

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending the )  
Yamhill County Comprehensive Plan (1974) to )  
Change the Designation from Agriculture/ )  
Forestry Large Holding to Very Low Density )  
Residential, Amending the Official Zoning Map )  
from Agriculture/Forestry (AF-20) and Exclusive ) ORDINANCE 597  
Farm Use (EF-40) to Very Low Density Resi- )  
dential (VLDR-2.5) and Taking an Exception )  
from Statewide Planning Goals 3 and 4 on )  
Approximately 6 Acres Comprised of 14 Parcels; )  
Applicant Debra Youngs; Planning Docket )  
PAZ-2-95; and Declaring an Emergency. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on July 5, 1995 Commissioners Dennis L. Goecks, Robert Johnstone, and Thomas E. E. Bunn being present.

WHEREAS, on March 22, 1995 the Department of Planning and Development received an application, Planning Docket PAZ-2-95, to change the comprehensive plan designation from Agriculture/Forestry Large Holding to Very Low Density Residential, to amend the Official Zoning Map from Agriculture/Forestry (AF-20) and Exclusive Farm Use (EF-40) to Very Low Residential (VLDR-2.5) and to take an exception from Statewide Planning Goals 3 and 4 on a single 8400 square foot parcel, by Debra Youngs ("applicant"), and, pursuant to Yamhill County Zoning Ordinance (YCZO) Section 1209.02, the Planning Director thereupon exercised his authority to increase the size of the subject area to a 6 acre area comprised of a total of 14 parcels, as more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference; and

WHEREAS, on June 1, 1995 the Yamhill County Planning Commission held a public hearing to consider the application and thereafter unanimously approved the zone change and recommended to the Board of Commissioners approval of the comprehensive plan amendment and exception; and

WHEREAS, on June 21, 1995, the Board held a public hearing on the application at which testimony and evidence was received, and that following the close of the hearing and the record, the Board deliberated and by vote of 2 to 0, with 1 abstention, tentatively approved the application for the comprehensive plan amendment, zone change and exception, and directed staff to prepare an ordinance and findings in support of approval; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A and incorporated herein by this reference provide a justification for approval of the application, including the taking of an exception to Statewide Land Use Planning Goals 3 and 4; and

WHEREAS, the attached Exhibit "A" demonstrates that the proposed exception and amendment to the Yamhill County Comprehensive Plan, Plan Map, and Official Zoning Map of Yamhill County are in the best interests of the citizens of Yamhill county; Now Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. The Yamhill County Comprehensive Plan and Plan Map (1974) are hereby amended as specified in the attached Exhibit "B", made part of this ordinance by reference, to reflect a plan designation of Very Low Density Residential on the 14 parcels described and shown in Exhibit "B".

Section 2. In adopting the plan amendment specified in this ordinance, the county hereby takes an exception to Statewide Planning Goals 3 and 4.

Section 3. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "Very Low Residential (VLDR-2.5)".

Section 4. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 5. 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.

DONE at McMinnville, Oregon this 5th day of July, 1995.

ATTEST  
YAMHILL COUNTY BOARD OF COMMISSIONERS  
CHARLES STERN  
County Clerk  
BY *Carol Ann White*  
Deputy CAROL ANN WHITE  
STATE OF OREGON

YAMHILL COUNTY BOARD OF COMMISSIONERS

*Dennis L. Goecks*  
Chairman DENNIS L. GOECKS

*Robert Johnstone*  
Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:

*John C. Pinkstaff*  
JOHN C. PINKSTAFF  
Assistant County Counsel

*Thomas E. E. Bunn*  
Commissioner THOMAS E. E. BUNN

**EXHIBIT "A"**

**Ordinance 597**

**Tentative Decision by the Board of Commissioners: June 21, 1995**

**Final Decision by the Board of Commissioners: July 5, 1995**

**DOCKET:** PAZ-2-95

**REQUEST:** Zone change from Agriculture/Forestry (AF-20) and Exclusive Farm Use (EF-40) to Very Low Density Residential (VLDR-2.5); Comprehensive Plan map amendment from Agriculture/Forestry Large Holding to Very Low Density Residential; exception to Statewide Planning Goals 3 and 4.

**APPLICANT:** Debra Youngs

**TAX LOTS:** 2423CC-900, 990, 1000, 1100, 1200, 1300, 1400, 1500;  
2426BB-100, 180, 190, 400, 500, 600.

**PROPERTY OWNERS:** Richard and Lena Espejo/Espejo living trust (Tax Lots 900, 990, 1000)  
Frank and Della Utton (Tax Lot 1100)  
Lonn and Vickie Strode (Tax Lot 1200, 1300)  
Richard and Lori Prouse (Tax Lot 1400)  
Yamhill County (Tax Lot 1500)  
Lester and Sharon Ison (Tax Lot 100)  
Debra Youngs (Tax Lot 180)  
Sammy and Roberta Metzner (Tax Lot 190)  
E. Averitt Jr. and Ruth Reed (Tax Lot 400, 500)  
David Dietzel (Tax Lot 600)

**LOCATION:** The east side of Highway 47 in Cove Orchard

**REVIEW CRITERIA:** Sections 1208 and 1209 of the Yamhill County Zoning Ordinance, ORS 197.732, OAR Chapter 660, Division 4.

MAP OF SUBJECT AREA



## **FINDINGS:**

### **A. Background Facts**

1. **Lot Size:** The application is to change the zoning on an 8400 square foot lot. The Planning Director has determined that it is appropriate to consider a larger area, consisting of 15 tax lots containing approximately 6 acres in total. All lots are less than one acre in size.
2. **Access:** Access is provided by Highway 240, Graham Avenue, and a road following the Southern Pacific Railroad right-of-way.
3. **On-Site Land Use:** The area is on the valley floor on the east side of Highway 240. A creek bisects the area, running parallel to the highway, and the associated flood plain covers approximately half of the area. Eight of the lots are developed with residences, one lot contains a pole building, and one lot contains a store. Four lots are currently undeveloped, and one of these, Tax Lot 1200, is likely too small for residential use.
4. **Surrounding Land Use:** The Cove Orchard area is a rural community located on both sides of Highway 47. The community contains upwards of 30 residences, two churches and a store. There are scattered agricultural uses along the valley floor, and forested hillsides bordering the community on the east and west.
5. **Surrounding Zoning:** Land to the west across Highway 240 is zoned VLDR-2.5 and AF-10. Other surrounding areas are zoned AF-20 and EF-40.
6. **Water:** The area is within the Cove Orchard Water District. Seven of the lots have water hook-ups. The water district has indicated that four or five additional hook-ups may be available.
7. **Sewage Disposal:** The area is within the Cove Orchard Sewer District. All of the lots except one have existing or reserved sewer hook-ups. There appear to be approximately 14 additional hook-ups available.
8. **Fire Protection:** Yamhill Rural Fire District.
9. **Taxes:** None of the properties are receiving a tax deferral.
10. **Soils:** Sheet 8 of the Soil Survey shows that the area consists of Chehalem (CeC) and Cove (Cv) soils, Class III and IV respectively. The Chehalem soil is high-value farmland.
11. **Previous Actions:** The area is part of the FC Grahams Cove Orchard Subdivision that was platted in 1909. The proposed rezone area was part of the 1992 Goal Exception study (G-2-92, study area 14). Because of overwhelming opposition to rezoning the area at that time due to the failing sewer system, study area 14 was dropped from further consideration. Other actions include conditional use approval in 1990 for a non-farm dwelling, variance and floodplain development permit to allow placement of a mobile home on Tax Lot 1400;

conditional use approval and variance in 1987 for a non-farm dwelling on Tax Lot 100; conditional use approval in 1991 for a non-farm dwelling on Tax Lot 500; conditional use approval in 1989 for a non-farm dwelling on Tax Lot 600.

## **B. Ordinance Provisions and Analysis**

1. The request by the applicant is to rezone Tax Lot 180 in order to allow construction of a dwelling. Since the property has high-value soils, under agricultural rules a dwelling could not be approved unless the property had produced at least \$80,000 from the sale of farm products in the last two years - a standard that is impossible to meet on a lot that is less than one acre in size.

2. Section 1209.02 of the Yamhill County Zoning Ordinance (YCZO) requires the Planning Director to review an application for a zone map amendment and determine whether it may be appropriate to consider map amendments for an area larger than that requested by the applicant. The following considerations must be taken into account:

- a. *Configuration of existing and proposed zone boundaries.*
- b. *Parcel sizes and uses of other land in the vicinity of the request.*
- c. *County planning goals and policies applicable to the vicinity.*

3. There is an area of VLDR-2.5 zoning on the west side of Highway 240, but none on the east side of the highway. If Tax Lot 180 alone was rezoned, it would create a "spot zone" on the east side of the highway, which the county normally does not encourage. Since the lots surrounding Tax Lot 180 are less than one acre in size and most are developed with single family residences, the Planning Director has determined that a larger area should be considered in the proposed rezoning. Goals and policies applicable to the area relate to agricultural lands. As discussed further in finding C.2, the area does not conform to these policies because of the small lot size and existing development, which limits most agricultural use.

## **C. Zone Change Review Criteria and Analysis**

1. The subject request must comply with the standards and criteria in the Yamhill County Zoning Ordinance (YCZO), Section 1208.02. These provisions are:

- "A. *That the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
- "B. *That 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. *That 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. *That other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
- "E. *That the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*"

These criteria are addressed, respectively, in Findings C.2 through C.6, below.

2. Regarding Comprehensive Plan goals and policies, Policy (a) of Goal I.B.2 states:

*"a. Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivisions, partitioning, or development and by virtue of close proximity to existing urban centers; or in small, limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage disposal systems, and possible rural fire protection."*

The Board finds that the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan, as required by YCZO §1208.02 A. The proposal complies with this plan policy because the Cove Orchard area is committed to residential use since it is a platted subdivision of small lots, most of which are developed with residences. The existing character of the area is not consistent with agricultural and forestry plan policies for the same reasons. The proposal will simply expand the area that is already zoned VLDR in order to include that portion of the Cove Orchard community lying east of Highway 47.

3. The Board finds that 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, as required by YCZO §1208.02 B. The requested use is residential. Under the current AF-20 zoning, the vacant lots would need to produce at least \$80,000 per year from the sale of farm products in order to qualify for a dwelling. This is obviously impossible because of the small lot size. The vacant lots are also surrounded by residential use, which would further

inhibit agricultural use of the lots. In order to make any practical use of the lots, a zone change is needed.

4. The Board finds that 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, as required by YCZO §1208.02 C. Surrounding land uses are rural residential, consisting of parcels less than 10 acres in size that are developed with residences but may contain small-scale farm uses. Cove Orchard is recognized as a rural unincorporated community because of the density and pattern of development.

In the proposed rezone area itself, four non-farm dwellings have been approved since 1987, indicating that the lots are unsuitable for agricultural use. The area is within the Cove Orchard Sewer and Water districts. Of the vacant lots, all except Tax Lot 1500 have reserved sewer hook-ups. Tax Lot 1500 appears to be the only vacant lot with a water hook-up. The water district has indicated that there may be 4-5 additional hook-ups available. There are approximately 14 available sewer hook-ups.

Consequently, water and sewer services appear to be available to serve all of the undeveloped parcels in the area proposed to be rezoned. It should be noted that the provision of sewer or water services is under the jurisdiction of, and requires approval from the sewer and water districts, and the proposed rezoning in no way requires that the districts approve new hook-ups. Other services such as road access, electricity, telephone and fire protection are available and currently serve the area.

5. The Board finds that other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors, as required by YCZO §1208.02 D. The proposed use on Tax Lot 180, which would also be allowed on the other vacant lots, is a single family residence. While other areas in the county are available for residential development, there is an extenuating factor in that several of the vacant lots have been paying a \$40 monthly sewer bill for their reserved sewer hook-ups. This economic investment by property owners, combined with the amount of existing residential development in the proposed rezone area, makes the area better suited to residential use than other areas of the county.

6. The Board finds that the amendment is consistent with the current Oregon Administrative Rules for exceptions, as required by YCZO §1208.02 E, for the reasons set forth in Section D, below.

**D. Oregon Administrative Rule Provisions and Analysis**

1. Most of the area is in the AF-20 district, although one lot is zoned EF-40. The AF-20 district is acknowledged under both Goals 3 and 4. Statewide Planning Goal 3, Agricultural Lands, is:

*"To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700."*

Statewide Planning Goal 4, Forest Lands, is:

*"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."*

*Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources."*

2. ORS 197.732 indicates that an exception to a goal may be taken when the land subject to the exception is physically developed to an extent that it is no longer available for uses allowed by the applicable goals, when the land is irrevocably committed to uses not allowed by the applicable goals, or if reasons justify why the applicable goals should not apply. This exception will be based on both physical development and irrevocable commitment.

3. OAR 660-04-025 states the requirements for taking an exception when land is physically developed:

*"Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception."*

The area of the proposed exception is shown on Map 1 and identified by Tax Lot number on the first page of this report. The extent of physical development for each lot is shown in Table 1. All of the properties have road access from Highway 47, Graham Avenue, or the road shown as Southern Pacific Railroad on the map (there are no railroad tracks). Electricity and telephone service are available to each lot. Because of their small sizes, the lots containing structures are developed to an extent that they are no longer available for agricultural use or forestry.

4. OAR 660-04-028 indicates that a "committed exception" may be taken when land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the goal impracticable. The findings for a committed exception must address the characteristics of the exception area and adjacent lands and the relationship between the two, as well as other relevant factors such as existing adjacent uses, existing public facilities and services (water and sewer lines, etc.), parcel size and ownership patterns of the exception area and adjacent lands, physical development, or other relevant factors.

TABLE 1.  
DEVELOPMENT AND UTILITIES

TAX LOT	SEWER HOOK-UP	WATER HOOK-UP	STRUCTURES
2423CC-900	yes	yes	dwelling
2423CC-990	yes	yes	dwelling
2423CC-1000	yes	yes	store
2423CC-1100	yes	yes	dwelling
2423CC-1200*	no	no	vacant
2423CC-1300	yes	yes	dwelling
2423CC-1400	yes	no	dwelling
2423CC-1500	no	yes	vacant
2426BB-100	yes	no	dwelling
2426BB-180	yes	no	vacant
2426BB-190	yes	no	vacant
2426BB-400	yes	no	pole barn
2426BB-500	yes	no	dwelling
2426BB-600	yes	yes	dwelling

\*Note: Tax Lot 1200 is less than 2000 square feet in size, so for practical purposes is not developable.

4. The proposed exception area is not suitable for commercial forest use. The area consists of Chehalem and Cove soils which are not rated for timber production in the Soil Survey. The nearest forested area is on the hillside to the east, approximately 800 feet away. There are several other residences between the two areas. Consequently, the proposed exception area does not play a role in protecting or maintaining forest lands, and forest practices and operations will be unaffected by residential use in the proposed rezone area.

5. Adjacent lands across Highway 47 to the west are zoned VLDR-2.5 and AF-10 (exception zone designations), and are characterized by residential development and small-scale farm uses. The surrounding lands to the north, east, and south are characterized by similar uses, but are zoned for agriculture and forestry. There is more potential for commercial agricultural use on these surrounding lands because of larger parcel sizes - many of the surrounding tax lots are under the same ownership. The proposed exception area is characterized by smaller lot sizes and a greater density of residential development, making it unsuitable for agricultural use.

6. As indicated in Finding D.2, the majority of the lots in the proposed rezone area are physically developed to an extent that agricultural uses are impracticable. There are three vacant lots that could potentially be developed (Tax Lots 180, 190 and 1500). The three lots are adjacent to each other, but are under separate ownership. None of the lots is part of a larger parcel. Each lot is less than 10,000 square feet in size. The lots are bordered by roads on the east and west, and by residences on the north and south. A creek runs through the properties. Two of the lots have been paying for reserved sewer hook-ups, and the third has a water hook-up. These factors make the lots unsuitable for agriculture or forest use, and indicate that they are irrevocably committed to residential use.

#### **CONCLUSIONS:**

1. The request is for an amendment to the Yamhill County Comprehensive Plan map from Agriculture/Forestry Large Holding to Very Low Density Residential, a zone change from AF-20 Agriculture/Forestry and EF-40 Exclusive Farm Use to VLDR-2.5 Very Low Density Residential, and an exception to Statewide Planning Goals 3 and 4.

2. The original request involved only Tax Lot 2426BB-180, but the Planning Director determined that it is appropriate to include a larger area in the request because of the small lot sizes and existing development in the area.

3. The proposal complies with the criteria in Section 1208.02 of the Yamhill County Zoning Ordinance for a zone change because it is consistent with the goals and policies of the Comprehensive Plan, the change is appropriate considering the density and pattern of existing residential development in the area, and the availability of utilities, roads, and other services make the area suitable for residential use.

4. The proposal complies with the requirements of OAR 660-04 for taking an exception to Statewide Planning Goals 3 and 4 because the majority of the lots are physically developed, and the three vacant lots that could potentially be developed are committed to non-agricultural use

due to existing sewer and water hook-ups and surrounding residential development. The small lot size and density of development make the area unsuitable for agriculture or forest use.

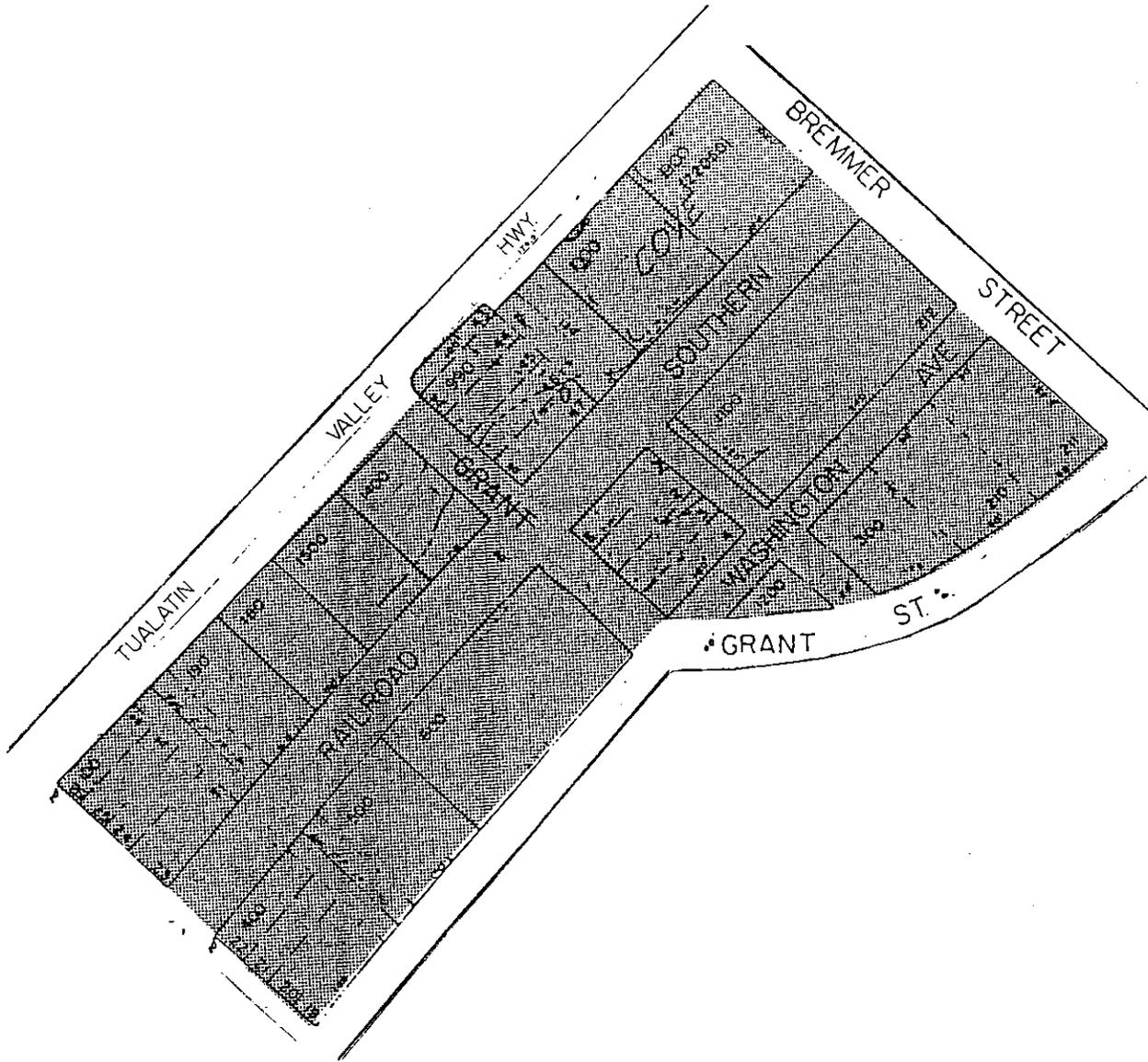
**DECISION:**

The Board approves the request for a zone change from Agriculture/Forestry (AF-20) and Exclusive Farm Use (EF-40) to Very Low Density Residential (VLDR-2.5), Comprehensive Plan map amendment from Agriculture/Forestry Large Holding to Very Low Density Residential, and takes exceptions to Statewide Planning Goals 3 and 4, on Tax Lots 2423CC-900, 990, 1000, 1100, 1200, 1300, 1400, 1500, and 2426BB-100, 180, 190, 400, 500, and 600.

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EXHIBIT "B" FOR ORDINANCE NO. 597

ZONING MAP AMENDMENT  
TO CHANGE THE ZONING MAP AND  
COMPREHENSIVE PLAN DESIGNATION  
FROM "AF-20" AND "EF-40",  
AGRICULTURE/FORESTRY LARGE HOLDING  
TO "VLDR-2.5",  
VERY LOW DENSITY RESIDENTIAL



Area subject to Comprehensive  
Plan and Zone Map amendment