to the east that provides legal access to a site on the property proposed for the non-farm dwelling. The applicant shall verify the access easement road meets the Option 1 design standard.

(e) The parcel upon which a non-resource dwelling is located and being valued at true cash value for farm use under ORS 308.370 shall meet the requirements in ORS 215.236, including but not limited to:

- (i) The site shall be disqualified for farm deferral; and
- (ii) The tax penalty shall be paid prior to final approval;

Disqualification of the parcel from the farm deferral tax program is an approval requirement. County Planning finds that the Precedent Condition requiring the subject parcel to be disqualified from the farm deferral program and the tax penalty paid satisfies the criterion.

(f) If the non-farm dwelling site is being created by a land division, the parcel shall comply with the access, improvement requirements, and follow the procedures for land divisions set forth in §§ 152.640 through 152.739, and shall comply with the applicable dimensional standards of § 152.063; This standard is not applicable. The applicant is not proposing a land division.

(g) If the request involves the creation of a new parcel containing historic property as defined in ORS 358.480, the original parcel may be reduced below the minimum lot size standard, including an 11% standard deviation; This standard is not applicable. The request does not involve the creation of a new parcel containing historic property

(h) Sign and record a Covenant Not to Sue as provided in § 152.059(K)(11); See § 152.059(K)(11) addressed below.

(i) The dwelling will be sited on a lot or parcel created before January 1, 1993; The Deed records show the parcel was established prior to 1993. The County Planning Department finds that the criterion is met.

- (j) If a single-family dwelling is established on a lot or parcel as set forth in § 152.059 (K) (3) or (4), Lot of Record Dwelling, no additional dwelling may later be sited under the provisions of this sub-section. Not applicable. There have been not been previous dwellings established through approval as a Lot of Record Dwelling. The County Planning Department finds that the criterion does not apply.

(K)(10) Impact Test.

In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated.

(a) The county shall identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural area. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non resource uses shall not be included in the study area.

Study Area Description

The study area is comprised of 2000 acres which includes the lands within an approximate one mile radius of the subject parcel. Most of the parcels are large parcels consisting of hundreds of acres. Additionally, along the North Fork of the Walla Walla River are smaller farm parcels many developed with homes and pastures. The boundary of the study area does not follow parcel boundaries and in some cases a majority of a particular parcel may fall outside of the study area. These parcels are included in the study area if any portion of the parcel is within the boundary of the study area; however, for purposes of the dwelling calculations, only the dwellings that fall within, or could potentially fall within the boundaries of the study area are included. This area is representative of where the subject property is found due to the immediate proximity to the subject parcel, similar terrain, uses, and zoning. The County finds that analysis for the application was completed as prescribed and that the study area (see attached Impact Study Area Map) is adequate for an accurate description.

(b) Within the study area identify the broad types of farm uses (irrigated or non irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(5). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision.

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Farm Uses in the Study Area

A predominate farm use in the general area is dry land grain crops. However, some parcels along the river are composed of higher productive soils and parcels with water rights are in hay and pasture. These parcels near the river are smaller farm parcels and many have existing home sites. The study area also includes steeper hillsides with poor soils, not in farm production. The study area soil types range from Class II to Class VIII and all of the study area is zoned for farm use.

Number and Type of Existing Dwellings

The parcels in the Study Area range in size from 0.8 acre to over 600 acres in size. There are 36 dwellings located within the boundary of the study area. Most of these dwellings are located along the North and South Fork of the Walla Walla River Road and on smaller farm acreages within the study area. One of the 36 dwellings was established as a Lot of Record Dwelling and another was established as a non-farm dwelling.

Development Trends since 1993

In the study area three dwelling permits were issued since 1993. Two permits were issued for the replacement of Lawfully Established (existing) Dwellings, one permit was issued for a Lot of Record Dwelling and one permit was issued for a Non-farm Dwelling.

Potential Number of Dwellings

Non-Farm Dwellings

Under specific standards a non-farm dwelling may be approved on an existing parcel or, a maximum of two non-farm dwellings may be approved and partitioned from a large farm parcel, where the large parcel (after the two small non-farm parcels are divided) will remain at 160 acres or larger. A parcel or a portion of a parcel is presumed to be unsuitable for farming if the soil Class is VII-VIII or, if previously developed in a way that the parcel is unsuitable for farming. After review of the large parcels and the soil values on those parcels it appears that 22 dwellings have potential to meet standards for new non-farm dwellings.

Lot of Record Dwellings

Property owners could possibly qualify for a lot of record dwelling on their property if they, or a family member, have continually owned the property since prior to January 1, 1985; and no other dwelling existed on the parcel or tract of land as of November 4, 1993. In addition to long term family ownership the parcel or tract must be composed predominately of non-high value farm soils.

(c) Determine whether approval of the proposed non-farm/lot of record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

Determination

The study area includes EFU zoned parcels and some with poor quality soils located to the west, northwest and east of the applicant's property. These parcels are not in commercial farm production due to the terrain and the poor soils (Class VII or VIII). Some of the area parcels that also have these poorer quality of soils are located between the North Fork and the South Fork of the Walla Walla River these parcels also consist of Class VII soils and have potential for qualifying for non-farm dwelling approvals; however, many of these parcels do not adjoin a public road and would require crossing the river in order to access a dwelling. This makes development unlikely. As outlined above the potential addition of 22 non-farm dwellings approvals could be possible across the 2,000 acre study area based on factors such as poor soils. However, it is unlikely all 22 would be developed because of access issues and development costs.

The large commercial farming activities that occur in the area are mainly to the north of the applicant's parcel and consist of large parcels planted in grain crops. The total build out of the 2,000 acres, including the 36 existing dwellings and the 22 potential non-farm dwellings, is 58 dwellings. Most of the existing dwellings are established along the North and South Fork of the Walla Walla River. The parcels with potential for non-farm dwellings are located along the south facing slopes north of the North Fork road and on the steeper slopes between the North and South Fork Walla Walla River Road.

Based on the development pattern and the farming practices in the area, approval of the applicant's non-farm dwelling should not make it more difficult to farm, purchase farm property, or otherwise negatively impact the overall land use pattern established in the study area. The County finds that the proposed applicant's non-farm dwelling at the proposed location will not materially alter the stability of the land use pattern of the area.

(K) (11) Covenant Not to Sue

All dwellings approved within the EFU zone require the landowners to sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The property owner has indicated that he is willing to sign the Covenant Not to Sue document. The County Planning Department finds that the Precedent Condition of approval to sign and record a Covenant Not to Sue document satisfies the criterion.

PROPOSED APPROVAL DECISION: BASED UPON THE ABOVE STATED FINDINGS AND CONCLUSIONS, THE NF LAND, LLC LAND USE DECISION, #LUD-176-14, REQUEST COULD BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

Precedent Conditions:

1. Disqualify the approved non-farm dwelling parcel from the Farm Deferral Program and pay deferred tax penalties. Proof of payment must be provided to the County Planning Department.
2. Sign and record a Covenant Not to Sue Agreement.
3. Obtain or verify that a county road approach permit is in place for the existing access easement road and verify the access easement road is improved to the Option 1 design standard (County P-1). The improved road must be developed to accommodate emergency vehicle access to the proposed dwelling.

Subsequent Conditions:

4. Obtain a Zoning Permit from the Umatilla County Planning Department to place the non-farm dwelling on the property.
5. Obtain all other State permits necessary for dwelling development such as State Building Codes permits and the Department of Environmental Quality on-site septic permit.
6. Authorization to place the non-farm dwelling on the property is valid for four years from the date the Final Findings document is signed. The applicant or property owner may request an approval extension for up to two additional years. (Approval and all approval extensions are limited to a total of six years from the date the Final Findings are signed.)

PROPOSED DECISION TO DENY: BASED UPON THE ABOVE FINDINGS AND CONCLUSIONS THE NF LAND, LLC, NON-FARM DWELLING LAND USE DECISION, #LUD-14-176 DOES NOT MEET THE EFU APPROVAL STANDARDS IN SECTION 152.059 (K) AND IS DENIED.

UMATILLA COUNTY PLANNING COMMISSION

Dated _____ day of _____, 2015

Randy Randall, *Planning Commission Chair*

Mailed _____ day of _____, 2015

Application for a Permit to Use Ground Water



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

RECEIVED

Water-Use Permit Application Processing

DEC 19 2014

1. Completeness Determination

The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050 (www.oregon.gov/owrd/law). The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

UMATILLA COUNTY
PLANNING DEPARTMENT

2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$200. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

3. Public Notice

Within 7 days of the mailing of the initial review, the Department gives public notice of the application in the weekly notice published by the Department at www.oregon.gov/owrd. The public comment period is 30 days from publication in the weekly notice.

4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$300.00 for the applicant and \$600.00 for non-applicants. Protests are filed on approximately 10% of Proposed Final Orders. If a protest is filed, the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

6. Final Order Issued

If no protests are filed, the Department issues a Final Order consistent with the PFO. If the application is approved, a permit is issued that specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.

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DEC 10 2012

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Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.615)

Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

- SECTION 1: applicant information and signature
- SECTION 2: property ownership
- SECTION 3: well development
- SECTION 4: water use
- SECTION 5: water management
- SECTION 6: storage of groundwater in a reservoir
- SECTION 7: use of stored groundwater from the reservoir
- SECTION 8: project schedule
- SECTION 9: within a district
- SECTION 10: remarks

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SALEM, OR

Attachments:

- Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map. Example: A copy of the deed, land sales contract or title insurance policy.
- Fees - Amount enclosed: **\$5,964**
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.

Provide a map and check that each of the following items is included:

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other _____

Application for a Permit to Use Ground Water



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant Information

NAME NFLAND LLC		PHONE (HM) N/A	
PHONE (WK) 206-310-7631	CELL N/A	FAX N/A	
ADDRESS 2885 SANFORD AVE SW #21711			
CITY GRANDVILLE	STATE MI	ZIP 49418	E-MAIL* NFLANDLLC@GMAIL.COM

Organization Information

NAME SAME AS APPLICANT		PHONE	FAX
ADDRESS			CELL
CITY	STATE	ZIP	E-MAIL*

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME GEO-SPATIAL SOLUTIONS, INC.		PHONE 541-330-0371	FAX
ADDRESS P.O. BOX 335			CELL 541-241-6831
CITY BEND	STATE OR	ZIP 97709	E-MAIL* JOHN@GEOSPATIALSOLUTIONS.COM

Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

RECEIVED BY OWRD

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land-use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water-right holders to get water to which they are entitled.

DEC 10 2012

SALEM, OR

I (we) affirm that the information contained in this application is true and accurate.


Applicant Signature

Sam Hobson, Member
Print Name and title if applicable

11/20/12
Date

Applicant Signature

Print Name and title if applicable

Date

For Department Use		
App. No. <u>Gr 17604</u>	Permit No. _____	Date _____

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SECTION 2: PROPERTY OWNERSHIP

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

Yes

- There are no encumbrances.
- This land is encumbered by easements, rights of way, roads or other encumbrances.

No

- I have a recorded easement or written authorization permitting access.
- I do not currently have written authorization or easement permitting access.
- Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
- Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

N/A

SECTION 3: WELL DEVELOPMENT

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
1	North Fork Walla Walla River	755 feet	45 feet (well above river)
2	North Fork Walla Walla River	1,960 feet	170 feet (well above river)
3	North Fork Walla Walla River	2,040 feet	170 feet (well above river)
4	North Fork Walla Walla River	4,075 feet	420 feet (well above river)
5	North Fork Walla Walla River	2,935 feet	450 feet (well above river)
6	North Fork Walla Walla River	2,485 feet	480 feet (well above river)
7	North Fork Walla Walla River	3,600 feet	570 feet (well above river)

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials (*attach additional sheets if necessary*).

None of the proposed wells exist at this time. The applicant does not intend to drill seven wells. The applicant intends to drill only the number of wells required to yield a sufficient production rate to irrigate the proposed lands. The applicant is requesting authorization for seven potential well locations, to provide flexibility during construction of the well(s).

RECEIVED BY OWRD

DEC 10 2012

SALEM, OR

SECTION 3: WELL DEVELOPMENT, CONTINUED

Source (aquifer), if known: Basalt

Total maximum rate requested: 6.47 cfs (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

Complete the table below. If this is an existing well, the following information may be found on the applicable well log. (If a well log is available, please submit it in addition to completing the table.) If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner.

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	PROPOSED USE			
										SOURCE AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)
Well 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	500 ft	300-500 ft	0-300 ft	N/A	Basalt	500	Max	Max
Well 2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	625 ft	400-625 ft	0-400 ft	N/A	Basalt	625	Max	Max
Well 3	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	625 ft	400-625 ft	0-400 ft	N/A	Basalt	625	Max	Max
Well 4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	900 ft	600-900 ft	0-400 ft	N/A	Basalt	900	Max	Max
Well 5	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	900 ft	600-900 ft	0-400 ft	N/A	Basalt	900	Max	Max
Well 6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	950 ft	650-950 ft	0-400 ft	N/A	Basalt	950	Max	Max
Well 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	1000 ft	700-1000 ft	0-400 ft	N/A	Basalt	1000	Max	Max
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									

* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.
 ** A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.
 *** Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.

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Revised 2/1/2012

Ground Water/5

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SECTION 4: WATER USE

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Irrigation	March 1 through November 30	1,553

Exempt Uses: Please note that 15,000 gallons per day for single or group **domestic** purposes and 5,000 gallons per day for a single **industrial or commercial** purpose are exempt from permitting requirements.

For irrigation use only:
 Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).
 Primary: 517.7 Acres Supplemental: N/A Acres
 List the Permit or Certificate number of the underlying primary water right(s): N/A
 Indicate the maximum total number of acre-feet you expect to use in an irrigation season: 1,553

- If the use is **municipal or quasi-municipal**, attach **Form M**
- If the use is **domestic**, indicate the number of households: N/A

If the use is **mining**, describe what is being mined and the method(s) of extraction: N/A

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SECTION 5: WATER MANAGEMENT

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A. Diversion and Conveyance

What equipment will you use to pump water from your well(s)?

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- Pump (give horsepower and type): Vertical turbine (600 +/- hp depending on well yield and TDH)
- Other means (describe): _____

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.
Water will be pumped from the wells into storage reservoirs (bulges) then applied to agricultural crops.

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)
The water application systems are likely to change over the life of the project. Initially, portable sprinkler irrigation systems (Big Guns and/or aluminum handlines) may be used for production of pasture and forage crops. If and when lands are converted to permanent crops, drip or sprinkler systems are likely to be used.

C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters.
The amount of water requested is standard for irrigation of agricultural crops. Industry-standard irrigation technologies will be used for scheduling irrigation start and stop times, depending on the agronomic needs of the crops being grown (which is expected to change during the life of the project). Riparian and water quality issues are a minor concern, given the separation of the project site from the North Fork Walla Walla River by North Fork Walla Walla River Road and the adjacent agricultural lands.

(21)

SECTION 6: STORAGE OF GROUND WATER IN A RESERVOIR

If you would like to store ground water in a reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Reservoir ID: 1
 Acreage inundated by reservoir: 1.0 acre (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 5 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Reservoir ID: 2
 Acreage inundated by reservoir: 1.4 acres (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 6 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Reservoir ID: 3
 Acreage inundated by reservoir: 1.7 acre (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 7 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Reservoir ID: 4
 Acreage inundated by reservoir: 2.0 acre (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 9 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Note: If the dam height is greater than or equal to 10.0' above land surface AND the reservoir will store 9.2 acre feet or more, engineered plans and specifications must be approved prior to storage of water.

SECTION 7: USE OF STORED GROUND WATER FROM THE RESERVOIR

If you would like to use stored ground water from the reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Annual volume (acre-feet): 27 acre-feet

USE OF STORED GROUND WATER	PERIOD OF USE
Irrigation (temporarily stored in reservoir (bulge))	March 1 through November 30
Reservoir Liner Protection (27 acre-feet)	Year Round (permanent pool)

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SECTION 8: PROJECT SCHEDULE

Date construction will begin: Upon permit issuance
 Date construction will be completed: Within five years of permit issuance
 Date beneficial water use will begin: Within three years of construction completion

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SECTION 9: WITHIN A DISTRICT

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name N/A	Address	
City	State	Zip

SECTION 10: REMARKS

Use this space to clarify any information you have provided in the application (*attach additional sheets if necessary*).

The applicant requests authorization to store a total volume of 27 acre-feet at the four specified locations. The number of acre-feet to be stored at each location has been estimated. However, site-specific constraints may affect the volume of storage that can be feasibly and cost-effectively developed at each location. Therefore, the applicant requests the flexibility to change the volume developed at any given location, not to exceed the total proposed volume of 27 acre-feet.

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

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NOTE TO APPLICANTS

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In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and **all** of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; **and**
 - d) The application involves irrigation water uses only.

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Applicant: NF Land LLC

Mailing Address: 2885 Sanford Ave SE #21711

Grandville

City

MI
State

49418
Zip

Daytime Phone: 206-310-7631

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
5N	36E	13	SWSW, SESW SWSE	3000 3000 3001	EFU	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	14	SESE SWSE SESW	3100 3200 3201 3300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	22	NWNE, NENE	100	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	23	NWNW NWNE NENE	902 200 100 101 300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	24	NWNW, NENW, SWNW, SEnw NENW, SEnw, NWNE, SWNE	200 202	EFU	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Umatilla County	RECEIVED BY OWRD
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B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water Water Right Transfer Permit Amendment or Ground Water Registration Modification
 Limited Water Use License Allocation of Conserved Water Exchange of Water

Source of water: Reservoir/Pond Ground Water Surface Water (name) _____

Estimated quantity of water needed: 6.47 cubic feet per second gallons per minute acre-feet

Intended use of water: Irrigation Commercial Industrial Domestic for _____ household(s)
 Municipal Quasi-Municipal Instream Other _____

Briefly describe:

Develop basalt well(s) and appropriate ground water to irrigate agricultural crops on about 517.7 acres.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

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For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 152.056
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

Farm Use

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Name: _____ Title: Janna J. Mabbett, Planning Director
 Signature: J. Mabbett Phone: 378-6246 Date: 11-30-12
 Government Entity: Umatilla County

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____
 City or County: _____ Staff contact: _____
 Signature: _____ Phone: _____ Date: _____

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Date _____

(For staff use only)



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- SECTION 1: _____
- SECTION 2: _____
- SECTION 3: _____
- SECTION 4: _____
- SECTION 5: _____
- SECTION 6: _____
- SECTION 7: _____
- SECTION 8: _____
- SECTION 9: _____

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Land Use Information Form _____

Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.

Fees _____

MAP

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other _____

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A tract of land located in Section 22, Township 5 North, Range 36, E.W.M., County of Umatilla, State of Oregon;

That portion of the North Half of Northeast Quarter of Section 22, Township 5 North, Range 36, lying East of the County Road No. C-4, and North of County Road No. 440;

EXCEPTING THEREFROM, commencing at the Southwest corner of Section 14, Township 5 North, Range 36, E.W.M., which is the true point of beginning for this description; thence South 78°46'31" West a distance of 1,366.50 feet; thence South 42°31'39" West 190.56 feet; thence South 52°33'10" West 321.33 feet; thence South 34°38'37" West 50.61 feet; thence South 30°31'35" West 96.19 feet; thence South 33°28'23" West 178.02 feet; thence South 36°31'51" West 76.31 feet; thence South 42°31'01" West 70.44 feet; thence South 41°38'34" West 174.11 feet to a point on the centerline of Powerline Road, County Road No. 525; thence Northerly along the centerline of said County Road the following courses and distances: North 03°26'50" West 58.37 feet; thence North 05°35'48" East 58.94 feet; thence North 18°32'33" East 55.26 feet, North 32°31'11" East 75.93 feet; thence North 33°44'22" East 127.05 feet; thence North 22°19'07" East 73.82 feet; thence North 12°54'03" East 61.39 feet; thence North 05°07'16" East 70.54 feet; thence North 06°08'56" East 43.60 feet; North 11°54'00" East 52.79 feet; thence North 12°24'29" East 106.74 feet; thence North 11°20'12" East 101.02 feet; thence North 07°58'41" East 285.73 feet; thence leaving said County Road; thence East a distance of 1,831.89 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying with County Road Nos. C-4 and 440.

AmeriTitle 68510

Tax lot 100, Sec 22

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Gr-17604

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EXHIBIT A
PROPERTY LEGAL DESCRIPTION

5N 36 00 Tax Lot 3300:

A tract of land located in Section 14, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, being described as beginning at a point which lies 300 feet Southerly from the Northeast corner of the Southeast Quarter of the Southwest Quarter of said Section 14; thence Southwesterly to a point which is located on the West line of the Southeast Quarter of the Southwest Quarter of said Section 14, said point also being located 200 feet Northerly from the Southwest corner thereof; thence Southerly along the West line of the Southeast Quarter of the Southwest Quarter of said Section 14, a distance of 200 feet to a point located on the South line of said Section 14; thence Easterly along the South line of said Section 14 to the Southeast corner of the Southeast Quarter of the Southwest Quarter of said Section 14; thence Northerly along the East line of the Southeast Quarter of the Southwest Quarter of said Section 14 to the point of beginning.

Together with an easement for ingress and egress over an across the portion of the easement described as "Tract II" in that certain Warranty Deed from Bruce W. LaPorte and Tanya L. LaPorte, husband and wife, to Richard A. Cameron and Donna J. Cameron, dated March 28, 1984, and recorded in R113, Pages 1265-1266, Umatilla County, Oregon records on May 17, 1984, that is over and across the following property: All that portion of the East Half of the Northwest Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian Umatilla County, Oregon, which lies Northerly of the centerline of County Road No. 440.

5N 36 23 Tax Lot 902:

All that portion of the Northwest Quarter of the Northwest Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, which lies Northerly of the centerline of County Road No. 440;

Excepting there from any portion lying within the County Road right-of-way.

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LEGAL DESCRIPTION

A tract of land located in the Southwest Quarter of Southeast Quarter of Section 14, Township 5 North, Range 36, East of the Willamette Meridian, and being described as follows:

Beginning at the Southwest corner of said Section 14; thence North $75^{\circ}57'42''$ East a distance of 3,948.09 feet to the true point of beginning for this description; thence South $53^{\circ}49'18''$ West a distance of 420 feet; thence North $89^{\circ}33'51''$ West a distance of 871.00 feet, more or less, to a point on West line of Southwest Quarter of Southeast Quarter of said Section 14; thence North along said West line a distance of 695 feet, more or less, to Northwest corner of Southwest Quarter of Southeast Quarter of said Section 14; thence East along North line of Southwest Quarter of Southeast Quarter of said Section 14, a distance of 1,214.37 feet, more or less, to a point which bears North $2^{\circ}59'16''$ West from the point of beginning; thence South $2^{\circ}59'16''$ East a distance of 486 feet, more or less, to the point of beginning.

All being East of the Willamette Meridian, Umatilla County, Oregon.

Tax lot 3201

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LEGAL DESCRIPTION

Beginning at a point 1320 feet West of and 1320 feet North of Southeast corner of Section 14, Township 5 North, Range 36; thence West 1320 feet to a point on North-South centerline of said Section 14; thence South a distance of 2310 feet, more or less, to County Road No. 440; thence Easterly along said County Road a distance of 1320 feet, more or less, to North-South centerline Northeast Quarter of Section 23; thence North a distance of 2343 feet, more or less, to the point of beginning;

EXCEPTING THEREFROM a tract of land located in Southwest Quarter of Southeast Quarter of said Section 14, described as beginning at Southwest corner of said Section 14; thence North 75°57'42" East a distance of 3948.09 feet to the true point of beginning for this description; thence South 53°49'18" West a distance of 420 feet; thence North 89°33'51" West a distance of 871.08 feet, more or less, to a point on West line of Southwest Quarter of Southeast Quarter of said Section 14; thence North along said West line a distance of 695 feet, more or less, to Northwest corner of Southwest Quarter of Southeast Quarter of said Section 14; thence East along North line of Southwest Quarter of Southeast Quarter of said Section 14 a distance of 1214.37 feet, more or less, to a point which bears South 2°59'16" West from the point of beginning; thence South 2°59'16" East a distance of 486 feet, more or less, to the point of beginning;

SUBJECT to any and all water rights of way and roads;

All being East of the Willamette Meridian, Umatilla County, Oregon.

Taxlots 3200 and 200, Sec 23

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Tax lots 3000, 3001, Sec 13
200, 202, Sec 24
3100, Sec 14
100, 101, 300, Sec 23

Exhibit 'A'

Tract I

A tract of land located in Sections 13 and 24, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, being described as beginning at the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 24; thence North to the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 13; thence West, a distance of 335 feet, more or less, to the bottom of a ravine; thence in a Southwesterly direction down the ravine to where it intersects with the North line of the County Road; thence in a Southeasterly direction along the North line of said County Road to a point where said County Road intersects with the East-West centerline of said Section 24; thence East along said East-West centerline, a distance of 395 feet, more or less, to the point of beginning;

Excepting therefrom that tract of land conveyed to Myran Swanson, etux, by Deed recorded in Book 353, Page 204, Deed Records;

Also excepting therefrom that tract of land conveyed to Richard G. Woodhall, etux, by Deed recorded in Microfilm Reel 2, Page 565, Office of Umatilla County Records;

Also excepting therefrom any portion lying within the County Road right-of-way.

Tract II

A tract of land located in Sections 13 and 24, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, being described as commencing at the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 13; thence West, a distance of 335 feet, more or less, to the bottom of a ravine and the True Point of Beginning for this description; thence in a Southwesterly direction down the bottom of the ravine to where it intersects with the North line of the County Road; thence in a Northwesterly direction along the North side of said County Road to the Southwest corner of the Northwest Quarter of the Northwest Quarter of said Section 24; thence North to the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 13; thence East to the point of beginning;

Excepting therefrom any portion lying within the County Road right-of-way.

Tract III

The Southeast Quarter of the Southeast Quarter of Section 14, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon.

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SALEM, OR

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Tract IV

All that portion of the Northeast Quarter of the Northeast Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, which lies Northerly of the Northerly right-of-way line of the County Road;

Excepting therefrom that tract of land conveyed to Albert Smith, by Deed recorded in Book 105, Page 291, Deed Records;

Also excepting therefrom that tract of land conveyed to Ozro Graham by Deed recorded in Book 143, Page 69, Deed Records;

Also excepting therefrom any portion lying within the County Road right-of-way.

Tract V

Beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon; thence North, a distance of 131 feet; thence Westerly, a distance of 265 feet; thence Southerly, a distance of 95 feet to the North line of the County Road; thence Easterly along the North line of said County Road, a distance of 316 feet to the point of beginning;

Excepting therefrom any portion lying within the County Road right-of-way.

Tract VI

Commencing at the Northeast corner of the Southeast Quarter of the Northeast Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon; thence North $64^{\circ}09'$ West, a distance of 380.16 feet to the True Point of Beginning for this description; thence North, a distance of 16.50 feet; thence North $82^{\circ}12'$ West, a distance of 148.50 feet; thence North, a distance of 66 feet; thence North $86^{\circ}27'$ West, a distance of 264 feet; thence South, a distance of 82.50 feet; thence South $86^{\circ}27'$ East, a distance of 264 feet; thence South $82^{\circ}12'$ East, a distance of 148.50 feet to the point of beginning;

Excepting therefrom any portion lying within the County Road right-of-way.

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SALEM, OR

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DEC 19 2014

UMATILLA COUNTY
PLANNING DEPARTMENT

**Oregon Water Resources Department
Water Right Services Division**

Water Rights Application
Number G-17604

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On December 11, 2012, NF Land LLC submitted an application to the Department for the following water use permit:

- Amount of Water: 6.47 cubic feet per second (CFS) from ground water, and an annual volume of 1553.0 acre feet, and 27.0 acre feet (AF) of stored ground water
- Use of Water: irrigation of 517.9 acres and storage of ground water
- Source of Water: Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7, Well 8, Well 9, Well 10, Well 11, Well 12, Well 13, Well 14, and Well 15 (UMAT 57199/L111124) in North Fork Walla Walla River Basin
- Area of Proposed Use: Umatilla County within Sections 13, 14, 22, 23, and 24, Township 5 North, Range 36 East, W.M.

On September 6, 2013, the Department mailed the applicant notice of its Initial Review, determining that *"the appropriation of 6.47 CFS and 27.0 AF of water from Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7, Well 8, Well 9, Well 10, Well 11, Well 12, Well 13, Well 14, and Well 15 (UMAT 57199) in North Fork Walla Walla River Basin for irrigation of 517.9 acres and storage of groundwater is not allowable, and it appears unlikely that you will be issued a permit unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order."* The applicant did not notify the Department to stop processing the application within 14 days of that date.

On September 10, 2013, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

The applicant requested and was granted multiple administrative holds; the last expired October 7, 2014.

On September 29, 2014, the applicant amended the annual volume to 300.0 AF and removed Well 15 (UMAT 57199/L111124) from the application, replacing it with proposed Well 15 in a different location.

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In reviewing applications, the Department may consider any relevant sources of information, including the following:

- any applicable basin program
- applicable statutes, administrative rules, and case law
- the amount of water available
- the rate and duty for the proposed use
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- pending senior applications and existing water rights of record
- any applicable comprehensive plan or zoning ordinance
- recommendations by other state agencies
- the Scenic Waterway requirements of ORS 390.835
- designations of any critical ground water areas
- any comments received

Findings of Fact

The Umatilla Basin Program allows irrigation and storage of ground water.

On October 6, 2014, a re-assessment of ground water availability was completed by the Department's Ground Water/Hydrology section based on a maximum annual volume of 300.0 AF. A copy of this assessment is in the file. Ground water will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights.

Ground Water Findings Under OAR 690-009

The Department determined, consistent with OAR 690-009-0040(4), that the proposed ground water use will not have the potential for substantial interference with surface water.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is

a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7, Well 8, Well 9, Well 10, Well 11, Well 12, Well 13, Well 14, and Well 15 in North Fork Walla Walla River Basin are not within or above a State Scenic Waterway.

The Department finds that the amount of water requested, 6.47 CFS, is an acceptable amount.

The proposed ground water use is not within a designated critical ground water area.

Conclusions of Law

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Umatilla Basin Program.

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The application is in compliance with the State Agency Coordination Program regarding land use.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or

- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
- (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety, and health. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED November 4, 2014

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **December 19, 2014**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;

Application G-17604

- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$350 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$700 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the Proposed Final Order.
- *If you do not protest this Proposed Final Order and if no substantive changes are made in the Final Order, you will not have an opportunity for judicial review, protest or appeal of the Final Order when it is issued.*

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **December 19, 2014**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$200. If a hearing is scheduled, an additional fee of \$500 must be submitted along with a request for intervention.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

This document was prepared by Kim French. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

NF LAND LLC
2885 SANFORD AVE SW #21711
GRANDVILLE, MI 49418

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-17604

SOURCE OF WATER: WELL 1, WELL 2, WELL 3, WELL 4, WELL 5, WELL 6, WELL 7,
WELL 8, WELL 9, WELL 10, WELL 11, WELL 12, WELL 13, WELL 14, AND WELL 15
IN NORTH FORK WALLA WALLA RIVER BASIN

STORAGE FACILITIES: RESERVOIR 1, RESERVOIR 2, RESERVOIR 3, AND
RESERVOIR 4

MAXIMUM RATE: 6.47 CUBIC FEET PER SECOND

MAXIMUM ANNUAL VOLUME: 300.0 ACRE FEET, WHICH INCLUDES UP TO 27.0 ACRE
FEET OF STORED GROUND WATER IN RESERVOIRS 1 - 4

PURPOSE OR USE: IRRIGATION OF 517.9 ACRES MARCH 1 THROUGH NOVEMBER 30;
STORED GROUND WATER, YEAR-ROUND

DATE OF PRIORITY: DECEMBER 11, 2012

WELL LOCATIONS:

WELL 1: SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 1060 FEET NORTH AND
885 FEET WEST FROM C1/4 CORNER, SECTION 24

WELL 2: NE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 620 FEET SOUTH AND
60 FEET WEST FROM N1/4 CORNER, SECTION 24

WELL 3: SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 45 FEET NORTH AND
1200 FEET EAST FROM SW CORNER, SECTION 13

WELL 4: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1200 FEET NORTH AND
900 FEET EAST FROM S1/4 CORNER, SECTION 13

WELL 5: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 470 FEET NORTH AND
250 FEET WEST FROM S1/4 CORNER, SECTION 13

WELL 6: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 360 FEET SOUTH AND
1270 FEET EAST FROM N1/4 CORNER, SECTION 24

Application G-17604 Water Resources Department

PERMIT DRAFT

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WELL 7: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1240 FEET NORTH AND 300 FEET WEST FROM S1/4 CORNER, SECTION 13

WELL 8: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 695 FEET SOUTH AND 125 FEET EAST FROM N1/4 CORNER, SECTION 23

WELL 9: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 1250 FEET SOUTH AND 260 FEET EAST FROM NW CORNER, SECTION 24

WELL 10: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 720 FEET SOUTH AND 215 FEET EAST FROM NW CORNER, SECTION 23

WELL 11: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 375 FEET SOUTH AND 825 FEET EAST FROM NW CORNER, SECTION 24

WELL 12: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 725 FEET SOUTH AND 1190 FEET EAST FROM N1/4 CORNER, SECTION 23

WELL 13: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 14, T5N, R36E, W.M.; 585 FEET NORTH AND 580 FEET EAST FROM S1/4 CORNER, SECTION 14

WELL 14: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 895 FEET SOUTH AND 370 FEET WEST FROM NE CORNER, SECTION 23

WELL 15: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 14, T5N, R36E, W.M.; 250 FEET NORTH AND 343 FEET EAST FROM S1/4 CORNER, SECTION 14

RESERVOIR LOCATIONS:

RESERVOIR 1: SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 14, T5N, R36E, W.M.; 1150 FEET NORTH AND 175 FEET WEST FROM SE CORNER, SECTION 14

RESERVOIR 2: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1175 FEET NORTH AND 1025 FEET WEST FROM S1/4 CORNER, SECTION 13

RESERVOIR 3: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1180 FEET NORTH AND 100 FEET WEST FROM S1/4 CORNER, SECTION 13

RESERVOIR 4: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 650 FEET SOUTH AND 1300 FEET EAST FROM N1/4 CORNER, SECTION 24

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

	<u>IRRIGATION</u>	<u>STORAGE</u>
SW ¼ SW ¼	40.0 ACRES	
SE ¼ SW ¼	40.0 ACRES	X
SW ¼ SE ¼	40.0 ACRES	X
SECTION 13		
SE ¼ SW ¼	18.5 ACRES	
SW ¼ SE ¼	40.0 ACRES	
SE ¼ SE ¼	40.0 ACRES	X
SECTION 14		
NE ¼ NE ¼	25.4 ACRES	
NW ¼ NE ¼	9.8 ACRES	
SECTION 22		
NE ¼ NE ¼	33.4 ACRES	
NW ¼ NE ¼	28.0 ACRES	
NW ¼ NW ¼	24.7 ACRES	
SECTION 23		
NW ¼ NE ¼	40.1 ACRES	X
SW ¼ NE ¼	33.5 ACRES	
NE ¼ NW ¼	40.0 ACRES	
NW ¼ NW ¼	40.0 ACRES	
SW ¼ NW ¼	6.5 ACRES	
SE ¼ NW ¼	18.0 ACRES	
SECTION 24		

TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

Measurement devices, and recording/reporting of annual water use conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the devices in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

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- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.

Dedicated Observation Well: The permittee shall construct one four-inch observation well to penetrate the same aquifer as the production well(s), prior to any ground water use authorized by this permit. The well shall meet the Department's minimum well construction standards and shall be cased and sealed to the same depth as the production wells. The well shall be constructed at a location approved by the Department for the purpose of instrumentation with continuous groundwater-level monitoring equipment. The landowner and permittee shall provide access to Department staff to install and maintain the monitoring equipment. The well shall not be used for any other purpose while the Department is monitoring groundwater levels.

Upon reasonable notice, the permittee shall allow Department staff access to the observation and production wells. Department staff will periodically measure water levels in the observation and production wells for the purpose of evaluating the appropriation's impact to the resource.

Annual Measurement Condition:

The Department requires the water user to measure and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall submit an initial February or March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to measure and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR

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690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations submitted to the Department.

The Department may require the discontinuance of ground water use, or reduce the rate or volume of withdrawal from the well(s) if any of the following events occur:.

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Ground water production shall occur only from a single aquifer in the Columbia River Basalt groundwater reservoir.

Ground water production shall occur no deeper than a bottom hole elevation of 1,100 feet.

Well 8 through Well 15 shall be constructed in a different aquifer than that developed by any City of Milton-Freewater municipal well.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification

Application G-17604 Water Resources Department PERMIT DRAFT

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Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

The permittee is required to pass all surface water for which a storage right does not exist. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that surface-water flow is not impeded. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party

to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

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Mailing List for PFO Copies

Application #G-17604

PFO Date November 4, 2014

Original emailed to applicant:

NFLAND LLC
2885 SANFORD AVE SW 21711
GRANDVILLE, MI 49418

SENT VIA EMAIL:

1. WRD - Watermaster #5
2. Applicant - nflandllc@gmail.com
3. Agent - john@geospatialolutions.com
4. Agent - defilippi@stoel.com

Copies sent to:

1. WRD - File # G-17604
2. Water Availability: Shawn Turner

PFO and Map Copies sent to:

3. WRD - Watermaster # 5
4. Regional Manager: NC

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
Protest/ Standing Dates checked _____

CASEWORKER :Kim French

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Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

Watermaster

116 SE Dorion Avenue

Pendleton, OR 97801

Phone: (541) 278-5456

FAX: (541) 278-0287

RECEIVED

DEC 31 2014

UMATILLA COUNTY
PLANNING DEPARTMENT

December 31, 2014

Ms. Carol Johnson
Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, Oregon 97801

RE: Watermaster comments for #LUD-176-14 and #LUD-177-14, applicant NF Land, LLC.

Dear Ms. Johnson,

Recently the Watermaster's office reviewed two Umatilla County planning applications proposed by NF Land, LLC. Applications numbered- #LUD-176-14 and #LUD-177-14.

Regarding irrigation water rights on the properties identified in the applications. NF Land, LLC submitted an application to the Oregon Water Resources Department (OWRD) on December 11, 2012, to develop 15 wells in Sections 13, 14, 22, 23, 24 of Township 5 North, Range 36 East, W.M. The map attached to this document was submitted to OWRD with the water rights application and shows the intent to develop irrigation on the lands involved with this Land Use Decision request.

There is a lengthy history involved with this application. The most recent activity was a Proposed Final Order, issued by OWRD, on 11/4/2014 that would allow 6.74cfs, up to a maximum annual volume of 300 AF, to be applied on the proposed 517.9 acres. The last day to file a protest was on December 19, 2014. No protests were filed and a Final Order will likely be issued to NF Lands, LLC that would allow development of up to 14 wells on the 517.9 acres, which includes the land in the County Land Use Decision request. 15

For full details, more information may be found by reviewing application G-17604 at www.oregon.gov/owrd.

Sincerely,

Greg Silbernagel
Watermaster, District 5

Attachments: Map

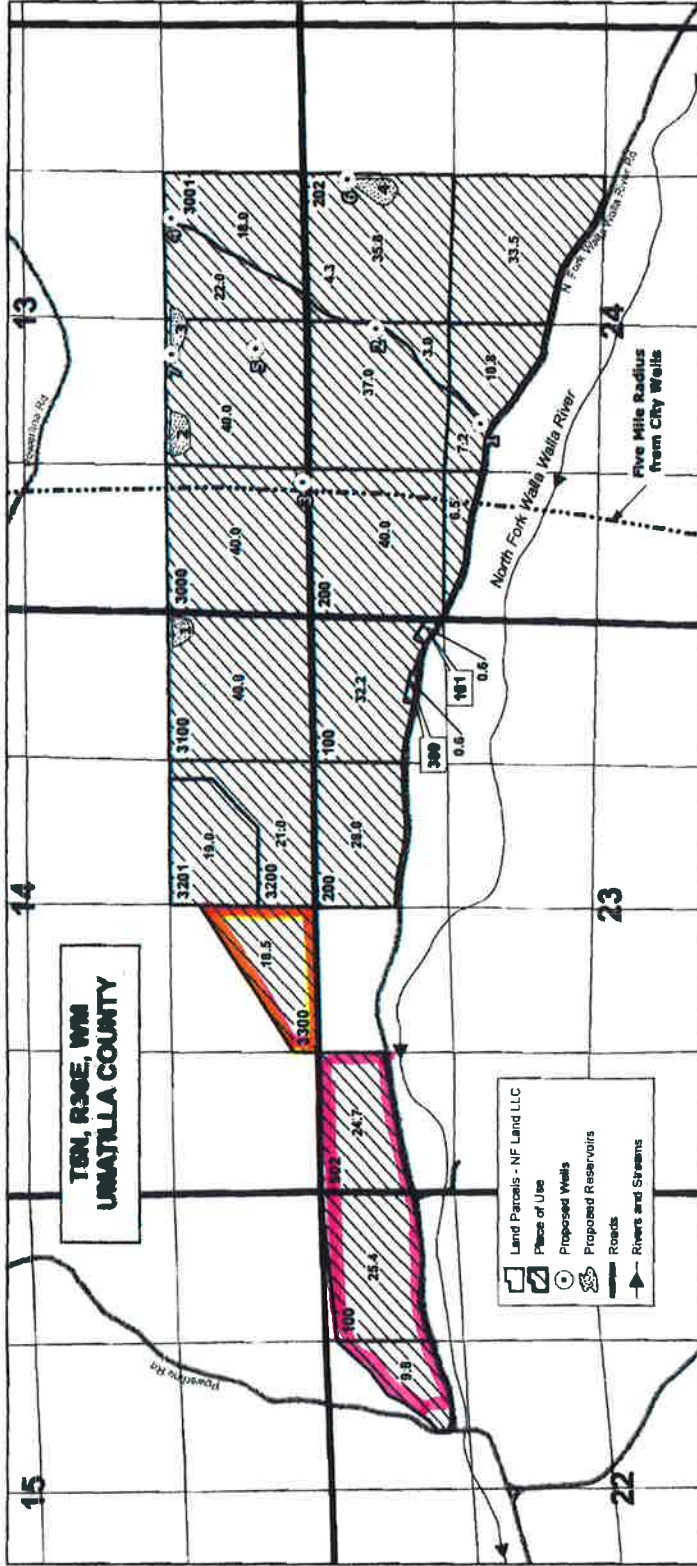
Cc: Mike Ladd – NCR Manager

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RECEIVED

DEC 19 2014

UMATILLA COUNTY
PLANNING DEPARTMENT



TEN, RIDGE, WM
UMATILLA COUNTY

- Land Parcels - NF Land LLC
- Piece of Use
- Proposed Wells
- Proposed Reservoirs
- Roads
- Rivers and Streams

- POA 1
Proposed basalt well located 1060 feet N and 885 feet W from Center of Sec 24
- POA 2
Proposed basalt well located 620 feet S and 60 feet W from N 1/4 Corner of Sec 24
- POA 3
Proposed basalt well located 45 feet N and 1200 feet E from SW Corner of Sec 13
- POA 4
Proposed basalt well located 1200 feet N and 900 feet E from S 1/4 Corner of Sec 13
- POA 5
Proposed basalt well located 470 feet N and 250 feet W from S 1/4 Corner of Sec 13
- POA 6
Proposed basalt well located 360 feet S and 1270 feet E from N 1/4 Corner of Sec 24
- POA 7
Proposed basalt well located 1240 feet N and 300 feet W from S 1/4 Corner of Sec 13
- RESERVOIR 1
Dam Location = 1150 feet N and 175 feet W from SE Corner of Section 14
Storage = 5 acre-feet (approx) Area = 1.0 acre (approx)
- RESERVOIR 2
Dam Location = 1175 feet N and 1025 feet W from S 1/4 Corner of Section 13
Storage = 6 acre-feet (approx) Area = 1.4 acres (approx)
- RESERVOIR 3
Dam Location = 1180 feet N and 100 feet W from S 1/4 Corner of Section 13
Storage = 7 acre-feet (approx) Area = 1.7 acre (approx)
- RESERVOIR 4
Dam Location = 650 feet S and 1300 feet E from N 1/4 Corner of Section 24
Storage = 9 acre-feet (approx) Area = 2.0 acre (approx)

APPLICATION MAP
 Permit to Use Groundwater
 Prepared for: NF LAND LLC
 Prepared by: Geo-Spatial Solutions
 Revised: 20 NOV 2012

RECEIVED BY OWRD

DEC 10 2012

SALEM, OR

PROPOSED USE: Irrigation of 517.7 acres (total)
 MAXIMUM RATE: 6.47 cfs (2,904 gpm)

G-17604

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Land use request #LUD-176-14 and LUD-177-14

2 messages

Jim O'Connell <Jim@caprinc.com>

Wed, Dec 17, 2014 at 8:24 AM

To: "carol.johnson@umatillacounty.net" <carol.johnson@umatillacounty.net>

Carol Johnson: In regards to the request for land use change I have a very big concern. We have spent several thousands of dollar's developing a vineyard on our property. The applicants want to use the easement thru our property (901) for access to the land which they has the right too. We have built a eight foot fence around the total perimeter of our property to keep the deer out. The deer will eat the grape vine leaves and grapes. This would cause considerable finical loss to our company if this happens. We have installed eight foot gates at the access road and have locked these gates and given NLF land the means to open they when they need to. If the land they want to change is approved for a home site, the change will cause several trips a day into and out of our vineyard. Will the new homeowners want to get out and open and close the gate every time they enter or leave out vineyard. This could be addressed by requiring the access road to have an eight foot gate that is controlled by a remote control that would easily open and close all three gates. It could be set to close automatically a short time after it is opened to ensure that it is closed all the time after opening. The other alternative would be to require the road to be fenced off with an eight foot high fence. This would ensure that no human error will cause our company damages. We are open to other ideas if NFL Land has any but this concern needs to be addressed as part of the land change to ensure that it is part of the process from the beginning, not after we have suffered losses to our vineyard. Thank you Jim O'Connell Managing member Capri Walla Walla

Jim O'Connell

President/CEO

6867 N Oracle Ste 101

Tucson Az 85704

520-219-1856

caprinc.
BUSINESS MANAGEMENT

Carol Johnson <carol.johnson@umatillacounty.net>

Wed, Dec 17, 2014 at 8:39 AM

To: Jim O'Connell <Jim@caprinc.com>

Good morning Jim,

Thank you for your comments. I will place them in the file for consideration.

Carol Johnson

[Quoted text hidden]

52



Carol Johnson, Senior Planner

Umatilla County Department of Land Use Planning

216 SE 4th ST, Pendleton, OR 97801

Phone: 541-278-6301 | Fax: 541-278-5480

<http://www.umatillacounty.net/planning>

Visit the County's website for application forms, planning documents, and other helpful information.

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

RECEIVED

JAN 02 2015

UMATILLA COUNTY
PLANNING DEPARTMENT

December 29, 2014

Ms. Carol Johnson
Senior Planner
Umatilla County Department of Land Use Planning
216 SE 4th Street
Pendleton, OR 97801

Dear Carol,

As you know, NF Land LLC is the applicant on two current land use decision requests: #LUD-176-14 and #LUD-177-14. This letter is in response to the December 9 public notices regarding those two requests.

Thank you for your work on the two applications. NF Land LLC offers the following comments on the Preliminary Findings and Conclusions. The applications, findings, conclusions, and decisions are very similar for both LUD requests. As such, the following comments apply to **both** requests.

1. NF Land's understanding is that once the tentative decisions are approved, the approval period is for four years, with the possibility of a two-year extension. Further, NF Land understands it will have four years—plus the possibility of two extra years—to satisfy **both precedent and subsequent conditions**. If this is not consistent with Planning's understanding, NF Land requests that the tentative decision be modified to conform with NF Land's understanding.
2. Both tentative decisions include a condition (#3) that "road access improvements must be professionally engineered and include erosion controls". NF Land requests this portion of the condition be eliminated, along with the rest of the condition #3 text displayed in *italic* font. NF Land's understanding is that these are **not** standard County conditions for approval of a non-farm dwelling. As such, NF Land believes it should not be singled out for this much more challenging and expensive condition.

Please contact me with any questions, and thanks again for your assistance.

Sincerely,



NF Land LLC
By Sam Hobson, Member
2885 Sanford Ave SW, #21711
Grandville, MI 49418
NFLandLLC@gmail.com

(54)

Umatilla County

Department of Land Use Planning



January 22, 2015

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

Sam Hobson
NF Land, LLC
2885 Sanford Avenue SW 321711
Grandville, MI 49418-1342

Re: NF Land Non-Farm Dwelling, #LUD-176-14
Map #5N 36, Tax Lots #902 & 102; and
NF Land Non-farm Dwelling, #LUD-177-14
Map #5N 36, Tax Lot #3300

Dear Sam:

The 21-day notice period for your two non-farm dwelling requests has elapsed. The County Planning office received three written comments regarding your tentative plan to locate non-farm dwellings on Tax Lot #3300 and Tax Lots #902 & 102. Copies of these comments are enclosed with this letter. Comments also include your request for clarification of the approval timeline and a change to Precedent Condition 3. The comments are summarized below followed by responses.

Comments:

1. The first comment received is from notified property owner and neighbor Jim O'Connell of Capri Vineyard. Due to the area's proximity to wildlife it is necessary for the property to have a high fence around the perimeter of his vineyard to prevent deer from entering the property and eating grape leaves and fruit. Mr. O'Connell acknowledges that you have a right of access to your properties through his property but his big concern is about an increase in vehicle trips resulting from the approval of your dwelling¹ requests. It is his belief that the proposed dwellings will result in more vehicle trips across his vineyard property and increase the risk of crop loss to his farm operation as a result of access gates being left open.
2. A second comment was received from a notified agency, the Oregon Department of Water Resources (OWRD). The comments from District 5 Watermaster, Greg Silbernagel, are informational. The OWRD comment letter includes a copy of the map submitted with your 2012 water rights application. According to OWRD your 2012 water rights application

¹ Trip Generation manual, published by the Institute of Transportation Engineers, a single family dwelling generates, week days, approximately 9.52 Average Daily Trips (ADT).

requests development of 15 wells. The map submitted with the OWRD application shows your properties along the North Fork Walla Walla River Road and includes the parcels now proposed for consideration as non-farm dwelling parcels. OWRD issued a Proposed Final Order on November 4, 2014, to allow up to 6.74 [6.47] cfs. The protest period for the Proposed Final Order ended on December 19, 2014, with no protests filed. The Final Order will allow up to 14 [15] wells on 517.9 acres and includes the properties considered for non-farm status.

3. Your comments request clarification of a non-farm dwelling approval timeline and an amendment to Precedent Condition 3 to change certain access road improvements.

Planning Response Capri Vineyard:

Standards for non-farm dwellings require Findings demonstrating that the non-farm dwellings and activities associated with the dwelling “will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.”

Nearby lands devoted to farm use include Mr. O’Connell’s property planted in grapes and traversed for access to both of your properties and the proposed non-farm dwellings. An expansion of the vehicle traffic through this neighboring farm operation has been described as increasing potential impacts to the neighbor’s farming operation.

The introduction of impacts to the farming operation from the proposed non-farm dwellings will need to be addressed. Impacts from the non-farm dwellings must satisfy the requirement that “the dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.”

Mr. O’Connell offers a couple of possible solutions that may be incorporated into the Findings and as conditions of approval. Solutions offered include installation of automatic closing gates or installation of fencing along the access road to keep the area planted in grapes enclosed from the access easement road and potential impact from gates left open.

Planning Response OWRD:

Statements used in the report to support the lack of farm possibilities on your properties are, in part, based on the absence of irrigation water rights on your properties. On November 7, 2014, prior to sending out notice of the land use decision applications, planning emailed the question, why it was not possible to develop a vineyard on your similarly situated parcels as has been developed on the adjacent Capri Vineyard parcel?

Your response included two reasons. One was due to the high investment costs to

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prepare (earth-moving terracing, etc.) the slopes for planting and the second that grapes would not grow in the properties soils/climate without irrigation water.

Staff agrees that the cost of terracing and planting a vineyard is a large investment and although a grape crop does not require a large volume of irrigation water, water is necessary to grow a grape crop in this area of the county.

Information regarding your 2012 water rights application submittal was not included in the land use application materials for the non-farm dwelling properties. Planning staff first learned about your pursuit of water rights from comments made by OWRD in response to the public notices for your non-farm applications.

Although, irrigation water rights are not currently developed, or in use, on your properties your 2012 application has recently resulted in OWRD's Proposed Final Order for up to 15 wells across 500+ acres of farm zoned land (map attached). This likewise is a costly investment and doubtfully would not be pursued without some anticipation or speculation on farm uses the irrigation water rights would benefit.

This again raises questions about whether the non-farm dwellings would be on land generally unsuitable for farming where irrigation water rights increase the possible farm uses of the properties. This is especially true where an adjacent parcel, similarly situated, is in a farm use. Although preparing the land for a farm crop would be necessary, the water to irrigate the farm crop is an available beneficial use that may be developed under the terms and conditions of the OWRD Final Order. Therefore, available irrigation water rights increase the farm use possibilities on the subject properties.

Additionally, it also must be determined how the stability standard is met if the cumulative impacts of non-farm dwellings make it more difficult for farm uses in the area to continue due, in part, to limits on opportunities to expand, purchase or lease farmland. If approved, the neighboring farm operation (vineyard) would be bordered by both non-farm parcels; therefore, it is necessary to determine if the non-farm dwellings will diminish the neighboring farm operation's opportunity to expand, etc.

Planning Response Approval Time Non-Farm Dwellings:

Dwelling approvals on EFU zoned lands are granted for four years and when requested, may be extended two additional years. Umatilla County grants up to a total of six years from the date the Final Findings are signed to complete the conditions of approval.

Planning Response Amending Precedent Condition 3:

The requirements listed in Precedent Condition 3 for professionally engineered road improvements including erosion controls, is a condition applied due to road development on steeper slopes. Access (Section 152.059 (K) (8) (d)) entails road

improvements to the Option 1 (County P-1) road design standard within a 30-ft access easement. The Option 1 and P-1 road standard requires a 16-ft wide roadway improved with four inches of compacted gravel (see attached diagram). The Findings under Section 152.059 (K) (8) (d) are amended for the verification of improvements to the access easement road to the Option 1 (County P-1) design standard as follows:

3. Obtain and/or verify that a county road approach permit is in place for the existing access easement road and verify the access easement road is improved to the Option 1 design standard (County P-1). The improved road must be developed to accommodate emergency vehicle access to the proposed dwelling.

Summary:

The comments received from Mr. O'Connell, OWRD, and you, the applicant, require amending and altering the Staff Report and Findings. Standards for non-farm dwellings, found in Section 152.059 (K) (8), must be met based on facts in the record that are relied upon and believed to demonstrate that the Standards are met. Following is a summary of issues requiring additional justification.

1. The non-farm dwellings must satisfy the requirement that "the dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use."

Potential impacts identified by the neighboring farming operation will need to be addressed by additional justification satisfying that the non-farm dwellings will not significantly change or increase the cost of accepted farming practices on nearby lands.

2. Additional justification is necessary to satisfy the stability standard on whether the cumulative impacts from non-farm dwellings make it more difficult for farm uses in the area to continue, due to diminished opportunities to expand, purchase or lease farmland.
3. The proposed non-farm parcels are within the 500+ acres benefitting from water rights within the OWRD Proposed Final Order. This presents difficulties about how the proposed non-farm dwellings satisfy whether the non-farm dwellings would be on land generally unsuitable for farming. Therefore, provide additional justification on why the proposed non-farm parcels are unsuitable for farming, in light of OWRD's Proposed Final Order.

Due to the need for additional justification to make a decision on your non-farm dwelling requests, and because of the limitation of 150-days placed on counties to make Final decisions, the Final decisions for your non-farm dwelling requests are

directed to the next available Planning Commission Hearing on February 26, 2015. In order to organize and assemble additional information prior to the hearing, please submit materials by February 5, 2015, two weeks prior to the hearing date, or as soon as possible so that materials may be prepared for the hearing. The prepared materials are mailed to the Commission members 10-days prior to the hearing date.

Thank you for your attention to these matters.

Cordially,



Carol Johnson
Senior Planner

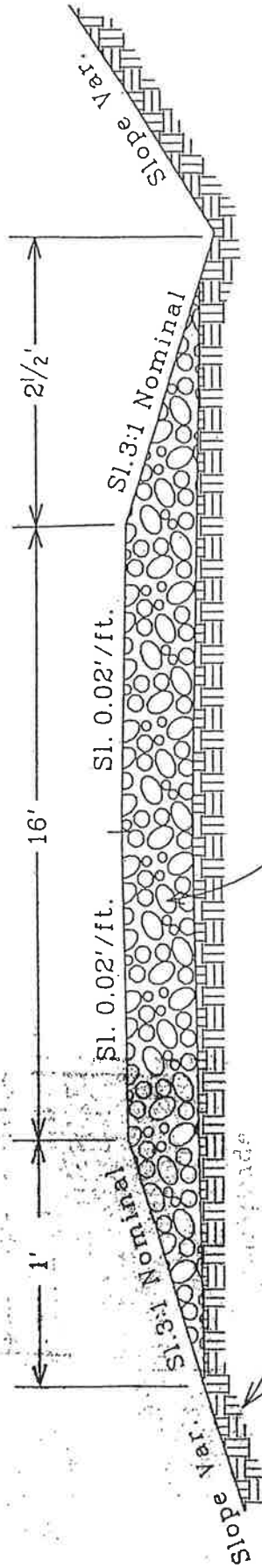
enclosures: Comment Letters, P-1 County Road Diagram

cc: Jim O'Connell-Capri Vineyard, Property Owner
Greg Silbernagel, Watermaster/OWRD
Tamra J. Mabbott, County Planning Director

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"P-1" (Land Partition)

To be used in cases where additional Partitioning or development is not anticipated and access is to 3 or fewer parcels.



- * Note: If Partition is within a City Urban Growth Boundary, City Standards should apply.
- * Culvert pipes to be installed in locations determined by the Director of Public Works. Materials & workmanship shall conform to current ODOT Standard Specifications
- * All other construction details and specifications to conform to current ODOT Standard Specifications and to be approved by the Director of Public Works.
- * Any changes to surfacing width or depths or variance from current Oregon Department of Transportation Standard Specifications must be approved by the Director of Public Works.

Umatilla Co. Rd. Dept.	
"P-1"	
Drawn By: JG	Checked By: GR
Date: July 1997	Road Standard

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Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

Watermaster

116 SE Dorion Avenue

Pendleton, OR 97801

Phone: (541) 278-5456

FAX: (541) 278-0287

February 13th, 2015

Ms. Carol Johnson
Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, Oregon 97801

Re: Public hearing regarding #LUD-176-14 and #LUD-177-14.

Dear Ms. Johnson,

See attached for the "Final Order" issued by the Oregon Water Resources Department regarding NF Land, LLC's intent to appropriate groundwater. Full details and history may be found by reviewing application #G-17604 at <http://apps.wrd.state.or.us/apps/wr/wrinfo/>

Please let me know if you have any questions.

Sincerely,

Greg Silbernagel
Watermaster, District #5

Attachments: Final Order for Water Rights Application Number G-17604 (2 pages)

(el)

**Oregon Water Resources Department
Water Right Services Division**

Water Rights Application
Number G-17604

Final Order

Appeal Rights

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Findings of Fact

On December 11, 2012, NF Land LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 4, 2014. The protest period closed December 19, 2014, and no protest was filed.

Conclusions of Law

The proposed use would not impair or be detrimental to the public interest pursuant to ORS 537.621(2).

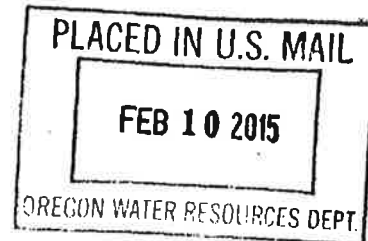
Order

Application G-17604 therefore is approved as proposed by the Proposed Final Order, and Permit G-17347 is issued as limited by the conditions proposed by the Proposed Final Order.

DATED February 9, 2015

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director



(62)

This document was prepared by Kim French. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

FEB 18 2015

COREY, BYLER & REW, L.L.P.
ATTORNEYS AT LAW

UMATILLA COUNTY
PLANNING DEPARTMENT

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GEORGE H. COREY, DECEASED
ALEX M. BYLER, DECEASED
LAWRENCE B. REW, DECEASED

Email: gregg@corey-byler.com

*Admitted in Oregon and Washington

February 18, 2015

Mr. Randy Randall, Chair
Umatilla County Planning Commission
Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, OR 97801

Re: NF Land, LLC
Land Use Requests #LUD-176-14; 177-14
Our File No. 1150048-001

Dear Mr. Randall:

Our office represents NF Land, LLC ("NF Land") in relation to the above two land use applications pending before Umatilla County, in which NF Land seeks approval for two separate non-farm dwellings. It is my understanding that the Planning Department prepared Preliminary Findings and Conclusions recommending the approval of LUD 176-14 and 177-14 but that the Planning Department received comments from members of the public during the 21 day notice period following issuance of the Preliminary Findings and Conclusions. I further understand that in response to these comments the Planning Department requests further discussion from NF Land. On behalf of NF Land I submit the below analysis to address the comments received by the Planning Department.

i. The non-farm dwellings will not "force a significant change in" nor "significantly increase the costs of accepted farming practices on nearby lands."

In order for the two non-farm dwelling permits to be approved NF Land must demonstrate that the proposed non-farm dwellings will not "force a significant change in" or "significantly increase the cost of" accepted farming practices on nearby farm land. This standard is imposed by UCDC 152.059 (K)(8)(a) and ORS 215.284 (7)(a). The provision in the Umatilla County Development Code ("UCDC") merely restates the language in the state statute. The Land Use Board of Appeals ("LUBA") has explained that ORS 215.284, requires the local decisionmaker to "(1) describe the farm and forest practices on surrounding lands devoted to farm or forest use, (2) explain why the proposed use will not force a significant change in those practices, and (3) explain

why the proposed use will not significantly increase the costs of those practices.” Gutoski v. Lane County, 34 Or LUBA 223, 227 (1998).

In this instance the County’s Preliminary Findings and Conclusions already describe the farming practices on nearby lands so the first element is taken care of. As to the second and third elements there is simply no proof that the existing farm practices will be changed nor that the costs will be increased. The nearby farming operation—which operation is run by one of the commenters to NF Land’s application—is a vineyard. That vineyard has already installed a fence to keep deer out. There are also already gates that regulate access pursuant to mutual agreement between NF Land and Capri Vineyard, and those gates can remain as is.¹ There is simply no evidence in the record that the farming practices will be changed nor that costs will be increased if NF Land’s applications for non-farm dwellings are approved. The fence and the gate were already in place prior to NF Land’s application for two non-farm dwellings so there is nothing that can be construed as a “change.” Similarly, the costs for the fence and gates have already been incurred and were incurred before NF Land’s applications were even filed. So, there is no risk of approval of NF Land’s applications leading to additional costs related to farming.

A prior LUBA case addressing a non-farm dwelling and whether it increased the costs of farming at a nearby vineyard is instructive here and supports NF Land’s position. In *Wetherell v. Douglas County and Umpqua Pacific Resources, Inc.*, LUBA rejected an argument by the opponent of a non-farm dwelling permit, and upheld the decision of Douglas County, that a gravel road through a vineyard would not significantly change the farming practices nor significantly increase the costs of farming. 56 OR LUBA 210, 138 (2008). The opponent argued that the creation of a gravel road would compact soil and cause the vines in the vineyard to become less productive. LUBA rejected this argument and said that a decrease in production would not “force a significant change in accepted farming practices or the cost of those farming practices” and rejected the opponent’s argument. *Id.*

The situation here is analogous to that in *Wetherell* in that the arguments of Capri Vineyard revolve around the possible reduction in vineyard production because of deer—which might gain access by getting around gates that are presently in place and eating grapes. As in *Wetherell* the potential speculative reduction in production could just as easily occur now if someone associated with Capri Vineyard were to leave a gate open. Put another way: any possible impacts upon the grapes exists without regard to whether NF Land’s applications are granted. Logically then, approving these non-farm dwellings will not lead to “significant changes” in farming practice nor result in “significantly increased” costs. Thus, there is no basis to find that NF Land’s applications do not meet the standard set out in UDCD 152.059 (K)(8)(a). Respectfully, LUD 176-14 and 177-14 should be granted, consistent with the recommendation in the Planning Department’s Preliminary Findings and Conclusions.

///

¹ The easement in favor of NF Land across Capri Vineyards’ property explicitly provides that no gates are to be put in place that prevent access. Notwithstanding, NF Land, in the interest of neighborly relations, agreed to allow the gates until such time as NF Land decided otherwise. A copy of said easement, with the gate restriction highlighted, is attached.

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ii. The cumulative impacts from non-farm dwellings will not make it more difficult for farm uses in the area to continue.

The Planning Department requested further explanation of whether the “stability standard,” which requires an analysis under UCDC 152.059 (K)(10), was satisfied here. That provision in the Umatilla County Development Code requires an analysis of whether “cumulative impacts” from non-farm dwellings would make it more difficult for farm uses in the area to continue. As required by that provision of the UCDC, Umatilla County performed a study to determine whether this standard was met. The Preliminary Findings and Conclusions state that the stability standard was met. Since that time there has been no evidence placed into the record that would indicate the stability standard is no longer met nor has any evidence been provided to call Umatilla County’s conclusions into question. Similarly, there were no comments that were sent to Umatilla County which raised concerns with this standard. Thus, the stability standard does not bar granting NF Land’s applications for non-farm dwellings.

To the extent that this issue needs to be considered further, the Planning Department’s own findings establish that the stability standard is met. Only one non-farm dwelling has been built since 1993. Further, only 15 parcels even potentially qualify for building of non-farm dwellings but as the Planning Department notes “it is unlikely all 15 would be developed because of access issues and development costs.” Indeed, the lack of building activity of non-farm dwellings since 1993, despite the possibility, demonstrates there is no risk of “cumulative impacts” of non-farm dwellings disrupting farming activity. And, as to LUD 176-14 that parcel was approved for a non-farm dwelling already by Umatilla County, first in 1991 and again in 2008. Given that the parcel has already been approved for development multiple times it is not clear how simply approving the development once again would change the land use pattern in the area and violate the standards in UCDC 152.059 (K)(10).

iii. The presence of a water permit is not part of the analysis for purposes of determining whether land is “generally unsuitable” for farming under UCDC 152.059 (K)(8)(b).

In response to a letter from the District 5 Watermaster, Greg Silbernagel, the Planning Department required that NF Land provide additional explanation as to why the parcels for which NF Land seeks non-farm dwelling permits are “unsuitable for farming” given the proposed final order that would authorize a water permit.² As explained more fully below the possibility of water rights does not provide a basis upon which to deny NF Land’s applications.

The Final Order by the Oregon Water Resources Department does not impact NF Land’s applications for several reasons. First, mere approval of a water permit does not mean that the water rights will actually be developed. Water must actually be available beneath the surface and in sufficient quantity and quality. It must also be economically feasible to develop and the applicant must prove beneficial use over time in order to perfect a water right. Thus, the permit is only the first step in a long process. The viability of irrigated farming on the property owned by

² The Oregon Water Resources Department only very recently approved NF Land’s application and granted a permit. At the time that #LUD-176-14 and 177-14 were submitted the ORWD had not acted on the permit request.

(Cde)

Mr. Randy Randall
Chair
February 18, 2015
Page of 4 of 4

NF Land is speculative at best and would be a very expensive undertaking. Therefore, the permit does not support a finding that the parcels subject to NF Land's two land use requests are suitable for farming.

Further, the standard for determining whether property is "generally unsuitable for farm use" does not actually incorporate a requirement that Umatilla County consider the availability of water rights. Specifically, UCDC 152.059 (K)(8)(b) states that:

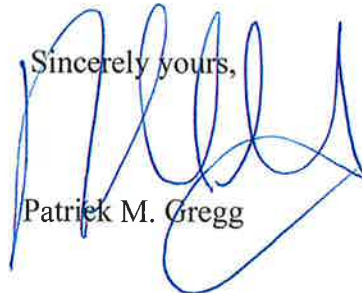
The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel that is generally unsuitable for farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. UCDC 152.059 (K)(8)(b).

This set of standards identified in UCDC 152.059 (K)(8)(b) does not refer to the viability of irrigated farming nor the existence of a water right as one of the criteria for determining if the property is unsuitable for farm use. In this instance then, the decision of the Oregon Water Resources Department and the issuance of a permit is not a consideration. Rather, the Planning Department's Preliminary Findings, which found that the parcels qualified as "generally unsuitable for farming" are controlling and demonstrate that the necessary showing has been met by NF Land. The two applications submitted by NF Land should be approved.

iv. Conclusion

NF Land respectfully submits that the above points appropriately clarify the questions that arose following the public comments on LUDC 176-14 and 177-14. NF Land therefore requests that the Planning Commission approve the two pending applications and grant permission for NF Land to construct two non-farm dwellings.

Sincerely yours,



Patrick M. Gregg

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NF LAND, LLC LAND USE DECISION, #LUD-177-14
FEBRUARY 26, 2015
PLANNING COMMISSION HEARING
PACKET LIST

1. Staff Memo to PC, pages 1 & 2
2. Property Vicinity Map, page 3
3. Applicant's Site Plan Map, page 4
4. 2000-acre Impact Study Area Map, page 5
5. Staff Report-Preliminary Findings, pages 6-15
6. Application for a Permit to Use Ground Water, pages 16-34
7. OWRD Proposed Final Order Water Rights Application No. G-17604, pages 35-49
8. OWRD Comment Letter from Greg Silbernagel, Watermaster, District 5, and NF Land LLC, Application Map for Permit to Use Groundwater, pages 50 & 51
9. Comment Letter from Jim O'Connell, Caprinc, page 52 & 53
10. Comment Letter from NF Land LLC, by Sam Hobson, Member, page 54
11. Staff's 21-day Letter and P-1 Road Standard Diagram, pages 55-60
12. OWRD Letter from Greg Silbernagel, Watermaster, District 5, and OWRD Final Order Water Rights Application No. G-17604, pages 61-63
13. Additional Justification (letter), from Attorney Patrick Gregg, for NF Land, LLC Land Use Decision, Non-farm Dwelling Applications, pages 64-67

Umatilla County

Department of Land Use Planning



February 18, 2015

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

MEMO

To: Umatilla County Planning Commissioners
From: Carol Johnson, Senior Planner
Re: February 26, 2015, Planning Commission Hearing,
NF Land, LLC, Applicant/Property Owner
Land Use Decision, #LUD-176-14
Tax Lot 102, Map 5N 36 22 and Tax Lot 902, Map 5N 36 23
Land Use Decision, #LUD-177-15
Tax Lot 3300, Map 5N 36
cc: Doug Olsen, County Counsel
Tamra J. Mabbott, Planning Director

Sam Hobson, managing partner of NF Land, LLC, has requested approval of two non-farm dwellings on lands owned along the north side of the North Fork Walla Walla River Road. Non-farm dwelling approvals are processed through a Land Use Decision application and typically follow an administrative review process consisting of public notice followed by a comment period with the opportunity to request a public hearing. The Land Use Decisions for the NF Land requests followed the administrative process.

During the 21-day comment period the Planning Department received comments from the applicant, an adjacent notified property owner and from Oregon Water Resources, a notified public agency. These comments raised staff's concerns about NF Land satisfying certain non-farm dwelling approval standards in Umatilla County Development Code (UCDC) Section 152.059 (K) (8), (10) & (11) as follows:

1. The non-farm dwellings must satisfy the requirement that "the dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use."

Potential impacts identified by the neighboring farming operation will need to be addressed by additional justification satisfying that the non-farm dwellings will not significantly change or increase the cost of accepted farming practices on nearby lands.

2. Additional justification is necessary to satisfy the stability standard on whether the cumulative impacts from non-farm dwellings make it more difficult for farm uses in the area to continue, due to diminished opportunities to expand, purchase or lease farmland.
3. The proposed non-farm parcels are within the 500+ acres benefitting from water rights within the OWRD Proposed Final Order. This presents difficulties about how the proposed non-farm dwellings satisfy whether the non-farm dwellings would be on land generally unsuitable for farming. Therefore, provide additional justification on why the proposed non-farm parcels are unsuitable for farming, in light of OWRD's Proposed Final Order.

Staff concluded that the NF Land, LLC application requests should be directed to the Planning Commission for Final Decisions. To assist the Planning Commission in making these decisions the Commissioners' packets include, in part: vicinity maps, the staff report-preliminary findings, comment letters, water rights information, correspondence, and additional justification submitted by Patrick Gregg, the applicant's attorney. The Planning Commission decision to approve, or deny, the NF Land, LLC land use requests must be supported by facts the Planning Commission believes, and relies upon, to prepare the Final Findings and Conclusions.

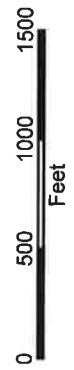
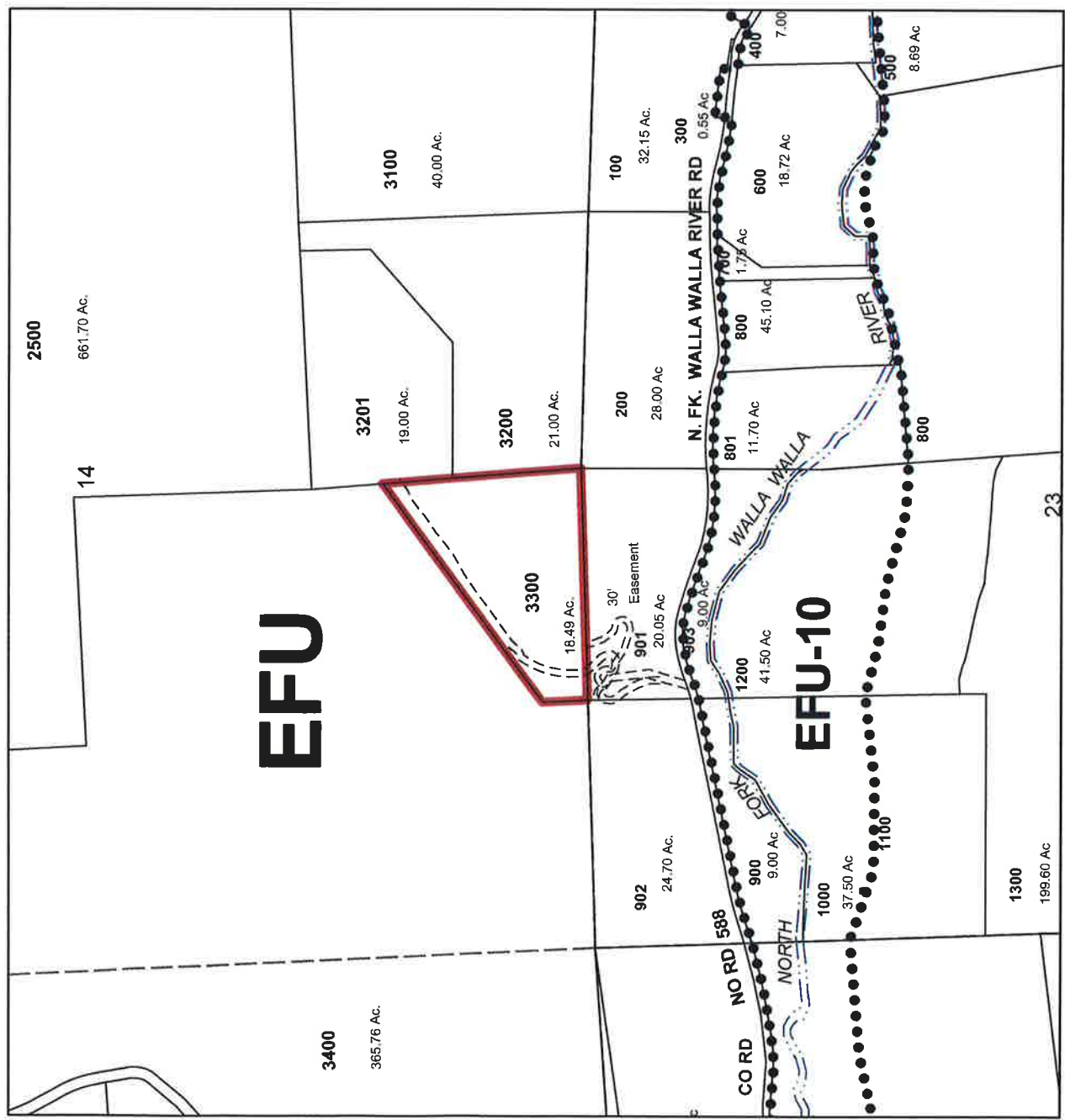
PROPERTY OWNERS WITHIN 750'
NOTICE AREA OF SUBJECT PARCEL

MAP 5N36

- 2500 BUZZING DOUBLE B RANCH LLC
- 3200 NF LAND LLC
- 3201 NF LAND LLC
- 3300 NF LAND LLC**
- 3400 WEISSEFLUH MARILYN

MAP 5N3623

- 200 NF LAND LLC
- 801 RAMSEY JOE M & DORIS M
- 900 AFDAHL BRIAN
- 901 CAPRI WALLA WALLA LLC
- 902 NF LAND LLC
- 903 LANE DAN J & DANA
- 1200 KNIFONG DANIEL & PAMELA



LAND USE DECISION #LUD-176-14
 NF LAND LLC, APPLICANT/OWNER
 MAP 5N36, TAX LOT 3300
 SUBJECT PARCEL

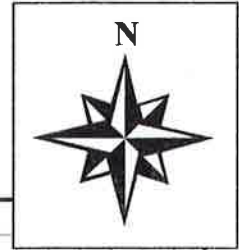
DATE: 11/17/14

MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Not intended for legal use. Created by J. Alford, Umatilla County Planning Dept. 11/17/14

(3)

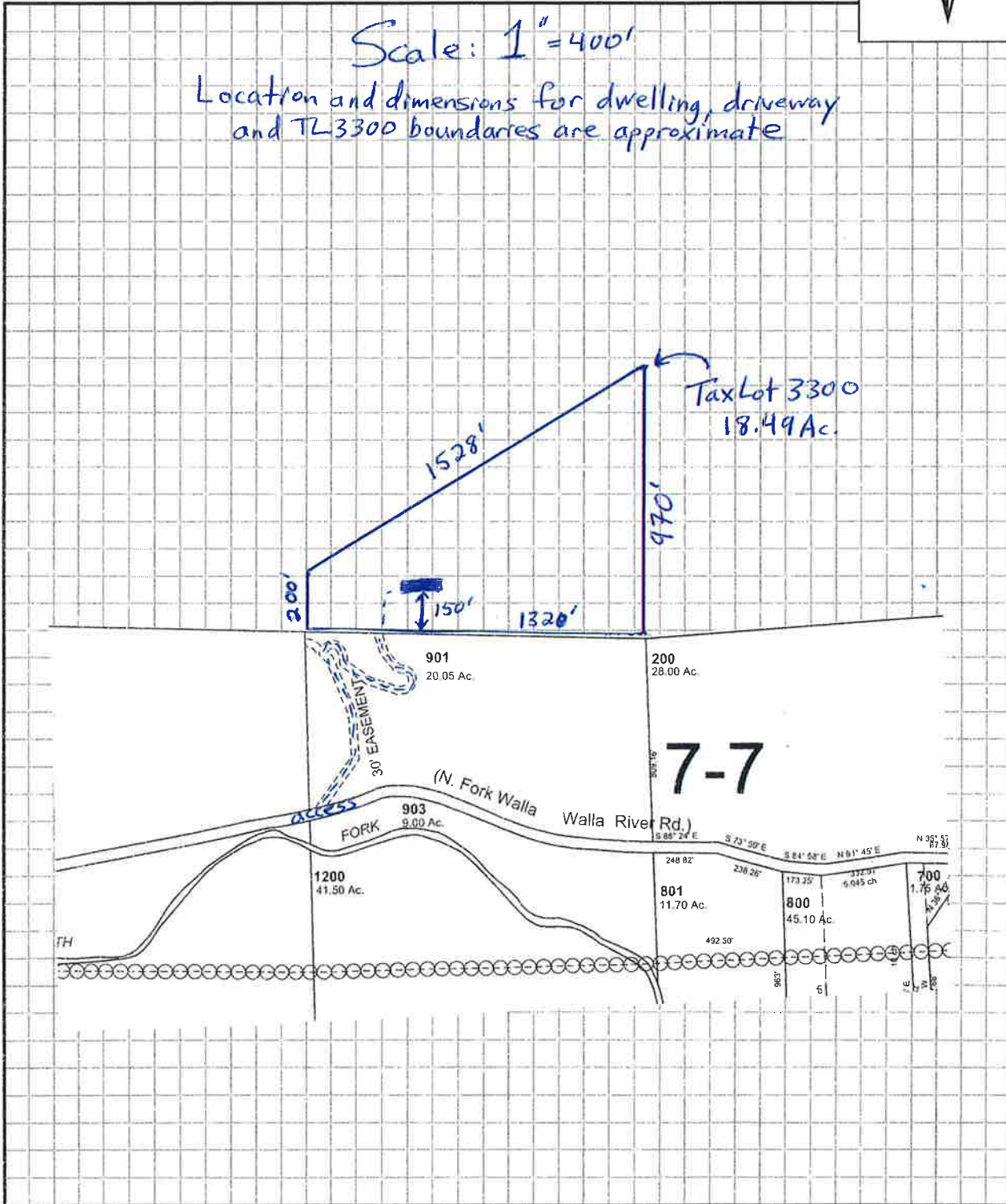
Exhibit B, "Site Plan"

Please include the details listed under item (c)
found in Section 4 (on preceding page)

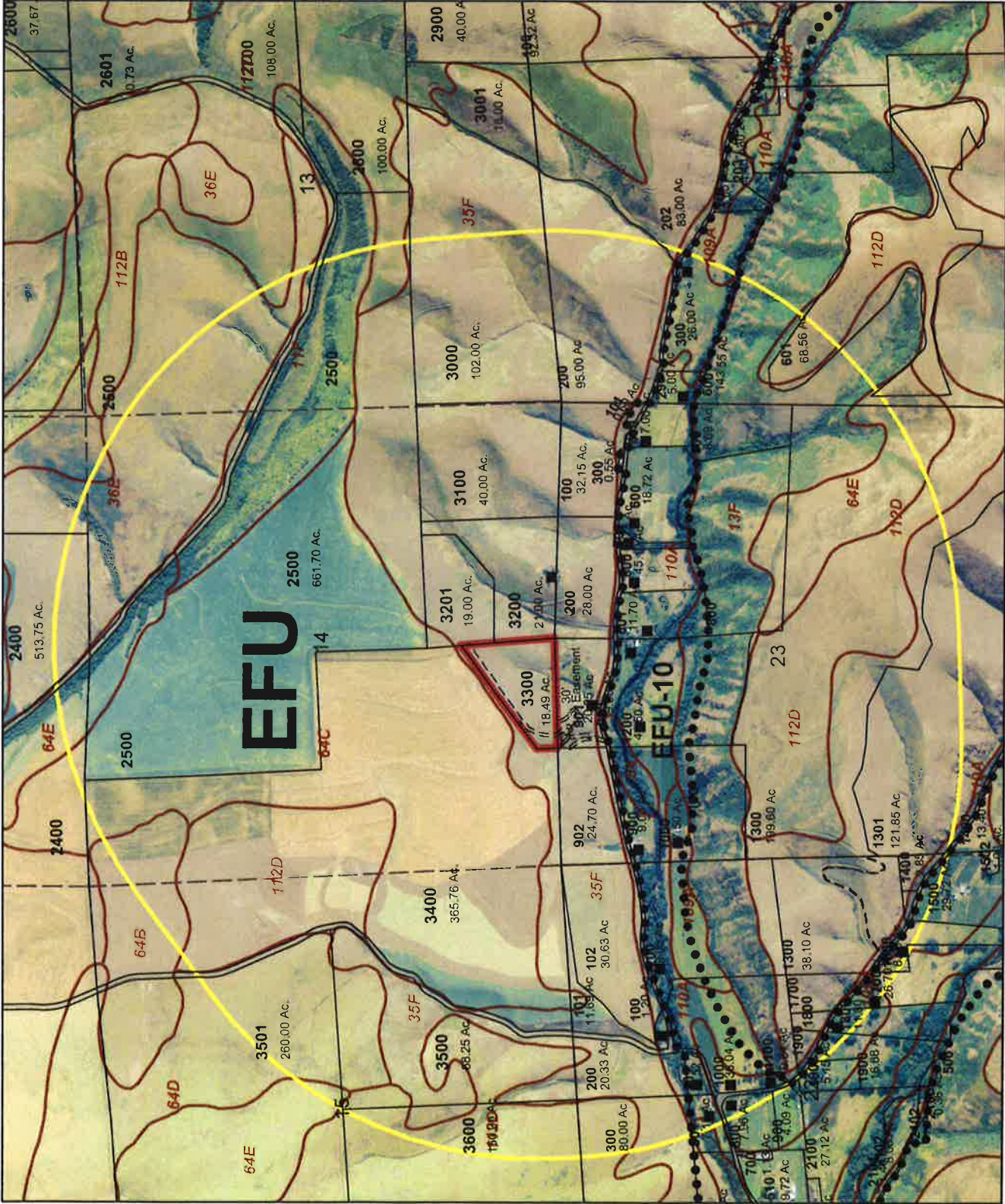


Scale: 1" = 400'

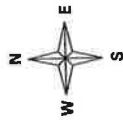
Location and dimensions for dwelling, driveway
and TL3300 boundaries are approximate



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- Legend**
- Subject Tax Lot 3300
 - Parcel Boundary
 - 2000 Ac. Template
 - Dwellings
 - Soil Type Boundary



2012 AERIAL PHOTO



**NF LAND LLC 2000 AC. IMPACT STUDY AREA
MAP 5N36, TAX LOT 3300**



MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Created by J. Alford Umatilla County Planning Dept.

**UMATILLA COUNTY PLANNING DEPARTMENT
PRELIMINARY FINDINGS AND CONCLUSIONS
NF LAND LLC NON-FARM DWELLING
LAND USE DECISION REQUEST #LUD-177-14
MAP #5N 36, TAX LOT #3300, ACCOUNT #134116**

1. **APPLICANT:** NF Land, LLC, Sam Hobson, 2885 Sanford Avenue SW 321711, Grandville, MI 49418-1342
2. **OWNER:** Same as above.
3. **REQUEST:** The applicant is pursuing an opportunity to qualify a non-farm dwelling on a parcel of farmland consisting of poor quality soils. (The applicant also is pursuing a second application for a non-farm dwelling on a parcel located to the southwest of Tax Lot 3300.)
4. **LOCATION:** The property is located on the north side of the North Fork of the Walla Walla River Road approximately 5 1/2 miles to the southeast of the City of Milton-Freewater. The subject parcel is on the south facing hillside north of a recently planted vineyard owned by Capri Walla Walla.
5. **SITUS /ADDRESS:** The property is undeveloped and an address has not been issued at this time.
6. **PARCEL ACREAGE:** Tax Lot 3300 = 18.49 acres.
7. **PROP CODE:** Property Codes are assigned by the County Assessor as to what type of land use is present on the property. Property Code 550, assigned to the property is: "Vacant unimproved farm land, Farm Deferral."
8. **TAX CODE:** The Tax Code is assigned by the County Tax Office. Each Code Area has various taxing rates depending upon the services provided. The Tax Code for this parcel is 07-07, which has the following taxing definitions: General County, Umatilla Co Bond, School District #7 Milton Freewater, Education Service District (ESD), BMCC, BMCC Bond, Port Of Umatilla, Cemetery District 3 Milton-Freewater and the Umatilla Special Library District.
8. **COMP PLAN:** North/South Agricultural Region Plan Designation.
9. **ZONING:** Exclusive Farm Use (EFU, 160-acre minimum)
10. **ACCESS:** Access would be via an existing access easement extending from the North Fork Walla Walla River Road. A county road approach permit will need to be verified or obtained for access to the county road.

11. ROAD TYPE: North Fork Walla Walla River Road, County Road No. 588, is a paved two lane county road.

12. EASEMENTS: Other easements were not listed for the property; however, there are easements for overhead powerline listed on the deed.

13. LAND USE: The subject property is farm zoned but limited for farm production.

14. ADJACENT USE: Properties farther to the north are primarily planted in grains. The property immediately south is planted in wine grapes. Along the river and county road are parcels in tree fruit, hay and pasture.

15. SOIL TYPES:

The applicant's property proposed for the non-farm dwelling has no irrigation water rights and consists of the following non high-value soil type:

Map Unit	Description	Land Capability Class	
		Dry	Irrigated
35F	Gwin-Rock outcrop complex, 40 to 70 percent slopes	VIIIs	---

The study area consists of the following list of soil types:

Map Unit	Description	Land Capability Class	
		Dry	Irrigated
64C	Palouse silt loam, 7 to 12 percent slopes	VIIe	IIIe
35F	Gwin-Rock outcrop complex, 40 to 70 percent slopes	VIIIs	---
112D	Waha silty clay loam, 12 to 25 percent slopes	IVe	---
13F	Buckcreek-Gwin Association, 45 to 70 percent slopes	IVe	---
64D	Palouse silt loam, 12 to 20 percent slopes	VIe	---
64B	Palouse silt loam, 1 to 7 percent slopes	IIe	IIe
110A	Veazie cobbly loam, 12 to 25 percent slopes	IVs	IIIs
109A	Venzie silt loam, 0 to 3 percent slopes	IVs	IIs
84	Riverwash	VIIIw	---
36E	Gwinly very cobbly silt loam, 7 to 40 percent slopes	VIIIs	---
11F	Bowlus-Buckcreek Association, 40 to 70 percent slopes	VIIe	---

Soil Survey of Umatilla County Area, 1989, NRCS. The suffix on the Land Capability Class designations are defined as "e" – erosion prone and "c" climate limitations (Survey, page. 172).

16. BUILDINGS: There are no buildings on the property.

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- 17. UTILITIES:** The area is served by Milton-Freewater Power for electrical power, and Century Link for telephone service.
- 18. WATER/ SEWER:** The subject property is not currently developed with a domestic well or septic system.
- 19. RURAL FIRE:** The property is not within a taxed fire district but has the option to subscribe to the Milton-Freewater Fire Department.
- 20. IRRIGATION:** There are no irrigation water rights on the property.
- 21. FLOODPLAIN:** The property is not located within a Special Flood Hazard Area.
- 22. PROPERTY OWNERS AND AGENCIES NOTIFIED:** February 4, 2015

NOTIFIED AGENCIES: Department of Environmental Quality, DLCD, Oregon Department of Water Resources, Oregon Department of Ag, Umatilla County Assessor, Umatilla County Road Department, Walla Walla Watershed, City of Milton-Freewater Power and Century Link

23. PLANNING COMMISSION HEARING DATE: February 26, 2015

24. COMMENTS RECEIVED: Three comments were received during the administrative review, 21-day comment period. The first comment received was from notified property owner and neighbor Jim O'Connell of Capri Vineyard. Due to the area's proximity to wildlife it is necessary for the Capri property to have a high fence around the perimeter of the vineyard to prevent deer from entering the property and eating grape leaves and fruit. Mr. O'Connell acknowledged that the applicant has a right of access to the properties through his property but his big concern is about an increase in vehicle trips resulting from the approval of the dwelling requests. It is his belief that the proposed dwellings will result in more vehicle trips across his vineyard property and increase the risk of crop loss to his farming operation as a result of access gates being left open.

A second comment was received from a notified agency, the Oregon Department of Water Resources (OWRD). The comments from District 5 Watermaster, Greg Silbernagel, are informational. The OWRD comment letter includes a copy of the map submitted with the applicant's 2012 water rights application. According to OWRD the 2012 water rights application requests development of 15 wells. The map submitted with the OWRD application shows the NF Land, LLC properties along the North Fork Walla Walla River Road and includes the parcels now proposed for consideration as non-farm dwelling parcels. OWRD issued a Proposed Final Order on November 4, 2014, to allow up to 6.74 [6.47] cfs. The protest period for the Proposed Final Order ended on December 19, 2014, with no protests filed. The Final Order will allow up to 14 [15] wells on 517.9 acres and includes the properties considered for non-farm status.

Comments were received from the applicant requesting clarification of a non-farm dwelling approval timeline and an amendment to Precedent Condition 3 to change certain access road improvements.

In response to these comments the NF Land, LLC, Land Use Decision, #LUD-14-177, is directed to the Umatilla County Planning Commission for Final Decision.

25. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE FOR LAND USE DECISIONS, The criteria to establish a Non-Farm Dwelling in the EFU Zone are found in Section 152.059 (K)(8), *Non-Farm Dwelling*. The following applicable standards are indicated by underlined text, responses follow in standard text.

§ 152.059 LAND USE DECISION

In an EFU zone the following uses may be permitted through a land use decision via administrative review (§152.769) and subject to the applicable criteria found in §152.617. If approved, a county zoning permit (§152.025) is required to finalize the decision.

(K) DWELLINGS.

The following permanent, single family dwellings may be authorized in an EFU zone. The dwellings may be conventional “stick built,” modular homes, manufactured homes or mobile homes meeting the definition of a dwelling and the standards in §152.013(B)(5). All farm dwelling applications are subject to review and comment by the Department of Land Conservation and Development. Permits for dwellings approved under this section are valid for four years. A permit extension for an additional two years may be obtained.

(8) *Non-farm dwelling.* A non-farm dwelling permitted in ORS 215.284 and subject to the following criteria:

- (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
- (b) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land considerations, drainage and flooding, vegetation, location and size of tract.
 - (i) A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and
 - (ii) A lot or parcel or portion of a lot or parcel is not generally unsuitable simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not generally unsuitable. A lot or parcel or portion of a lot or parcel is presumed to be suitable if it is composed predominately of Class I - VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or
 - (iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species

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recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not generally unsuitable simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not generally unsuitable. If a lot or parcel is under forest assessment, it is presumed suitable if, in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

The largest commercial farming occurring within the 2,000 acre impact study area consists of growing grain crops north of the subject property on less severe slopes. In addition there are tree fruits, grapes and some hay and pasture areas mainly along the river where there are better soils and irrigation water is available.

Farming practices and activities for growing grain crops typically include cultivation, seeding, fertilizing, weed spraying, and harvesting of crops, which commonly includes the use of farm equipment such as tractors, spray attachments, and machinery and trucks for harvest. These farming practices occur at specific times of the year and not necessarily on a daily basis. The applicant's parcel is comprised of slopes of between 40 to 70 percent and therefore, due to steep slopes and poor soil quality the parcel has not been in farm production. (These soil conditions exist on the other steep south facing hill sides nearby.)

The area on the parcel where the applicant believes a dwelling could be developed is an area that is flat compared to the rest of the parcel. Access to the property and possible dwelling site is provided by an existing access easement extending from the county road across the Capri property. Under the Rules a parcel or portion of a parcel is presumed to be suitable for farming if composed predominately of Class I - VI soils; likewise a parcel containing Class VII soils is presumed to be unsuitable. The applicant's entire parcel is comprised of Class VII soils and lacks irrigation water. Therefore, the applicant's proposed non-farm dwelling would be situated upon a parcel that is generally unsuitable land for the production of farm crops and livestock, considering terrain, and adverse soils. For these reasons the Umatilla County Planning Department finds that the criteria are met.

(Lands managed for forest use occur farther to the east at higher elevations than the subject property. Therefore, it is reasonable to believe that changes in forest practices or an increase in the cost of forest practices would not occur.)

(c) The dwelling will not materially alter the stability of the overall land use pattern of the area;

(i) In determining whether a proposed non-farm dwelling will alter the stability of the overall land use pattern of the area, a county shall consider the cumulative impact of non-farm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in § 152.059 (K) (10) (OAR 660-033-0130 (4)(a)(D).) If the application involves the creation of a new parcel for the non-farm dwelling, a county

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shall consider whether creation of the parcel will lead to creation of other non-farm parcels, to the detriment of agriculture in the area by applying the standards (impact test) set forth in § 152.059 (K) (10). See the impact test in Section 152.059 (K) (VIII) below.

(ii) The dwelling complies with such other conditions as the governing body or its designate considers necessary. See the proposed conditions, listed below.

(d) New easements, private roads or public right-of-ways, must meet at a minimum, the Option 1 design standard as depicted in the County Transportation Plan Figure 7-2A (30 foot right of way with 16 foot travel lane). Whenever possible, new roads should not be placed upon agricultural land as defined by prior policies; The applicant's plan shows the existing easement road for access to the non-farm dwelling. The applicant shall verify the access easement road meets the Option 1 design standard.

(e) The parcel upon which a non-resource dwelling is located and being valued at true cash value for farm use under ORS 308.370 shall meet the requirements in ORS 215.236, including but not limited to:

- (i) The site shall be disqualified for farm deferral; and
- (ii) The tax penalty shall be paid prior to final approval;

Disqualification of the parcel from the farm deferral tax program is an approval requirement. County Planning finds that the Precedent Condition requiring the subject parcel to be disqualified from the farm deferral program and the tax penalty paid satisfies the criterion.

(f) If the non-farm dwelling site is being created by a land division, the parcel shall comply with the access, improvement requirements, and follow the procedures for land divisions set forth in §§ 152.640 through 152.739, and shall comply with the applicable dimensional standards of § 152.063; This standard is not applicable. The applicant is not proposing a land division.

(g) If the request involves the creation of a new parcel containing historic property as defined in ORS 358.480, the original parcel may be reduced below the minimum lot size standard, including an 11% standard deviation; This standard is not applicable. The request does not involve the creation of a new parcel containing historic property

(h) Sign and record a Covenant Not to Sue as provided in § 152.059(K)(11); See § 152.059(K)(11) addressed below.

(i) The dwelling will be sited on a lot or parcel created before January 1, 1993; The Deed records show the parcel was established prior to 1993. The County Planning Department finds that the criterion is met.

(j) If a single-family dwelling is established on a lot or parcel as set forth in § 152.059 (K) (3) or (4), Lot of Record Dwelling, no additional dwelling may later be sited under the provisions of this sub-section. Not applicable. There have been no previous dwellings established through approval as a Lot of Record Dwelling. The County Planning Department finds that the criterion does not apply.

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(K)(10) Impact Test.

In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated.

(a) The county shall identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural area. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.

Study Area Description

The study area is comprised of 2000 acres which includes the lands within an approximate one mile radius of the subject parcel. Many of the parcels to the north are large parcels consisting of hundreds of acres. Additionally, along the North Fork of the Walla Walla River are smaller farm parcels many developed with homes with small farm operations consisting of orchard fruit and hay pastures. The boundary of the study area does not follow parcel boundaries and in some cases a majority of a particular parcel may fall outside of the study area. These parcels are included in the study area if any portion of the parcel is within the boundary of the study area; however, for purposes of the dwelling calculations, only the dwellings that fall within, or could potentially fall within the boundaries of the study area are included. This area is representative of where the subject property is found due to the immediate proximity to the subject parcel, similar terrain, uses, and zoning. The County finds that analysis for the application was completed as prescribed and that the study area (see attached Impact Study Area Map) is adequate for an accurate description.

(b) Within the study area identify the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(5). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision.

Farm Uses in the Study Area

A predominate or largest commercial farm use in the impact area is dry land grain crops. However, some parcels along the river are composed of higher productive soils and those parcels with water rights are in fruit, hay and pasture. The parcels located near the river are smaller farm parcels and most have existing home sites. The study area also includes

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steeper hillsides with poor soils, not in farm production similar to the applicant's property. The study area soil types range from Class II to Class VIII and all of the study area is zoned for farm use.

Number and Type of Existing Dwellings

The Study Area consists of parcels ranging in size from less than one acre to over 600 acres in size. There are 21 dwellings located within the boundary of the study area. The assessment dates associated with the dwellings are from 1906 to 1991. Most of these dwellings are located along the North and South Fork of the Walla Walla River Road on smaller farm acreages within the study area. Additionally, there have been three non-farm dwellings approved in the area but these dwellings have not been constructed.

Development Trends since 1993

Since 1993 one replacement dwelling permit has been issued to replace an existing farm dwelling. Also there have been three non-farm dwellings approved in the area but these dwellings have not been constructed.

Potential Number of Dwellings

Non-Farm Dwellings

Under specific standards a non-farm dwelling may be approved on an existing parcel or, up to two non-farm dwellings may be approved and partitioned from a large farm parcel, where the large parcel (after the two small non-farm parcels are partitioned away) remains at least 160 acres or larger. A parcel or a portion of a parcel is presumed to be unsuitable for farming if the parcel is comprised of poor soil quality Class VII or Class VIII soils or, if previous development on the parcel has made the parcel unsuitable for farming.

The applicant owns several other properties located in the study area. One of the applicant's parcels consists of Tax Lot 902 and Tax Lot 102. This parcel is located to the southwest of Tax Lot 3300 and received approval for a non-farm dwelling in both 1991 and 2008. The 1991 non-farm dwelling approval expired and the property owner once again applied for approval in 2008. The 2008 approval likewise expired prior to finalizing the approval and constructing the non-farm dwelling. The applicant purchased the property and now has applied for a non-farm dwelling approval on the property. In addition to Tax Lots 902 and 102 the applicant also owns property to the east of the subject property. Three of the applicant's properties to the east received approval in 2011 for non-farm dwellings. Although these three parcels have received approval the dwellings have not yet been constructed.

After review of the parcel sizes and the soil values on those parcels it appears that 15 have potential to meet the standards for a non-farm dwelling.

Lot of Record Dwellings

Property owners could possibly qualify for a lot of record dwelling on their property if they, or a family member, have continually owned the property since prior to January 1, 1985; and no other dwelling existed on the parcel or tract of land as of November 4, 1993. In addition to long term family ownership the parcel or tract must be composed predominately of non-high value farm soils.

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(c) Determine whether approval of the proposed non-farm/lot of record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

Determination

The study area includes EFU zoned parcels with poor quality soils to the southwest and east of the applicant's property. These parcels are not in commercial farm production due to the terrain and the poor soils (Class VII or VIII). Some of the area parcels that also have poor quality of soils are located between the North Fork and the South Fork of the Walla Walla River these parcels also consist of Class VII soils and have potential for qualifying for non-farm dwelling approvals; however, many of these parcels do not adjoin a public road and would require crossing the river in order to access a dwelling. This makes development unlikely. As outlined above the potential addition of 15 non-farm dwellings approvals could be possible across the 2,000 acre study area based on factors such as poor soils. However, it is unlikely all 15 would be developed because of access issues and development costs.

The large commercial farming activities that occur in the area are mainly to the north of the applicant's parcel and consist of large parcels planted in grain crops. The total build out of the 2,000 acres, including the existing dwellings and the potential dwellings, is 36 dwellings. Most of the existing dwellings are established along the North and South Fork of the Walla Walla River. The parcels with potential for non-farm dwellings are located along the south facing slopes and north of the North Fork road and on the steeper slopes between the North and South Fork Walla Walla River Road.

Based on the development pattern and the farming practices in the area, approval of the applicant's non-farm dwelling should not make it more difficult to farm, purchase farm property, or otherwise negatively impact the overall land use pattern established in the study area. The County finds that the proposed applicant's non-farm dwelling at the proposed location will not materially alter the stability of the land use pattern of the area.

(K) (11) Covenant Not to Sue

All dwellings approved within the EFU zone require the landowners to sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The property owner has indicated that he is willing to sign the Covenant Not to Sue document. The County Planning Department finds that the Precedent Condition of approval to sign and record a Covenant Not to Sue document satisfies the criterion.

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PROPOSED APPROVAL DECISION: BASED UPON THE ABOVE STATED FINDINGS AND CONCLUSIONS, THE NF LAND, LLC, LAND USE DECISION, #LUD-177-14, REQUEST COULD BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

Precedent Conditions:

1. Disqualify the approved non-farm dwelling parcel from the Farm Deferral Program and pay deferred tax penalties. Proof of payment must be provided to the County Planning Department.
2. Sign and record a Covenant Not to Sue Agreement.
3. Obtain or verify that a county road approach permit is in place for the existing access easement road and verify the access easement road is improved to the Option 1 design standard (County P-1). The improved road must be developed to accommodate emergency vehicle access to the proposed dwelling.

Subsequent Conditions:

4. Obtain a Zoning Permit from the Umatilla County Planning Department to place the non-farm dwelling on the property.
5. Obtain all other State permits necessary for dwelling development such as State Building Codes permits and the Department of Environmental Quality on-site septic permit.
6. Authorization to place the non-farm dwelling on the property is valid for four years from the date the Final Findings document is signed. The applicant or property owner may request an approval extension for up to two additional years. (Approval and all approval extensions are limited to a total of six years from the date the Final Findings are signed.)

PROPOSED DECISION TO DENY: BASED UPON THE ABOVE FINDINGS AND CONCLUSIONS THE NF LAND, LLC, NON-FARM DWELLING LAND USE DECISION, #LUD-14-177 DOES NOT MEET THE EFU APPROVAL STANDARDS IN SECTION 152.059 (K) AND IS DENIED.

UMATILLA COUNTY PLANNING COMMISSION

Dated _____ day of _____, 2015

Randy Randall, *Planning Commission Chair*

Mailed _____ day of _____, 2015

(15)

Application for a Permit to Use Ground Water



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

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Water-Use Permit Application Processing

DEC 19 2014

1. Completeness Determination

The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050 (www.oregon.gov/owrd/law). The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

UMATILLA COUNTY
PLANNING DEPARTMENT

2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$200. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

3. Public Notice

Within 7 days of the mailing of the initial review, the Department gives public notice of the application in the weekly notice published by the Department at www.oregon.gov/owrd. The public comment period is 30 days from publication in the weekly notice.

4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$300.00 for the applicant and \$600.00 for non-applicants. Protests are filed on approximately 10% of Proposed Final Orders. If a protest is filed, the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

6. Final Order Issued

If no protests are filed, the Department issues a Final Order consistent with the PFO. If the application is approved, a permit is issued that specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.

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Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.615)

Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

- SECTION 1: applicant information and signature
- SECTION 2: property ownership
- SECTION 3: well development
- SECTION 4: water use
- SECTION 5: water management
- SECTION 6: storage of groundwater in a reservoir
- SECTION 7: use of stored groundwater from the reservoir
- SECTION 8: project schedule
- SECTION 9: within a district
- SECTION 10: remarks

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Attachments:

- Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map. Example: A copy of the deed, land sales contract or title insurance policy.
- Fees - Amount enclosed: **\$5,964**
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.

Provide a map and check that each of the following items is included:

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other _____

Application for a Permit to Use Ground Water



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant Information

NAME NFLAND LLC		PHONE (HM) N/A	
PHONE (WK) 206-310-7631	CELL N/A	FAX N/A	
ADDRESS 2885 SANFORD AVE SW #21711			
CITY GRANDVILLE	STATE MI	ZIP 49418	E-MAIL* NFLANDLLC@GMAIL.COM

Organization Information

NAME SAME AS APPLICANT		PHONE	FAX
ADDRESS			CELL
CITY	STATE	ZIP	E-MAIL*

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME GEO-SPATIAL SOLUTIONS, INC.		PHONE 541-330-0371	FAX
ADDRESS P.O. BOX 335			CELL 541-241-6831
CITY BEND	STATE OR	ZIP 97709	E-MAIL* JOHN@GEOSPATIALSOLUTIONS.COM

Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

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By my signature below I confirm that I understand:

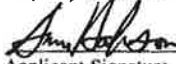
- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land-use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water-right holders to get water to which they are entitled.

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I (we) affirm that the information contained in this application is true and accurate.


Applicant Signature

Sam Hobson, Member
Print Name and title if applicable

11/20/12
Date

Applicant Signature

Print Name and title if applicable

Date

For Department Use		
App. No. <u>Gr 17604</u>	Permit No. _____	Date _____

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SECTION 2: PROPERTY OWNERSHIP

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

Yes

- There are no encumbrances.
- This land is encumbered by easements, rights of way, roads or other encumbrances.

No

- I have a recorded easement or written authorization permitting access.
- I do not currently have written authorization or easement permitting access.
- Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
- Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

N/A

SECTION 3: WELL DEVELOPMENT

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
1	North Fork Walla Walla River	755 feet	45 feet (well above river)
2	North Fork Walla Walla River	1,960 feet	170 feet (well above river)
3	North Fork Walla Walla River	2,040 feet	170 feet (well above river)
4	North Fork Walla Walla River	4,075 feet	420 feet (well above river)
5	North Fork Walla Walla River	2,935 feet	450 feet (well above river)
6	North Fork Walla Walla River	2,485 feet	480 feet (well above river)
7	North Fork Walla Walla River	3,600 feet	570 feet (well above river)

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials (*attach additional sheets if necessary*).

None of the proposed wells exist at this time. The applicant does not intend to drill seven wells. The applicant intends to drill only the number of wells required to yield a sufficient production rate to irrigate the proposed lands. The applicant is requesting authorization for seven potential well locations, to provide flexibility during construction of the well(s).

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SECTION 3: WELL DEVELOPMENT, CONTINUED

Source (aquifer), if known: Basalt

Total maximum rate requested: 6.47 cfs (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

Complete the table below. If this is an existing well, the following information may be found on the applicable well log. (If a well log is available, please submit it in addition to completing the table.) If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner.

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	SOURCE/AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)	PROPOSED USE	
Well 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	500 ft	300-500 ft	0-300 ft	N/A	Basalt	500	Max	Max		
Well 2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	625 ft	400-625 ft	0-400 ft	N/A	Basalt	625	Max	Max		
Well 3	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	625 ft	400-625 ft	0-400 ft	N/A	Basalt	625	Max	Max		
Well 4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	900 ft	600-900 ft	0-400 ft	N/A	Basalt	900	Max	Max		
Well 5	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	900 ft	600-900 ft	0-400 ft	N/A	Basalt	900	Max	Max		
Well 6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	950 ft	650-950 ft	0-400 ft	N/A	Basalt	950	Max	Max		
Well 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	16 in	1000 ft	700-1000 ft	0-400 ft	N/A	Basalt	1000	Max	Max		
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>											

67-7604

* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.
 ** A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.
 *** Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.

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 Ground Water/5
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SECTION 4: WATER USE

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Irrigation	March 1 through November 30	1,553

Exempt Uses: Please note that 15,000 gallons per day for single or group **domestic** purposes and 5,000 gallons per day for a single **industrial or commercial** purpose are exempt from permitting requirements.

For irrigation use only:

Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).

Primary: 517.7 Acres Supplemental: N/A Acres

List the Permit or Certificate number of the underlying primary water right(s): N/A

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: 1,553

- If the use is **municipal or quasi-municipal**, attach **Form M**
- If the use is **domestic**, indicate the number of households: N/A

If the use is **mining**, describe what is being mined and the method(s) of extraction: N/A

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SECTION 5: WATER MANAGEMENT

A. Diversion and Conveyance

What equipment will you use to pump water from your well(s)?

Pump (give horsepower and type): Vertical turbine (600 +/- hp depending on well yield and TDH)

Other means (describe): _____

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.

Water will be pumped from the wells into storage reservoirs (bulges) then applied to agricultural crops.

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

The water application systems are likely to change over the life of the project. Initially, portable sprinkler irrigation systems (Big Guns and/or aluminum handlines) may be used for production of pasture and forage crops. If and when lands are converted to permanent crops, drip or sprinkler systems are likely to be used.

C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters.

The amount of water requested is standard for irrigation of agricultural crops. Industry-standard irrigation technologies will be used for scheduling irrigation start and stop times, depending on the agronomic needs of the crops being grown (which is expected to change during the life of the project). Riparian and water quality issues are a minor concern, given the separation of the project site from the North Fork Walla Walla River by North Fork Walla Walla River Road and the adjacent agricultural lands.

SECTION 6: STORAGE OF GROUND WATER IN A RESERVOIR

If you would like to store ground water in a reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Reservoir ID: 1
 Acreage inundated by reservoir: 1.0 acre (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 5 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Reservoir ID: 2
 Acreage inundated by reservoir: 1.4 acres (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 6 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Reservoir ID: 3
 Acreage inundated by reservoir: 1.7 acre (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 7 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Reservoir ID: 4
 Acreage inundated by reservoir: 2.0 acre (approx.)
 Use(s): Irrigation
 Volume of Reservoir (acre-feet): 9 acre-feet (approx.)
 Dam height (feet, if excavated, write "zero"): TBD (<10 feet)

Note: If the dam height is greater than or equal to 10.0' above land surface AND the reservoir will store 9.2 acre feet or more, engineered plans and specifications must be approved prior to storage of water.

SECTION 7: USE OF STORED GROUND WATER FROM THE RESERVOIR

If you would like to use stored ground water from the reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Annual volume (acre-feet): 27 acre-feet

USE OF STORED GROUND WATER	PERIOD OF USE
Irrigation (temporarily stored in reservoir (bulge))	March 1 through November 30
Reservoir Liner Protection (27 acre-feet)	Year Round (permanent pool)

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SECTION 8: PROJECT SCHEDULE

Date construction will begin: Upon permit issuance
 Date construction will be completed: Within five years of permit issuance
 Date beneficial water use will begin: Within three years of construction completion

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SECTION 9: WITHIN A DISTRICT

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name N/A	Address	
City	State	Zip

SECTION 10: REMARKS

Use this space to clarify any information you have provided in the application (*attach additional sheets if necessary*).

The applicant requests authorization to store a total volume of 27 acre-feet at the four specified locations. The number of acre-feet to be stored at each location has been estimated. However, site-specific constraints may affect the volume of storage that can be feasibly and cost-effectively developed at each location. Therefore, the applicant requests the flexibility to change the volume developed at any given location, not to exceed the total proposed volume of 27 acre-feet.

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

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NOTE TO APPLICANTS

SALEM, OR

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and **all** of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
 - d) The application involves irrigation water uses only.

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Applicant: NF Land LLC

Mailing Address: 2885 Sanford Ave SE #21711

Grandville

City

MI
State

49418
Zip

Daytime Phone: 206-310-7631

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
5N	36E	13	SWSW, SESW SWSE	3000 3000 3001	EFU	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	14	SESE SWSE SESW	3100 3200 3201 3300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	22	NWNE, NENE	100	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	23	NWNW NWNE NENE	902 200 100 101 300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU
5N	36E	24	NWNW, NENW, SWNW, SENW NENW, SENW, NWNE, SWNE	200 202	EFU	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	EFU

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Umatilla County	RECEIVED BY OWRD
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SALEM, OR

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B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water Water Right Transfer Permit Amendment or Ground Water Registration Modification
- Limited Water Use License Allocation of Conserved Water Exchange of Water

Source of water: Reservoir/Pond Ground Water Surface Water (name) _____

Estimated quantity of water needed: 6.47 cubic feet per second gallons per minute acre-feet

Intended use of water: Irrigation Commercial Industrial Domestic for _____ household(s)

Municipal Quasi-Municipal Instream Other _____

Briefly describe:

Develop basalt well(s) and appropriate ground water to irrigate agricultural crops on about 517.7 acres.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

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SALEM, OR

(26)

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 152.056
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

Farm Use

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Name: _____ Title: Tamra J. Mabbett, Planning Director
 Signature: T. Mabbett Phone: 378-6246 Date: 11-30-12
 Government Entity: Umatilla County

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____
 City or County: _____ Staff contact: _____
 Signature: _____ Phone: _____ Date: _____



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Date _____

(For staff use only)



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- SECTION 1: _____
- SECTION 2: _____
- SECTION 3: _____
- SECTION 4: _____
- SECTION 5: _____
- SECTION 6: _____
- SECTION 7: _____
- SECTION 8: _____
- SECTION 9: _____
- Land Use Information Form _____
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- Fees _____

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MAP

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other _____

WR

A tract of land located in Section 22, Township 5 North, Range 36, E.W.M., County of Umatilla, State of Oregon;

That portion of the North Half of Northeast Quarter of Section 22, Township 5 North, Range 36, lying East of the County Road No. C-4, and North of County Road No. 440;

EXCEPTING THEREFROM, commencing at the Southwest corner of Section 14, Township 5 North, Range 36, E.W.M., which is the true point of beginning for this description; thence South 78°46'31" West a distance of 1,366.50 feet; thence South 42°31'39" West 190.56 feet; thence South 52°33'10" West 321.33 feet; thence South 34°38'37" West 50.61 feet; thence South 30°31'35" West 96.19 feet; thence South 33°28'23" West 178.02 feet; thence South 36°31'51" West 76.31 feet; thence South 42°31'01" West 70.44 feet; thence South 41°38'34" West 174.11 feet to a point on the centerline of Powerline Road, County Road No. 525; thence Northerly along the centerline of said County Road the following courses and distances: North 03°26'50" West 58.37 feet; thence North 05°35'48" East 58.94 feet; thence North 18°32'33" East 55.26 feet, North 32°31'11" East 75.93 feet; thence North 33°44'22" East 127.05 feet; thence North 22°19'07" East 73.82 feet; thence North 12°54'03" East 61.39 feet; thence North 05°07'16" East 70.54 feet; thence North 06°08'56" East 43.60 feet; North 11°54'00" East 52.79 feet; thence North 12°24'29" East 106.74 feet; thence North 11°20'12" East 101.02 feet; thence North 07°58'41" East 285.73 feet; thence leaving said County Road; thence East a distance of 1,831.89 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying with County Road Nos. C-4 and 440.

AmeriTitle 68510

Tax lot 100, Sec 22

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EXHIBIT A
PROPERTY LEGAL DESCRIPTION

5N 36 00 Tax Lot 3300:

A tract of land located in Section 14, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, being described as beginning at a point which lies 300 feet Southerly from the Northeast corner of the Southeast Quarter of the Southwest Quarter of said Section 14; thence Southwesterly to a point which is located on the West line of the Southeast Quarter of the Southwest Quarter of said Section 14, said point also being located 200 feet Northerly from the Southwest corner thereof; thence Southerly along the West line of the Southeast Quarter of the Southwest Quarter of said Section 14, a distance of 200 feet to a point located on the South line of said Section 14; thence Easterly along the South line of said Section 14 to the Southeast corner of the Southeast Quarter of the Southwest Quarter of said Section 14; thence Northerly along the East line of the Southeast Quarter of the Southwest Quarter of said Section 14 to the point of beginning.

Together with an easement for ingress and egress over an across the portion of the easement described as "Tract II" in that certain Warranty Deed from Bruce W. LaPorte and Tanya L. LaPorte, husband and wife, to Richard A. Cameron and Donna J. Cameron, dated March 28, 1984, and recorded in R113, Pages 1265-1266, Umatilla County, Oregon records on May 17, 1984, that is over and across the following property: All that portion of the East Half of the Northwest Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian Umatilla County, Oregon, which lies Northerly of the centerline of County Road No. 440.

5N 36 23 Tax Lot 902:

All that portion of the Northwest Quarter of the Northwest Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, which lies Northerly of the centerline of County Road No. 440;

Excepting there from any portion lying within the County Road right-of-way.

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LEGAL DESCRIPTION

A tract of land located in the Southwest Quarter of Southeast Quarter of Section 14, Township 5 North, Range 36, East of the Willamette Meridian, and being described as follows:

Beginning at the Southwest corner of said Section 14; thence North $75^{\circ}57'42''$ East a distance of 3,948.09 feet to the true point of beginning for this description; thence South $53^{\circ}49'18''$ West a distance of 420 feet; thence North $89^{\circ}33'51''$ West a distance of 871.00 feet, more or less, to a point on West line of Southwest Quarter of Southeast Quarter of said Section 14; thence North along said West line a distance of 695 feet, more or less, to Northwest corner of Southwest Quarter of Southeast Quarter of said Section 14; thence East along North line of Southwest Quarter of Southeast Quarter of said Section 14, a distance of 1,214.37 feet, more or less, to a point which bears North $2^{\circ}59'16''$ West from the point of beginning; thence South $2^{\circ}59'16''$ East a distance of 486 feet, more or less, to the point of beginning.

All being East of the Willamette Meridian, Umatilla County, Oregon.

Tax lot 3201

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LEGAL DESCRIPTION

Beginning at a point 1320 feet West of and 1320 feet North of Southeast corner of Section 14, Township 5 North, Range 36; thence West 1320 feet to a point on North-South centerline of said Section 14; thence South a distance of 2310 feet, more or less, to County Road No. 440; thence Easterly along said County Road a distance of 1320 feet, more or less, to North-South centerline Northeast Quarter of Section 23; thence North a distance of 2343 feet, more or less, to the point of beginning;

EXCEPTING THEREFROM a tract of land located in Southwest Quarter of Southeast Quarter of said Section 14, described as beginning at Southwest corner of said Section 14; thence North 75°57'42" East a distance of 3948.09 feet to the true point of beginning for this description; thence South 53°49'18" West a distance of 420 feet; thence North 89°33'51" West a distance of 871.08 feet, more or less, to a point on West line of Southwest Quarter of Southeast Quarter of said Section 14; thence North along said West line a distance of 595 feet, more or less, to Northwest corner of Southwest Quarter of Southeast Quarter of said Section 14; thence East along North line of Southwest Quarter of Southeast Quarter of said Section 14 a distance of 1214.37 feet, more or less, to a point which bears South 2°59'16" West from the point of beginning; thence South 2°59'16" East a distance of 486 feet, more or less, to the point of beginning;

SUBJECT to any and all water rights of way and roads;

All being East of the Willamette Meridian, Umatilla County, Oregon.

Taxlots 3200 and 200, Sec 23

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Tax lots 3000, 3001, Sec 13
200, 202, Sec 24
3100, Sec 14
100, 101, 300, Sec 23

Exhibit 'A'

Tract I

A tract of land located in Sections 13 and 24, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, being described as beginning at the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 24; thence North to the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 13; thence West, a distance of 335 feet, more or less, to the bottom of a ravine; thence in a Southwesterly direction down the ravine to where it intersects with the North line of the County Road; thence in a Southeasterly direction along the North line of said County Road to a point where said County Road intersects with the East-West centerline of said Section 24; thence East along said East-West centerline, a distance of 395 feet, more or less, to the point of beginning;

Excepting therefrom that tract of land conveyed to Myran Swanson, etux, by Deed recorded in Book 353, Page 204, Deed Records;

Also excepting therefrom that tract of land conveyed to Richard G. Woodhall, etux, by Deed recorded in Microfilm Reel 2, Page 565, Office of Umatilla County Records;

Also excepting therefrom any portion lying within the County Road right-of-way.

Tract II

A tract of land located in Sections 13 and 24, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, being described as commencing at the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 13; thence West, a distance of 335 feet, more or less, to the bottom of a ravine and the True Point of Beginning for this description; thence in a Southwesterly direction down the bottom of the ravine to where it intersects with the North line of the County Road; thence in a Northwesterly direction along the North side of said County Road to the Southwest corner of the Northwest Quarter of the Northwest Quarter of said Section 24; thence North to the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 13; thence East to the point of beginning;

Excepting therefrom any portion lying within the County Road right-of-way.

Tract III

The Southeast Quarter of the Southeast Quarter of Section 14, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon.

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Tract IV

All that portion of the Northeast Quarter of the Northeast Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon, which lies Northerly of the Northerly right-of-way line of the County Road;

Excepting therefrom that tract of land conveyed to Albert Smith, by Deed recorded in Book 105, Page 291, Deed Records;

Also excepting therefrom that tract of land conveyed to Ozro Graham by Deed recorded in Book 143, Page 69, Deed Records;

Also excepting therefrom any portion lying within the County Road right-of-way.

Tract V

Beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon; thence North, a distance of 131 feet; thence Westerly, a distance of 265 feet; thence Southerly, a distance of 95 feet to the North line of the County Road; thence Easterly along the North line of said County Road, a distance of 316 feet to the point of beginning;

Excepting therefrom any portion lying within the County Road right-of-way.

Tract VI

Commencing at the Northeast corner of the Southeast Quarter of the Northeast Quarter of Section 23, Township 5 North, Range 36, East of the Willamette Meridian, Umatilla County, Oregon; thence North $64^{\circ}09'$ West, a distance of 380.16 feet to the True Point of Beginning for this description; thence North, a distance of 16.50 feet; thence North $82^{\circ}12'$ West, a distance of 148.50 feet; thence North, a distance of 66 feet; thence North $86^{\circ}27'$ West, a distance of 264 feet; thence South, a distance of 82.50 feet; thence South $86^{\circ}27'$ East, a distance of 264 feet; thence South $82^{\circ}12'$ East, a distance of 148.50 feet to the point of beginning;

Excepting therefrom any portion lying within the County Road right-of-way.

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DEC 19 2014

UMATILLA COUNTY
PLANNING DEPARTMENT

**Oregon Water Resources Department
Water Right Services Division**

Water Rights Application
Number G-17604

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On December 11, 2012, NF Land LLC submitted an application to the Department for the following water use permit:

- Amount of Water: 6.47 cubic feet per second (CFS) from ground water, and an annual volume of 1553.0 acre feet, and 27.0 acre feet (AF) of stored ground water
- Use of Water: irrigation of 517.9 acres and storage of ground water
- Source of Water: Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7, Well 8, Well 9, Well 10, Well 11, Well 12, Well 13, Well 14, and Well 15 (UMAT 57199/L111124) in North Fork Walla Walla River Basin
- Area of Proposed Use: Umatilla County within Sections 13, 14, 22, 23, and 24, Township 5 North, Range 36 East, W.M.

On September 6, 2013, the Department mailed the applicant notice of its Initial Review, determining that *"the appropriation of 6.47 CFS and 27.0 AF of water from Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7, Well 8, Well 9, Well 10, Well 11, Well 12, Well 13, Well 14, and Well 15 (UMAT 57199) in North Fork Walla Walla River Basin for irrigation of 517.9 acres and storage of groundwater is not allowable, and it appears unlikely that you will be issued a permit unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order."* The applicant did not notify the Department to stop processing the application within 14 days of that date.

On September 10, 2013, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

The applicant requested and was granted multiple administrative holds; the last expired October 7, 2014.

On September 29, 2014, the applicant amended the annual volume to 300.0 AF and removed Well 15 (UMAT 57199/L111124) from the application, replacing it with proposed Well 15 in a different location.

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In reviewing applications, the Department may consider any relevant sources of information, including the following:

- any applicable basin program
- applicable statutes, administrative rules, and case law
- the amount of water available
- the rate and duty for the proposed use
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- pending senior applications and existing water rights of record
- any applicable comprehensive plan or zoning ordinance
- recommendations by other state agencies
- the Scenic Waterway requirements of ORS 390.835
- designations of any critical ground water areas
- any comments received

Findings of Fact

The Umatilla Basin Program allows irrigation and storage of ground water.

On October 6, 2014, a re-assessment of ground water availability was completed by the Department's Ground Water/Hydrology section based on a maximum annual volume of 300.0 AF. A copy of this assessment is in the file. Ground water will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights.

Ground Water Findings Under OAR 690-009

The Department determined, consistent with OAR 690-009-0040(4), that the proposed ground water use will not have the potential for substantial interference with surface water.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is

a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7, Well 8, Well 9, Well 10, Well 11, Well 12, Well 13, Well 14, and Well 15 in North Fork Walla Walla River Basin are not within or above a State Scenic Waterway.

The Department finds that the amount of water requested, 6.47 CFS, is an acceptable amount.

The proposed ground water use is not within a designated critical ground water area.

Conclusions of Law

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Umatilla Basin Program.

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The application is in compliance with the State Agency Coordination Program regarding land use.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or

- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
- (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety, and health. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED November 4, 2014



E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **December 19, 2014**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;

Application G-17604

- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2) (b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$350 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$700 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the Proposed Final Order.
- *If you do not protest this Proposed Final Order and if no substantive changes are made in the Final Order, you will not have an opportunity for judicial review, protest or appeal of the Final Order when it is issued.*

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **December 19, 2014**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$200. If a hearing is scheduled, an additional fee of \$500 must be submitted along with a request for intervention.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

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This document was prepared by Kim French. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

NF LAND LLC
2885 SANFORD AVE SW #21711
GRANDVILLE, MI 49418

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-17604

SOURCE OF WATER: WELL 1, WELL 2, WELL 3, WELL 4, WELL 5, WELL 6, WELL 7,
WELL 8, WELL 9, WELL 10, WELL 11, WELL 12, WELL 13, WELL 14, AND WELL 15
IN NORTH FORK WALLA WALLA RIVER BASIN

STORAGE FACILITIES: RESERVOIR 1, RESERVOIR 2, RESERVOIR 3, AND
RESERVOIR 4

MAXIMUM RATE: 6.47 CUBIC FEET PER SECOND

MAXIMUM ANNUAL VOLUME: 300.0 ACRE FEET, WHICH INCLUDES UP TO 27.0 ACRE
FEET OF STORED GROUND WATER IN RESERVOIRS 1 - 4

PURPOSE OR USE: IRRIGATION OF 517.9 ACRES MARCH 1 THROUGH NOVEMBER 30;
STORED GROUND WATER, YEAR-ROUND

DATE OF PRIORITY: DECEMBER 11, 2012

WELL LOCATIONS:

WELL 1: SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 1060 FEET NORTH AND
885 FEET WEST FROM C1/4 CORNER, SECTION 24

WELL 2: NE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 620 FEET SOUTH AND
60 FEET WEST FROM N1/4 CORNER, SECTION 24

WELL 3: SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 45 FEET NORTH AND
1200 FEET EAST FROM SW CORNER, SECTION 13

WELL 4: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1200 FEET NORTH AND
900 FEET EAST FROM S1/4 CORNER, SECTION 13

WELL 5: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 470 FEET NORTH AND
250 FEET WEST FROM S1/4 CORNER, SECTION 13

WELL 6: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 360 FEET SOUTH AND
1270 FEET EAST FROM N1/4 CORNER, SECTION 24

Application G-17604 Water Resources Department

PERMIT DRAFT

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WELL 7: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1240 FEET NORTH AND 300 FEET WEST FROM S1/4 CORNER, SECTION 13

WELL 8: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 695 FEET SOUTH AND 125 FEET EAST FROM N1/4 CORNER, SECTION 23

WELL 9: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 1250 FEET SOUTH AND 260 FEET EAST FROM NW CORNER, SECTION 24

WELL 10: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 720 FEET SOUTH AND 215 FEET EAST FROM NW CORNER, SECTION 23

WELL 11: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 375 FEET SOUTH AND 825 FEET EAST FROM NW CORNER, SECTION 24

WELL 12: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 725 FEET SOUTH AND 1190 FEET EAST FROM N1/4 CORNER, SECTION 23

WELL 13: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 14, T5N, R36E, W.M.; 585 FEET NORTH AND 580 FEET EAST FROM S1/4 CORNER, SECTION 14

WELL 14: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 23, T5N, R36E, W.M.; 895 FEET SOUTH AND 370 FEET WEST FROM NE CORNER, SECTION 23

WELL 15: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 14, T5N, R36E, W.M.; 250 FEET NORTH AND 343 FEET EAST FROM S1/4 CORNER, SECTION 14

RESERVOIR LOCATIONS:

RESERVOIR 1: SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 14, T5N, R36E, W.M.; 1150 FEET NORTH AND 175 FEET WEST FROM SE CORNER, SECTION 14

RESERVOIR 2: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1175 FEET NORTH AND 1025 FEET WEST FROM S1/4 CORNER, SECTION 13

RESERVOIR 3: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 13, T5N, R36E, W.M.; 1180 FEET NORTH AND 100 FEET WEST FROM S1/4 CORNER, SECTION 13

RESERVOIR 4: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 24, T5N, R36E, W.M.; 650 FEET SOUTH AND 1300 FEET EAST FROM N1/4 CORNER, SECTION 24

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

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THE PLACE OF USE IS LOCATED AS FOLLOWS:

	<u>IRRIGATION</u>	<u>STORAGE</u>
SW $\frac{1}{4}$ SW $\frac{1}{4}$	40.0 ACRES	
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.0 ACRES	X
SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0 ACRES	X
	SECTION 13	
SE $\frac{1}{4}$ SW $\frac{1}{4}$	18.5 ACRES	
SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0 ACRES	
SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0 ACRES	X
	SECTION 14	
NE $\frac{1}{4}$ NE $\frac{1}{4}$	25.4 ACRES	
NW $\frac{1}{4}$ NE $\frac{1}{4}$	9.8 ACRES	
	SECTION 22	
NE $\frac{1}{4}$ NE $\frac{1}{4}$	33.4 ACRES	
NW $\frac{1}{4}$ NE $\frac{1}{4}$	28.0 ACRES	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	24.7 ACRES	
	SECTION 23	
NW $\frac{1}{4}$ NE $\frac{1}{4}$	40.1 ACRES	X
SW $\frac{1}{4}$ NE $\frac{1}{4}$	33.5 ACRES	
NE $\frac{1}{4}$ NW $\frac{1}{4}$	40.0 ACRES	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	40.0 ACRES	
SW $\frac{1}{4}$ NW $\frac{1}{4}$	6.5 ACRES	
SE $\frac{1}{4}$ NW $\frac{1}{4}$	18.0 ACRES	
	SECTION 24	
	TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.	

Measurement devices, and recording/reporting of annual water use conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the devices in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.

Dedicated Observation Well: The permittee shall construct one four-inch observation well to penetrate the same aquifer as the production well(s), prior to any ground water use authorized by this permit. The well shall meet the Department's minimum well construction standards and shall be cased and sealed to the same depth as the production wells. The well shall be constructed at a location approved by the Department for the purpose of instrumentation with continuous groundwater-level monitoring equipment. The landowner and permittee shall provide access to Department staff to install and maintain the monitoring equipment. The well shall not be used for any other purpose while the Department is monitoring groundwater levels.

Upon reasonable notice, the permittee shall allow Department staff access to the observation and production wells. Department staff will periodically measure water levels in the observation and production wells for the purpose of evaluating the appropriation's impact to the resource.

Annual Measurement Condition:

The Department requires the water user to measure and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall submit an initial February or March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to measure and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR

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690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations submitted to the Department.

The Department may require the discontinuance of ground water use, or reduce the rate or volume of withdrawal from the well(s) if any of the following events occur:.

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Ground water production shall occur only from a single aquifer in the Columbia River Basalt groundwater reservoir.

Ground water production shall occur no deeper than a bottom hole elevation of 1,100 feet.

Well 8 through Well 15 shall be constructed in a different aquifer than that developed by any City of Milton-Freewater municipal well.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification

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Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

The permittee is required to pass all surface water for which a storage right does not exist. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that surface-water flow is not impeded. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party

to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

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Mailing List for PFO Copies

Application #G-17604

PFO Date November 4, 2014

Original emailed to applicant:

NFLAND LLC
2885 SANFORD AVE SW 21711
GRANDVILLE, MI 49418

SENT VIA EMAIL:

1. WRD - Watermaster #5
2. Applicant - nflandllc@gmail.com
3. Agent - john@geospatialolutions.com
4. Agent - defilippi@stoel.com

Copies sent to:

1. WRD - File # G-17604
2. Water Availability: Shawn Turner

PFO and Map Copies sent to:

3. WRD - Watermaster # 5
4. Regional Manager: NC

CASEWORKER :Kim French

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>
<p>Protest/ Standing Dates checked</p> <p>_____</p>

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Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

Watermaster

116 SE Dorion Avenue

Pendleton, OR 97801

Phone: (541) 278-5456

FAX: (541) 278-0287

RECEIVED

DEC 31 2014

UMATILLA COUNTY
PLANNING DEPARTMENT

December 31, 2014

Ms. Carol Johnson
Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, Oregon 97801

RE: Watermaster comments for #LUD-176-14 and #LUD-177-14, applicant NF Land, LLC.

Dear Ms. Johnson,

Recently the Watermaster's office reviewed two Umatilla County planning applications proposed by NF Land, LLC. Applications numbered- #LUD-176-14 and #LUD-177-14.

Regarding irrigation water rights on the properties identified in the applications. NF Land, LLC submitted an application to the Oregon Water Resources Department (OWRD) on December 11, 2012, to develop 15 wells in Sections 13, 14, 22, 23, 24 of Township 5 North, Range 36 East, W.M. The map attached to this document was submitted to OWRD with the water rights application and shows the intent to develop irrigation on the lands involved with this Land Use Decision request.

There is a lengthy history involved with this application. The most recent activity was a Proposed Final Order, issued by OWRD, on 11/4/2014 that would allow 6.74cfs, up to a maximum annual volume of 300 AF, to be applied on the proposed 517.9 acres. The last day to file a protest was on December 19, 2014. No protests were filed and a Final Order will likely be issued to NF Lands, LLC that would allow development of up to 14 wells on the 517.9 acres, which includes the land in the County Land Use Decision request. ¹⁵

For full details, more information may be found by reviewing application G-17604 at www.oregon.gov/owrd.

Sincerely,

Greg Silbernagel
Watermaster, District 5

Attachments: Map

Cc: Mike Ladd – NCR Manager

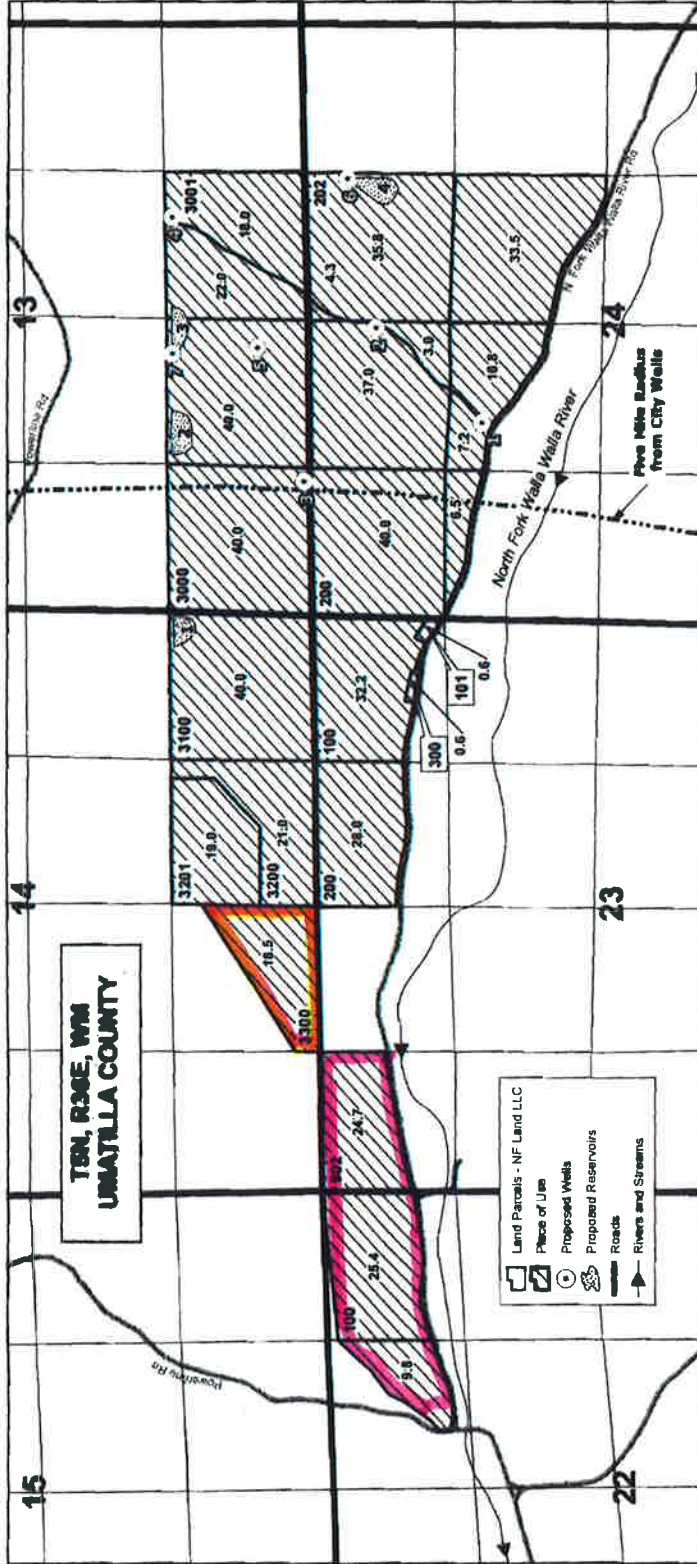
50



RECEIVED

DEC 19 2014

UMATILLA COUNTY
PLANNING DEPARTMENT



- POA 1 Proposed basalt well located 1060 feet N and 885 feet W from Center of Sec 24
 - POA 2 Proposed basalt well located 620 feet S and 60 feet W from N 1/4 Corner of Sec 24
 - POA 3 Proposed basalt well located 45 feet N and 1200 feet E from SW Corner of Sec 13
 - POA 4 Proposed basalt well located 1200 feet N and 900 feet E from S 1/4 Corner of Sec 13
 - POA 5 Proposed basalt well located 470 feet N and 250 feet W from S 1/4 Corner of Sec 13
 - POA 6 Proposed basalt well located 360 feet S and 1270 feet E from N 1/4 Corner of Sec 24
 - POA 7 Proposed basalt well located 1240 feet N and 300 feet W from S 1/4 Corner of Sec 13
- PROPOSED USE: Irrigation of 517.7 acres (total)
 MAXIMUM RATE: 6.47 cfs (2,904 gpm)

- RESERVOIR 1
Dam Location = 1150 feet N and 175 feet W from SE Corner of Section 14
Storage = 5 acre-feet (approx) Area = 1.0 acre (approx)
- RESERVOIR 2
Dam Location = 1175 feet N and 1025 feet W from S 1/4 Corner of Section 13
Storage = 6 acre-feet (approx) Area = 1.4 acres (approx)
- RESERVOIR 3
Dam Location = 1190 feet N and 100 feet W from S 1/4 Corner of Section 13
Storage = 7 acre-feet (approx) Area = 1.7 acre (approx)
- RESERVOIR 4
Dam Location = 650 feet S and 1300 feet E from N 1/4 Corner of Section 24
Storage = 9 acre-feet (approx) Area = 2.0 acre (approx)

APPLICATION MAP
 Permit to Use Groundwater
 Prepared for: NF LAND LLC
 Prepared by: Geo-Spatial Solutions
 Revised: 20 NOV 2012

RECEIVED BY OWRD
 DEC 10 2012
 SALEM, OR

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Land use request #LUD-176-14 and LUD-177-14

2 messages

Jim O'Connell <Jim@caprinc.com>

Wed, Dec 17, 2014 at 8:24 AM

To: "carol.johnson@umatillacounty.net" <carol.johnson@umatillacounty.net>

Carol Johnson: In regards to the request for land use change I have a very big concern. We have spent several thousands of dollar's developing a vineyard on our property. The applicants want to use the easement thru our property (901) for access to the land which they has the right too. We have built a eight foot fence around the total perimeter of our property to keep the deer out. The deer will eat the grape vine leaves and grapes. This would cause considerable finical loss to our company if this happens. We have installed eight foot gates at the access road and have locked these gates and given NLF land the means to open they when they need to. If the land they want to change is approved for a home site, the change will cause several trips a day into and out of our vineyard. Will the new homeowners want to get out and open and close the gate every time they enter or leave out vineyard. This could be addressed by requiring the access road to have an eight foot gate that is controlled by a remote control that would easily open and close all three gates. It could be set to close automatically a short time after it is opened to ensure that it is closed all the time after opening. The other alternative would be to require the road to be fenced off with an eight foot high fence. This would ensure that no human error will cause our company damages. We are open to other ideas if NFL Land has any but this concern needs to be addressed as part of the land change to ensure that it is part of the process from the beginning, not after we have suffered losses to our vineyard. Thank you Jim O'Connell Managing member Capri Walla Walla

Jim O'Connell

President/CEO

6867 N Oracle Ste 101

Tucson Az 85704

520-219-1856

caprinc.
BUSINESS MANAGEMENT

Carol Johnson <carol.johnson@umatillacounty.net>

Wed, Dec 17, 2014 at 8:39 AM

To: Jim O'Connell <Jim@caprinc.com>

Good morning Jim,

Thank you for your comments. I will place them in the file for consideration.

Carol Johnson

[Quoted text hidden]

52



Carol Johnson, Senior Planner

Umatilla County Department of Land Use Planning

216 SE 4th ST, Pendleton, OR 97801

Phone: 541-278-6301 | Fax: 541-278-5480

<http://www.umatillacounty.net/planning>

Visit the County's website for application forms, planning documents, and other helpful information.

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

RECEIVED

JAN 02 2015

UMATILLA COUNTY
PLANNING DEPARTMENT

December 29, 2014

Ms. Carol Johnson
Senior Planner
Umatilla County Department of Land Use Planning
216 SE 4th Street
Pendleton, OR 97801

Dear Carol,

As you know, NF Land LLC is the applicant on two current land use decision requests: #LUD-176-14 and #LUD-177-14. This letter is in response to the December 9 public notices regarding those two requests.

Thank you for your work on the two applications. NF Land LLC offers the following comments on the Preliminary Findings and Conclusions. The applications, findings, conclusions, and decisions are very similar for both LUD requests. As such, the following comments apply to **both** requests.

1. NF Land's understanding is that once the tentative decisions are approved, the approval period is for four years, with the possibility of a two-year extension. Further, NF Land understands it will have four years—plus the possibility of two extra years—to satisfy **both precedent and subsequent conditions**. If this is not consistent with Planning's understanding, NF Land requests that the tentative decision be modified to conform with NF Land's understanding.
2. Both tentative decisions include a condition (#3) that "road access improvements must be professionally engineered and include erosion controls". NF Land requests this portion of the condition be eliminated, along with the rest of the condition #3 text displayed in *italic* font. NF Land's understanding is that these are **not** standard County conditions for approval of a non-farm dwelling. As such, NF Land believes it should not be singled out for this much more challenging and expensive condition.

Please contact me with any questions, and thanks again for your assistance.

Sincerely,

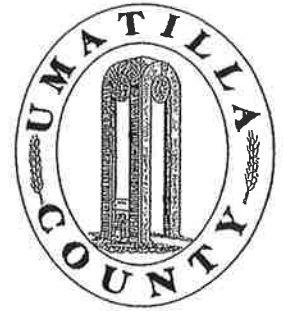


NF Land LLC
By Sam Hobson, Member
2885 Sanford Ave SW, #21711
Grandville, MI 49418
NFLandLLC@gmail.com

54

Umatilla County

Department of Land Use Planning



January 22, 2015

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

Sam Hobson
NF Land, LLC
2885 Sanford Avenue SW 321711
Grandville, MI 49418-1342

Re: NF Land Non-Farm Dwelling, #LUD-176-14
Map #5N 36, Tax Lots #902 & 102; and
NF Land Non-farm Dwelling, #LUD-177-14
Map #5N 36, Tax Lot #3300

Dear Sam:

The 21-day notice period for your two non-farm dwelling requests has elapsed. The County Planning office received three written comments regarding your tentative plan to locate non-farm dwellings on Tax Lot #3300 and Tax Lots #902 & 102. Copies of these comments are enclosed with this letter. Comments also include your request for clarification of the approval timeline and a change to Precedent Condition 3. The comments are summarized below followed by responses.

Comments:

1. The first comment received is from notified property owner and neighbor Jim O'Connell of Capri Vineyard. Due to the area's proximity to wildlife it is necessary for the property to have a high fence around the perimeter of his vineyard to prevent deer from entering the property and eating grape leaves and fruit. Mr. O'Connell acknowledges that you have a right of access to your properties through his property but his big concern is about an increase in vehicle trips resulting from the approval of your dwelling¹ requests. It is his belief that the proposed dwellings will result in more vehicle trips across his vineyard property and increase the risk of crop loss to his farm operation as a result of access gates being left open.
2. A second comment was received from a notified agency, the Oregon Department of Water Resources (OWRD). The comments from District 5 Watermaster, Greg Silbernagel, are informational. The OWRD comment letter includes a copy of the map submitted with your 2012 water rights application. According to OWRD your 2012 water rights application

¹ Trip Generation manual, published by the Institute of Transportation Engineers, a single family dwelling generates, week days, approximately 9.52 Average Daily Trips (ADT).

requests development of 15 wells. The map submitted with the OWRD application shows your properties along the North Fork Walla Walla River Road and includes the parcels now proposed for consideration as non-farm dwelling parcels. OWRD issued a Proposed Final Order on November 4, 2014, to allow up to 6.74 [6.47] cfs. The protest period for the Proposed Final Order ended on December 19, 2014, with no protests filed. The Final Order will allow up to 14 [15] wells on 517.9 acres and includes the properties considered for non-farm status.

3. Your comments request clarification of a non-farm dwelling approval timeline and an amendment to Precedent Condition 3 to change certain access road improvements.

Planning Response Capri Vineyard:

Standards for non-farm dwellings require Findings demonstrating that the non-farm dwellings and activities associated with the dwelling “will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.”

Nearby lands devoted to farm use include Mr. O’Connell’s property planted in grapes and traversed for access to both of your properties and the proposed non-farm dwellings. An expansion of the vehicle traffic through this neighboring farm operation has been described as increasing potential impacts to the neighbor’s farming operation.

The introduction of impacts to the farming operation from the proposed non-farm dwellings will need to be addressed. Impacts from the non-farm dwellings must satisfy the requirement that “the dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.”

Mr. O’Connell offers a couple of possible solutions that may be incorporated into the Findings and as conditions of approval. Solutions offered include installation of automatic closing gates or installation of fencing along the access road to keep the area planted in grapes enclosed from the access easement road and potential impact from gates left open.

Planning Response OWRD:

Statements used in the report to support the lack of farm possibilities on your properties are, in part, based on the absence of irrigation water rights on your properties. On November 7, 2014, prior to sending out notice of the land use decision applications, planning emailed the question, why it was not possible to develop a vineyard on your similarly situated parcels as has been developed on the adjacent Capri Vineyard parcel?

Your response included two reasons. One was due to the high investment costs to

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prepare (earth-moving terracing, etc.) the slopes for planting and the second that grapes would not grow in the properties soils/climate without irrigation water.

Staff agrees that the cost of terracing and planting a vineyard is a large investment and although a grape crop does not require a large volume of irrigation water, water is necessary to grow a grape crop in this area of the county.

Information regarding your 2012 water rights application submittal was not included in the land use application materials for the non-farm dwelling properties. Planning staff first learned about your pursuit of water rights from comments made by OWRD in response to the public notices for your non-farm applications.

Although, irrigation water rights are not currently developed, or in use, on your properties your 2012 application has recently resulted in OWRD's Proposed Final Order for up to 15 wells across 500+ acres of farm zoned land (map attached). This likewise is a costly investment and doubtfully would not be pursued without some anticipation or speculation on farm uses the irrigation water rights would benefit.

This again raises questions about whether the non-farm dwellings would be on land generally unsuitable for farming where irrigation water rights increase the possible farm uses of the properties. This is especially true where an adjacent parcel, similarly situated, is in a farm use. Although preparing the land for a farm crop would be necessary, the water to irrigate the farm crop is an available beneficial use that may be developed under the terms and conditions of the OWRD Final Order. Therefore, available irrigation water rights increase the farm use possibilities on the subject properties.

Additionally, it also must be determined how the stability standard is met if the cumulative impacts of non-farm dwellings make it more difficult for farm uses in the area to continue due, in part, to limits on opportunities to expand, purchase or lease farmland. If approved, the neighboring farm operation (vineyard) would be bordered by both non-farm parcels; therefore, it is necessary to determine if the non-farm dwellings will diminish the neighboring farm operation's opportunity to expand, etc.

Planning Response Approval Time Non-Farm Dwellings:

Dwelling approvals on EFU zoned lands are granted for four years and when requested, may be extended two additional years. Umatilla County grants up to a total of six years from the date the Final Findings are signed to complete the conditions of approval.

Planning Response Amending Precedent Condition 3:

The requirements listed in Precedent Condition 3 for professionally engineered road improvements including erosion controls, is a condition applied due to road development on steeper slopes. Access (Section 152.059 (K) (8) (d)) entails road

improvements to the Option 1 (County P-1) road design standard within a 30-ft access easement. The Option 1 and P-1 road standard requires a 16-ft wide roadway improved with four inches of compacted gravel (see attached diagram). The Findings under Section 152.059 (K) (8) (d) are amended for the verification of improvements to the access easement road to the Option 1 (County P-1) design standard as follows:

3. Obtain and/or verify that a county road approach permit is in place for the existing access easement road and verify the access easement road is improved to the Option 1 design standard (County P-1). The improved road must be developed to accommodate emergency vehicle access to the proposed dwelling.

Summary:

The comments received from Mr. O'Connell, OWRD, and you, the applicant, require amending and altering the Staff Report and Findings. Standards for non-farm dwellings, found in Section 152.059 (K) (8), must be met based on facts in the record that are relied upon and believed to demonstrate that the Standards are met. Following is a summary of issues requiring additional justification.

1. The non-farm dwellings must satisfy the requirement that "the dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use."

Potential impacts identified by the neighboring farming operation will need to be addressed by additional justification satisfying that the non-farm dwellings will not significantly change or increase the cost of accepted farming practices on nearby lands.

2. Additional justification is necessary to satisfy the stability standard on whether the cumulative impacts from non-farm dwellings make it more difficult for farm uses in the area to continue, due to diminished opportunities to expand, purchase or lease farmland.
3. The proposed non-farm parcels are within the 500+ acres benefitting from water rights within the OWRD Proposed Final Order. This presents difficulties about how the proposed non-farm dwellings satisfy whether the non-farm dwellings would be on land generally unsuitable for farming. Therefore, provide additional justification on why the proposed non-farm parcels are unsuitable for farming, in light of OWRD's Proposed Final Order.

Due to the need for additional justification to make a decision on your non-farm dwelling requests, and because of the limitation of 150-days placed on counties to make Final decisions, the Final decisions for your non-farm dwelling requests are

directed to the next available Planning Commission Hearing on February 26, 2015. In order to organize and assemble additional information prior to the hearing, please submit materials by February 5, 2015, two weeks prior to the hearing date, or as soon as possible so that materials may be prepared for the hearing. The prepared materials are mailed to the Commission members 10-days prior to the hearing date.

Thank you for your attention to these matters.

Cordially,



Carol Johnson
Senior Planner

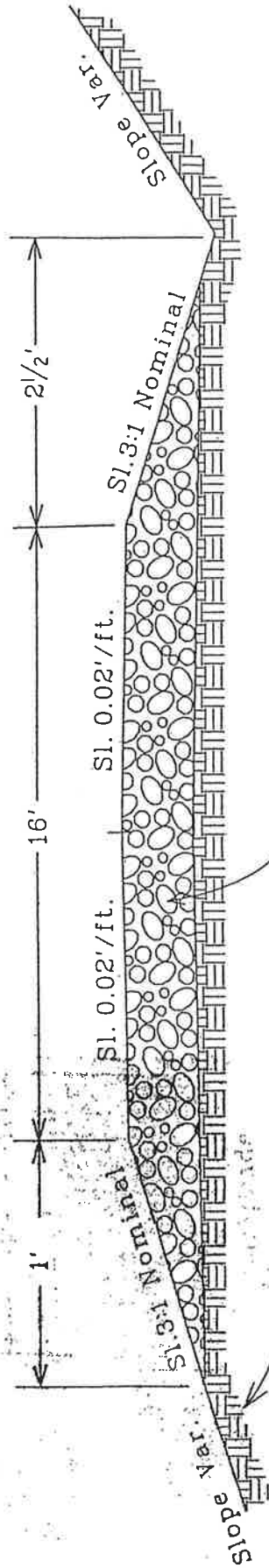
enclosures: Comment Letters, P-1 County Road Diagram

cc: Jim O'Connell-Capri Vineyard, Property Owner
Greg Silbernagel, Watermaster/OWRD
Tamra J. Mabbott, County Planning Director

"P-1"

(Land Partition)

To be used in cases where additional Partitioning or development is not anticipated and access is to 3 or fewer parcels.



Crushed gravel surfacing
Nominal compacted thickness 4"
(size and grading requirements
to conform to current Oregon
Department of Transportation
Specifications).

- * Note: If Partition is within a City Urban Growth Boundary, City Standards should apply.
- * Culvert pipes to be installed in locations determined by the Director of Public Works. Materials & workmanship shall conform to current ODOT Standard Specifications
- * All other construction details and specifications to conform to current ODOT Standard Specifications and to be approved by the Director of Public Works.
- * Any changes to surfacing width or depths or variance from current Oregon Department of Transportation Standard Specifications must be approved by the Director of Public Works.

Umatilla Co. Rd. Dept.	
"P-1"	
Drawn By: JG	Checked By: GR
Date: July 1997	Road Standard

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Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

Watermaster

116 SE Dorion Avenue

Pendleton, OR 97801

Phone: (541) 278-5456

FAX: (541) 278-0287

February 13th, 2015

Ms. Carol Johnson
Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, Oregon 97801

Re: Public hearing regarding #LUD-176-14 and #LUD-177-14.

Dear Ms. Johnson,

See attached for the "Final Order" issued by the Oregon Water Resources Department regarding NF Land, LLC's intent to appropriate groundwater. Full details and history may be found by reviewing application #G-17604 at <http://apps.wrd.state.or.us/apps/wr/wrinfo/>

Please let me know if you have any questions.

Sincerely,

Greg Silbernagel
Watermaster, District #5

Attachments: Final Order for Water Rights Application Number G-17604 (2 pages)

(61)

**Oregon Water Resources Department
Water Right Services Division**

Water Rights Application
Number G-17604

Final Order

Appeal Rights

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Findings of Fact

On December 11, 2012, NF Land LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on November 4, 2014. The protest period closed December 19, 2014, and no protest was filed.

Conclusions of Law

The proposed use would not impair or be detrimental to the public interest pursuant to ORS 537.621(2).

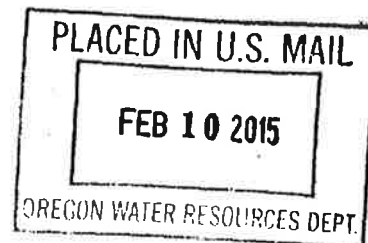
Order

Application G-17604 therefore is approved as proposed by the Proposed Final Order, and Permit G-17347 is issued as limited by the conditions proposed by the Proposed Final Order.

DATED February 9, 2015

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director



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This document was prepared by Kim French. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

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FEB 18 2015

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February 18, 2015

Mr. Randy Randall, Chair
Umatilla County Planning Commission
Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, OR 97801

Re: NF Land, LLC
Land Use Requests #LUD-176-14; 177-14
Our File No. 1150048-001

Dear Mr. Randall:

Our office represents NF Land, LLC ("NF Land") in relation to the above two land use applications pending before Umatilla County, in which NF Land seeks approval for two separate non-farm dwellings. It is my understanding that the Planning Department prepared Preliminary Findings and Conclusions recommending the approval of LUD 176-14 and 177-14 but that the Planning Department received comments from members of the public during the 21 day notice period following issuance of the Preliminary Findings and Conclusions. I further understand that in response to these comments the Planning Department requests further discussion from NF Land. On behalf of NF Land I submit the below analysis to address the comments received by the Planning Department.

i. The non-farm dwellings will not "force a significant change in" nor "significantly increase the costs of accepted farming practices on nearby lands."

In order for the two non-farm dwelling permits to be approved NF Land must demonstrate that the proposed non-farm dwellings will not "force a significant change in" or "significantly increase the cost of" accepted farming practices on nearby farm land. This standard is imposed by UCDC 152.059 (K)(8)(a) and ORS 215.284 (7)(a). The provision in the Umatilla County Development Code ("UCDC") merely restates the language in the state statute. The Land Use Board of Appeals ("LUBA") has explained that ORS 215.284, requires the local decisionmaker to "(1) describe the farm and forest practices on surrounding lands devoted to farm or forest use, (2) explain why the proposed use will not force a significant change in those practices, and (3) explain

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why the proposed use will not significantly increase the costs of those practices.” Gutoski v. Lane County, 34 Or LUBA 223, 227 (1998).

In this instance the County’s Preliminary Findings and Conclusions already describe the farming practices on nearby lands so the first element is taken care of. As to the second and third elements there is simply no proof that the existing farm practices will be changed nor that the costs will be increased. The nearby farming operation—which operation is run by one of the commenters to NF Land’s application—is a vineyard. That vineyard has already installed a fence to keep deer out. There are also already gates that regulate access pursuant to mutual agreement between NF Land and Capri Vineyard, and those gates can remain as is.¹ There is simply no evidence in the record that the farming practices will be changed nor that costs will be increased if NF Land’s applications for non-farm dwellings are approved. The fence and the gate were already in place prior to NF Land’s application for two non-farm dwellings so there is nothing that can be construed as a “change.” Similarly, the costs for the fence and gates have already been incurred and were incurred before NF Land’s applications were even filed. So, there is no risk of approval of NF Land’s applications leading to additional costs related to farming.

A prior LUBA case addressing a non-farm dwelling and whether it increased the costs of farming at a nearby vineyard is instructive here and supports NF Land’s position. In *Wetherell v. Douglas County and Umpqua Pacific Resources, Inc.*, LUBA rejected an argument by the opponent of a non-farm dwelling permit, and upheld the decision of Douglas County, that a gravel road through a vineyard would not significantly change the farming practices nor significantly increase the costs of farming. 56 OR LUBA 210, 138 (2008). The opponent argued that the creation of a gravel road would compact soil and cause the vines in the vineyard to become less productive. LUBA rejected this argument and said that a decrease in production would not “force a significant change in accepted farming practices or the cost of those farming practices” and rejected the opponent’s argument. *Id.*

The situation here is analogous to that in *Wetherell* in that the arguments of Capri Vineyard revolve around the possible reduction in vineyard production because of deer—which might gain access by getting around gates that are presently in place and eating grapes. As in *Wetherell* the potential speculative reduction in production could just as easily occur now if someone associated with Capri Vineyard were to leave a gate open. Put another way: any possible impacts upon the grapes exists without regard to whether NF Land’s applications are granted. Logically then, approving these non-farm dwellings will not lead to “significant changes” in farming practice nor result in “significantly increased” costs. Thus, there is no basis to find that NF Land’s applications do not meet the standard set out in UDCD 152.059 (K)(8)(a). Respectfully, LUD 176-14 and 177-14 should be granted, consistent with the recommendation in the Planning Department’s Preliminary Findings and Conclusions.

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¹ The easement in favor of NF Land across Capri Vineyards’ property explicitly provides that no gates are to be put in place that prevent access. Notwithstanding, NF Land, in the interest of neighborly relations, agreed to allow the gates until such time as NF Land decided otherwise. A copy of said easement, with the gate restriction highlighted, is attached.

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ii. The cumulative impacts from non-farm dwellings will not make it more difficult for farm uses in the area to continue.

The Planning Department requested further explanation of whether the “stability standard,” which requires an analysis under UCDC 152.059 (K)(10), was satisfied here. That provision in the Umatilla County Development Code requires an analysis of whether “cumulative impacts” from non-farm dwellings would make it more difficult for farm uses in the area to continue. As required by that provision of the UCDC, Umatilla County performed a study to determine whether this standard was met. The Preliminary Findings and Conclusions state that the stability standard was met. Since that time there has been no evidence placed into the record that would indicate the stability standard is no longer met nor has any evidence been provided to call Umatilla County’s conclusions into question. Similarly, there were no comments that were sent to Umatilla County which raised concerns with this standard. Thus, the stability standard does not bar granting NF Land’s applications for non-farm dwellings.

To the extent that this issue needs to be considered further, the Planning Department’s own findings establish that the stability standard is met. Only one non-farm dwelling has been built since 1993. Further, only 15 parcels even potentially qualify for building of non-farm dwellings but as the Planning Department notes “it is unlikely all 15 would be developed because of access issues and development costs.” Indeed, the lack of building activity of non-farm dwellings since 1993, despite the possibility, demonstrates there is no risk of “cumulative impacts” of non-farm dwellings disrupting farming activity. And, as to LUD 176-14 that parcel was approved for a non-farm dwelling already by Umatilla County, first in 1991 and again in 2008. Given that the parcel has already been approved for development multiple times it is not clear how simply approving the development once again would change the land use pattern in the area and violate the standards in UCDC 152.059 (K)(10).

iii. The presence of a water permit is not part of the analysis for purposes of determining whether land is “generally unsuitable” for farming under UCDC 152.059 (K)(8)(b).

In response to a letter from the District 5 Watermaster, Greg Silbernagel, the Planning Department required that NF Land provide additional explanation as to why the parcels for which NF Land seeks non-farm dwelling permits are “unsuitable for farming” given the proposed final order that would authorize a water permit.² As explained more fully below the possibility of water rights does not provide a basis upon which to deny NF Land’s applications.

The Final Order by the Oregon Water Resources Department does not impact NF Land’s applications for several reasons. First, mere approval of a water permit does not mean that the water rights will actually be developed. Water must actually be available beneath the surface and in sufficient quantity and quality. It must also be economically feasible to develop and the applicant must prove beneficial use over time in order to perfect a water right. Thus, the permit is only the first step in a long process. The viability of irrigated farming on the property owned by

² The Oregon Water Resources Department only very recently approved NF Land’s application and granted a permit. At the time that #LUD-176-14 and 177-14 were submitted the ORWD had not acted on the permit request.

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NF Land is speculative at best and would be a very expensive undertaking. Therefore, the permit does not support a finding that the parcels subject to NF Land's two land use requests are suitable for farming.

Further, the standard for determining whether property is "generally unsuitable for farm use" does not actually incorporate a requirement that Umatilla County consider the availability of water rights. Specifically, UCDC 152.059 (K)(8)(b) states that:

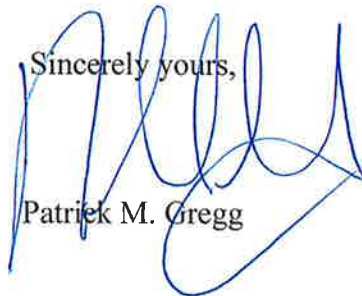
The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel that is generally unsuitable for farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. UCDC 152.059 (K)(8)(b).

This set of standards identified in UCDC 152.059 (K)(8)(b) does not refer to the viability of irrigated farming nor the existence of a water right as one of the criteria for determining if the property is unsuitable for farm use. In this instance then, the decision of the Oregon Water Resources Department and the issuance of a permit is not a consideration. Rather, the Planning Department's Preliminary Findings, which found that the parcels qualified as "generally unsuitable for farming" are controlling and demonstrate that the necessary showing has been met by NF Land. The two applications submitted by NF Land should be approved.

iv. Conclusion

NF Land respectfully submits that the above points appropriately clarify the questions that arose following the public comments on LUDC 176-14 and 177-14. NF Land therefore requests that the Planning Commission approve the two pending applications and grant permission for NF Land to construct two non-farm dwellings.

Sincerely yours,



Patrick M. Gregg

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