

**PRELIMINARY FINDINGS OF FACT
LAND PARTITION REQUEST
Application Number LP-S-483-20**

REQUEST: To partition an approximate 3869-acre parcel into 3 parcels; of which one will be utilized for a "non-farm" parcel.

APPLICANTS: Jeffrey and Melissa Cutsforth
66790 Hwy 207 Echo
Lexington, OR 97839

OWNERS: Jeffrey and Melissa Cutsforth
66790 Hwy 207 Echo
Lexington, OR 97839

PROPERTY DESCRIPTION: Tax Lot 2000 of Assessor's Map 1S 25E

PROPERTY LOCATION: Located off Hwy 207, approximately 0.5 miles northwest of the Lexington Airport.

I GENERAL INFORMATION:

Zoning of the parcel is Exclusive Farm Use (EFU) with a 160-acre minimum lot size. Subject parcel is 0.5 miles Northwest of Lexington outside of the Urban Growth Boundary (UGB). Applicant has proposed one Non-Farm Dwelling parcel that is currently being considered under Land Use Decision LUD-S-29-20 concurrent to this application.

II APPROVAL CRITERIA:

Morrow County Zoning Ordinance Article 3 Section 3.010(L) Exclusive Farm Use Zone (EFU), and Morrow County Subdivision Ordinance Article 5 Land Partitions Section 5.030 will apply. Criteria are listed below in **bold type**, followed by a response in standard type.

MORROW COUNTY ZONING ORDINANCE ARTICLE 3 USE ZONES SECTION 3.010(L). LAND DIVISIONS.

1. **Minimum Parcel Size. The minimum size for creation of a new parcel shall be 160 acres.**

See discussion under Subsection 2 below authorizing the division of a new parcel smaller than the minimum size. Proposed parcel 1 will have a remainder of approximately 866-acres, and proposed parcel 2 will have a remainder of approximately 2993-acres. This criterion is met.

2. **A division of land to accommodate a use permitted by Section C, except a residential use, smaller than the minimum parcel size provided in Subsection 1 may be approved if the parcel for the nonfarm use is not larger than the minimum size necessary for the use.**

This criterion is not applicable as the division is not to accommodate a use permitted under Section C, which addresses Conditional Uses. The Non-Farm Dwelling is a Land Use Decision allowed with standards. This criterion is met.

3. **A division of land to create up to two new parcels smaller than the minimum size established under Subsection 1, each to contain a dwelling not provided in conjunction with farm use, may be permitted if:**
- a. **The nonfarm dwellings have been approved under Subsection H;**
 - b. **The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;**
 - c. **The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size in Subsection 1; and**
 - d. **The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under Subsection 1.**

Application has been made for a Land Use Decision to approve one non-farm dwelling which is an administrative decision being approved concurrently to this request. The Land Use Decision has not yet been approved; however, staff do not foresee a problem with the approval. Staff recommends and lists that the Land Use Decision LUD-S-29-20 be completed as a condition of approval for this application prior to the Planning Director signing the final partition plat. Assessors records show that the existing parcel was established prior to July 1, 2001. The existing parcel exceeds the minimum parcel size and the proposed parcels will be larger than 160 acres, excepting the non-farm dwelling parcel which will be approximately 10 acres in size, with the exact size to be determined when the property is surveyed. These criteria are met.

4. **A division of land to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use, may be permitted if:**
- a. **The nonfarm dwellings have been approved under Subsection H;**
 - b. **The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;**
 - c. **The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size in Subsection A but equal to or larger than 40 acres;**
 - d. **The parcels for the nonfarm dwellings are:**
 - (1) **Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber; and**
 - (2) **Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. The Land Conservation and Development Commission, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands that differ in acreage and productivity level; and**

- e. **The parcels for the nonfarm dwellings do not have established water rights for irrigation.**

These criteria are not applicable as the parent parcel is larger than 80 acres.

- 5. **This Section does not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.**

This criterion is not applicable as this approval is not for the creation or sale of cemetery lots.

- 6. **This Section does not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.**

This criterion is not applicable as the division of land is not resulting from a lien foreclosure or foreclosure of a recorded contract.

- 7. **This Section does not allow a division or a property line adjustment of a lot or parcel that separates a use described in B.29, C.3, or C.7 from the lot or parcel on which the primary residential use exists.**

This criterion is not applicable as the division does not contain the uses mentioned, identified as farm worker dwellings, temporary hardship dwellings, or home occupations.

- 8. **This Section does not allow a division or a property line adjustment of a lot or parcel that separates a processing facility from the farm operation specified in Section B.17.**

This criterion is not applicable as the division does not separate a processing facility from the farm operation.

- 9. **A division of land may be permitted to create a parcel with an existing dwelling to be used:**

- a. **As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under Section H; and**
- b. **For historic property that meets the requirements of Section B.33.**

These criteria are not applicable as the division is not for the purpose of establishing a residential home or a historic property.

- 10. **Notwithstanding the minimum lot or parcel size described in Subsection 1,**

- a. **A division of land may be approved provided:**

- (1) **The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels; and**
- (2) **A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.**

- b. **A parcel created pursuant to this Subsection that does not contain a dwelling:**

- (1) **Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;**
- (2) **May not be considered in approving or denying an application for siting any other dwelling;**
- (3) **May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and**

- (4) **May not be smaller than 25 acres unless the purpose of the land division is to facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan or to allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.**

This criterion is not applicable as this is not an application for a public park, open space, or a land conservation organization.

11. **A division of land smaller than the minimum lot or parcel size in Subsection 1 may be approved provided:**
- a. **The division is for the purpose of establishing a church, including cemeteries in conjunction with the church;**
 - b. **The church has been approved under Subsection B.26;**
 - c. **The newly created lot or parcel is not larger than five acres; and**
 - d. **The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in Subsection 1 either by itself or after it is consolidated with another lot or parcel.**

This criterion is not applicable as the division is not for the purpose of establishing a church or cemetery.

12. **Notwithstanding the minimum lot or parcel size described Subsection 1, a division for the nonfarm uses set out in Subsection B.12 if the parcel for the nonfarm use is not larger than the minimum size necessary for the use.**

This criterion is not applicable as the division is not for a fire service facility as indicated in Subsection B.12.

13. **The governing body of a county may not approve a division of land for nonfarm use under Subsection 2, 3, 4, 9, 10, 11, or 12 unless any additional tax imposed for the change in use has been paid.**

The applicant will disqualify the "non-farm" Proposed Parcel 3 from farm deferral taxation program and pay the taxes from the previous ten years. This is required prior to the Planning Director signing the Final Partition Plat and listed as a condition of approval.

14. **Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur.**

This criterion is not applicable as the parcel is not used for training or stabling facilities.

15. **A division of a lawfully established unit of land may occur along an urban growth boundary where the parcel remaining outside the urban growth boundary is zoned for agricultural uses and is smaller than the minimum parcel size, provided that:**

- a. **If the parcel contains a dwelling, the parcel must be large enough to support the continued residential use.**
- b. **If the parcel does not contain a dwelling, it:**
 - (1) **Is not eligible for siting a dwelling, except as may be authorized in ORS 195.120;**
 - (2) **May not be considered in approving or denying an application for any other dwelling; and**

- (3) **May not be considered in approving a redesignation or rezoning of agricultural lands, except to allow a public park, open space, or other natural resource use.**

These criteria are not applicable as the land is not along an urban growth boundary.

MORROW COUNTY SUBDIVISION ORDINANCE ARTICLE 5 LAND PARTITIONS SECTION 5.030. REQUIREMENTS FOR APPROVAL. No application for partitioning shall be approved unless the following requirements are met:

1. **Proposal is in compliance with the County and affected City Comprehensive Plan and applicable Zoning.**

The proposed land partition, if approved in conjunction with the non-farm dwelling, does meet the requirements of the Zoning Ordinance and Comprehensive Plan relative to minimum parcel size. The applicant will need to submit both a preliminary and final partition plat to be in compliance with this Article and ORS Chapter 92. This is recommended and listed as a Condition of Approval.

2. **Each parcel is suited for the use intended or offered; including, but not limited to, sewage disposal approval and guaranteed access.**

The applicant has requested Proposed Parcel 3 as a non-farm parcel for the purposes of a future dwelling. The exact dimensions and area of the parcel will be determined when the property is surveyed, however, the parcel will be approximately 10 acres in size. The remainder of Parcels 1 and 2 exceed the minimum parcel size in the EFU zone and allows for continued or future agricultural practices.

Proposed parcel 3, the non-farm dwelling parcel, does not have existing access to Highway 74. Applicant has proposed an easement across proposed parcel 2 to ensure future access to Highway 74. Applicant will need to show the proposed easement on the partition plat prior to the Morrow County Planning Director signing the final Partition Plat. This is recommended and listed as a Condition of Approval. Proposed Parcels 1 and 2 have existing access points along Highway 74 or Highway 207, should the Applicant require additional access points they will need to work with Oregon Department of Transportation (ODOT) to obtain proper access permits.

To ensure buildability of each parcel, Proposed Parcel 3 will need to obtain site suitability from Umatilla County Health (Uco. Health). This is recommended and listed as a Condition of Approval.

3. **All required public service and facilities are available and adequate or are proposed to be provided by the partitioner.**

Electricity and telephone services are available in the area, Applicant will need to work with local providers for future service. No other public services or facilities are available.

4. **Proposal will not have any identifiable adverse impacts on adjoining or area land uses, public services and facilities, and natural resource carrying capacities.**

The current parcel and surrounding uses are farm land and will be continued to be used as such. The proposal will not have any identifiable adverse impacts on

area land uses. The applicant will be required to sign and record with Morrow County a Right to Farm Disclaimer Statement for the non-farm dwelling parcel; this is required and listed as a condition of approval.

5. **An approved water rights diversion plan as applicable.**
The preliminary Findings of Fact were referred to the County Watermaster to determine water rights and for any necessary approvals.
6. **Flag lots will not be permitted when the results would be to increase the number of properties requiring direct and individual access from a State Highway or other arterial. Flag lots may be permitted to achieve planning objectives under the following conditions:**
 - a. **When flag lot driveways are separated by at least twice the minimum frontage distance.**
 - b. **The driveway must meet driveway standards described in Article 8, Section 8.020.V.**
 - c. **The lot meets the minimum lot area of the zoning district, without including the driveway.**
 - d. **Only one flag lot shall be permitted per private right-of-way or access easement.**

This provision does not apply as no flag lots are proposed.
7. **The depth of any lot will not be restricted as long as a buildable parcel is proposed.**
The application meets this criterion.
8. **No plat of a subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company will be approved unless the County has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.**
This property is not within the boundaries of an irrigation or water control district.
9. **The Commission will deny an application for partitioning when it can be shown by the Commission that the partitioning is part of a plan or scheme to create more than three (3) parcels without going through subdivision, or is part of a development pattern creating more than three (3) parcels without subdividing.**
This provision does not apply to this application.
10. **In addition to the requirements set forth above, the following factors may be considered for approval or disapproval of an application for land partitioning is a geographical or other factor identified by other, appropriate professionals or Plans such as the requirements of the Comprehensive Plan, FEMA requirements, Byways rules, etc., requires it:**
 - a. **Placement and availability of utilities.**
 - b. **Safety from fire, flood and other natural hazards.**
 - c. **The same improvements may be required for a partitioning as required of a subdivision, if required it will be installed by the applicant.**
 - d. **Possible effects on natural, scenic and historical resources.**
 - e. **Need for onsite or offsite improvements.**
 - f. **Need for additional setback, screening, landscaping and other requirements relative to the protection of adjoining and area land**

uses. If the proposed partition is located within an Urban Growth Boundary, the affected city must be given notice according to the respective Joint Management agreement.

- g. In the approval of a land partition, the need for street and other improvements will be considered and may be required as a Condition of Approval at a different standard than for a subdivision. Planning staff would not recommend any additional requirements based on the factors above.

III LEGAL NOTICE PUBLISHED: June 9, 2020
East Oregonian

June 10, 2020
Heppner Gazette-Times

IV AGENCIES NOTIFIED: Greg Silbernagel, Watermaster; Virgil Morgan, Ione Rural Fire Protection District; Mike Gorman, Morrow County Assessor; Matt Scrivner, Morrow County Public Works Director; Stephen Haddock, Morrow County Surveyor; Teresa Penninger, Oregon Department of Transportation.

V PROPERTY OWNERS NOTIFIED: June 19, 2020

VI HEARING DATE: June 30, 2020
Bartholomew Building
Heppner, Oregon

VII PLANNING COMMISSION ACTION: Staff recommend approval subject to the following Precedent Conditions of Approval. These conditions must be completed before the Planning Director may sign the final partition plat or before the land may be deeded to a third party.

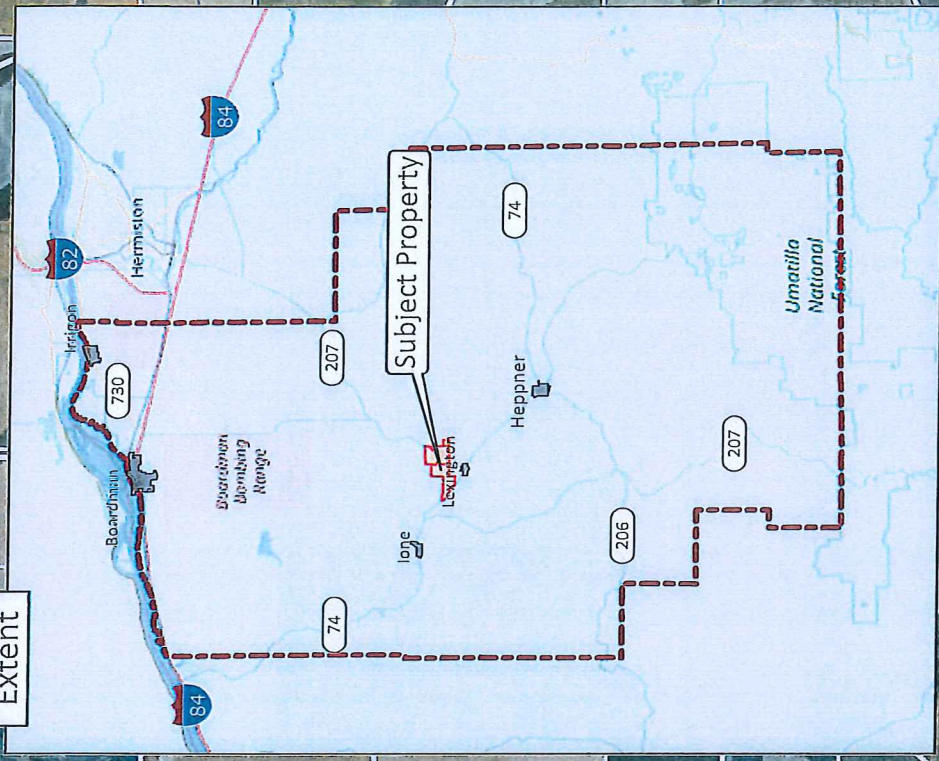
1. The related administrative Land Use Decision LUD-S-29-20 for the Non-Farm Dwelling must be approved and completed.
2. Disqualify the "non-farm" parcel from farm deferral taxation program and pay the taxes from the previous ten years (ORS 215.236).
3. Submit both a preliminary and final partition plat to be in compliance with Article 5 of the Morrow County Subdivision Ordinance and ORS Chapter 92.
4. Sign and record with Morrow County, a Right to Farm Disclaimer Statement for the non-farm dwelling parcel.
5. Obtain site-suitability from Umatilla County Health for Proposed Parcel 3.
6. Show all existing and proposed easements on the final partition plat prior to obtaining Morrow County Planning Director signature.

Jeff Wenholz, Chair

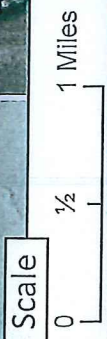
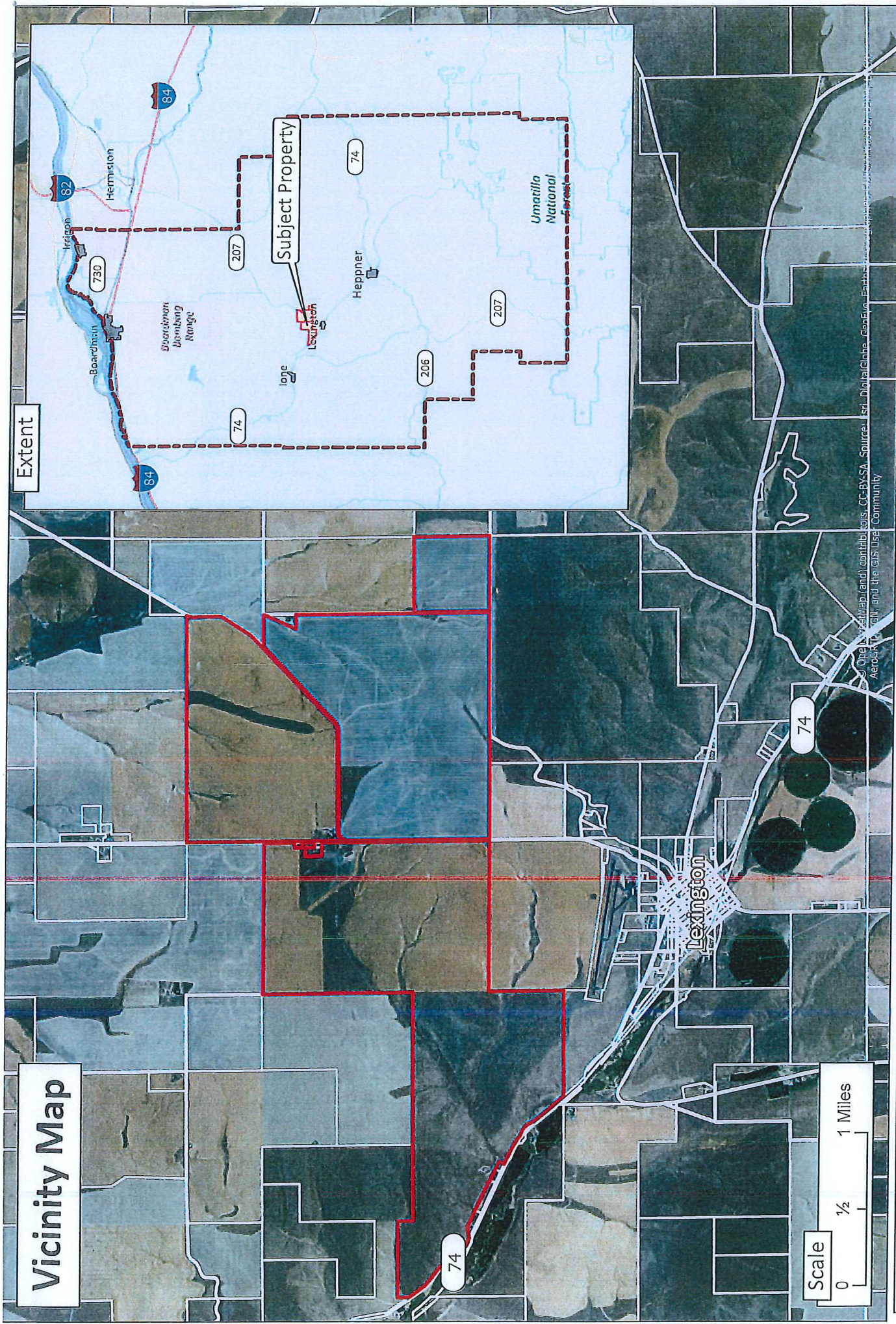
Date

ATTACHMENTS:
Vicinity Map
Plot Plan


Extent



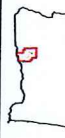
Vicinity Map



Legend

-  Tax Lots
-  Subject Property

LP-S-483-20
 Jeff and Melissa Cutsforth
1S-25E TL2000



Cartography By: Stephen Wrecksics
 Morrow County Planning Department
 Coordinate System: NAD83 Oregon GIC Lambert ft
 Datum: North American 1983
 Projection: Lambert Conformal Conic

Date Saved: 6/4/2020 9:37 AM

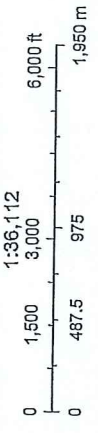
Editor: City of Morrow County and the Morrow County Planning Department

ArcGIS Web Map



5/27/2020, 3:39:49 PM

- 2019 Assessor's Map Index
- Taxlot W Ownership
- Morrow County Boundary



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community