

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the a Comprehensive Plan Text)
Amendment to Allow a City of Scappoose Water)
Line Extension on Certain Resource-Zoned Land) ORDINANCE NO. 2014-3
and to Adopt the Service Area Map for Dutch)
Canyon Water Line (Application No. TA 13-01))

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE.

This Ordinance shall be known as Ordinance No. 2014-3.

SECTION 2. AUTHORITY.

This Ordinance is adopted pursuant to ORS 203.035, 197.175, 197.610 and 197.615

SECTION 3. PURPOSE.

The purpose of this Ordinance is to amend the Comprehensive Plan to adopt the Dutch Canyon Water Line Service Area Map and to allow for the extension of the City of Scappoose water line on Resource-zoned land outside of the city's Urban Growth Boundary.

SECTION 4. HISTORY.

In 1984 and 1995, the Columbia County Circuit Court ordered the City of Scappoose to provide water service to nineteen (19) properties in the rural Dutch Canyon area. (Court Case Nos. 25683 and 27310 (May 18, 1984) and 88-2112 (April 14, 1995)). In addition to the 19 properties that have secured water rights through the court orders, 52 other tax lots front on Dutch Canyon Road and would also have access to the extended water line. A Comprehensive Plan text amendment is necessary to extend the water line because the properties are in Resource and Rural Residential zones outside the city limits and Urban Growth Boundary, where urban level water service is not allowed.

Following public notice, the Planning Commission held a public hearing on September 9, 2013. The Planning Commission deliberated and voted to recommend approval of the application to the Board of Commissioners.

Following public notice, the Board of Commissioners held a public hearing on the application on January 22, 2014. In addition to hearing oral testimony, the Board admitted legal counsel's file into evidence, the contents of which are listed in Exhibit 1, attached hereto and incorporated herein by this reference. The Board then closed the hearing, deliberated, and decided by unanimous vote to tentatively approve the application. The Board then directed staff to prepare an ordinance to reflect their decision.

SECTION 5. FINDINGS AND CONCLUSIONS.

In support of its decision, the Board of County Commissioners adopts the findings and conclusions in the Staff Report to the Board of Commissioners, attached hereto as Exhibit 2 and incorporated herein by this reference.

SECTION 6. DECISION, AMENDMENT AND AUTHORIZATION.

- A. TA 13-01 is hereby approved.
- B. The Dutch Canyon Water Line Service Area Map, attached hereto as Exhibit 3 and incorporated herein by this reference, is hereby adopted and made part of the Comprehensive Plan as Map 42.1.
- C. The Columbia County Comprehensive Plan is hereby amended, as follows (with additions shown in underline and deletions shown in ~~strikethrough~~):
 - 1. **Part V. Agriculture, Policy 9** shall be amended as follows:
 - “9. Avoid extension of urban facilities and services into agricultural areas whenever possible. No water or sewer facility shall be designed to provide domestic service to agricultural areas with the exception of the service area for the Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995.”
 - 2. **Part VI. Rural Residential, Policy 4.A** shall be amended as follows:
 - “4. Establish a Rural Residential Zone with a 2-acre minimum lot or parcel size, where such lands will not create ‘spot zoning’ (a relative small area with different zoning that its surroundings) and, as determined by the County:
 - A. Are within an existing public or community water district providing adequate domestic and fire flow water, with the exception of the service area for the Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995.”

3. **Part XIV. Public Facilities and Services, Policy 2** shall be amended as follows:

“2. Require that the level of facilities ~~and~~ provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

- A. Public or community water systems.
- B. Public or community sewage systems.
- C. Collector and/or arterial street systems.
- D. Fire protection by a rural fire protection district, or an equivalent level of service.

Development of public or community water and sewer facilities is not appropriate within forestry or agricultural areas unless needed to alleviate a demonstrated health hazard or where required by court judgments, and where such facilities are the minimum level to accomplish the task in accordance with Oregon administrative rules regarding water service to rural lands (OAR 660-011-0065). Urban levels of streets and fire protection are also inappropriate within forestry and agricultural resource areas.”

4. **Part XIV. Public Facilities and Services** shall be amended to add Policy 22, as follows:

“22. Allow provision of potable water service outside the Scappoose Urban Growth Boundary within the Dutch Canyon Water Line Service Area, illustrated on Map 42.1. The properties directly abutting Dutch Canyon Road illustrated on Map 42.1 shall be eligible for municipal water service, while properties with an easement but no frontage on Dutch Canyon Road shall not qualify for water service. The presence of the Dutch Canyon Water Line shall not be grounds for zone changes or other density increases beyond the density allowed by the zoning in effect as of November 3, 2003.”

SECTION 7. SEVERABILITY.

If any portion of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent portion, and such holdings shall not affect the validity of the remaining portion of this ordinance.

SECTION 8. SCRIVENER'S ERRORS.

Any scrivener's errors in this Ordinance may be corrected by order of the Board of County Commissioners.

DATED this 19th day of February, 2014.

Approved as to Form

By: [Signature]
Office of County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Anthony Hyde, Chair

Recording Secretary

By: [Signature]
Jan Greenhalgh, Recording Secretary

By: [Signature]
Henry Heimuller, Commissioner

First Reading: 2-5-14
Second Reading: 2-19-14
Effective Date: 5-20-14

By: [Signature]
Earl Fisher, Commissioner

EXHIBIT 1 - Legal Counsel's File
City of Scappoose Application for Comprehensive Plan Amendment
(TA 13-01)

1. Board Communication from Todd Dugdale, January 15, 2014;
2. Staff Report to the Board of County Commissioners dated January 15, 2014 with the following attachments:
 - A. Exhibit A- 3 maps of Dutch Canyon Water Line Service Area and Zoning map
 - B. Exhibit B- Proposed Text Amendment
 - C. Exhibit C- Columbia County Circuit Court Judgment dated May 17, 1984
 - D. Exhibit D- Columbia County Circuit Court Judgment dated April 14, 1995;
3. Planning Commission Recommendation to the Board of Commissioners dated 10-3-13;
4. Application for Comprehensive Plan amendment TA 13-01;
5. Board Communication from Todd Dugdale dated October 3, 2013 with the following attachments:
 - A. Notice of Planning Commission public hearing
 - B. Referral Contact List
 - C. List of Property Owners
 - D. Recommendation from Planning Commission;
6. Staff Report to the Columbia County Planning Commission dated September 9, 2013
7. Notice of Public Hearing (Publication)
8. Notice of Public Hearing (Property Owner Notice)
9. Affidavit of Mailing
10. Affidavit of Publication
11. Minutes of Planning Commission Hearing

COLUMBIA COUNTY BOARD OF COMMISSIONERS
Staff Report
 January 15, 2014

Comprehensive Plan Text Amendment
For
City of Scappoose Waterline Extension - Dutch Canyon

HEARING DATE: January 22, 2014

FILE NUMBER: TA 13-01

APPLICANT: City of Scappoose

REQUEST: The City of Scappoose is serving municipal water to properties that are outside the Urban Growth Area, due to court judgements. The City requests that the County Adopt the Service Area Map for Dutch Canyon Water Line, and a Comprehensive Plan Text Amendment to revise portions of Part V (Agriculture), Policy 9, and Part XIV (Public Facilities), Policy 2 and 22.

ADOPT: *1) Dutch Canyon Water Line Service Area Map* Attached as "Exhibit A"
 Into the Comprehensive Plan, Part XIV Public Facilities and Services, Water
2) Plan Text Amendments Attached as Exhibit "B"
 These amendments are shown and reviewed under Applicable Review Criteria

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Columbia County Comprehensive Plan

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BACKGROUND:

The City of Scappoose is required by court order to serve domestic water to nine properties on Dutch Canyon Road, outside of the Urban Growth Area. In 2009 and 2010 the City constructed a booster pump station and 3.2 miles of water distribution line to the nine properties with court ordered rights to City water. The new water main along the Dutch Canyon Road passes in front of several other properties, the owners of which would like to connect to City water. The City is willing to serve other customers in addition to the nine with water rights.

Generally, cities do not extend water or sewer services to customers outside their city limits or Urban Growth Boundary. In this instance, a court order requires the City to provide water service that extends beyond the city's jurisdiction and into the County's jurisdiction. The City and the County must therefore cooperate and agree on the extent of City water service. The City has asked Columbia County to acknowledge this water line extension in the County Comprehensive Plan by adopting the Dutch Canyon Water Line Service Area map, showing all properties affected. The City has also requested that the County amend Policies in its Comprehensive Plan to be compliant with this extrajurisdictional water line extension to these rural lands.

The County lands included in the Dutch Canyon Waterline Extension are split between those lands zoned Rural Residential (RR-5) and some larger parcels south of Dutch Canyon Road that are zoned for Primary Agriculture (PA-80) and Forest-Agriculture (FA-80). (See zoning map attached as part of the application) To be approved, the application and its proposed extension of public water service to rural areas must comply with the Comprehensive Plan Policies for Agriculture, Forest and Rural Residential as well as the Public Service Policies dealing with public or community water systems.

REVIEW CRITERIA:

Comprehensive Plan Part 1: Administrative Procedures, Goals and Policies

5. Provide a framework by which the Comprehensive Plan may be reviewed, revised and amended. Amendments to the Comprehensive Plan and its implementing ordinance(s) shall be in accordance with the following procedures and guidelines:
 - A. Amendments may be initiated by the Board of Commissioners, the Planning Commission, the Planning Director or the owner(s) of the affected property.
 - B. A Citizen Planning Advisory Committee may, upon a majority vote of its members, formally request either the Board of Commissioners or the Planning Commission initiate an amendment.
 - C. Revisions or amendments will follow the same process as initial adoption - CPAC review, Planning Commission public hearing and recommendation, and Board hearing and adoption of revisions or amendments.
 - D. For quasi-judicial amendments, all property owners within two hundred and fifty (250) feet of the affected area shall be notified of the hearing date and the requested amendment at least ten (10) days prior to the first scheduled public hearing.
 - E. For legislative amendments, notice of the public hearing and a copy of the proposed amendment, will be mailed to all Citizen Planning Advisory Committees and interested parties at least ten (10) days prior to the first scheduled public hearing.

Finding 1: This Plan Amendment was initiated by the County Planning Director at the request of the City of Scappoose. For quite some time, the City has been planning how to provide water service to a qualified group of property owners along Dutch Canyon Road. Since 2006, the Planning Departments of the City, the County and the State DLCD have been discussing which properties were to be allowed to connect to this 3.2 mile City water line extension. The new water line on Dutch Canyon Road fronts 52 tax lots, 19 of which have secured a domestic water right through the court order. Although the Oregon state land use administrative rule prohibits extensions of water service into rural areas, the DLCD, City and County agreed that in addition to the properties granted a City Water Right, parcel with physical frontage on Dutch Canyon Road should be able to connect to the City water line in Dutch Canyon Road. In addition, those properties qualified for City water would be eligible to serve city water to the divisions of its property, but only to the present density of county zoning. The County Board of Commissioners wrote a letter dated January 31, 2007 to the City of Scappoose confirming that the County would not increase development density based on the installation of the proposed 8" Dutch Canyon Waterline.

The process for adopting these amendments shall: follow a review and recommendation from the

area Citizen Planning Advisory Committee (CPAC) and the Planning Commission. On July 31, 2013 Notice of the initial Planning Commission hearing was sent to all property owners within 250 feet of the affected area, to affected agencies and to the Scappoose Citizen Planning Advisory Committee (CPAC). The Planning Commission held a public hearing on September 9, 2013 and made recommendation, Final Order No. TA 13-01 signed by Chairman on October 3, 2013, to approve the Text Amendments and adopt the Dutch Canyon Water Line Service Area.

Following with the Columbia County Zoning Ordinance:

Section 1606 Legislative Hearing: Requests to amend the text of the Zoning Ordinance or to change a large area of the Zoning Map of Columbia County in order to bring it into compliance with the Comprehensive Plan are legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures.

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change.
- .2 Notice of a Legislative Hearing shall be published at least twice, one week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than 10 calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners.

Finding 2: Although this request was brought before the County by a single applicant that affects discrete parcels of land, the notifications sent out by the county for review and hearing has been directed to accommodate both legislative hearing and quasi-judicial hearing. (See Finding #1 above) Notice of the Planning Commission hearing was published twice in the area papers, on August 21, 2013 and August 28, 2013. Notice of the Board of Commissioners public hearing was published on January 8, 2014.

1607 Consistency with the Comprehensive Plan: All amendments to the Zoning Ordinance Text and Map shall be consistent with the Comprehensive Plan Text and Maps.

- .1 The Commission shall hold a hearing to consider the proposed amendments and shall make a recommendation to the Board of Commissioners with regard to the proposed amendments. The Board of Commissioners shall hold at least one hearing to consider the proposed amendments. Both the Commission and the Board of Commissioners hearings will require notice

in the manner outlined in Section 1611.

Finding 3: The proposed amendments to the Comprehensive Plan must be consistent with all elements of the Plan. These elements of the Comprehensive Plan are reviewed later in this Report. Notices for the hearings contain the items required in Section 1611. The Planning Commission held a public hearing on September 9, 2013 and forwarded their recommendation to the Board of Commissioners. A hearing date for the Board is scheduled for January 22, 2014.

1611 **Notice of Legislative Hearing:** The notice of a legislative hearing shall contain the following items:

- .1 Date, time and place of the hearing;
- .2 A description of the area to be rezoned or the changes to the text;
- .3 Copies of the statement for the proposed changes are available in the Planning Department. These proposed changes may be amended at the public hearing;
- .4 Interested parties may appear and be heard;
- .5 Hearings will be held in accordance with the provisions of the Zoning Ordinance.

Finding 4: The above information was included in the mailed and published notices. Notices were mailed to affected agencies on July 31, 2013 and were published in the local news media on August 21 and August 28, 2013. Notice for the hearing before the Board was published on January 8, 2014. Staff finds that the criterion is met.

Continuing with the Columbia County Comprehensive Plan

The Following Parts of the Comprehensive Plan apply to this application; Parts not listed do not apply.

PART III. PLANNING COORDINATION

PURPOSE

Successful integration of all parts of the plan is one of the most important features of a comprehensive plan. Primary coordination occurs by involving all affected people and agencies during the development of the plan. Plan coordination activities include:

1. The county and the seven incorporated cities in the county are each responsible for the preparation of the plan for their own jurisdiction. The cities and the county work together in the preparation of urban growth boundaries.
2. The county, under ORS Chapter 197, is given the responsibility of coordinating the plans of cities and special districts.

Finding 5: The City of Scappoose is required by order of the Columbia County Circuit Court (See judgments dated May 17, 1984 and April 14, 1995, attached hereto as Exhibits C and D respectively) to provide domestic water outside of their service area, exterritorial to City limits and Urban Growth Boundary. The City has been working and coordinating with the County on how to plan for the water extension problem since at least 2006. The City has now developed and proposed a set of amendments to the County Comprehensive Plan. It is the County's responsibility to plan for the land use in these unexpected public water system changes in the Dutch Canyon Area near Scappoose.

Continuing with Columbia County Comprehensive Plan

Part IV Forest Lands Goals and Policies

10. Any changes in the minimum lot sizes for forest lands will be reviewed against the requirements of statewide land use planning Goal 4 and implementing standards and rules.

Finding 6: A portion of the Dutch Canyon Water Service Area is zoned Forest Agriculture FA-80. There are three tax lots totaling 40.89 acres, on both sides of Dutch Canyon Road, just west of Raymond Creek Road, that are in the Dutch Canyon water service area. With current zoning none of these units of land could be further divided. Any changes in minimum lot size of less than 80 acres would require the applicant to take an Exception to Statewide Goal 4, showing why these lands should not be protected for forest purposes. This criteria is met. This application does not seek to increase densities or change the zoning.

Continuing with Columbia County Comprehensive Plan

Part V Agriculture Goals and Policies

2. If the County proposes to convert agricultural lands (as defined by Statewide Land Use Goal 3) to urbanizable land, the County shall follow the procedures and requirements for exceptions to the Agricultural Lands goal, pursuant to Goal 2. Those uses which are permitted by ORS 215.283(1) or (2) shall not require an exception to the Agricultural Lands goal. [Amended by Ordinance No. 98-01 eff. 6/29/98].

8. Establish minimum lot sizes to assure that productive agricultural land will not be divided into parcels that are too small for commercial farm use.
9. Avoid extension of urban facilities and services into agricultural areas whenever possible. No water or sewer facility shall be designed to provide domestic service to agricultural areas.
13. Allow the division of lands placed in the Primary Agriculture District in accordance with the following:
 - A. The lot area is consistent with the agriculture land use policy for the State of Oregon as expressed in ORS 215.243 and consistent with ORS 215.263 and ORS 215.780;
 - B. The lot area is of a similar size to existing commercial agricultural operations in the surrounding area;
 - C. In those instances where it is proposed to locate a farm-related dwelling, the proposed lot area is of sufficient size to support commercial production of food or fiber using accepted farm practices as defined in ORS 215.203 (2) ©;
 - D. Approval of the partitioning will not seriously interfere with the preservation of wildlife or fish habitat areas as identified in the Columbia County Comprehensive Plan, or interference will be mitigated; and,
 - E. Any additional criteria as set forth in the County Primary Agriculture District.
18. In order to provide additional protection to the existing commercial agricultural economy of the County, the division of land in the primary agriculture zone into lots smaller than 80 acres will be allowed only if consistent with ORS 215.263, ORS 215.284 and ORS 215.780.

Finding 7: A portion of the Dutch Canyon Water Service Area is zoned Primary Agriculture PA-80, approximately 265 acres. Any proposed conversion of these lands to an urban use or to a zone to increase the density of dwellings would require an Exception to Statewide Goal 3 Agricultural lands. The County designated a minimum lot size of 80 acres to Agricultural lands to protect commercial farming from encroachment of incompatible uses. The City of Scappoose application is in direct conflict with Policy #9 above that prohibits water or sewer facilities for domestic use in agricultural designated areas. To alleviate this conflict the City of Scappoose proposes to amend the Plan by adding the following to Policy 9: Avoid extension of urban facilities and services into agricultural areas whenever possible. No water or sewer facility shall be designed to provide domestic service to agricultural areas. “with the exception of the service area for Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995.”

Any divisions of land in this Primary Agriculture Designation shall only be done if in compliance

with Policies 13 and 18 above. The application does not seek to divide land or increase density of residential uses in this agricultural area. The applicant wants to make sure the new water line is not an invitation for owners to divide their land for more housing units. Any regulation about divisions of lands must be made by the County. With the above mentioned amendment and further county policy revisions discussed below, as submitted by the applicant, the application is in compliance with the above policies with proposed changes.

Continuing with Columbia County Comprehensive Plan

PART VI. Rural Residential: Goals and Policies

3. Establish a Rural Residential Zone with a 5-acre minimum lot or parcel size where such lands: *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - A. Must rely on a private water system to serve the property.
 - B. Must rely on a private sewage disposal system to serve the property.
 - C. Have access onto a public or private right-of-way meeting applicable County Road Standards. *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - D. May or may not be within a rural fire protection district. *[Amended by Ordinance No. 98-4 eff. November 1998].*

4. Establish a Rural Residential Zone with a 2-acre minimum lot or parcel size, where such lands will not create "spot zoning" (a relatively small area with different zoning than its surroundings) and, as determined by the County: *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - A. Are within an existing public or community water district providing adequate domestic and fire flow water. *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - B. Have soils capable of accommodating a subsurface septic system. *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - C. Have access onto a public right-of-way meeting applicable County Road Standards. *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - D. Are within, and can be served by a rural fire protection district. *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - E. A 2-acre minimum parcel size is appropriate to maintain the rural character of the area. *[Amended by Ordinance No. 98-4 eff. November 1998].*
 - F. The conversion complies with the Oregon Administrative Rule requirements for an exception to Goal 14. *[Added by Ordinance No. 98-4 eff. November 1998; Amended by Ordinance No. 00-05, eff. 11/13/00].*

Finding 8: A portion of the Dutch Canyon Water Service Area is zoned Rural Residential (RR-5), approximately 250 acres. The County zoned this area RR-5 in compliance with the above policy 3. In particular, this residential exception area had no community or public water system, therefore each residential lot had to rely on a private well or source of water. A change has taken place, and a public water system is now available to RR-5 zoned properties that was not available when the current zoning was applied.

Although not requested by the applicant, staff recommends amending Rural Residential Policy 4A, similar to the Agriculture Policy 9 discussed above. The State DLCDC, the City and Columbia County planning staff concur that the introduction of a City water line to the area should not result in more densely developed land in Dutch Canyon. This application is simply to allow certain properties outside the City limits and UGB to connect to a water line that the City was required to install. The application does not meet the criteria for a zone change to higher density. Public Facility policies of the Comprehensive Plan (discussed later) also restrict density increase because of facility extensions. Many developers, owners, appraisers and real-estate agents use the Comprehensive Plan as a guide to possible development on properties. To avoid confusion about future application of the RR-2 zone and retain plan consistency, staff recommends Policy 4A be revised as follows:

- A. Are within an existing public or community water district providing adequate domestic and fire flow water, "with the exception of the service area for Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995."

Continuing with Columbia County Comprehensive Plan

PART XI. URBANIZATION: GOALS AND POLICIES

POLICIES: It shall be a policy of the County to:

20. Limit development outside of urban growth boundaries to densities which do not require an urban level of public facilities or services and are consistent with Goal 14 and OAR 660, Division 4.

Finding 9: The City water line extended to the Dutch Canyon Area is part of an urban service provided; but, the presence of the water line by itself does not constitute provision of urban services, especially when increased densities are prohibited from the extension. The intent of the proposed Plan Amendment is to allow the water line extension without changing development densities in effect prior to the water line extension. Any increase in density, under the present zoning of the Dutch canyon Waterline Extension Area would require an Exception to either Statewide Goals 3, 4 or 14. This

criteria is met if the proposed amendments are adopted.

Continuing with Columbia County Comprehensive Plan

PART XIV. PUBLIC FACILITIES AND SERVICES: GOALS AND POLICIES

GOAL:

To plan and develop a timely, orderly, and efficient arrangement of public facilities as a framework for urban and rural development.

POLICIES: It shall be County policy to:

2. Require that the level of facilities and provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

- A. Public or community water systems.
- B. Public or community sewage systems.
- C. Collector and/or arterial street systems.
- D. Fire protection by a rural fire protection district, or an equivalent level of service.

Development of public or community water and sewer facilities is not appropriate within forestry or agricultural areas unless needed to alleviate a demonstrated health hazard, and where such facilities are the minimum level to accomplish the task. Urban levels of streets and fire protection are also inappropriate within forestry and agricultural resource areas.

5. Coordinate public facilities and planning with affected service districts and/or agencies.

Finding 10: The County has been cooperating with the City of Scappoose on the Court imposed water line extension into Dutch Canyon, and with this proposed amendment would make County Plan amendments, following through with that coordination. Extensions of the City water line into the County designated Rural Residential areas is appropriate with the above policies; however, other policies in the Plan restrict increases in densities because of the introduction of a water line extension. Policy #2 above restricts public water in Agriculture or Forest areas except for a demonstrated health hazard. The City proposes to add an except for: "or where required by court judgements", and an Oregon Administrative Rule regarding water service to rural lands, OAR 660-011-0065. The proposed Text Amendment in Policy #2, last sentence: is as follows:

Development of public or community water and sewer facilities is not appropriate within forestry or agricultural areas unless needed to alleviate a demonstrated health hazard, or where required by court judgments, and where such facilities are the minimum level to accomplish the task in accordance with Oregon administrative rules regarding water service to rural lands (OAR 660-011-0065). Urban levels of streets and fire protection are also inappropriate within forestry and agricultural resource areas.

The City of Scappoose also proposes to add a new Policy #22 to Part XIV Public Facilities & Services as follows:

22. Allow provision of potable water service outside the Scappoose Growth Boundary within the Dutch Canyon Water Line Service Area illustrated on Map # _____. The properties directly abutting Dutch Canyon Road illustrated on the Map shall be eligible for municipal service, while properties with an easement but no frontage on Dutch Canyon Road shall not qualify for water service. The presence of Dutch Canyon Water Line shall not be grounds for zone changes or other density increases beyond the density allowed by the zoning in effect as of November 3, 2003.

Staff regards an amendment for this new policy #22 as essential for the County to administer development in the area. The County needs to know which parcels are eligible for water service. The county requires a source of water prior to platting and building permit releases. Good quality ground water through private wells is somewhat elusive for many properties in the area. Some dwellings rely on cisterns or purchased water and are accustomed to a lack of domestic water, sometimes a hardship. The three agencies agreed on allowing water service to those properties abutting the water line on Dutch Canyon Road and to any divisions of the qualified parcel down to the density of the present zoning.

Continuing with Oregon Administrative Rule

Division 11 Pubic Facilities and Services

OAR 660-011-0065 Water Service to Rural Areas

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment" means the creation of a new water system and all associated physical components, including systems provided by public or private entities;

(b) "Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.

© "Water system" shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.

(2) Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;

(b) Allow a higher density for residential development served by a water system than would be authorized without such service; or

© Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.

(3) Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.

Finding 11: This rule is directly applicable to this application or to any water extensions in the rural areas of Columbia County. The County has not updated the Public Facilities section of the Comprehensive Plan to be compatible with this Administrative Rule, so the Rule applies directly, as if incorporated in the county ordinances. The extended water system in Dutch Canyon, with proposed amendments, does not allow an increase in base density in residential areas or allow for an increase in allowable density in residential areas due to the availability of service from a water system. The wording in proposed Policy # 22 in Public Facilities and Services (above) reflects the above verbiage. The State DLCD was provided a copy of the City of Scappoose's application, 35 days prior to the initial hearing, and has provided no response that the language is not consistent with this Rule. Staff finds that this criteria is met.

Continuing with Oregon Administrative Rule

Division 04 - Interpretation of Goal 2 Exception Process

OAR 660-004-0040 Application of Goal 14 to Rural Residential Areas

(6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 (Urbanization).

Finding 12: This rule has not been incorporated into Columbia County Comprehensive Plan or implementing ordinances, so, it applies directly. If a property owner or the City applied to the County to increase residential densities in any residential part of Dutch Canyon Waterline Area, an exception to urbanization Goal 14 would be required and reviewed by the State DLCD. This is a very high standard to meet in any application. The County has no plans to increase densities in this area.

COMMENTS:

Oregon Department of Land Conservation and Development (DLCD): No Comment received.

City of Scappoose: No comment received.

Scappoose CPAC: Recommend approval of the application with two conditions.

First, that on those lands other than the nine parcels controlled by the judgements in the Parish and Alexander cases, if in the future any those parcels are partitioned such that any of the newly partitioned parcels do not have frontage on Dutch Canyon Road, they will not be allowed access to the City's water line unless they comply with the "base density" provision of OAR 660-011-0065(2)(a). And,

Second, other than for the nine parcels controlled by the judgements in Parish and Alexander cases, water service will only be provided to any parcels in the area at issue here which are in compliance with the City's municipal Code dealing with the extension of water service (now set forth in Scappoose Municipal Code 13.04.020(1) and (2)) in effect at the time of the application.

Soil and Water Conservation: No Objection

County Roadmaster: No Objection

County Sanitarian: No Objection

Scappoose Fire District: No Objection

State WRD Watermaster: No comment received

No other comments have been received from citizen groups, government agencies or the general public as of the date of this staff report.

STAFF COMMENTS, CONCLUSIONS AND RECOMMENDATIONS:

Based on the findings of this report, Columbia County has a responsibility to coordinate public and community water systems in the unincorporated County. The County is further required to collaborate with each water provider as to the zoning and allowed density of development within a water service area. Columbia County's Comprehensive Plan supports revisions to its contents to include up-to-date information related to the public services provisions in Columbia County. The staff of County Planning Division, the City of Scappoose and the State DLCDC coordinated to present revisions to the Plan as presented by the City in this application. The proposed amendments in conjunction with this application are consistent with Oregon State law and the goals and policies of Columbia County's Comprehensive Plan.

Based on the facts, findings and comments herein, the Planning Director and the Planning Commission **RECOMMEND APPROVAL** of the proposed text amendments to the County's Comprehensive Plan to Adopt the Dutch Canyon Water Service Area map and clarify eligible properties for service giving guidance to future properties' eligibility to connect to City water.

Attachments:

Exhibit "A" Maps of Dutch Canyon Water Line Service Area, Zoning Map

Exhibit "B" Proposed Text Amendments

Exhibit "C" Columbia County Circuit Court Judgment, dated May 17, 1984

Exhibit "D" Columbia County Circuit Court Judgment, dated April 14, 1995

Application TA 13-01 by the City of Scappoose

Exhibit A

Dutch Canyon Water Line Service Area Aerial Photograph
Columbia County, Oregon



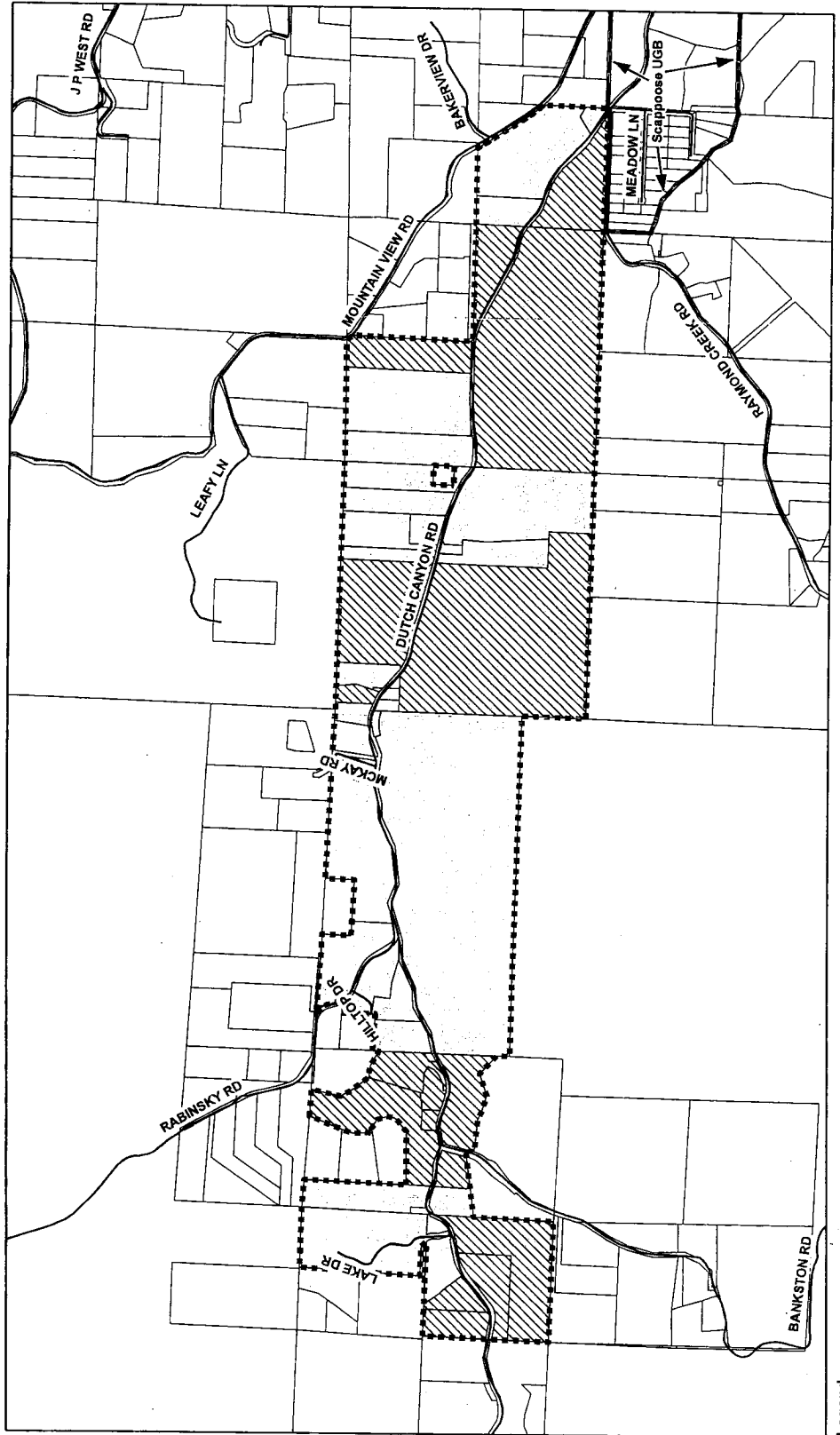
Legend

- Scappoose Urban Growth Boundary
- Streets
- Parcels
- Service Area boundary
- Service Area parcels

N
W E S
0 500 1,000 2,000 Feet

Exhibit A

Dutch Canyon Water Line Service Area
Columbia County, Oregon

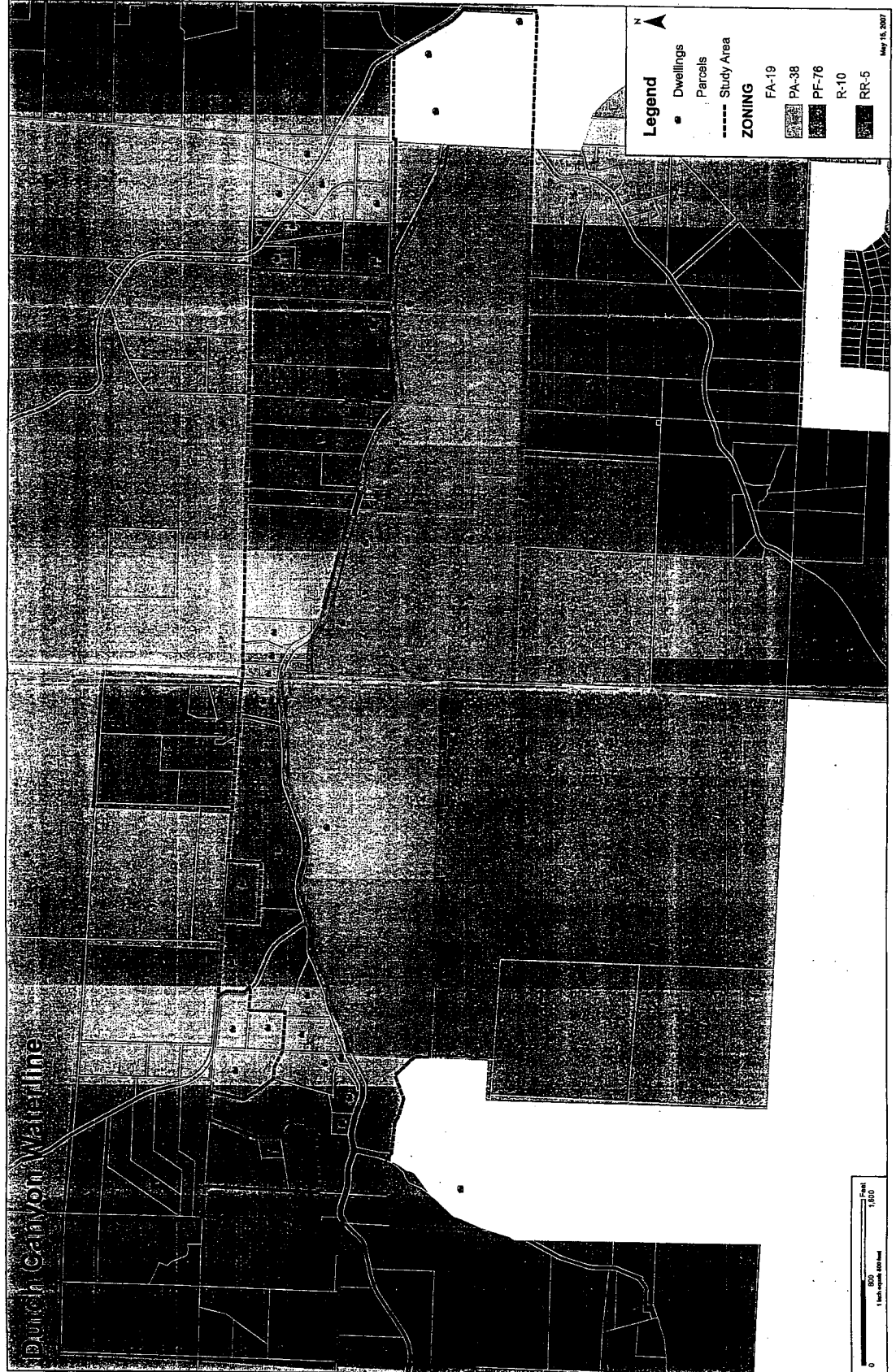


Legend

- Service Area boundary (dashed line)
- Streets (solid line)
- Parcels (thin solid line)
- Service Area parcels (hatched area)
- Service Area parcels with rights to City water (hatched area)
- Scappoose Urban Growth Boundary (solid line)

North Arrow
Scale: 0, 500, 1,000, 2,000 Feet

Exhibit A



**Proposed amendments to the Comprehensive Plan (Staff Draft)
Dutch Canyon Water Line (TA 13-01)**

(Proposed language additions are underlined)

PART V. AGRICULTURE

POLICIES: It shall be a policy of the County to:

9. Avoid extension of urban facilities and services into agricultural areas whenever possible. No water or sewer facility shall be designed to provide domestic service to agricultural areas with the exception of the service area for the Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995.

PART VI. Rural Residential

Policies: It shall be a policy of the County to:

4. Establish a Rural Residential Zone with a 2-acre minimum lot or parcel size, where such lands will not create "spot zoning" (a relative small area with different zoning than its surroundings) and, as determined by the County:

A. Are within an existing public or community water district providing adequate domestic and fire flow water, with the exception of the service area for the Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995.

PART XIV. PUBLIC FACILITIES & SERVICES

POLICIES: It shall be County policy to:

2. Require that the level of facilities and provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

- A. Public or community water systems.
- B. Public or community sewer systems.
- C. Collector and/or arterial street systems.
- D. Fire protection by a rural fire protection district, or an equivalent level of service.

Development of public or community water and sewer facilities is not appropriate within forestry or agricultural areas unless needed to alleviate a demonstrated health hazard or where

required by court judgments, and where such facilities are the minimum level to accomplish the task in accordance with Oregon administrative rules regarding water service to rural lands (OAR 660-011-0065). Urban levels of streets and fire protection are also inappropriate within forestry and agricultural resource areas.

Add a new policy:

22. Allow provision of potable water service outside the Scappoose Urban Growth Boundary within the Dutch Canyon Water Line Service Area illustrated on Map # _____ . The properties directly abutting Dutch Canyon Road illustrated on the Map shall be eligible for municipal water service, while properties with an easement but no frontage on Dutch Canyon Road shall not qualify for water service. The presence of the Dutch Canyon Water Line shall not be grounds for zone changes or other density increases beyond the density allowed by the zoning in effect as of November 3, 2003.

1 MRS. WILLIAM HONEYMAN, R.J. HONEYMAN, H.H.)
 HONEYMAN, HENRY HUGHES, V.J. HUGHES, ALFRED)
 JENSEN, FLORENCE G. JENSEN, JACOB T. JONES,)
 2 LILLIAN JONES, GERALD JONES, NANCY A. JONES,)
 WALTER JONES, BARBARA G. JONES, THOMAS E.)
 3 KIRTLAND, JANICE A. KRAMER, FRED J. KUIPER,)
 SARA A. KUIPER, HERMAN LAUBE, HELEN L. LAUBE,)
 4 ELBERT MANLEY, LAWRENCE McCONNELL, ANN P.)
 McCONNELL, E. L. McJUNKIN, VIVIAN E. McJUNKIN,)
 ROBERT L. McKEE, MARY J. McKEE, DOUGLAS D.)
 MARTIN, VERNA L. MARTIN, EDMUND G. MELTON,)
 5 MARY K. MELTON, MARETH J. MERRILL, ANNA G.)
 MERRILL, ARTHUR D. MILLER, DORA E. MILLER,)
 6 WOLFRAM G. MULLER, LUZIA MULLER, ROBERT PARISH,)
 JR., LOUISE M. PARISH, RICHARD SAHAGIAN,)
 7 MARIAN SAHAGIAN, EDWARD SALVENSEN, DEBBIE M.)
 SALVENSEN, ANTON SCHLOSSER, AMELIA C. SCHLOSSER,)
 8 LEROY L. SLABY, CAROL A. SLABY, THEO S.)
 STANSBIE, BLANCHE STANSBIE, HAROLD STRAND,)
 9 DOROTHY E. STRAND, MATILDA TETZ, OTTO A. TETZ,)
 VIOLA M. TETZ, CURTIS G. TETZ, ROWENA ANN TETZ,)
 10 ELSIE VANLANDINGHAM, GARY L. WILSON, PATRICIA)
 K. WILSON, ERNEST A. WINTERFELD, ADELINE)
 11 WINTERFELD,)
 Plaintiffs)
 12 vs.)
 13 CITY OF SCAPPOOSE, OREGON,) JUDGMENT
 A Municipal Corporation)
 14 Defendant)

15 THIS MATTER was set for hearing on March 21, 1984. Plaintiffs
 16 were present and represented by Agnes M. Petersen
 17 and Robert McKee. Defendant City of Scappoose was present and
 18 represented by David B. Williamson. The parties negotiated for
 19 in excess of 8 hours with the assistance of the court and arrived
 20 at and agreed upon the following judgment by sworn testimony in
 21 open court. Pursuant to the negotiations and agreements it
 22 appeared to the Court:

23 1. Plaintiffs and defendants are residents or own property
 24 within the area described in the December 5, 1975, water rights
 25 certificate of City of Scappoose, recorded in Volume 15, Page
 26 895, Miscellaneous Records.
 Page - 2 - JUDGMENT ORDER.

1 2. The Scappoose water system has run through the area
2 known as Dutch Canyon since the 1920's and has served water users
3 in the area including some of the parties to these two lawsuits.

4 3. The two lawsuits have been filed to determine the re-
5 spective rights of all parties and the suits should be amicably
6 settled and a judgment entered settling these issues. It is,
7 therefore,

8 ORDERED and ADJUDGED:

9 1. All parties plaintiffs to the above lawsuit shall continue
10 to receive City of Scappoose water as a matter of right.

11 2. There will be no termination or threat of termination
12 of water services to plaintiffs receiving water so long as they
13 pay all water bills when due. Failure to pay water bills shall
14 produce the same result as non-payment within the City limits.

15 3. All prior water agreements and water contracts executed
16 by these plaintiffs are superceded by this judgment insofar as
17 the agreements are inconsistent with this judgment.

18 4. Water Charges: The above plaintiffs shall pay the
19 same rate for water service as users within the City plus four
20 dollars (\$4.00) per month per user until the year 2019 when the
21 1979 General Obligation Bond is paid in full. The \$4.00 per
22 month charge is the outside users contribution toward the amorti-
23 zation of the 1979 General Obligation Water Bond. Plaintiffs
24 shall also pay their prorated share of any future general obli-
25 gation bonds issued to enlarge or improve City's water system.

26 * * *

1 5. Sewer Charges: No sewer charges shall be made to these
2 plaintiffs unless plaintiffs are served by City sewer. City
3 shall never attempt to force these plaintiffs to involuntarily
4 form a separate water district.

5 6. All parties plaintiff shall be entitled to the same
6 rights and privileges and be bound by the same rules as all other
7 persons being served water by the City of Scappoose within the
8 City limits in that additional hookups shall be given for existing
9 homesteads, lots and parcels approved for building permits provided
10 the hooking up and serving of water complies with all state and
11 federal laws and regulations in existence on the date of appli-
12 cation for the hookup.

13 7. In the event an application is filed by a party outside
14 the present urban growth boundary to be included within the boundary
15 and for a water hookup for good cause, the hookup shall be approved
16 and granted upon approval of the amendment of the UGB by inclusion
17 of applicants property within the boundary by action of Scappoose
18 City Council. Once the water service is received it cannot be
19 terminated except for cause, eg non-payment of water bill.

20 8. City shall pass no ordinances nor attempt to enforce
21 any ordinances which are inconsistent with this judgment.

22 9. This judgment shall have no effect on these plaintiffs'
23 rights and City's water rights certificate dated December 5,
24 1975, recorded in Volume 15, Page 895, Miscellaneous Records,
25 Columbia County, Oregon.

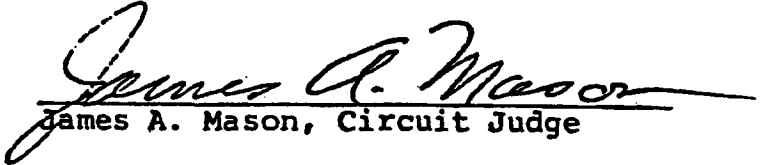
26 * * *

1 10. This judgment binds all parties hereto, their heirs,
2 successors or assigns and plaintiffs' rights hereunder shall
3 run with their land.

4 11. The effective date of this judgment is April 1, 1984,
5 as to water rates.

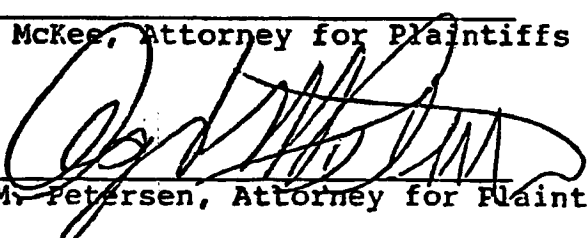
6 12. Neither party nor parties shall be awarded costs or
7 disbursements.

8 DATED this 17th day of ^{May}~~March~~, 1984, nunc pro tunc to
9 March 21, 1984.

10 
11 James A. Mason, Circuit Judge

12 APPROVED AS TO FORM:

13
14 Robert McKee, Attorney for Plaintiffs

15 
16
17 Agnes M. Petersen, Attorney for Plaintiffs


18 
19 David B. Williamson, Attorney for
20 City of Scappoose, Oregon

Exhibit 'D'

FILED
STATE OF OREGON
COLUMBIA COUNTY COURTS

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR COLUMBIA COUNTY JAN 8 33

2 CITY OF SCAPPOOSE, OREGON,
3 an Oregon Municipal Corporation,

TRIAL COURT ADMINISTRATOR
Case No. 88-2112

4 Plaintiff,

J. Smiley

5 vs.

JUDGMENT

6 ERVIN ASHLEY, RUSSELL COWLES,
7 HELEN LAUBE, ROGER STRAND,
8 ALFRED TETZ, ERNEST WINTERFELD,
9 LUZIA MULLER, JAMIE WILLIAMS,
10 WYNETTE WILLIAMS, ALLAN STRAND,
11 OTTO TETZ, VIOLA TETZ, JOHANNA
12 TETZ, DUANE SMITH, AND RUTH SMITH

13 Defendants.

14 THE ABOVE ENTITLED MATTER came on for trial on February 22,
15 1995. David F. Bartz, Jr., appeared on behalf of the plaintiff,
16 Robert P. VanNatta appeared on behalf of defendants, Ashley,
17 Cowles, Laube, Strand, Winterfeld, Muller, Jamie Williams, Wy-
18 nette Williams and Allan Strand. Joseph David McDonald appeared
19 on behalf of defendant Ruth Smith. Duane Smith died in Febru-
20 ary of 1994 and Ruth Smith is his successor in interest. Otto
21 Tetz, Viola Tetz and Johanna Tetz did not appear at trial. The
22 case was tried to conclusion.

23 NOW, THEREFORE, IT'S HEREBY ADJUDGED:

24 1. That certain judgment heretofore entered by the Circuit
25 Court of Columbia County in Case No. 25683 styled Parish v. City
26 of Scappoose, et al and in Case No. 27310 styled Alexander et al
27 v. City of Scappoose which was entered on May 18, 1984 and dated
May 17, 1984 nunc pro tunc to March 21, 1984 is a valid and
subsisting judgment which is determinative of the rights of the
parties in this case. A portion of that prior judgment provides

1 JUDGMENT
D:\RI\REA\OUTCH.JMT

VAN NATTA & PETERSEN
ATTORNEYS AT LAW
P.O. BOX 718
ST HELENS OREGON
503/397-4001

65
104

1 as follows:

2 "1. All parties plaintiff to the above lawsuit shall
3 continue to receive City of Scappoose water as a matter
4 of right.

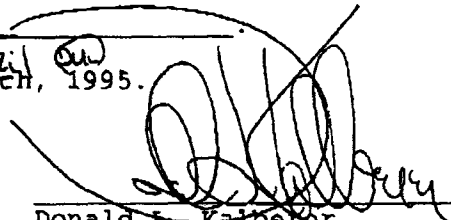
5 2. There will be no termination or threat of termina-
6 tion of water services to plaintiffs receiving water so
7 long as they pay all water bills when due.

8 3. All prior water agreements and water contracts
9 executed by these plaintiffs are superseded by this
10 judgment insofar as the agreements are inconsistent
11 with this judgment."

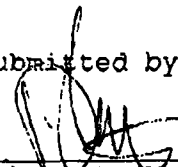
12 2. The City of Scappoose (the "City") shall not discontinue
13 domestic water service to the defendants, and their successors in
14 interest, as a method of resolving any water quality issues
15 relating to the water which the City is required under said prior
16 judgment to provide to the defendants and their successors in
17 interest, under and the obligation of compliance with regulatory
18 water quality standards is upon the City; such "compliance obli-
19 gation," however, shall arise only upon the order of a regulatory
20 agency with authority over Oregon drinking wataer quality stan-
21 dards which requires the City to take remedial action, and

22 3. The defendants shall have and recover their costs to be
23 taxed and allowed in the sum of \$ _____.

24 Dated this 14 day of ~~March~~^{April}, 1995.

25 
26 _____
27 Donald E. Kaiberer
Circuit Judge

Submitted by:

28 
29 _____
30 Robert P. VanNatta, OSB# 70-115


31 2 JUDGMENT
32 D:\RI\REA\DTCH.JMT

VAN NATTA & PETERSEN
ATTORNEYS AT LAW
P.O. BOX 718
ST HELENS OREGON
503.325.2200

1 STATE OF OREGON)
 2 County of Columbia) ss.

3 I hereby certify that I have prepared the foregoing copy
 4 Judgment, and have carefully compared the same with the original
 5 thereof; and that it is a correct copy therefrom and of the whole
 6 thereof.

7 Dated this 29 day of March, 1995.

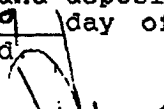
8 
 9 Robert P. Van Natta; OSB #70155
 10 Of Attorneys for Defendants
 11 Ervin Ashley, Russell Cowles,
 12 Helen Laube, Luzia Muller,
 13 Jamie Williams, Wynette Williams,
 14 Roger Strand, Allan Strand and
 15 Ernest Winterfeld

16 I hereby certify that I served the foregoing Judgment on
 17 David F. Bartz, Jr., Attorney for Plaintiff and Joseph D. McDon-
 18 ald, Attorney for Defendants, on the 29 day of March, 1995,
 19 by mailing to them a true and correct copy thereof, certified by
 20 me as such. I further certify that said copy was placed in a
 21 sealed envelope address to said attorneys as follows:

22 David F. Bartz, Jr.
 23 SCHWABE, WILLIAMSON & WYATT
 24 Suites 1600-1950 Pacwest Center
 25 1211 S.W. Fifth Avenue
 26 Portland, Oregon 97204-3795

27 Joseph D. McDonald
 28 PALMER, FELTZ, SMITH & McDONALD
 29 Pacwest Center, Suite 593
 30 1211 S.W. Fifth Avenue
 31 Portland, Oregon 97204-3705

32 their last known address, and deposited in the Post Office at St.
 33 Helens, Oregon, on the 29 day of March, 1995, and that the
 34 postage thereon was prepaid.

35 
 36 Robert P. Van Natta; OSB #70155

37 VAN NATTA & PETERSEN
 Attorneys at Law
 P. O. Box 748
 St. Helens, Oregon 97051
 Telephone: (503)-397-4091

38 3 JUDGMENT
 39 D:\RI\REA\DUTCH.JMT

VAN NATTA & PETERSEN
 ATTORNEYS AT LAW
 P.O. BOX 748
 ST. HELENS OREGON

**BEFORE THE
COLUMBIA COUNTY PLANNING COMMISSION
ST. HELENS, OREGON**

In the Matter of the Application of the)
City of Scappoose for a Comprehensive)
Plan Text Amendment to add language)
to allow a City water line extension in)
resource designations if required by)
Court Order and to Adopt the Service)
Area Map for Dutch Canyon Water Line)

**RECOMMENDATION TO THE
BOARD OF COMMISSIONERS
FOR TA 13-01**

This matter came before the Columbia County Planning Commission on the application of the City of Scappoose to adopt the Dutch Canyon Water Line Service Area Map and obtain land use approval for extending a City water service outside of the City's Urban Growth Area. For county land use approval the text of the Comprehensive Plan needs to be amended in Part XIV Public Facilities & Services, in Part V Agriculture and Part VI Rural Residential. Due to court judgements, the City of Scappoose has extended municipal water service to nine properties on Dutch Canyon Road, some 3.2 miles beyond their normal service area. The City, the State DLCDC and County Planning Division have agreed that other properties abutting Dutch Canyon Road should be eligible to hook up to City water service if the water extension will not increase densities beyond existing zoning. This amendment would make that possible.

Notice of the Hearing was published twice in the Daily News, Spotlight, and Chronicle on August 21, 2013 and August 28, 2013, at least 10 calendar days prior to the September 9, 2013 public hearing date. Notice of this application was mailed to the owners of the affected subject properties and applicable agencies on July 31, 2013. The 35-day notice was mailed to the Department of Land Conservation and Development (DLCDC) on July 30, 2013.

This matter was scheduled for Planning Commission hearing on September 9. The Planning Commission heard testimony from the applicant and interested parties and those who were opposed to the application. After hearing all oral and written testimony the Planning Commission closed the record. The Planning Commission deliberated on the matter on September 9, 2013. It is recommended that Exhibit B be added to the record showing the exception of the service area for the Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgements in 1984 and 1995.

After discussion and due consideration the Columbia County Planning Commission **recommends** that the Board of County Commissioners **APPROVE** this Comprehensive Plan Text Amendment and adopt the Dutch Canyon Water Line Service Area map as presented in the Application and the Planning Department Staff Report.

COLUMBIA COUNTY PLANNING COMMISSION



TERRY LUTTRELL, CHAIRMAN PRO-TEM

10-3-13
DATE

COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES
COURTHOUSE
230 STRAND
ST. HELENS, OREGON 97051
(503) 397-1501

TA
File No. 13-01

ZONING/SUBDIVISION ORDINANCE
TEXT AMENDMENT APPLICATION

TYPE OF TEXT AMENDMENT: Zoning Ordinance Subdivision Ordinance

Other: Comprehensive Plan amendment

APPLICANT:

Name: City of Scappoose

Mailing address: 33568 E. Columbia Ave.

City: Scappoose State: OR Zip Code: 97056

Phone No.: Office (503) 543-7146 Home 5

APPLICANT'S REPRESENTATIVE(If Any):

Name: Jon Hanken, City Manager

Mailing address: see above

City: _____ State: _____ Zip Code: _____

Phone No.: Office _____ Home _____

I. PROPOSED TEXT AMENDMENT:

Please describe the proposed text amendment below.

Include the proposed text amendment(s) in an attachment labeled "Exhibit 1, Proposed Text Amendment". Please copy the text of the portion of the Ordinance you would like to amend from the County's website, www.co.columbia.or.us/lids/, and clearly indicate the proposed amendments by strikeouts(for deletion) and **bold type**(for addition).

- Adoption of service area for Ditch Canyon Water Line

- See attached documents

II. DECISION CRITERIA FOR TEXT AMENDMENTS

TA 13-01

- A. Please present, in as much detail as necessary, evidence to show that the proposed text is consistent with applicable Oregon Revised Statutes and Administrative Rules. Include your written testimony showing the proposal complies with this criterion in an attachment labeled " Exhibit 1, Compliance with the applicable Oregon Revised Statutes and Administrative Rules."
- B. Please present, in as much detail as necessary, evidence to show that the proposed text amendment is consistent with the intent and policies within applicable sections of the Comprehensive Plan text and maps. Include your written testimony showing the proposal complies with this criterion in an attachment labeled " Exhibit 2, Compliance with the Comprehensive Plan."
- C. Please present, in as much detail as necessary, evidence to show that the proposed text amendment is consistent with the intent and purpose statement of the affected Chapter or sub-chapter of the Ordinance to be amended. Include your written testimony showing the proposal complies with this criterion in an attachment labeled " Exhibit 3, Compliance with the Ordinance Statement of Purpose."

III. CERTIFICATION:

I hereby certify that all of the above statements, and all other documents submitted, are accurate and true to the best of my knowledge and belief.

Applicant Signature: [Signature] Date: 6/19/13

Applicant Signature: City of Scappoose Date: _____

+++++

Planning Department Use Only

Date Rec'd.: 6-19-13 Hearing Date: _____

Fee Paid: 1/2 1744.50 Receipt No. 10631 48783

Staff Member: [Signature]

Other Related Applications: _____ Zoning Map Amendment _____ Plan Text Amendment

_____ Plan Text Amendment

+++++

Attachment 1:

Background information on the City of Scappoose Dutch Canyon Water Line

The City of Scappoose is obligated to provide domestic water service to nine properties on Dutch Canyon Road due to court judgments issued in 1984 and 1995. These nine properties are outside the Scappoose City Limits and outside the Scappoose Urban Growth Boundary (UGB). The City provided untreated water to these residents for many years but constructed a booster pump station and 3.2 miles of water distribution piping in 2009 and 2010 to deliver potable water to the nine properties with rights to City water.

The new water main passes in front of several properties along Dutch Canyon Road. As a result, the City is willing to serve other customers in addition to the nine with water rights. Based on the direction of Oregon Department of Land Conservation and Development (DLCD) staff, the City has adopted policies in its Municipal Code affirming that the water would be provided only at the densities allowed by Columbia County zoning as of November 3, 2003 for properties with direct frontage on Dutch Canyon Road (Scappoose Municipal Code section 13.04.020(B)).

Zoning in the Service Area includes FA-80 (Forest Agriculture with a minimum lot size of 80 acres), PA-80 (Primary Agriculture with a minimum lot size of 80 acres), and RR-5 (Rural Residential with a minimum lot size of 5 acres). Based on the zoning, the nine properties with water rights could be divided into lots allowing for approximately 26 residences, and the remaining properties without water rights could be divided into lots allowing for approximately 38 residences. These figures include the existing residences.

DLCD staff has indicated that Columbia County needs to formally adopt a service area map in its Comprehensive Plan to clearly identify the affected parcels. This action would be consistent with Oregon administrative rules regarding water service to rural lands (OAR 660-011-0065).

Attachment 2 – Proposed amendments to the Comprehensive Plan

(Proposed language additions are double underlined)

PART V. AGRICULTURE

POLICIES: It shall be a policy of the County to:

9. Avoid extension of urban facilities and services into agricultural areas whenever possible. No water or sewer facility shall be designed to provide domestic service to agricultural areas with the exception of the service area for the Dutch Canyon Water Line operated by the City of Scappoose, constructed in response to court judgments in 1984 and 1995.

PART XIV. PUBLIC FACILITIES & SERVICES

POLICIES: It shall be County policy to:

2. Require that the level of facilities and provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

- A. Public or community water systems.
- B. Public or community sewage systems.
- C. Collector and/or arterial street systems.
- D. Fire protection by a rural fire protection district, or an equivalent level of service.

Development of public or community water and sewer facilities is not appropriate within forestry or agricultural areas unless needed to alleviate a demonstrated health hazard or where required by court judgments, and where such facilities are the minimum level to accomplish the task in accordance with Oregon administrative rules regarding water service to rural lands (OAR 660-011-0065). Urban levels of streets and fire protection are also inappropriate within forestry and agricultural resource areas.

22. Allow provision of potable water service outside the Scappoose Urban Growth Boundary within the Dutch Canyon Water Line Service Area illustrated on Map # _____ . The properties directly abutting Dutch Canyon Road illustrated on the Map shall be eligible for municipal water service, while properties with an easement but no frontage on Dutch Canyon Road shall not qualify for water service. The presence of the Dutch Canyon Water Line shall not be grounds for zone changes or other density increases beyond the density allowed by the zoning in effect as of November 3, 2003.

Attachment 3 – Draft findings in support of the Comprehensive Plan amendment

Statewide Planning Goals & Guidelines

GOAL 11: PUBLIC FACILITIES AND SERVICES

[...]

Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or unincorporated community boundaries at a density higher than authorized without service from such a system.

[...]

GUIDELINES

A. PLANNING

[...]

2. Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.

Response:

The City of Scappoose is obligated by 1984 and 1995 court judgments to provide potable water to nine properties along Dutch Canyon Road outside the Scappoose Urban Growth Boundary (UGB). The City is willing to serve other customers along Dutch Canyon Road in addition to the nine with water rights. To clearly define eligibility for water, the County is adopting the Dutch Canyon Water Line Service Area illustrated on Map _____. The properties within this service area have rural zoning, namely FA-80 (Forest Agriculture with a minimum lot size of 80 acres), PA-80 (Primary Agriculture with a minimum lot size of 80 acres), and RR-5 (Rural Residential with a minimum lot size of 5 acres).

The County has proposed a specific policy within the Public Facilities & Services section of the Comprehensive Plan to ensure that the City's 2009-2010 extension of water service into the affected area will not lead to higher densities than those allowed prior to the water main construction extension. Similarly, Scappoose Municipal Code Section 13.04.020(B) states that the City will only provide water at densities allowed by the County zoning in effect on November 3, 2003 (see Appendix).

Oregon Administrative Rules

DIVISION 11 PUBLIC FACILITIES PLANNING

OAR 660-011-0065 [Water Service to Rural Lands]

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment" means the creation of a new water system and all associated physical components, including systems provided by public or private entities;

(b) "Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a

use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.

(c) "Water system" shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.

(2) Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;

(b) Allow a higher density for residential development served by a water system than would be authorized without such service; or

(c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.

(3) Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.

Response:

The proposed amendments to the Comprehensive Plan would allow for the provision of municipal water to the designated Dutch Canyon Water Line Service Area outside the City of Scappoose Urban Growth Boundary (UGB), as illustrated on Map _____. The water line was constructed in 2009-2010 to satisfy 1984 and 1995 court judgments mandating water service to nine properties (see Map _____). The City of Scappoose is willing to provide water to the intervening properties which abut Dutch Canyon Road. The Appendix contains a list of the properties with and without rights to City water from the court judgments.

The proposed Public Facilities & Services new Policy #22 states within the Comprehensive Plan that the presence of the Dutch Canyon Water Line shall not be the grounds density increases beyond the density allowed by the zoning which predated the extension of the Dutch Canyon Water Line. The proposed policy ensures that the water line is not used as the basis to increase residential density, and the proposed service area map limits the potential water customers to a specific set of authorized properties.

Columbia County Comprehensive Plan

PART IV. FOREST LANDS

FOREST LANDS: GOALS AND POLICIES

POLICIES: It shall be the policy of Columbia County to:

10. Any changes in the minimum lot sizes for forest lands will be reviewed against the requirements of statewide land use planning Goal 4 and implementing standards and rules.

Response:

A portion of the property within the Dutch Canyon Water Line Service Area (approximately 34 acres) is zoned FA-80, Forest / Agriculture Use. Statewide Planning Goal 11 and OAR 660-011-

0065 limit the ability of jurisdictions to increase residential density due to the provision of water service. The proposed Comprehensive Plan amendment acknowledges that the Dutch Canyon Water Line cannot be used as the reason to increase residential density. As a result, any proposed changes to lot size for parcels zoned FA-80 in the Dutch Canyon Water Line Service Area would need to comply with Forest Lands Policy #10, Statewide Planning Goal 4, and applicable standards and rules.

PART V. AGRICULTURE

AGRICULTURE: GOALS AND POLICIES

POLICIES: It shall be a policy of the County to:

2. If the County proposes to convert agricultural lands (as defined by Statewide Land Use Goal 3) to urbanizable land, the County shall follow the procedures and requirements for exceptions to the Agricultural Lands goal, pursuant to Goal 2. Those uses which are permitted by ORS 215.283(1) or (2) shall not require an exception to the Agricultural Lands goal.

3. Designate Agricultural lands as Agricultural Resource in the Comprehensive Plan and implement this plan designation through the use of one (1) exclusive farm use zone:

Primary Agriculture - PA-80

Minimum lot size of 80 acres in that zone is appropriate for the continuation of the existing commercial agricultural enterprise in the area.

[...]

8. Establish minimum lot sizes to assure that productive agricultural land will not be divided into parcels that are too small for commercial farm use.

9. Avoid extension of urban facilities and services into agricultural areas whenever possible. No water or sewer facility shall be designed to provide domestic service to agricultural areas.

[...]

12. Require that conversion of rural land to urbanizable land be based on the criteria set out in Goals 3 and 14.

13. Allow the division of lands placed in the Primary Agriculture District in accordance with the following:

A. The lot area is consistent with the agriculture land use policy for the State of Oregon as expressed in ORS 215.243 and consistent with ORS 215.263 and ORS 215.780;

B. The lot area is of a similar size to existing commercial agricultural operations in the surrounding area;

C. In those instances where it is proposed to locate a farm-related dwelling, the proposed lot area is of sufficient size to support commercial production of food or fiber using accepted farm practices as defined in ORS 215.203 (2) (c);

D. Approval of the partitioning will not seriously interfere with the preservation of wildlife or fish habitat areas as identified in the Columbia County Comprehensive Plan, or interference will be mitigated; and,

E. Any additional criteria as set forth in the County Primary Agriculture District.

[...]

18. In order to provide additional protection to the existing commercial agricultural economy of the County, the division of land in the primary agriculture zone into lots smaller than 80 acres will be allowed only if consistent with ORS 215.263, ORS 215.284 and ORS 215.780.

Response:

A portion of the property within the Dutch Canyon Water Line Service Area (approximately 265 acres) is zoned PA-80, Primary Agriculture Use. Statewide Planning Goal 11 and OAR 660-011-0065 limit the ability of jurisdictions to increase residential density due to the provision of water service. The proposed Comprehensive Plan amendment acknowledges that the Dutch Canyon Water Line cannot be used as the reason to increase residential density. As a result, any proposed changes to lot size for parcels zoned PA-80 in the Dutch Canyon Water Line Service Area would need to comply with the Agriculture Policies, Statewide Planning Goal 3, and applicable standards and rules. The proposed Comprehensive Plan amendment would alter the language of Agriculture Policy #9 to provide an exception for the Dutch Canyon Water Line Service Area since the water line construction was mandated by court judgment. The Dutch Canyon Water Line Service Area includes the nine properties with rights to City water, together with the intervening properties as illustrated on Map ____.

PART VII. RURAL RESIDENTIAL

RURAL RESIDENTIAL: GOALS AND POLICIES

POLICIES: It shall be a policy of the County to:

- 3. Establish a Rural Residential Zone with a 5-acre minimum lot or parcel size where such lands:
 - A. Must rely on a private water system to serve the property.*
 - B. Must rely on a private sewage disposal system to serve the property.*
 - C. Have access onto a public or private right-of-way meeting applicable County Road Standards.*
 - D. May or may not be within a rural fire protection district.**

Response:

A portion of the property within the Dutch Canyon Water Line Service Area (approximately 250 acres) is zoned RR-5, Rural Residential - 5. This zoning designation acknowledges that private drinking water systems were required for residential development when the zoning was applied. Now that the Dutch Canyon Water Line has been constructed under court order to serve nine properties, existing and future residents along Dutch Canyon Road may choose to become water customers of the City of Scappoose. However, based on the proposed Comprehensive Plan amendment, Statewide Planning Goal 11, and OAR 660-011-0065, the presence of the Dutch Canyon Water Line may not be used as justification to increase the density of residential development in this area.

PART IX. URBANIZATION

URBANIZATION: GOALS AND POLICIES

POLICIES: It shall be a policy of the County to:

[...]

- 20. Limit development outside of urban growth boundaries to densities which do not require an urban level of public facilities or services and are consistent with Goal 14 and OAR 660, Division 4.*

Response:

The Dutch Canyon Water Line Service Area is located outside the Scappoose UGB. The presence of the new water line may accelerate a change in the number of housing units within the service area, but does not in itself lead to a change in development density. The maximum density is regulated by the Comprehensive Plan and zoning standards, which have minimum parcel sizes ranging from 5 acres to 80 acres within the Dutch Canyon Water Line Service Area. The proposed Comprehensive Plan amendment states that the presence of the water line may not be used as justification for the County to increase residential dwelling density.

The presence of the water line does not lead to additional development since groundwater is available to property owners already. A review of the Oregon Water Resources Department's well log database identified 42 drinking water wells within and near the Dutch Canyon Water Line service area drilled from 1966 to 2007. The output for these wells is as high as 50 gallons per minute (gpm), with a median value of 12 gpm. This flow rate is adequate for single-family residential development. The Oregon State University Extension Service indicates that

A country well should produce at least 5 to 6 gallons per minute continuous flow for a family with a three-bedroom, two-bathroom home. This is a minimum amount. A flow of 10 gallons per minute is highly desirable. A well producing 5 gallons per minute may require additional storage capacity and may restrict simultaneous activities.

(see *Rural Domestic Water Supply*, Publication EC 1374, Oregon State University Extension Service, reprinted January 1993).

The Oregon Water Resources Department recommends a flow rate of 50-75 gallons per day per person for domestic use plus any additional volumes for lawn & garden purposes. Based on this information, development within the Dutch Canyon Water Line Service Area would have occurred even without the water line construction since water is available.

Appropriate measures, consisting of a service area map and Plan policies, have been implemented to ensure that the Dutch Canyon Water Line does not lead to increased density in the designated rural areas. As illustrated on the aerial photograph (see Appendix), there are existing residences within the Dutch Canyon Water Line Service Area. A review of the zoning, included in the Appendix, indicates that the maximum number of allowable residences would be approximately 64, which includes the existing houses. This density is appropriate for rural areas and would remain unaffected by the construction of the Dutch Canyon Water Line due to the protections of Statewide Planning Goal 11, OAR 660-011-0065, and the proposed Public Facilities & Services new Policy #22.

PART XIV. PUBLIC FACILITIES AND SERVICES

PUBLIC FACILITIES AND SERVICES: GOALS AND POLICIES

POLICIES: It shall be County policy to:

[...]

2. Require that the level of facilities and services provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

A. Public or community water systems.

B. Public or community sewage systems.

C. Collector and/or arterial street systems.

D. Fire protection by a rural fire protection district, or an equivalent level of service.

Development of public or community water and sewer facilities is not appropriate within forestry or agricultural areas unless needed to alleviate a demonstrated health hazard, and where such facilities are the minimum level to accomplish the task. Urban levels of streets and fire protection are also inappropriate within forestry and agricultural resource areas.

[...]

5. Coordinate public facilities and services planning with affected service districts and/or agencies.

Response:

One of the components of the proposed Comprehensive Plan amendment is a modification to the text of Public Facilities and Services Policy #2 since construction of the Dutch Canyon Water Line was required by court judgments mandating provision of water service by the City of Scappoose to specific rural properties outside the UGB. The City is willing to provide water service to other abutting properties within the defined Dutch Canyon Water Line Service Area, and has previously codified its policy to only provide water at densities allowed by the County zoning in effect on November 3, 2003 (see Scappoose Municipal Code Section 13.04.020(B) in the Appendix). The City's actions were coordinated with the Oregon Department of Land Conservation and Development and Columbia County planning staff.

Appendix

Scappoose Municipal Code Section 13.04.020(B)

13.04.020 Water mains.

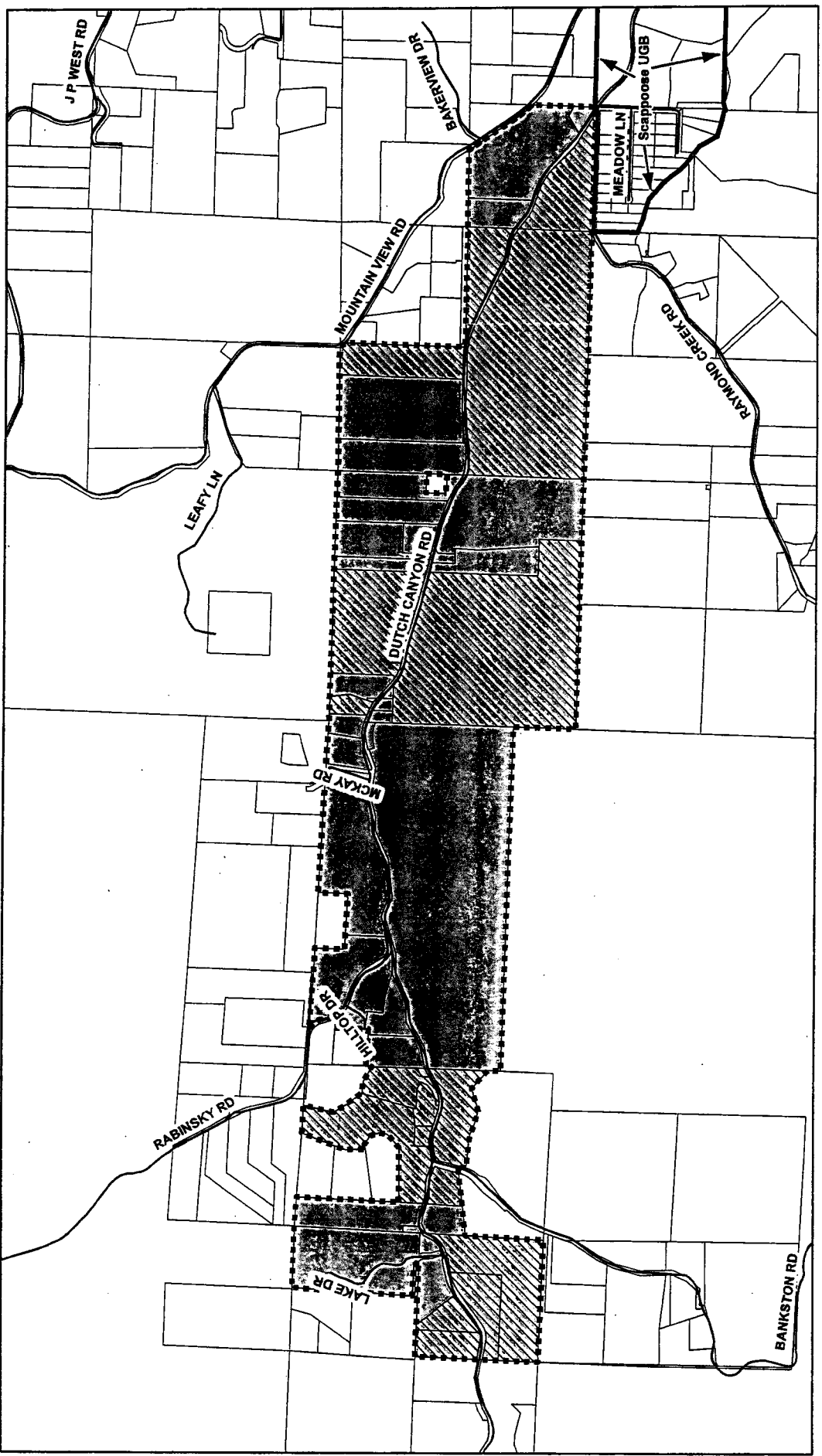
B. Extension of water mains within the corporate limits of the city may be made by the water department, but such extensions will be made only when, in the judgment of the city council, it is economically feasible. Outside users may be connected to the city water system upon a two-thirds affirmative vote of approval by the city council, it being the policy of the city that no outside users will be connected to city water.

1. Except for existing outside users the City will not provide new water service to unincorporated areas. However, the City of Scappoose will provide water service to all existing properties, including any further properties created by partition or subdivision processes for the properties associated with Parish, et al v. City of Scappoose, and Alexander et al v. City of Scappoose. Other properties directly abutting the Dutch Canyon Water Line Extension may also be provided water service, at the density permitted by Columbia County zoning as of November 3, 2003 for properties without municipal water service. Future zone changes within Columbia County allowing for greater density of properties via partition or subdivision processes do not merit the provision of water service from the City of Scappoose, nor do properties not abutting the Dutch Canyon Water Line Extension but equipped with a private or public easement across an abutting property qualify for water service.

2. Allow the construction of certain public facilities, including water lines, sanitary sewer lines and storm sewer lines outside the Urban Growth Boundary when it is beneficial to the City from an engineering, or operational basis, and in regard to water line extension, in specific scenarios where such extension might provide the potential for recovery of required improvement costs. However, the City will not allow any connections to these facilities except for health and safety reasons, and only when alternative solutions have been proven unviable. This provision does not restrict the ability of the City of Scappoose to contract with a water district or water association to provide water. However, the City of Scappoose will provide water service to all existing properties, including any further properties created by partition or subdivision processes for the properties associated with Parish, et al v. City of Scappoose, and Alexander et al v. City of Scappoose. Other properties directly abutting the Dutch Canyon Water Line Extension may also be provided water service, per the density provisions of underlying zones present within Columbia County as of November 3, 2003. Future zone changes within Columbia County allowing for greater density of properties via partition or subdivision processes do not merit the provision of water service from the City of Scappoose, nor do properties not abutting the Dutch Canyon Water Line Extension but equipped with a private or public easement across an abutting property qualify for water service.

3. Allow the extension of water services, but not sewer services, beyond the Urban Growth Boundary to any water district or water association that wishes to contract with the City for water, and to properties directly abutting the Dutch Canyon Water Line Extension, per the restrictions in Section 2, above.

Dutch Canyon Water Line Service Area
Columbia County, Oregon



Legend

- Streets
- ▤ Service Area boundary
- ▨ Scappoose Urban Growth Boundary

- ▨ Scappoose Urban Growth Boundary

CITY OF SCAPPOOSE

33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056
(503) 543-7146
FAX: (503) 543-7182

RECEIVED

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LAND DEVELOPMENT SERVICES

August 31, 2011

Glen Higgins, Planning Division Manager
Columbia County Department of Land Development Services
230 Strand St.
St. Helens, OR 97051

Subject: Dutch Canyon Water Line service area

Dear Glen:

As requested, City staff has produced draft maps and text for the County to incorporate into its Comprehensive Plan to identify the service area for the City's Dutch Canyon Water Line. Enclosed you will find a package of information as follows:

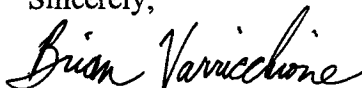
- (1) Background information that summarizes the water line history and rationale for the updates to the Comprehensive Plan. This information may be useful in your staff report.
- (2) Draft text and map for incorporation into the Comprehensive Plan.
- (3) Draft findings in support of the Comprehensive Plan amendment.

This material has been prepared following the direction of former Department of Land Conservation (DLCD) staff at project meetings and discussions with the City and County. We would recommend that the County discuss the draft Comprehensive Plan amendment with current DLCDC staff prior to adoption to ensure that the amendment is satisfactory. I have provided a CD with electronic versions of the documents so that you may edit as needed (e.g., I have made the assumption that the properties previously zoned FA-19 and PA-38 have now been rezoned to FA-80 and PA-80 as part of the County's recent updates; if that is incorrect then those text references would need to be changed).

Please advise the City on the County's timing for adoption of the amendments. We would also appreciate receiving copies of materials such as public notice, adopted ordinances, and so on.

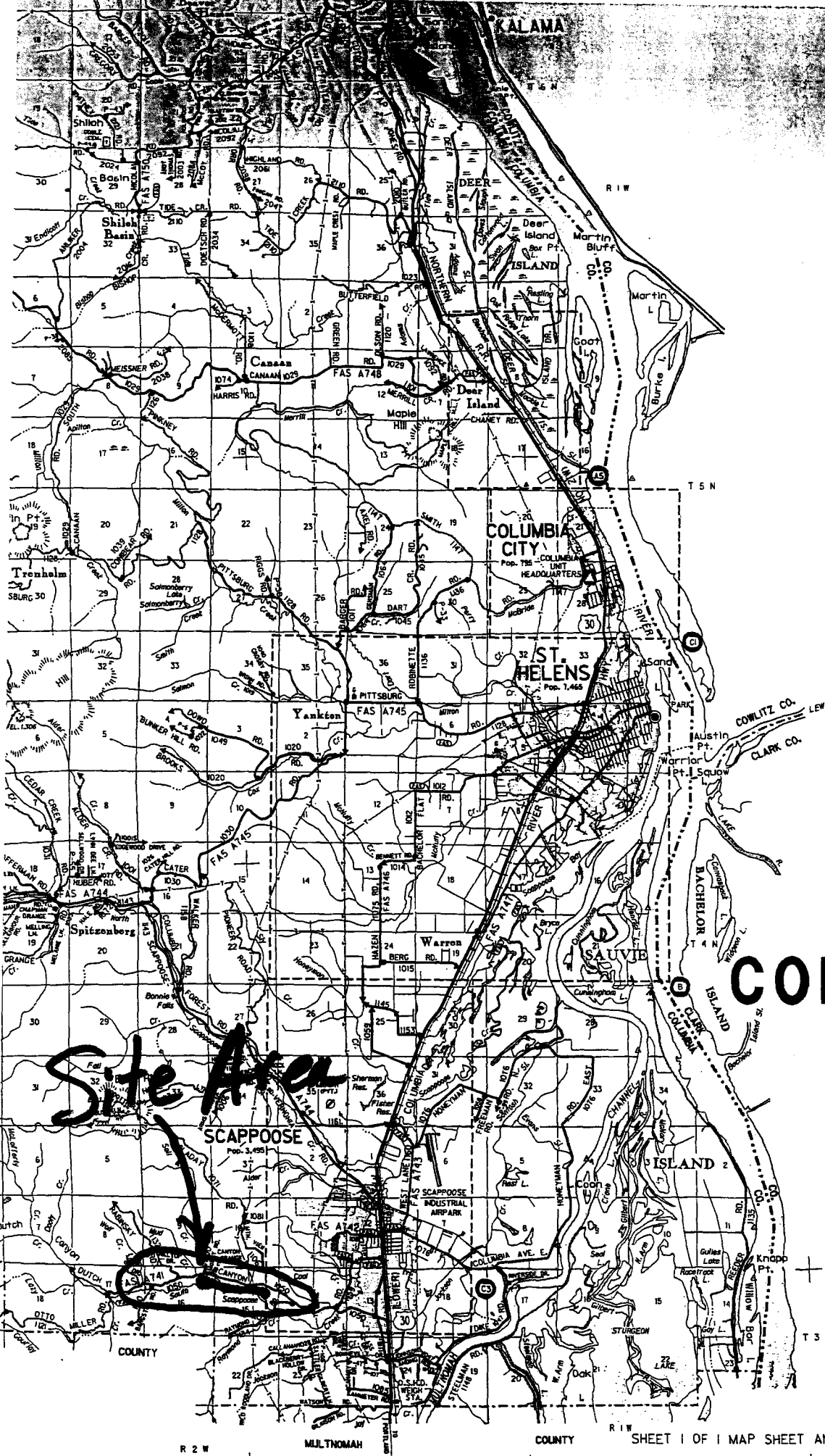
If you have any questions, feel free to contact me by phone at (503) 543-7184 or by my email address at brianvarricchione@ci.scappoose.or.us.

Sincerely,

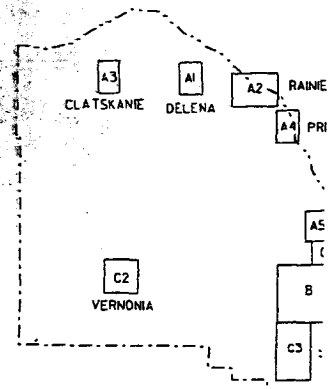


Brian Varricchione
City Planner

cc. Janet Hillock, Business Oregon

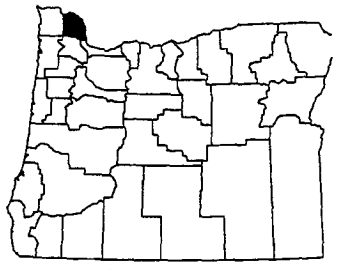


Site Area



Population of Columbia County 1986 E

KEY TO COUNTIES

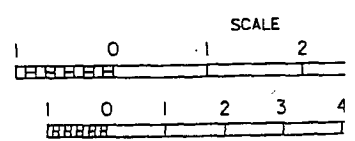


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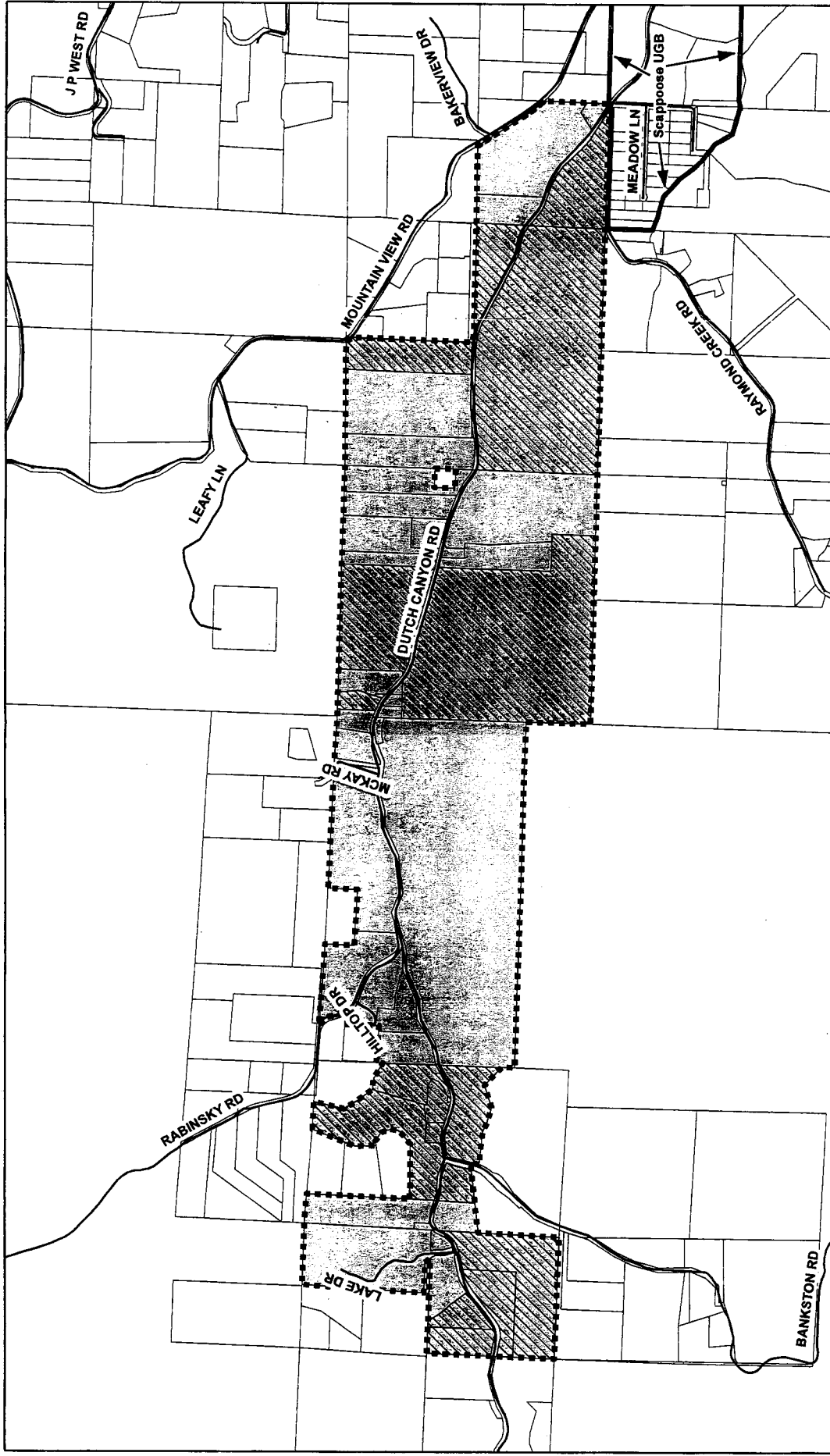
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U.S. DEPARTMENT OF TRANS
FEDERAL HIGHWAY ADMINIS

1987



State Plane Coordinate on Lamb
Oregon North Zone in Thousa

Dutch Canyon Water Line Service Area
Columbia County, Oregon



- Legend**
- Service Area boundary
 - Streets
 - ▭ Parcels
 - ▭ Service Area parcels
 - ▨ Service Area parcels with rights to City water
 - ▭ Scappoose Urban Growth Boundary