

BEFORE THE MORROW COUNTY COURT
OF MORROW COUNTY

AN ORDINANCE AMENDING THE MORROW COUNTY)
COMPREHENSIVE PLAN AND ZONING ORDINANCE)
ALLOWING FARM USE AS AN OUTRIGHT USE)
IN THE SPACE AGE INDUSTRIAL AND GENERAL)
INDUSTRIAL-LIMITED USE OVERLAY ZONE.....) ORDINANCE
NO. MC-C-6-96

WHEREAS, ORS 203.035 authorizes Morrow County to exercise authority within the county over matters of County concern; and

WHEREAS, Morrow County adopted a Comprehensive Land Use Plan and Zoning Ordinance on January 15, 1986; and

WHEREAS, Morrow County zoned certain lands Space Age Industrial; and

WHEREAS, Morrow County adopted Ordinance No. MC-C-4-86 designating and zoning certain lands General Industrial-Limited Use Overlay; and

WHEREAS, proposed changes will allow farm use as an outright use in the Space Age Industrial and General Industrial-Limited Use Overlay Zone; and

WHEREAS, proposed changes will be consistent with Oregon Revised Statutes definition of farm use; and

WHEREAS, the text change will affect the uses permitted outright on the following land: Sections 1-5, the north 1/2 of Section 8, Sections 9-16, 21-24 all in Township 3N, Range 24E, the southeast 1/4 of Section 15, the southwest 1/4 of Section 18, the west 1/2 of Section 19, the east 1/2 of Section 22, the south 1/2 of Sections 25 and 26, and Sections 27-29 and 32-36 in Township 4N, Range 24 E.W.M.

WHEREAS, the applicants agree to comply in all respects with the requirements of the Morrow County Zoning Ordinance and with all other applicable state and county laws, regulations, and ordinances; and

WHEREAS, the applicants agree to comply with certain conditions of approval; and

WHEREAS, the Morrow County Planning Commission reviewed the request at two duly advertised public hearings on April 29, 1996 and May 20, 1996; and

WHEREAS, the Morrow County Planning Commission recommended approval of the Comprehensive Plan and Zoning Ordinance amendments subject to conditions;

NOW THEREFORE THE COUNTY COURT OF MORROW COUNTY ORDAINS AS FOLLOWS:

SECTION 1. TITLE OF ORDINANCE.

This ordinance shall be known, and may be cited, as "The Space Age Industrial and General Industrial-Limited Use Overlay

Zone Text Amendment to allow Farming as an outright use."

SECTION 2. COMPREHENSIVE PLAN AND ZONING ORDINANCE AMENDMENT.

1. The Morrow County Comprehensive Plan (Pages 283-293) is amended to allow farm use as a use permitted outright in the Space Age Industrial and General Industrial-Limited Use Overlay Zones.

2. Section 3.072 of the Morrow County Zoning Ordinance is amended in the following manner:

"Section 3.072 In a SAI Zone, the following regulations shall apply:

1. Uses Permitted Outright

- A. Buildings and structures (above and below ground) used for space age technology research and development.
- B. Aerospace Aircraft and space vehicle testing and related research products.
- C. Propulsion testing which includes commercial engines, transatmospheric space plane, remote piloted vehicle, missiles or other space age related vehicles.
- D. Electronic, laser and microwave research activities.
- E. Contained shock testing.
- F. Fire Fighting equipment and facilities.
- G. Support facilities for on-site staff.
- H. Quarry operation on existing sites.
- I. Farm use."

3. Morrow County Ordinance No. MC-C-4-86 is amended in the following manner:

"2. That the zone change from EFU (Exclusive Farm Use) to General Industrial is subject to the Specific Limited Use Overlay Zone. The Specific Limited Use Overlay Zone is applied to limit the permitted uses to 'antenna test range, or for electronics, aerospace, aircraft or space vehicle research and/or development.' This limitations necessary because other permitted uses in the General Industrial Zone may not be compatible with

nearby land uses. Notwithstanding the foregoing (or any other provision of law), farm use shall also be permitted within the lands affected by this ordinance."

4. In addition to the foregoing, Section 3.072 of the Morrow County Zoning Ordinance is readopted (as amended) in its entirety.

5. The foregoing amendments are based upon the findings of Fact and Conclusions of Law attached hereto as Exhibit A.

SECTION 3. EMERGENCY. EFFECTIVE DATE.

This ordinance being preliminary to a major agricultural development, which greatly facilitates the economic health and welfare of the people of Morrow County, and which must occur prior to Administrative deadlines imposed by Oregon Water Resources and others; therefore, an emergency is declared to exist and this ordinance shall be effective immediately upon its passage by unanimous vote of the Morrow County Court, it being in the best interest and welfare of the people of Morrow County.

DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 12 DAY OF June, 1996.

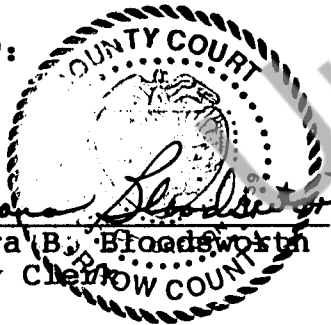
MORROW COUNTY COURT

Louis A. Carlson
Louis A. Carlson, Judge

R.J. French
R.J. French, Commissioner

Donald C.J. McElligott
Donald C.J. McElligott
Commissioner

ATTEST:



Barbara B. Broadworth
Barbara B. Broadworth
County Clerk

APPROVED AS TO FORM:

Valerie B. Roberts
Valerie B. Roberts
County Counsel

MORROW COUNTY PLANNING COMMISSION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND INFORMATION

DATE: May 20, 1996

PROPERTY: Sections 10-15, T3N, R24E (MG/LU; approximately 3,840 acres)
Section 1-5, N½ 8, 9, 16, 21-24, T3N, R24E; SE¼ 15, SW¼ 18,
W½ 19, E½ 22, S½ 25, S½ 26, 27-29, and 32-36 T4N, R24E (SAI,
approximately 14,000 acres).

**SUMMARY OF
REQUEST:**

Proposed Comprehensive Plan and Zoning Text Amendment to add Farming as an Allowed Use in the Space Age Industrial (SAI) and General Industrial/Limited Use Zones.

APPLICANTS:

Boeing Agri-Industrial Corporation (BAIC), Inland Land Company (ILC) and the State of Oregon Department of Administrative Services (DAS)

**PROPERTY
OWNER:**

State of Oregon, Department of Administrative Services

HISTORY:

The property in question is a portion of a tract containing approximately 93,800 acres known as the Boeing Space Age Industrial Park. In 1963, the State of Oregon leased the Space Age Industrial Park to Boeing on a long-term basis until December 31, 2040.

At the time the Boeing Company entered into the lease with the State, the Space Age Industrial Park was essentially unimproved grazing land without irrigation and of minimal value. The 1964-65 property taxes for the 93,800-acre tract were \$8,893.

On July 23, 1970, several members of the Oregon House of Representatives directed a letter to Boeing requesting that the tract be developed for agricultural purposes. The letter stated in part as follows:

STATEMENT OF FINDINGS -- MAY 20, 1996

"Through long-term leases and the development of irrigation, thousands of acres of these lands could be put to agricultural production without interfering in any way with the Boeing Company's long-range plans for the area.... For the benefit of local residents -- and for the economic development of Morrow County and the state of Oregon -- we request immediate, positive action to free presently dormant lands for irrigation. As legislators serving the area in question, we respectfully request Boeing to cooperate with local citizens in this forthright and constructive application of multiple-use principles of our valuable land."

...

"Knowing that your long range plans for this area do not include the use of the full tract for a long time to come, we are writing to urge that you make parts of this area ... available for relatively long term leases to irrigators who could then develop and improve the land to its full potential."

On September 7, 1971, the Director of the Department of Veteran's Affairs, by letter to Boeing, stated that:

"...[T]his office, as you know, has encouraged your company to develop the property on the multiple use concept. We interpret the provisions of Article 2, paragraph 3b [of the lease], to mean that such multiple use concept encompassing your proposed program to develop as much as 60,000 acres of the land through irrigation was and is authorized and permitted by the terms of the lease."

As a consequence of the effort in the early 1970s to promote agricultural development of portions of the Space Age Industrial Park, approximately 28,000 acres of land have been developed for irrigated agriculture. Largely as a result of this development, Boeing as of 1980 was paying \$341,715 in property taxes.

On January 15, 1986, the Morrow County Court adopted a Comprehensive Plan and land use regulations. The Comprehensive Plan and land use regulations were acknowledged by LCDC on January 30, 1986. The Property that is the subject of this application was planned and zoned for exclusive farm use (EFU). The Goal 5 element of the County's acknowledged Comprehensive Plan is premised upon farm use of this portion of the Space Age Industrial Park.

On July 2, 1986, the Morrow County Court, at the request of Boeing, amended its Comprehensive Plan and land use regulations by: (1) changing the Comprehensive Plan and

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Zoning map designations for approximately 3,840 acres (Sections 10-15, T 3N, R 24 E) from Exclusive Farm Use (EFU) to General Industrial (M-G); and (2) by simultaneously adopting and applying a Specific Limited Use (LU) Overlay Zone to the same land, limiting the permitted uses to "antenna test range, or for electronics, aerospace, aircraft or space vehicle research and/or development." The limited use overlay was adopted pursuant to OAR 660-04-018(3)(a), which requires that when an exception is taken to a statewide planning goal on the basis of need for the proposed use, the uses allowed be limited to the uses that served as the basis for the exception.

On November 7, 1987, the Morrow County Court, at the request of Boeing, amended its Comprehensive Plan and land use regulations by: (1) adopting new plan and zoning provisions for a "Space Age Industrial" (SAI) zone; and (2) applying this new zone to approximately 14,080 acres of land by taking an exception and amending the plan and zoning designations from EFU to SAI. The basis for this exception was the same as that for the plan and zoning amendment in 1986.

On April 12, 1996, Boeing and the State of Oregon requested that the MG/LU and SAI plan and zoning regulations be amended to allow farm use as a permitted use. Notice of this request was given on April 17, 1996. The Morrow County Planning Commission considered the request at two public hearings on April 29, 1996 and on May 20, 1996.

RECORD

The record in this proceeding includes the following:

- o Minutes of the Morrow County Planning Commission hearings on the Request;
- o Minutes of the Morrow County Court hearing on the Request;
- o The Request of Boeing and the State of Oregon, entitled "Statement of Reasons";
- o Ordinances Nos. MC-C-3-86 and MC-C-4-86;
- o The "Morrow County Exception Statement for Boeing Corporation Space Age Industrial Park"; and
- o The "Draft Findings of Fact and Conclusions of Law" prepared by the applicant and submitted to the County on May 20, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. General Findings of Fact and Conclusions of Law

A. The request to amend the text of the County's Comprehensive Plan and Zoning regulations concerns a specific portion of the 93,800-acre Boeing Space Age Industrial Park. This portion of Boeing lease area, totaling approximately 18,000 acres, is the only land that would be affected by the proposed text amendment.

B. The Property was initially planned and zoned (and acknowledged by LCDC) for exclusive farm use (EFU). The proposed text change to the SAI and GM/LU zones would simply clarify that farm use continues to be an allowed in these zones.

2. Findings of Fact and Conclusions of Law: Morrow County Criteria

A. Morrow County Comprehensive Plan, General Land Use Element

a. Industrial Policy 2: "Interim uses in areas designated for industrial use should be limited to those that will not deter later industrial development."

The proposed relisting of farm use as a allowed use will make interim use of a portion of the Boeing lease area possible. Farm use will not deter later industrial development by Boeing.

b. Limited Use Overlay Zone: "The purpose of the Limited Use Overlay Zone is to limit the list of permitted uses and activities allowed in the underlying zone to only those uses and activities which are justified in the comprehensive plan 'reasons' exception statement under ORS 197.732(1)(c) and OAR 660-04-018(3)...."

The proposed text change will reestablish farm use as an allowed use. This change is completely consistent with the underlying plan and zoning designation for the property prior to the exception, which was for exclusive farm use (EFU). The proposed change will not expand the range of uses allowed beyond those allowed in the EFU zone.

c. Space Age Industrial Zone: "The proposed Space Age Industrial Zone designation is intended to recognize those areas devoted to or most suitable for space age technology research and development. Uses of land inconsistent with those purposes will not be authorized."

The proposed text change will reestablish farm use as an allowed use in addition to the uses already allowed in the SAI zone. Boeing will continue to use its Property for a mix of uses, as allowed under its lease with the State of Oregon.

d. Objectives and Policies; Policy 9: "All plan and zone changes shall be in compliance with all applicable Statewide Planning Goals, County plan policies and procedures."

The findings and conclusions in this report address all applicable Statewide Planning Goals and County Comprehensive Plan policies.

B. Morrow County Comprehensive Plan, Agricultural Element

a. Policy 1: "It shall be the policy of Morrow County, Oregon, to preserve agricultural lands, to protect agriculture as its main economic enterprise, to balance economic and environmental considerations, to limit noncompatible nonagricultural development, and to maintain a high level of livability in the County."

The proposed text change will preserve agricultural use of the SAI and MG/LU lands on an interim basis. The SAI and MG/LU exceptions statement provides that agricultural use is compatible with the uses allowed in these zones.

b. Policy 6: "The needs of the farm community should be considered in evaluating County policies and future development projects in other sectors of the economy."

The proposed text change will support the continued growth of the farm community in Morrow County in a manner that is compatible with the industrial uses allowed in the SAI and MG/LU zones.

C. Morrow County Comprehensive Plan, Natural Resources Element

a. Goal 5 Inventory, Background: Pursuant to Statewide Goal 5, the Comprehensive Plan contains the County's inventory of significant Goal 5 resources. Goal 5 resources are divided into three categories, as follows:

- o 1A Resources** were determined to not be important, and are not included in the inventory;
- o 1B Resources** were determined to have inadequate information to include in the inventory; and
- o 1C Resources** were determined to be significant or important and were included in the inventory.

b. Goal 5 ESEE Analysis/Program, Background: For 1C Resources, the County has evaluated the economic, social, environmental, and energy consequences of potential conflicts between the inventoried 1C Resource and conflicting uses and developed a program to achieve the Goal as follows (see pages 90-91, Comprehensive Plan):

- o 2A Resources were found to have no conflicting uses;
- o Resources with conflicting uses (2B Resources) were further divided into one of three subcategories:
 - o 3A Resources are preserved (no conflicting use allowed);
 - o 3B Resources are not protected, and conflicting uses are allowed with no limitations;
 - o 3C Resources are protected through limits on conflicting uses.

c. Inventoried Goal 5 Resources in the Vicinity of the Property: Pursuant to Goal 5, inventoried Goal 5 Resources (those designated 1C, above) are both listed in the County's Comprehensive Plan text and mapped. The following maps show the locations of both inventoried Goal 5 resources, and resources that were not included in the inventory (insufficient information, 1B): (1) "Significant Resource Overlay Map", dated January 15, 1986; (2) "Wildlife Resources", undated; (3) "Mineral Resources", undated; "Archaeological Area[s], etc." Map, undated; (4) "Water Resources", undated; and (5) "Aggregate Sites", undated.

(i) **Significant Resource Overlay Map:** No significant resources, subject to Section 3.200 and 3.300 of the MCZO, are located on the property. The closest inventoried significant resource is the area inventoried for "Sensitive Nongame Habitat" on the Boardman Bombing Range (see Wildlife Resources Map, and Plan text at page 111 (Washington Ground Squirrel).

(ii) **Wildlife Resources Map:** Again, no Goal 5 resources are inventoried on the Property. The closest inventoried resource is a portion of the Boardman Bombing Range, which is indicated as Sensitive Nongame Habitat.

(iii) **Mineral Resources Map:** No aggregate source (active site) or other mineral resource is shown on the map in the area of the Property except for a potential aggregate site in the southeast corner of the property. At the time this source was

inventoried, the Property was planned and zoned for exclusive farm use. The aggregate site is inventoried as "1B", insufficient information to include in the inventory.

(iv) **Archaeological Areas Map:** No archaeological resources are inventoried on the Property. The Lewis & Clark trail is south of the Property and the proposed Inland Farm area. Portions of the Property are inventoried as a potential wind turbine site on this map. The Resource is designated 1B by the Comprehensive Plan (inadequate information to include in the inventory). As the Resource is not included in the County's Goal 5 inventory, and as the relisting of farm use as an allowed use would not alter the potential conflicting uses, the proposed text amendment is consistent with this portion of the County's Comprehensive Plan.

(v) **Water Resources Map:** This map shows potential dam sites in the county. The Comprehensive Plan states that none of these sites was considered feasible, and as a result, the resources shown on the map are not inventoried.

(vi) **Aggregate Sites Map:** None of the sites shown on the map are within the Property.

d. **Other Goal 5 Issues:** The Comprehensive Plan text states that long-billed curlew nesting area may exist on the Boeing Lease Area (page 144). The Plan further states that: "[n]esting areas on private land also coincide with EFU land and are not site specific. They are accorded a 1B designation (i.e., some information is available but it is inadequate to identify the resource site)." In accordance with General Policy P of the Natural Resources Element (page 134), updated information regarding the location, quality and quantity of curlew habitat is to be addressed through periodic review.

Pursuant to General Policy O of the Natural Resources Element (page 134), the Fish and Wildlife Habitat Protection Plan for Morrow County (1979) prepared by ODFW is a part of the County's Comprehensive Plan. The maps and text for the ODFW Plan do not list or inventory any Goal 5 resource on the Property, and indicate that the land use classifications most compatible with nongame habitat are Agriculture, Forestry and Preservation. ODFW Plan at 25.

e. **Goal 5, Conclusions:** There are no inventoried Goal 5 resources present within the property that is the subject of this Request. In order to be considered under the County's Natural Resources Element, and Statewide Goal 5, wildlife species habitat and other resources must be inventoried in the Comprehensive Plan. New species and/or habitat areas can be added to the Plan only through a legislative amendment to the Comprehensive Plan.

D. Morrow County Comprehensive Plan, Economic Element

a. **Goal 1:** By enabling interim agricultural use of approximately 18,000 acres of land, the proposed text change supports the County's policy to maintain and strengthen the agricultural products [industry] of the County (page 165).

E. Boeing Space Age Industrial Park Exception Statement

The exception statement for the SAI zone and the MG/LU zone appears at pages 283-293 of the Comprehensive Plan. The exceptions statement includes the following pertinent findings with regard to farm use:

- o The site is located on Class IV soils if irrigated.
- o Irrigation has not been utilized in this area, nor is it contemplated.
- o Boeing's planned industrial uses are compatible with adjacent airport and farming operations.

Re-listing farm use as a permitted use within the SAI and MG/LU zones has no effect on the basis for the designation of the area, and simply allows farm use as an interim use pending Boeing's long-term efforts to develop portions of the area for industrial uses. The primary basis for farm use of the Property is that it is now possible to irrigate these lands, whereas irrigation was not contemplated at the time of the exceptions in 1986-87.

F. Article 8, Morrow County Zoning Ordinance (MCZO)

a. **MCZO Section 8.010. Authorization to Initiate Amendments**

The request for an amendment to the text of the MCZO was initiated by the property owner (the State of Oregon, Department of Administrative Services, and Boeing).

b. **MCZO Section 8.020 Public Hearings on Amendments**

Two public hearings by the Planning Commission have been held, as required. The County Court heard the proposed amendment at a public hearing on June 12, 1996.

3. Findings of Fact and Conclusions of Law: Statewide Planning Goals

A. Applicability of Statewide Planning Goals

The following statewide planning goals are applicable to the proposed text amendment.

B. Specific Statewide Planning Goals

a. Goal 2 (Exceptions)

Uses allowed under a reasons exception are limited to only those that are justified in the exception. OAR 660-04-018(3)(a). To change the type or intensity of uses in a reasons exception area requires a new reasons exception.

No new reasons exception is required for farming because it is an outright use permitted and protected by Goal 3, the Goal an exception was taken to. LCDC's rules only require a new exception for uses not allowed by the underlying goal.

ORS 215.243 call for "the preservation of a maximum amount of the limited supply of agricultural land is necessary ... to the economy of the state". The proposed relisting of farm use as an allowed use in the SAI and MG/LU zones is supportive of this statewide policy and Goal 3.

b. Goal 3

By enabling farm use of approximately 18,000 acres, the proposed text change is directly supportive of Statewide Planning Goal 3.

c. Goal 5

Goal 5 applies only if there is an inventoried Goal 5 resource present on the Property, and farm use may affect that resource in a manner that was not anticipated at the time of the County's initial Goal 5 inventory and ESEE analysis in 1986. Since the Property was designated for farm use in 1986, at the time of the Goal 5 analysis, a new Goal 5 analysis would be required only if new Goal 5 resources have been added to the County's inventory. No resources have been added since 1986. Furthermore, as demonstrated by the analysis of the County's Goal 5 inventory, there is no inventoried Goal 5 resource on the Property.

Any additions to the County's Goal 5 inventory must be done through its regular legislative (periodic review) process. Larson v. Wallowa County, 23 Or LUBA 527, 540, aff'd in part, rev'd and remanded in part on other grounds, 116 Or App 96 (1992) (when county

inventories resource site but delays the Goal 5 process, Goal 5 contemplates completion of the process in legislative, not quasi-judicial proceedings). See also, Welch v. City of Portland, LUBA No. 94-133 (12/21/94) (city may not revisit its acknowledged Goal 5 inventory in a quasi-judicial proceeding." "[I]f the post-acknowledgement plan amendment does not affect inventoried Goal 5 resources, Goal 5 does not apply and need not be addressed."); Urquhart v. Lane Council of Governments, 80 Or App 176, 721 P2d 870 (1986); and Friends of Cedar Mill v. Washington County, LUBA No. 94-142 (1/4/95) (Goal 5 applies directly to plan amendments. However, a county is entitled to rely on its acknowledged Goal 5 inventory); and Davenport v. City of Tigard, 22 Or LUBA 577, 586 (1992) "To the extent a proposed post-acknowledgement plan amendment affects an inventoried Goal 5 resource, Goal 5 applies, and its requirements must be satisfied." Welch, *infra*.

For the foregoing reasons, Goal 5 does not apply to the proposed relisting of farm use as a permitted use in the SAI and MG/LU zones.

4. Conclusions

For the foregoing reasons, the Morrow County Planning Commission recommends that the proposed change to the text of the Morrow County Comprehensive Plan and the Morrow County Zoning Ordinance to clarify that farm use is a permitted use should be approved.

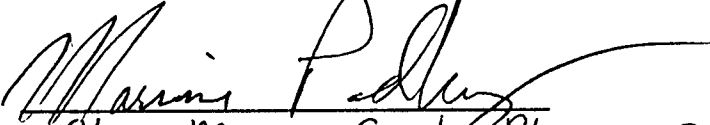
5. Conditions

The Morrow County Planning Commission further recommends that the text change be approved subject to the following conditions:

- a) Boeing Agri-Industrial Company (BAIC) will cooperate with the County in obtaining a dedication from the State of Oregon for a road right-of-way or public road easement located in substantial conformance with Exhibit A, attached hereto (the "Boardman - Ione Road"). Such cooperation shall include the granting of any consents required for the dedication and or construction of the Boardman - Ione Road
- b) The terms of the dedication shall provide that BAIC has the right to relocate the roadway, right-of-way or public road easement (as the case may be), so long as such relocation does not significantly increase the length or cost of the Boardman - Ione Road.
- c) Morrow County shall be responsible for obtaining all governmental approvals necessary for the planning, acquisition and construction of the Boardman-Ione Road.

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- d) Morrow County will work with BAIC and its sublessees to mitigate the effects of public access along the Boardman - Ione Road, which mitigation may include (but is not limited to) fencing and law enforcement patrols.


Chair, Morrow County Planning Commission
June 11, 1996

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ROUTE 1 = SELECTED ROUTE

29.5 MI

SPILLWAY

PLANT SITE

DIVIDER DIKE

165

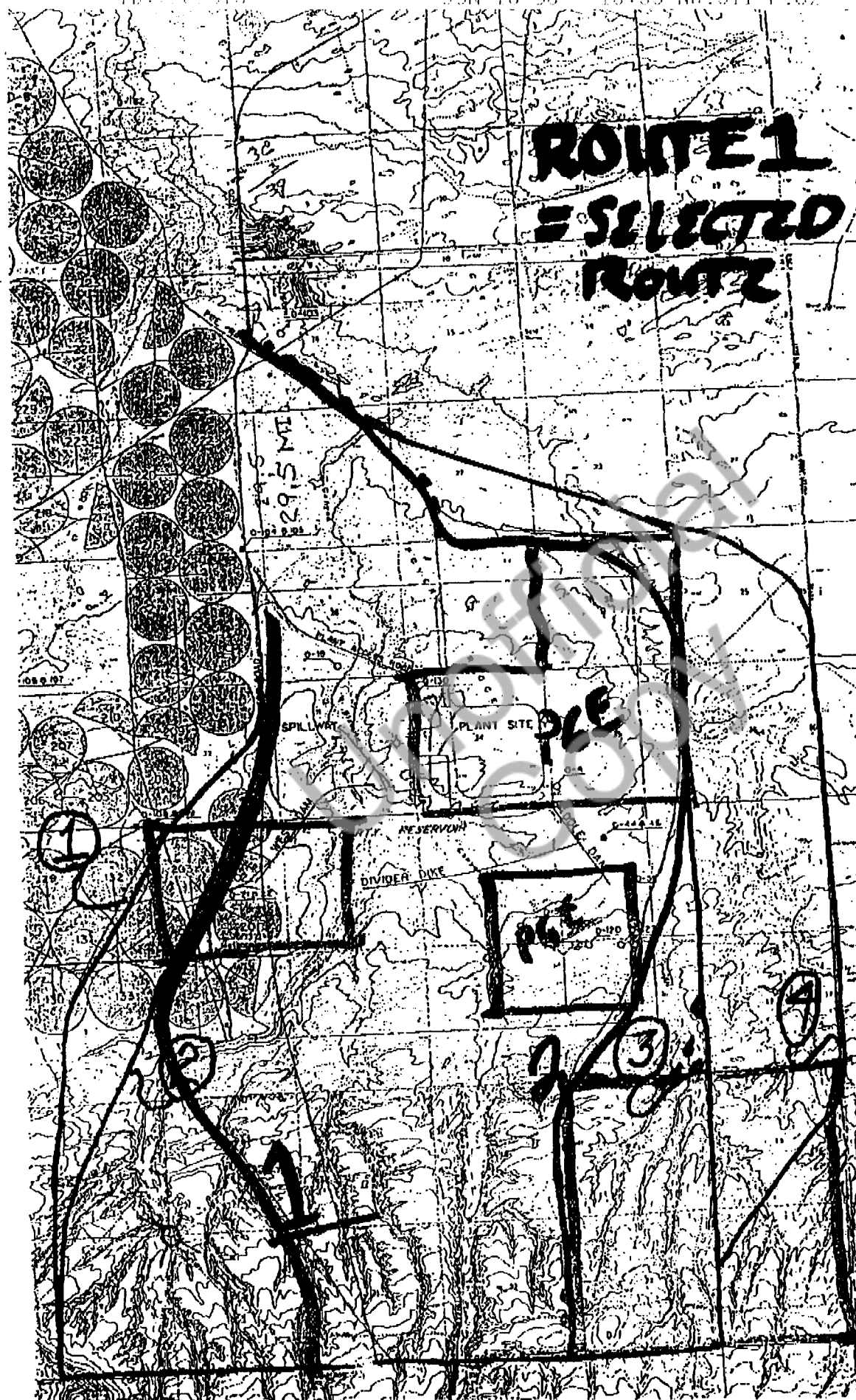
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STATE OF OREGON

County of Morrow

} SS

I certify that this instrument was received and recorded in the book of records of said county.

BARBARA BLOODSWORTH,
Morrow County Clerk

by: *Shirley McCarl* Deputy.

DOC#: 48278

RCPT: 1024

6/13/96 10:20 AM

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