

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, ) Ordinance 826  
 Tax Lot 4524-700, Applicant McMinnville Water & Light Commission )  
 Docket no. PAZ-02-08/P-02-08, and Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on May 14, 2008, Commissioners Mary P. Stern, Leslie Lewis and Kathy George being present.

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. An exception to Goal 3 is also required. The applicant also requested a partition in order to create a separate parcel for the proposed City of McMinnville water storage reservoir, and

IT APPEARING TO THE BOARD that the matter was heard at a duly noticed public hearing before the Planning Commission April 3, 2008, which voted unanimously for approval, and the matter was heard at a duly noticed public hearing April 30, 2008 before the Board, no opponents appearing, and the Board voted unanimously for approval. NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved 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. A map is appended as Exhibit "B".

DONE this 14<sup>th</sup> day of May, 2008, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN  
County Clerk



*Mary P. Stern*  
Chair MARY P. STERN

By: *Leslie Lewis*  
Deputy Anne Britton Commissioner LESLIE LEWIS

APPROVED AS TO FORM: *Kathy George*  
Commissioner KATHY GEORGE

*Rick Sanai*  
Rick Sanai, Assistant County Counsel

## EXHIBIT A

### FINDINGS AND CONCLUSIONS (PAZ-02-08/P-02-08)

#### I. GENERAL FACTUAL FINDINGS

1. **Current Property size:** Approximately 21.88 acres.
2. **Access:** The property is located at the west end of Fox Ridge Road.
3. **On-site Land Use:** The property is located west of the Masonic cemetery and the existing City of McMinnville Water & Light Commission (MW&L) service reservoirs. Most of the property is an open field with annual grass crops similar to that found in the surrounding area. A portion of the property has a stand of juvenile timber.
4. **Surrounding Zoning and Land Use:** The property to the north is zoned EFU-80 and contains a home site with out building and a Christmas tree farm. The property to the west is zoned EFU-80 and contains juvenile forest. The area to the east is zoned EFU-80 and is presently used as a Christmas tree farm. Property to the south is zoned EFU-80 and contains forest land.
5. **Water:** Water will be provided from the water storage facility to be constructed on the parcel.
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 three acre parcel are composed of Yamhill Silt Loam soils (Type 38), with an agricultural capability of Class 3. Class 3 soils are classified as high-value farmland.
9. **Taxes:** The parcel is currently taxable but is subject to special forest deferral classification.
10. **Previous Actions:** Tax Lot 4524-700 had an application for a partitioning approved as Docket P-1377-84.
11. The present farming and forestry uses would continue until displaced by the proposed service reservoir(s). The construction of the water storage reservoirs on the new 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 potable water is continuing.

13. MW&L's existing storage site has been a good neighbor since 1906, and has 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 at the existing reservoir site are anticipated. The three-acre parcel proposed for purchase by MW&L and for PWS status would be gradually developed for water storage purposes as needed. The existing farm and forest uses will continue until the reservoirs are needed. Surrounding properties would not experience increased noise, and access would be through the existing access roadway connecting to the end of Fox Ridge Road. Existing uses by surrounding neighbors, which vary from Resource to Residential, and Farming to Horticulture have all been compatible with the low impact character of the water storage 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 water storage 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 the topography of the City of McMinnville, westerly portions of the City of McMinnville which have been approved for current and future development (elevation up to 415'+/-) cannot be served by existing water storage facilities located at a lower elevation (elevation 340'+/-). In order to maximize the safety and reliability of the City's water system, the McMinnville Water and Light Commission, based upon the recommendations of staff and consultants (Water System Master Plan – March 1996), has decided to acquire and develop additional storage facilities (elevation 560'+/-) to serve new development occurring at higher elevations. Planning staff indicates that no other suitable PWS zoned county land is available at the needed elevations and in proximity to the existing proposed residential development.

## 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 4 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 located within the City of McMinnville.

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 3 farmland. The county decision-makers will need to determine whether it is more important to save this three acre property for farm use or allow it to be used to expand existing public water system storage 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 water storage facilities to serve growth occurring within the City of McMinnville.

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 3 acres of land located at an approximate elevation of 560 feet. As noted above, there are no nearby properties zoned PWS anywhere near that elevation. Based on this evidence, there are no other available “PWS” zoned properties that would be suitable for the proposed water storage facilities. Additionally, it should be considered that the intent of this application is to expand future storage facilities as close to the existing storage facilities as possible, which has been at the present location since 1906 (more than 100 years). The impacts of the existing facility, although low, are already established. Opening another facility away from this established location would likely cause greater impacts than allowing expansion near this established location.

4. **Regarding criterion 1208.02(C)**, the proposed use will not adversely affect the neighboring properties in the area. Existing water storage facilities have co-existed peacefully with the same neighboring uses for decades. The public services, necessary for the future storage 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 would ultimately enhance the fire flows and increase the available stored water capacities.

5. **Exception requirements findings**, criterion 1208.02 (E), are as follows:

- A. **Goal Exception Provisions and Analysis**

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking goal exceptions. The area is presently zoned EFU-80. As such it is subject to protection under Goal 3. An exception to Goal 3 must be taken for the three acre site to be re-zoned. Since the property is not built and committed to other uses a “reasons” exception is required.

2. OAR 660-04-020 contains four factors that must be addressed when taking an exception to a goal. They are:

- (a) *Reasons justify why the state policy embodied in the applicable goals should not apply.*
- (b) *Areas which do not require a new exception cannot reasonably accommodate the use.*
- (c) *The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.*

(d) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

3. Regarding factor (a), OAR 660-04-022 states that the reasons justifying why the state policy embodied in the goal should not apply include, but are not limited to, that there is a demonstrated need for the water storage facility, and either: 1) a resource upon which the facility is dependent can be reasonably obtained only at the exception site and the facility requires a location near the resource; or 2) the facility has special features or qualities that necessitate its location on or near the proposed exception site. The request does not comply with 1). The request complies with 2) - due to its location at sufficient elevation to provide service to areas within the City of McMinnville located at higher elevations than the existing service reservoirs.

4. Factor (b) was discussed previously. There are eight other areas within a six mile radius that would not require a new exception. However, none of these areas is of adequate size at the proper elevation nor situated in a fashion necessary to accommodate the use and all of the areas have other mutually exclusive existing public uses established on them.

5. Regarding factor (c), approval of the goal exception for the proposed uses will not result in any significant long-term environmental, economic, social or energy consequences to the area. Denial of the use would have a significant social consequence. Expansion of needed additional housing within the City of McMinnville on property presently zoned for residential development requires additional water storage and fire flow capacity at higher elevations within the city. The social consequences of failing to provide such storage would cause an economic hardship to land otherwise available for needed and planned housing and a public safety hazard. Additionally, not utilizing a the available gravity system will cause increased energy and reliability consequences.

6. With regard to factor (d) the existing use of MW&L's nearby storage facility has been compatible with other agricultural and forestry uses occurring in the area. There is no reason to believe that the expansion would not be just as compatible with other uses occurring in the immediate area.

## 6. **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 water storage and related facilities.

### **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 area serving the entire City of McMinnville and surrounding area.
2.     Water systems are a unique public service usually owned by public bodies.
3.     McMinnville Water and Light serves a population of more than 30,000 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 water storage facilities for public drinking water and fire protection purposes.
5.     No alternative area is available and suitable to expand the existing McMinnville Water & Light water service reservoir storage facility.
6.     The selected location for the new water storage site is close to the existing facility and will maximize the integration of existing and future water storage facilities.

7. Location of the new facility in proximity to the existing site will enable McMinnville Water and Light staff to monitor and maintain both sites simultaneously 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 water supplies and fire protection and related activities within the mid-county area.
2. The location of the proposed site is a major advantage to a coordinated mid-county water storage facility available for public service.
3. Health, 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. Water storage facilities are a legitimate type of PWS use, established as a permitted use in a county PWS zone. By their nature, water storage facilities require extremely long term planning horizons to assure continuity of service.
2. McMinnville Water and Light started providing water 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 water storage facilities occurred in 1995.
5. Additional water storage facilities will be developed as necessary, and subject to conditions of approval appropriate to those future requests.

**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 Water and Light system is presently a model of water service facilities. The entire complex operates on a gravity basis, with no electrical power required.
2. 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 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), the proposed use is for expansion of existing water storage facilities at a nearby site utilizing the same access roadway so the traffic impacts are already existing. There are no known transportation issues with the existing use. Neither the Oregon Department of Transportation nor the Yamhill County Public Works Department has raised concerns that existing and proposed water storage facilities would exceed the capacity of Fox Ridge 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:

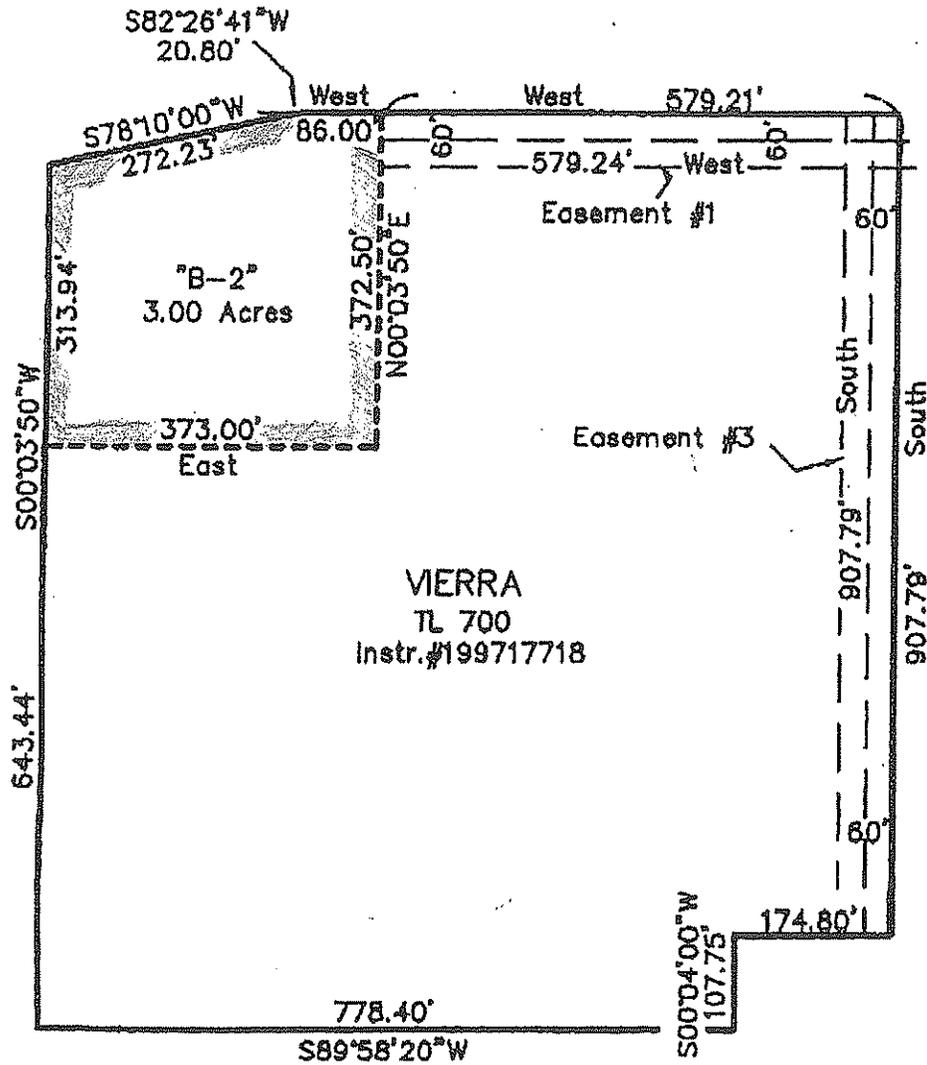
1. Applicant proposes to divide the entire three acre area zoned for PWS into a single parcel; separate from the remaining 18.88 acres of the original parcel. This meets the minimum PWS parcel size of 20,000 square feet. The remaining 18.88 acres will remain zoned EFU-80 as at present.

2. No residence will be constructed, and depth to width requirements for the configuration of the new parcel is satisfied.
3. Future water storage facilities will be constructed in conformance with all setback requirements. Access is via Fox Ridge Road 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 storage 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 water storage facilities.

EXHIBIT MAP FOR ORDINANCE NO. 826  
 PLAN AMENDMENT AND ZONE CHANGE  
 ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

May 14, 2008

FOR A COMPREHENSIVE PLAN AMENDMENT FROM  
 AGRICULTURE/FORESTRY LARGE HOLDING TO PUBLIC AND  
 TO CHANGE OFFICIAL ZONING MAP FROM  
*EF-80 EXCLUSIVE FARM USE*  
 TO  
*PWS Public Works/Safety*



CHANGE APPLIES TO A THREE ACRE PORTION OF TAX LOT 4524-700 AS IDENTIFIED ABOVE AS "B-2"

APPROXIMATE SCALE - 1 INCH = 200 FEET

B.O.08-301