

**BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON**  
**FOR THE COUNTY OF YAMHILL**  
**SITTING FOR THE TRANSACTION OF COUNTY BUSINESS**

Approval of a Comprehensive Plan Amendment from Agriculture/Forestry )  
 Large Holding to Public; a zone change from EF-80, Exclusive Farm )  
 use to PWS, Public Works/Safety Zone, Taking an Exception to Goal 3, ) **Ord. 833**  
 Tax Lots 4430-800 & 4431-100, Applicant McMinnville Water & Light )  
 Commission, Repealing and Replacing Ordinance 830 to Correct Scriveners' )  
 Errors, Docket no. PAZ-04-08/P-06-08, and Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on August 13, 2008, Commissioners Leslie Lewis and Kathy George being present, and Commissioner Mary P. Stern being excused.

IT APPEARING TO THE BOARD that the McMinnville Water & Light Commission requested approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Public; a zone change from EF-80, Exclusive Farm use to PWS, Public Works/Safety zone for two acres. An exception to Goal 3 is also required, and a partition of 2 acres of land approved for the PWS zone; and

IT APPEARING TO THE BOARD that the matter was heard at a duly noticed public hearing before the Planning Commission June 5, 2008, which voted unanimously for approval, and the matter was heard at a duly noticed public hearing July 16, 2008 before the Board, no opponents appearing before the Board, and the Board voted unanimously for approval. NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that an exception to Goal Three is approved, and the application is approved based upon and as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage. This ordinance repeals and replaces Ordinance 830 to correct scriveners' errors. A map is appended as Exhibit "B".

IT IS HEREBY FURTHER ORDAINED BY THE BOARD, the approved partition of land as detailed in the Findings for Approval attached as Exhibit A, shall be subject to the following four conditions of approval, to-wit:

1) A final partition plat pursuant to the requirements of the *Yamhill County Land Division Ordinance* shall be prepared and submitted to the Planning Director. The final partition plat shall substantially conform to the preliminary map. The Yamhill County Planning Docket Number "P-05-08" shall appear on the face of the plat.

2) Prior to final partition approval, a survey of the 2-acre parcel shall be completed by a registered land surveyor pursuant to Section 6.120 of the *Yamhill County Land Division Ordinance*.

3) A 30-foot wide (minimum) nonexclusive easement for ingress and egress shall be assigned to provide access to all parcels, surveyed, and shown on the face of the final plat. This easement shall be granted at the time of conveyance of either of the lots.

4) The road providing access to all parcels shall be constructed to county specifications and inspected by the Yamhill County Public Works Department or a private engineer, or a road construction agreement shall be completed and recorded, prior to final plat approval.

DONE this 13<sup>th</sup> day of August, 2008, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN  
County Clerk

Unavailable for signature

By: *Anne Britt*  
Deputy Anne Britt



Chair

MARY P. STERN

Commissioner

Commissioner

*Leslie Lewis*  
LESLIE LEWIS

APPROVED AS TO FORM

Commissioner

*Kathy George*  
KATHY GEORGE

*Rick Sanai*  
Rick Sanai, Assistant County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
8/13/08 by Board Order  
# 08-546

## EXHIBIT A

### FINDINGS AND CONCLUSIONS (PAZ-04-08/P-06-08)

#### I. GENERAL FACTUAL FINDINGS

1. **Current Property size:** Approximately 37.5 acres consisting of the Wolf parcel of 14 acres and the Oldham parcel of 23.5 acres.
2. **Access:** The property is located between Highway 18 and Old Sheridan Road at the junction with Peavine Road.
3. **On-site Land Use:** The property contains two permanent and one temporary residences. Most of the Oldham property is an open field with grass seed crops similar to that found in the surrounding area. The Wolf parcel is forested.
4. **Surrounding Zoning and Land Use:** The property to the north is zoned by the city of McMinnville for multiple family use and contains apartments. The property to the west is zoned EF-80 and contains farm land, pasture and a residence. The area to the east is zoned for Light Industrial and Heavy Industrial use. Property to the south is zoned EF-80 and AF-10 and contains farm land and rural residential development.
5. **Water:** Water will be provided from existing McMinnville Water and Light department transmission lines in the adjacent right of way.
6. **Sewage Disposal:** It is not anticipated that there will be any bathroom facilities, but if required, the need would to be served by an on-site septic system.
7. **Fire Protection:** McMinnville Rural Fire District.
8. **Soils:** The Yamhill County Soil Survey shows that the property and the proposed two acre parcel are composed of Woodburn soils (Types WuB and WuD), with an agricultural capability of Classes 2 and 3. Class 2 and 3 soils are classified as high-value farmland.
9. **Taxes:** The parcel is currently taxable but is subject to special farm deferral classification.
10. **Previous Actions:** Tax Lot 4431-100 has no prior record of land use approvals. Tax Lot 4430-800 was approved for a temporary hardship dwelling during 2007.
11. The present farming uses would continue until displaced by the proposed electrical substation(s). The construction of the substation on the newly created

two-acre parcel would be linked to the increasing population and demographic trends.

12. In 1974, the City of McMinnville was a community of approximately 7,000 persons at the center of a mid-county population of approximately 20,000. Today, McMinnville has grown to 31,665 (7/01/2007) and the county population is 93,085 (7/01/2007). The impact of population growth on demand for electrical service is continuing.

13. MW&L's existing substation sites has been a good neighbors since 1906, and have little or no impact on surrounding agricultural, resource, residential and horticultural uses in the vicinity. Off site supervision is maintained on a twenty-four hour basis.

14. No additional or different impacts from those already existing substation sites are anticipated. The two-acre parcel proposed for purchase by MW&L and for PWS status would be developed for electrical distribution purposes as needed. The existing farm uses will continue until the substation is constructed. Surrounding properties should not experience increased noise, and access would be through the existing 25' wide easement or from Highway 18, for an existing 115 KV power line now connecting Old Sheridan Road to Highway 18. Existing uses by surrounding neighbors, which vary from Industrial to Resource to Residential, and Farming to Horticulture are all compatible with the low impact character of the electrical substation activities.

15. Existing public services are available to the site and are adequate.

16. One purpose of the PWS zone is to provide for the legitimate demand and public need for electrical distribution facilities. The PWS zone exists partially to meet the needs of areas encompassing both cities and rural residential populations. The PWS zone thus serves a shared inter-Urban and Rural need for public utility facilities.

17. Due to the nature of growth trends of the City of McMinnville, westerly portions of the City of McMinnville which have been approved for current and future development cannot be adequately served by the existing Booth Bend Substation. In order to maximize the safety and reliability of the City's electrical system, the McMinnville Water and Light Commission, based upon the recommendations of staff and consultants (Electrical System Planning Study—June 2005), has decided to acquire and develop additional substation facilities to serve increased electrical demand. Planning staff indicates that no other suitable PWS zoned county land is available in proximity to the existing proposed substation site.

## II. ZONING ORDINANCE CRITERIA

### B. Zone Change, Exception and Plan Amendment Findings

1. The zone change portion of the request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:

- (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
- (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
- (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
- (D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
- (E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

2. **Regarding criterion (A) above**, an exception to Statewide Planning Goal 3 is needed so Comprehensive Plan goals and policies related to agricultural lands are applicable. The application addresses most Plan goals and policies related to Public Land, Facilities and Services. Those findings are incorporated here by reference. Other Plan goals and policies, which applicant feels may be pertinent are:

**Oregon Statewide Planning Goals and Guideline - Goal 9 - Economics, which states "To provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens . . . Comprehensive plans and policies will contribute to a stable and healthy economy in all regions of the State."**

This application promotes additional economic activity associated with the expansion of needed housing and commercial development located within the City of McMinnville and surrounding areas served by MW&L.

The Yamhill County Comprehensive Plan, Section II, Goal 2, Policy a. states:

**Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.**

In the Soil Survey of Yamhill Area, Oregon, the map shows that the soils present on the tract are agricultural Class 2 and 3 farmland. The county decision-makers will need to determine whether it is more important to save this two acre property for farm use or allow it to be used to expand existing public electrical distribution facilities.

**Yamhill County Revised Goals and Policies, G.IV.A.1. To develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development, including public lands and buildings, parks and recreation areas and facilities, schools, police and fire protection, domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services. (166)**

The proposed plan and zone change will have no adverse effect upon public services as existing facilities are near the site and are adequate. If anything, the applicant is providing a crucial public service by providing a place for expansion of electrical distribution facilities to serve increased electrical occurring within the McMinnville Water and Light service area.

3. **Regarding criteria 1208.02 (B) and (D),** County Planning staff conducted a survey of lots within a within a six mile radius, covering approximately thirty six sq. miles, from the subject property. The survey found eight existing "PWS" zoned properties within the surveyed area. The properties are listed below:

Tax Lot	Owner	Acreage
4513-01100	MW&L (Service Reservoir)	10.85 Acres
4319-2000	PGE Substation	2.29 Acres
4319-1602	City of Lafayette Well Site	.4 Acres
3533-1000	Yamhill County Radio Tower	1.0 Acres
5541-101,200	Waste Management Landfill	246 Acres
5512-300	Yamhill County Old Landfill	34.5 Acres
4424-900	City of McMinnville Approach Lights	6.75 Acres
5402-1000	Eola Village Water Ststem	1.25 Acres

The application involves 2 acres of land located at the south westerly margin of the city. As noted above, there are no nearby properties zoned PWS anywhere near that area. Based on this evidence, there are no other available "PWS" zoned properties that would be suitable for the proposed electrical distribution facilities. Additionally, it should be considered that the intent of this application is to expand future electrical facilities where needed to serve anticipated and approved development. The impacts of the existing substations, although low, are already known. Building another substation facility at this proposed location will likely cause minimal impacts to existing uses.

4. **Regarding criterion 1208.02(C)**, the proposed use will not adversely affect the neighboring properties in the area. Existing city substations have co-existed peacefully with similar neighboring uses for decades. The public services, necessary for the proposed facilities are similar to those needed for the existing use and are readily available. The proposed zone change should have no adverse effect upon public services, but will ultimately enhance the electrical distribution and increase the available electrical distribution capacities.

#### 5. **Limited Use Overlay Provisions**

OAR 660-04-18(3)(a) states that when a reasons exception is taken, plan and zone designations must limit uses to only those that are justified in the exception. Section 904.03 of the YCZO contains provisions for limited use overlays. It states:

- (a) *When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*
- (b) *The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.*
- (c) *Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.*
- (d) *Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.*

Since the PWS zone allows other uses which have not been evaluated to determine whether they are appropriate to the area, it is appropriate to apply a Limited Use Overlay to limit uses on the rezoned area to electrical distribution and related facilities.

6. Oral testimony at the Planning Commission asserted that a Goal Exception to Goal 14 was required to approve the Partition request in the PWS zone. The Board finds that that Goal 14 exceptions relate solely to rural residential zones and residential uses, and are inapplicable to the present application for a public utility use in the PWS zone.
7. Written testimony from the DLCDC indicated an opinion that a Goal 3 reasons Exception was not appropriate unless the proposed use is "not allowed by the applicable goal". DLCDC Staff further opined that ORS 215.275 permits utility uses on EFU lands. No legal authority was offered to support the DLCDC position in the case of a 2-acre substation in an existing zone require minimum parcel sizes of 80 acres. The Board finds that:
  - 1) Applicant has a compelling need in the public interest, welfare and safety to own and secure land on which municipal electrical substation facilities will be located; and
  - 2) Applicant's need for a 2-acre parcel is in conflict with the 80-acre minimum parcel size in the current zone; and
  - 3) The location of the proposed site in relation to existing BPA power line and the grid system of applicant's power system requires use of existing efu zoned land; and
  - 4) Applicant cannot acquire the needed parcel size under the current zoning; and
  - 5) The County's EFU zone is designed to preserve and protect large farm land holdings' and
  - 6) The acquisition of an 80-acre parcel by Applicant would under cut the County's policy favoring preservation of large agricultural holdings; and
  - 7) The PWS zone requested by applicant is limited to the area needed for the requested utility activity; and
  - 8) That applicant's requested activity "is not allowed by the applicable goal" and cannot be undertaken as proposed in the existing EFU zone and therefore a reasons Exception to Goal 3 is justified.

### **III. COMPREHENSIVE PLAN GOALS AND POLICIES**

#### **SECTION IV. Public Land, Facilities, and Services**

**Policy:** The County sees a need to integrate public facilities and services in an effort to eliminate costs and conserve energy.

#### **Related Findings:**

1. McMinnville Water and Light is a singular public power and water utility serving the entire City of McMinnville and surrounding area.

2. Electrical systems are a unique public service often owned by public bodies.
3. McMinnville Water and Light serves electricity to a population of more than 40,000 residents and businesses representing more than one third of the existing Yamhill County population.
4. There is a need to plan for, locate and provide public electrical distribution facilities for public protection purposes.
5. No alternative appropriately zoned area is available and suitable to expand existing McMinnville Water & Light substation facilities.

The selected location for the new substation is adjacent to the existing public rights of way and existing electrical facilities and will maximize the integration of existing and future electrical distribution facilities.

6. Location of the new facility will enable McMinnville Water and Light staff to monitor and maintain the site simultaneously with other facilities, thus reducing the time, vehicle mileage and energy costs associated with such activities.

**Policy:** It is a concern of the county to regulate public and quasi-public institutional uses within rural areas of the county.

**Related Findings:**

1. The County has a legitimate interest in assuring the future availability of adequate electrical supplies and related activities within the mid-county area.
2. The location of the proposed site is a major advantage to a coordinated mid-county electrical distribution grid available for public service.
3. Health, electrical service, water quality and fire and life safety concerns are legitimate county interests in connection with the future development of the City of McMinnville and surrounding areas.

**Goal Statement:**

**To develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development, including public lands and buildings, parks and recreation areas and facilities, schools, police and fire protection,**

**domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services. (166)**

**Related Findings:**

1. Electrical distribution facilities are a legitimate type of PWS use, established as a permitted use in a county PWS zone. By their nature, electrical substation facilities require extremely long term planning horizons to assure continuity of service.
2. McMinnville Water and Light started providing water and electrical service in 1889, and has served for generations and thousands of local families.
3. Additional area, located nearby to the existing facilities is needed to serve the long term expansion needs of the City of McMinnville.
4. The last increase to MW&L electrical substation facilities occurred in 2000 with the construction of the Baker Creek Substation.
5. Additional substation facilities will be developed as necessary, and subject to conditions of approval appropriate to those future requests. Three additional substations are currently in development at the proposed site, in the Grand Haven area, and at the Loop Road/Highway 18 location.

**Policy:** Yamhill County will coordinate with the cities and appropriate local, state, and federal agencies in providing for the health and service needs of the public, particularly the needs of the disadvantaged, including the young, the elderly and the handicapped.

**Related Findings:**

1. The entire existing McMinnville Water and Light system is presently a model of public electrical service facilities.
2. McMinnville Water and Light is responsible for provided essential public services consisting of electrical power, potable water and fire protection water flows to protect the McMinnville area population including the most vulnerable young, elderly and handicapped portions of the population.
3. Only the City of McMinnville has the facilities or funding to serve the power, water and fire flow needs of the public.
4. Prompt and continuous provision of electrical power and water and fire flow services has long been a primary health need of local citizens and requirement of local governments.

**IV. TRANSPORTATION PLANNING RULE**

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the provisions that must be met:

**(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:**

- (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;**
- (b) Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,**
- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**

**(2) A plan or land use regulation amendment significantly affects a transportation facility if it:**

- (a) Changes the functional classification of an existing or planned transportation facility;**
- (b) Changes standards implementing a functional classification system;**
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
- (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**

2. Regarding (1) and (2), there are no known transportation issues with the proposed use. Neither the Oregon Department of Transportation nor the Yamhill County Public Works Department has raised concerns that existing and proposed electrical facilities would exceed the capacity of Old Sheridan Road.

## **V. PARTITION CRITERIA AND FINDINGS**

1. In the PWS District, the following standards and limitations shall apply:

A. Dwelling Density.

Not more than one (1) dwelling shall be permitted on any parcel.

B. Parcel Size and Dimension.

1. Minimum Parcel Size.

The minimum parcel size shall be 20,000 square feet, plus 20,000 square feet for any dwelling.

2. Depth-to-Width Ratio.

The maximum depth-to-width ratio for any newly-created parcel shall be 3:1.

C. Setbacks.

The minimum setback for all yards shall be twenty (20) feet for all uses, except as follows:

1. The minimum setback shall be five (5) feet for all yards for signs.
2. Fences, walls and hedges may be permitted in any required yard or along the edge of any yard, subject to the clear-vision requirements of subsection 802.07(F). [Amended 7/9/98, Ord. 648]

D. Parcel Coverage.

The maximum parcel coverage shall be appropriate to the use, subject to Section 1101 for site design review.

E. Access.

Before a dwelling may be established on any parcel as provided in this section, the parcel shall have a legal, safe and passable means of access by abutting at least twenty (20) feet either directly upon a public road, or by a private easement which is at least thirty (30) feet in width for its entire length and which also abuts upon a public road for at least thirty (30) feet. Nothing in this section shall be construed to vary or waive the requirements for creation of new access contained in any Land Division Ordinance legally adopted by Yamhill County.

F. Clear-Vision Areas.

A clear-vision area shall be maintained on the corner of any parcel at the intersection of any two of the following: county roads; public roads; private roads serving four or more parcels; and railroads. A clear-vision area shall contain no sight-obscuring structures or plantings exceeding thirty (30) inches in height within a triangle formed by the lot corner nearest the intersection, and the two points twenty (20) feet from this corner is measured along the parcel lines adjacent to the intersection rights-of way. Trees exceeding this height may be located such that their branches extend into this triangle, provided they are maintained to allow at least twelve (12) feet of visual clearance within the triangle below the lowest hanging branches.

G. Height.

1. The maximum building height for any dwelling shall be thirty-five (35) feet;
2. The maximum building height for all other structures shall be sixty (60) feet;  
and
3. Appurtenances usually required to be placed above the roof level and not intended for human occupancy such as spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys and wind generators are not subject to the height limitations of this ordinance.

H. Off-street Parking.

Off-street parking and loading requirements for any use in the PWS District shall be as provided in Section 1007.

Related Findings:

1. Applicant proposes to divide the entire two acre area zoned for PWS into a single parcel; separate from the remaining 35.5 acres of the original two parcels. This meets the minimum PWS parcel size of 20,000 square feet. The remaining 35.5 acres will remain zoned as at present.
2. No residence will be constructed, and depth to width requirements for the configuration of the new parcel is satisfied.
3. Future electrical facilities will be constructed in conformance with all setback requirements. Access is via Old Sheridan Road or Highway 18 and will not require any new roadway improvements.
4. Clear vision and height standards will be applicable. Off street parking requirements will and can conform to YCZO Section 1007.
5. There is no existing septic system.
6. The site is within two miles of the city limits of McMinnville.
7. The approximate location of anticipated electrical facilities is shown on the submitted draft preliminary partition plat map.
8. The property is located within the McMinnville Rural Fire District.
9. The property is not located in a flood plain, or area of erosion, is not located on an area of steep slopes, does not contain fish or wildlife habitat areas, and has soil conditions sufficient for construction of the proposed electrical distribution facilities.

Exhibit "B" 833

CSP-6808

# McMinnville Water & Light

Location: NE 1/4 Section 31, T. 4 S., R. 4 W., WM., Yamhill County, OR

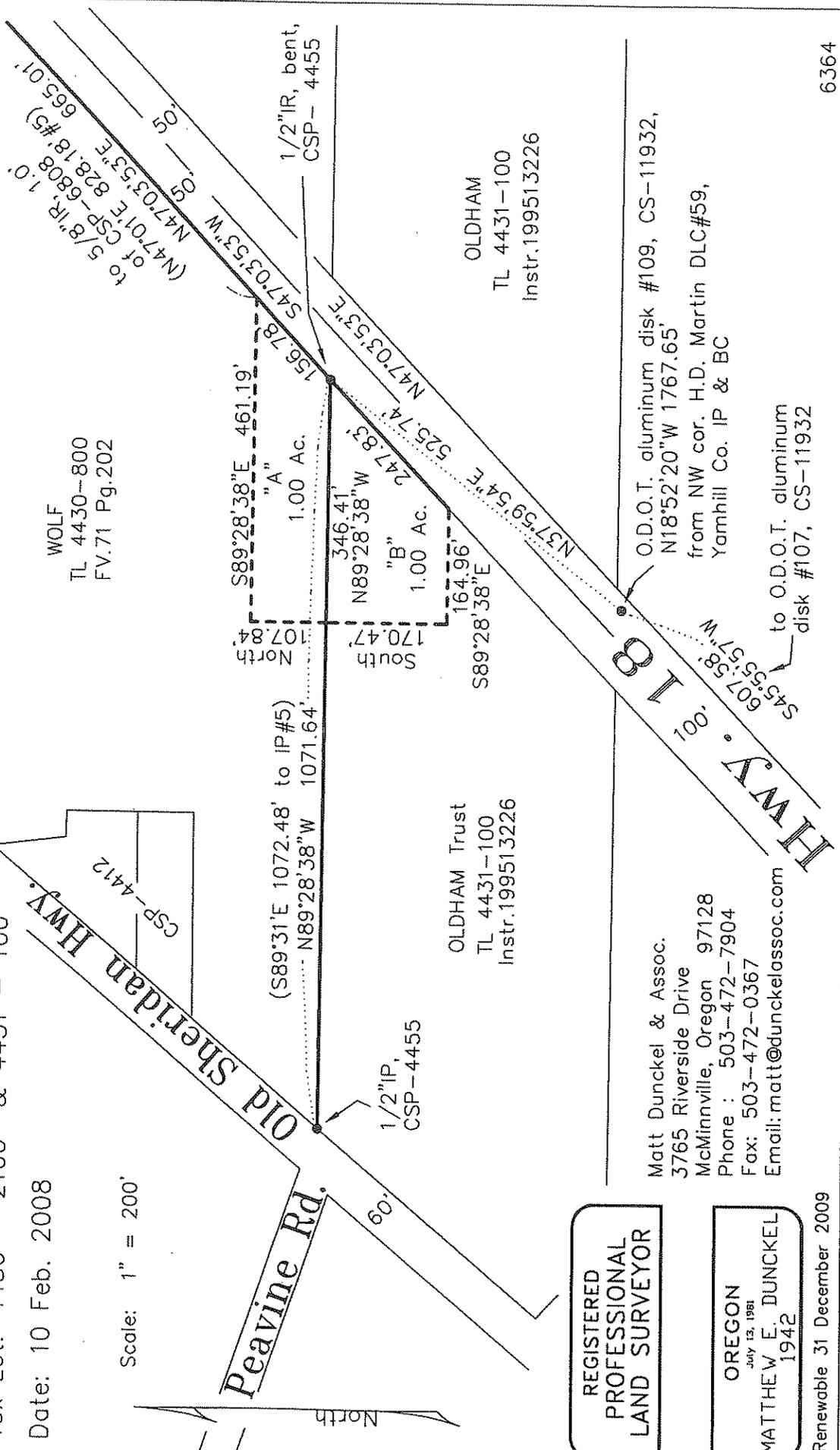
Tax Lot: 4430 - 2100 & 4431 - 100

Date: 10 Feb. 2008

Scale: 1" = 200'

5/8" IR, 1.0' down, fits calculated position of SE corner of CSP-6808

WOLF  
TL 4430-800  
FV.71 Pg.202



OLDHAM Trust  
TL 4431-100  
Instr.199513226

OLDHAM  
TL 4431-100  
Instr.199513226

O.D.O.T. aluminum disk #109, CS-11932,  
N18°52'20"W 1767.65'  
from NW cor. H.D. Martin DLC#59,  
Yamhill Co. IP & BC

Matt Dunckel & Assoc.  
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McMinnville, Oregon 97128  
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REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
July 13, 1981  
MATTHEW E. DUNCKEL  
1942

Renewable 31 December 2009