FILED
THE DALLES, OR.
OCT 5 4 21 PM '89
KAREN R LEBRETON
COUNTY CLERK

IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE APPLICATION OF RICHARD J. MURRAY FOR A COMPREHENSIVE PLAN MAP AMENDMENT FROM FOREST TO RURAL RESIDENTIAL AND A ZONE CHANGE FROM "F-2(40)" TO "R-R"	)	ORDINANCE AMENDMENT

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for transaction of public business and a majority of the Court being present; and

IT APPEARING TO THE COURT: That the Wasco County Planning Commission met and conducted a public hearing on September 11, 1989, to consider an application by Richard J. Murray for a Comprehensive Plan Amendment to change the Plan map from Forest to Rural Residential and a zone change from "F-2(40)" to "R-R" for property described as Township 2 North, Range 12 East W.M., Section 22, Tax Lot 800.

IT FURTHER APPEARING TO THE COURT: That the Planning Commission recommended approval of the subject requested based upon Planning Staff findings and testimony and evidence presented at the hearing.

IT FURTHER APPEARING TO THE COURT: That on October 3, 1989, in the County Courtroom of the County Courthouse in The Dalles, Oregon, this Court conducted a public hearing on the subject application at which time the Court received testimony of parties.

P89- 0331 (19)

Based upon the entire record of all testimony and evidence received, the Wasco County Court hereby makes the following findings:

1. Proper notice was given and the hearing was held in accordance with procedural rules for quasi-judicial zone change applications and in conformity with said requirements as set forth in the Wasco County Comprehensive Plan.
2. All members of the County Court were present and were qualified to sit as decision-makers after full disclosure was made and the matter of qualifications was discussed by Court;
3. In making its decision, the Court recognizes the procedural and legal requirements of Wasco County Comprehensive Plan and Land Use and Development Ordinance and weighed fully each requirement in arriving at its decision;
4. Adopts the recommendation of the Wasco County Planning Commission (Attachment A);
5. Adopts the Planning and Development Office Staff report, comments and findings (Attachment B).

NOW, THEREFORE: based upon the attached findings of fact, the County Court for Wasco County hereby ordains as follows: The Wasco County Comprehensive Plan Map is amended to adopt the "Rural Residential" designation and the Wasco County zoning map is amended to adopt the "R-R" designation for property described as Township 2 North, Range 12 East W.M., Section 22, Tax Lot 800.

Emergency Clause: This action being necessary for the immediate preservation of public peace, health, and safety, an emergency is declared to exist, and the Ordinance Amendment takes effect on its passage.

Regularly passed and adopted by unanimous vote of all members of the County Court of the County of Wasco, State of Oregon.

DATED this 4th day of October, 1989.

WASCO COUNTY COURT

William L. Hulse, Judge

John Mabrey, Commissioner

Scott McKay, Commissioner

Approved as to form:

Bernard L. Smith
Wasco Co. District Attorney

db

P89-0331 (19)

Exhibit A

WASCO COUNTY PLANNING COMMISSION

IN THE MATTER OF the Application of Richard J. Murray for a Comprehensive Plan Amendment and zone change.	)))	RECOMMENDATION

On Monday, September 11, 1989, the Wasco County Planning Commission duly met and conducted a public hearing upon the application of Richard J. Murray for an amendment to the Comprehensive Plan map to change the designation from Forest to Rural Residential, and a Zone Change to change the designation from "F-2(40)" Forest to "R-R" Rural Residential for property described as Township 2 North, Range 12 East, Section 22, Tax Lot 800.

The following voting members of the Commission were present: John Kerege, Maureen Musser, Pat Davis, Maureen Mack and Joe Sullivan.

The hearing was opened and testimony was received from all interested parties, including a staff report from the Planning and Development Office.

Upon closure of the hearing, the Commission, based upon testimony received and the staff report, voted unanimously to recommend to the County Court that the request be granted.

Submitted for the Commission,

By: Dan Durow, Director
Wasco Co. Planning and Development Office

dt

Attachment A

P89-0331

(19)

Exhibit B

PLANNING AND DEVELOPMENT OFFICE

WASCO COUNTY

1721 W. 10th STREET THE DALLES, OREGON 97058

DANIEL C. DUROW, Director PHONE: (503) 298-5169

TO: Wasco County Planning Commission

FROM: Wasco County Planning & Development Office

SUBJECT: Request for a Comprehensive Plan Amendment and Zone Change

APPLICANT: Richard J. Murray

REQUEST: To consider amendments to the Wasco County Comprehensive Plan and zoning maps. The current plan designation is Forest and the zone is "F-2(40)" Forest. The request is to change the designations to Rural Residential and "R-R" Rural Residential, respectively.

LOCATION: North of and adjacent to Sevenmile Hill Road approximately one-quarter mile west of the Sevenmile High Road intersection on property described as Township 2 North, Range 12 East, Section 22, Tax Lot 800.

PROPERTY OWNER: Richard Murray

REGULATIONS: Statewide Planning Goals, Oregon Administrative Rules, Wasco County Comprehensive Plan, and Wasco County Land Use and Development Ordinance.

AUTHORITY: Wasco County Land Use and Development Ordinance, Section 2.060 C.

EXHIBITS:

A. Notice mailed to adjacent property owners and interested parties.

B. Applications as submitted.

C. Existing zoning and development.

NOTIFICATION: In addition to owners of property within three hundred (300) feet of the subject parcel, the following individuals/agencies were notified of the subject request: Wasco County Court, Assessor, District Attorney, Land Use Counsel, Roadmaster, Sanitarian, Watermaster, and Western Citizen Advisory Group; Wasco Rural Fire Protection District; Oregon Department of Forestry; Oregon Department of Fish

& Wildlife; Wasco County Soil and Water Conservation District; Oregon Department of Land Conservation & Development; and Chenowith School District #9.

COMMENT: At the time of this report, two comments have been received. The Oregon Department of Forestry commented orally and has no objection. A representative of the Oregon Department of Fish and Wildlife indicated that prospective landowners should be aware that they will receive damage to ornamental and garden plantings from big game.

FINDINGS:

A. Background Information

1. The Comprehensive Plan designation for the area surrounding the subject property is: north, Rural Residential; east, Forest-Farm; south, Forest; and west, Forest.

2. Lot Size: 7.35 acres.

3. Access: Sevenmile Hill Road.

4. Soils: According to the Soil Survey of Wasco County (Northern Part), the subject property is comprised of two soil types. The eastern portion of the property contains Wamic loam, which has an agricultural Capability Class of IV and woodland suitability of 4. The western portion contains Wamic-Skyline Complex soils. This type of soil is highly variable, and may have an agricultural Capability Class of IV or VII and a woodland suitability rating of 4 or no suitability. Information more detailed than the Soil Survey has not been submitted regarding the quality of the subject soils.

5. Sewage Disposal: Any residential development would require septic approval.

6. Water Private well.

7. Taxes: 6.1 acres of forest lands, with the remainder rural tract.

8. Fire Protection: Wasco Rural Fire Protection District.

B. Applicable Goal and Comprehensive Plan Provisions and Analysis

1. The subject property is designated as Goal 4 (forest) land on the Comprehensive Plan map. The property also potentially qualifies as Goal 3 (agricultural) land because of soils (see Finding A.6). In order to redesignate the property with a rural residential classification, an exception to Goals 3 and 4 must be taken. Oregon Administrative Rules (OAR) Section 660-04-018 identifies two general types of exceptions. The first is based upon "physical development" or "irrevocable commitment" or both. The second is based upon "reasons" why the Goal should not apply. This request will rely on a justification based upon irrevocable commitment.

2. OAR 660-04-028 specifies the criteria that are to be addressed when justifying "irrevocable commitment." These criteria deal with the characteristics of the property and its vicinity, existing adjacent uses and public facilities, ownership pattern of the area, and other relevant factors.

   Characteristics of the Property: Please refer also to Section A of this report regarding property characteristics. The subject parcel is a portion of a lot in a 1911 subdivision. Less than one-half of the property is currently wooded with young ponderosa pine. The rest is an open grassy area, presumably wooded formerly. A shallow draw bisects the property, so that the east and west sides are a higher elevation than the central portion. The property is fenced on three sides and utility lines traverse the lot from east to west.

   Characteristics of Adjacent Lands and Uses: The Sevenmile Hill area in the vicinity of the subject property is a mix of large lot (five to ten acre) residential use and large- and small-scale farm and forest uses. In the immediate vicinity, there are several existing subdivisions (see Exhibit C). Four of the subdivisions -- Sunnydale Orchards, Martin Tracts, Fairmont Orchard Tracts, and Mosier View Orchards -- date from 1908 to 1911 and are comprised of five to twelve acre parcels. There is no current employment of any of this land for orchards. These four subdivisions are planned and zoned Forest-Farm, which has a ten acre minimum lot size. Adjacent to the subject property on the north is Flyby Night Subdivision (1979), comprised primarily of five acre lots, and planned and zoned Rural Residential (five acre minimum). Another Rural Residential subdivision, Dell Vista, is north of Sunnydale Orchards. Some small-scale agriculture is practiced in these subdivisions, but only on isolated parcels.

To the south of the subject property (across Sevenmile Hill Road) outside the subdivisions, the parcels are larger, ranging from sixteen acres to in excess of four hundred acres. This area is predominantly forest in the vicinity of the subject parcel. Residential use is more sparse in this area, although the parcel adjacent to the subject parcel on the south is developed (tax lot 900 in Exhibit C).

Existing Public Facilities and Services: The property fronts a county road. Power and telephone service are available to the site. A rural fire protection district includes the subject parcel. On-site water and sewage disposal are required.

Ownership Pattern and Relationship Between Subject Property and Surrounding Area: As stated previously, much of the area is subdivided into small lots. Many of these are owned individually, but in several cases one individual owns two to five lots, so holdings range from about five acres to twenty-seven acres, with most in the five to ten acre range. The Flyby Night exception area is predominantly five acre lots. The part of Wasco County zoned F-2(40) is characterized by parcels forty acres and larger. Near the subject property, there are a few smaller parcels, and these are on the margins of the Forest zone. In Exhibit C, the only Forest parcels created applying Goal 4 were the four straddling the county road in the southwest corner of the map.

The characteristics of the subject property more closely approximate those in the Flyby Night exception area than those of the area designated Forest on the Comprehensive Plan, particularly in size. The area along Sevenmile Hill Road is committed by planning and zoning to five and ten acre lots for a mile to the east and several miles to the west, but the subject property (along with a 0.72 acre contiguous parcel that straddles the road) is the only land in the county north of Sevenmile Hill Road zoned designated Forest. This road serves as a separating feature, effectively cutting the parcel off from other resource lands, and leaving a parcel too small to manage effectively as a part of a larger farm or forest operation.

3. The Wasco County Comprehensive Plan requires consideration of general criteria prior to approval of a Plan amendment. The criteria to be considered are:

   (a) Compliance with the statewide land use goals as provided by the LCDC, where applicable.

(b) Substantial proof that such change shall not be detrimental to the spirit and intent of such goals.

(c) A mistake in the original comprehensive plan or change in the character of the neighborhood can be demonstrated.

(d) Factors which relate to the public need for healthful, safe, and aesthetic surroundings and conditions.

(e) Proof of change in the inventories originally developed.

(f) Revisions shall be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change must be established.

See the findings in Section B. 2 of this report for a discussion regarding factors relating to criteria (a) and (b) above. An examination of the characteristics of the property and its relationship to surrounding properties reveals no incompatibility with Goal 3 or 4, nor with the intent of those goals. In addition to the factors discussed in Section B. 2 regarding the compliance of the request with the spirit and intent of the Goals, the purpose of the Forest designation should be examined. According to the Comprehensive Plan (pages 268-9), the F-2(80) zone is primarily devoted to timber management, while the F-2(40) zone is considered sensitive big game habitat. In order to protect this wildlife resource (as required by Goal 5), a "big game winter range" designation has been applied to portions of the county. The subject property is not within the identified big game winter range. Therefore, the request will not be counter to the intent of the designation.

Regarding criterion (c), the applicant maintains there was a mistake in the original Comprehensive Plan (see Exhibit B), but he submitted no evidence supporting the claim. The area along Sevenmile Hill Road has changed somewhat since the original Plan designation was assigned due to further residential development on the properties zoned Rural Residential and Forest-Farm, but the vicinity was previously of a rural residential character.

There has been no evidence presented that the request is in conflict with criterion (d). No significant impact on environmental quality will result from

uses permitted in the R-R zone, nor will safety or aesthetics be adversely affected.

Regarding criterion (e), no change in original inventories has been identified. The property could still be classified as Goal 3 or 4 land based on the criteria used to develop the inventories, but for reasons outlined in Section B. 2, the property is suitable for the residential designation.

Regarding criterion (f), this report is the required special study. There is an established need, justified in the Comprehensive Plan, for rural residences. The subject property is not by itself required in order to accommodate that need because there are vacant parcels currently zoned appropriately. The need is for a consistent Comprehensive Plan that balances resource protection with rural uses. The proposed change will help accomplish that end.

C. Applicable Ordinance Provisions and Analysis

1. The zone change request is for a change from "F-2(40)" Forest to "R-R" Rural Residential. The R-R zone is being requested because it is the appropriate zone to allow residential use on 7.35 acres.

2. Section 9.020 of LUDO establishes criteria for review of zone change requests. It must be established that the original zoning was the product of a mistake or that:

   (a) The rezoning will conform with the Comprehensive Plan; and

   (b) The site is suitable to the proposed zone; and

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

   The requested zoning designation will conform to the Comprehensive Plan if the concurrent plan amendment request is approved. The site is apparently suitable for residential use. Sanitation approval will be required. Other public services and utilities are available to the site. There has been no evidence presented that public health, safety, or welfare will be adversely affected by granting the requested zone change.

3. OAR 660-04-018 requires that uses permitted in exception areas justified by development and/or commitment must be limited to "uses which are the

same as the existing types of land use on the exception site" or rural uses that meet the following requirements.

(a) The rural uses are consistent with all other applicable Goal requirements; and

(b) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and

(c) The rural uses are compatible with adjacent or nearby resource uses.

The vicinity of the subject property is currently predominated by rural residential use. The R-R zone allows only rural uses that are similar to those that currently exist in the Sevenmile Hill area. The subject property is physically separated from resource uses, so compatibility is not a problem when the requested change is viewed in relation to the preponderance of nonresource use existing in the area.

CONCLUSIONS:

1. The request is for a Comprehensive Plan Amendment to change the Plan map designation from Forest to Rural Residential and a zone change from "F-2(40)" Forest to "R-R" Rural Residential.

2. Based upon the findings in this report, the parcel is irrevocably committed to nonresource use.

3. Based upon the findings in this report, the request complies with the amendment procedures and criteria of the Wasco County Comprehensive Plan.

4. Based upon the findings in this report, the request complies with the provisions of Section 9.020 of the Land Use & Development Ordinance.

5. The request complies with the exception requirements of Goal 2 and OAR 660-04-018.

STAFF RECOMMENDATION: Based upon the above findings and conclusions, staff recommends that the Planning Commission forward to the Wasco County Court a recommendation that the request by Richard J.

Murray for a Comprehensive Plan Amendment and zone change be approved, so that plan designation will be Rural Residential and the zone be "R-R" Rural Residential.

db

<wp\sr-cpazc>

P89-0331 (19)

PLANNING AND DEVELOPMENT OFFICE

WASCO COUNTY

1721 W. 10th STREET THE DALLES, OREGON 97058

PHONE: (503) 298-5169

DANIEL C. DUROW, Director

NOTICE OF PUBLIC HEARING

Place: Wasco County Courthouse, Circuit Courtoom
Date: September 11, 1989
Time: 7:00 P.M.

The Wasco County Planning Commission will hold a public hearing on the following item on the date and at the time indicated above. The Planning Commission invites views and comments at the meeting on this proposal. If you do not wish to attend the meeting, you may provide written comment in the space provided below, or on a separate sheet.

REQUEST AND PURPOSE:	Comprehensive Plan Amendment and Zone Change, from Forest to Rural Residential
APPLICANT:	Richard Murray
LOCATION:	North of and adjacent to Sevenmile Hill Road near the intersection of Richard Road, on property described as Township 2 North, Range 12 East, Section 22, Tax Lot 800.
PROPERTY OWNER:	Richard Murray
PRESENT ZONING:	"F-2(40)" Forest
ORDINANCE SECTION:	Chapter 9 of the Wasco County Land Use and Development Ordinance

By: Dan Durow
Director of Planning & Development

COMMENTS (please return to address above):

_____

_____

_____

_____

"Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser."

P89-0331 (19)

EXHIBIT A

ZNC-89-104-WAF24-H

WASCO COUNTY PLANNING & DEVELOPMENT OFFICE

APPLICATION FOR ZONE CHANGE

RECEIVED
AUG. 2 1989
Wasco Co. Plan. & Dev. Office

APPLICANT:

MURRAY RICHARD J. 296-4029
(Last Name) (First Name) (Middle Name) (Telephone)

2175 RIDGE RD W, THE DALLES, ORE 97058
(Address)

Legal Owner: RICHARD J. MURRAY

If applicant is not legal owner, state interest in property:

LOCATION OF SUBJECT PROPERTY:

Township: 2N Range: 12 Section: 32 Tax Lot: 800

Size of Parcel: 7.35 AC

Existing Zoning: F-2 (40) Plan Designation: Forest

Proposed Zone Change: R-R Rural Residential

Existing Land Use: F-2 (40)

Surrounding Land Use: RR-5, FF 10

State the purpose for the proposed zone change: TO SELL PROPERTY, NEW OWNER WANTS TO ~~BUILD~~ SITE A MOBILE HOME AND BUILD IN THE FUTURE WITHOUT A CONDITIONAL USE PERMIT.

How does the proposed zone change comply with the Comprehensive Plan?

ONLY 7.35 AC LOT ZONED F-2 LOCATED NORTH OF SEVENMILE HILL RD.

EXHIBIT B

P89-0331 (19)

If the request is not in conformance with the Comprehensive Plan, wh should the request be considered? IT IS THE ONLY LOT ACROSS OF SEVEN MILE HILL RD IN F-2 ZONE IT IS ONLY 7.35 ACRES.

What effect would the proposed zone change have on surrounding properties? WOULD MAKE IT CONFORM WITH SURROUNDING PROPERTY USE.

Is there a public need or demand to support the requested zone change? I so, what?: WE HAVE A BUYER FOR THE PROPERTY.

A site plan shall be drawn on a separate sheet, approximately to scal The following must be shown:

1. Parcel boundaries (shape) and dimensions.
2. The size and location of all existing structures. None
3. Existing access. 7 Mile Hill Rd
4. Predominant natural features. pine trees on east side - open meadow.
5. Direction to north.
6. Any other information which you feel may help in evaluating yo request.

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B-1

Attach a copy of deed and/or contract and any other information regardir property restrictions or covenants.

Richard J. Murray
(Petitioner)

2 Aug 1989
(Date)

YOU OR YOUR REPRESENTATIVE MUST APPEAR AND PRESENT YOUR CASE TO T PLANNING COMMISSION.

P89-0331 (19)

B-2

Attach a copy of deed and/or contract and any other information regardin property restrictions or covenants.

Richard J. Murray
(Petitioner)

2 Aug 1989
(Date)

YOU OR YOUR REPRESENTATIVE MUST APPEAR AND PRESENT YOUR CASE TO TH PLANNING COMMISSION.

d. How the proposed use would be compatible with other adjacent uses. Adjacent property is R-R.

2. Substantial proof that the proposed change will not be detrimental to the spirit and intent of such goals.

3. Did a mistake in the original Comprehensive Plan occur? If so, explain. If not, what change in the character of the neighborhood has occurred which would warrant the proposed change? Yes - Should have been changed years ago.

4. Factors which relate to the public need for healthful, safe and aesthetic surroundings and conditions. There is a demand for the change.

5. Proof of change in the inventories originally developed.

6. Revisions shall be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change must be established.
Man wants to buy it for this use.

Attach a map which clearly outlines the area of the proposed change.

FILING FEE: $200.00
(Make check payable to: Wasco County Planning & Development Office)

NOTE: Fees are not transferable or refundable.

You or your representative must be present at public hearing associated with this application to present your case. You will be notified by mail of the time, date and place.

PLEASE NOTE THAT THE BURDEN OF PROOF IS PLACED UPON THE APPLICANT SEEKING THE AMENDMENT.

Richard J. Murray
(Applicant)

2 Aug '89
(Date)

P89-0331 (19)

EXISTING ZONING AND DEVELOPMENT

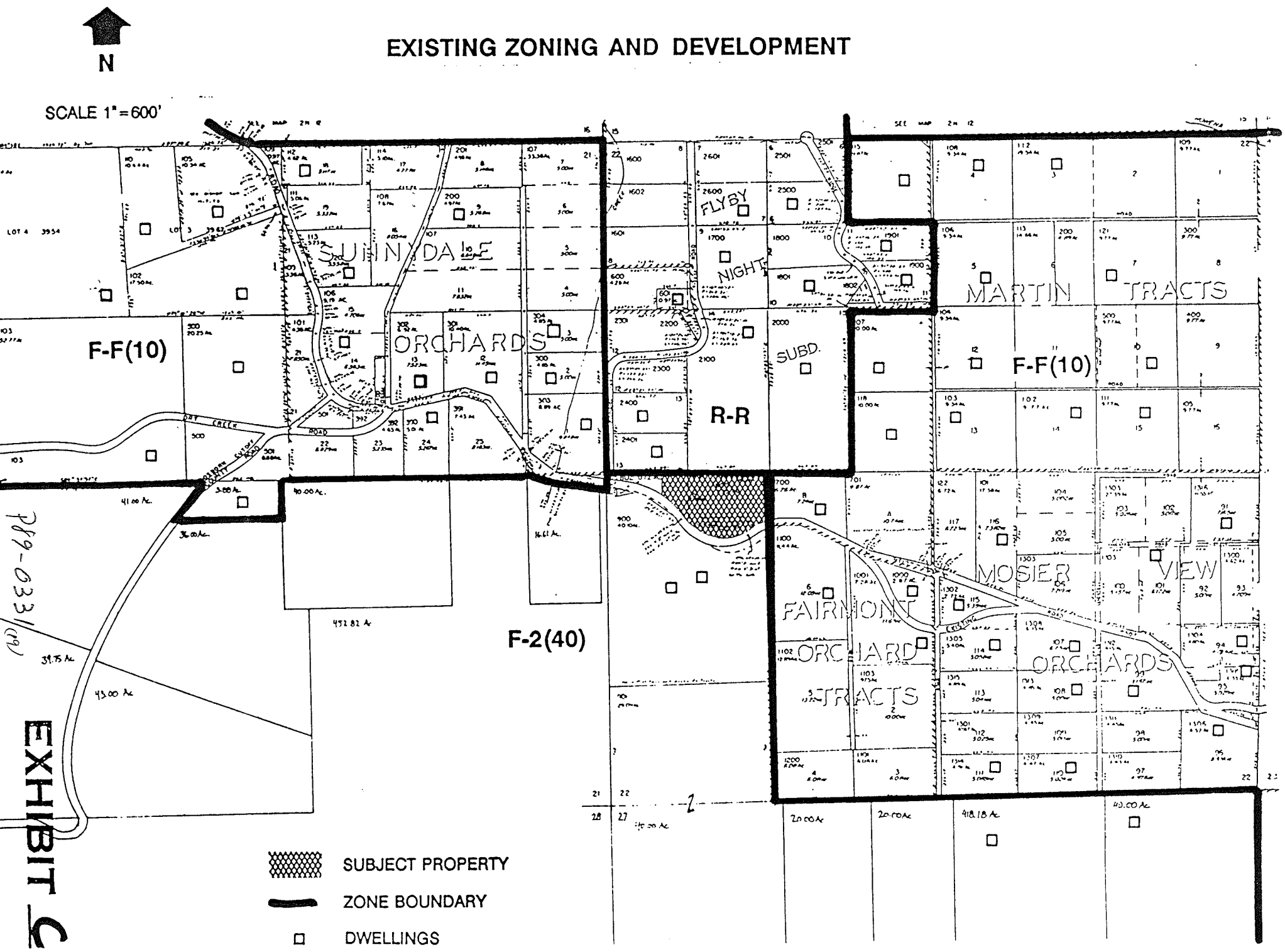

EXHIBIT C

P89-0331(19)