



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

08/28/2012

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Coos County Plan Amendment
DLCD File Number 001-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, September 13, 2012

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Jill Rolfe, Coos County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Dave Perry, DLCD Regional Representative

<paa> YA

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DEPT OF
AUG 24 2012
LAND CONSERVATION AND DEVELOPMENT

DATE
STAMP

For DLCD Use Only

Jurisdiction: **Coos County**

Local file number: **AM-12-01/RZ-12-02**

Date of Adoption: **8/21/12**

Date Mailed: **8/22/12**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one**Date:

- | | |
|--|--|
| ☐ Comprehensive Plan Text Amendment | ☒ Comprehensive Plan Map Amendment |
| ☐ Land Use Regulation Amendment | ☒ Zoning Map Amendment |
| ☐ New Land Use Regulation | ☐ Other: |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

This was a rezone of Exclusive Farm Use zoned property to Forest Mixed Use. The plan designation changed from Agricultural to Forest. There were other applications submitted with the request. This was approved on 8/21/12.

Does the Adoption differ from proposal? **No**

Plan Map Changed from: **Agricultural**

to: **Forest**

Zone Map Changed from: **Exclusive Farm Use**

to: **Forest Mixed Use**

Location: **27-12-28-800, 801, 803 & 805, 56495 Fairveiw Road, Coquille Acres Involved: 322**

Specify Density: Previous: **80 acres**

New: **80 acres**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| ☐ | ☐ | ☒ | ☒ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Oregon Department of Forestry, Coquille RFPD, Coos County Assessor's Office, Dave Perry, DLCD.

Local Contact: **Jill Rolfe, Interim Planning Director** Phone: (541) 396-7770 Extension:
Address: **250 N. Baxter,** Fax Number: **541-396-1022**
City: **Coquille** Zip: **97423** E-mail Address: **planning@co.coos.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist.**

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF AMENDING THE COOS)
COUNTY COMPREHENSIVE PLAN & COOS) ORDINANCE 12-08-003PL
COUNTY ZONING & LAND DEVELOPMENT)
ORDINANCE (Heistand, Tucker and)
Westgaard REZONE, Hearings Body)
Applications and Property Line
Adjustment)

This matter came before the Coos County Board of Commissioners sitting for the transaction of business on the August 21, 2012, concerning amendments to the Coos county Comprehensive Plan and Coos County Zoning & Land Development Ordinance. Specifically, The Board considered multi application in conjunction with a plan amendment and rezone of the subject property described as Township 27S Range 12W Section 28 Tax Lots 800, 801, 803 and 805. The second request is a Hearings Body Conditional use on tax lot 803 to reclassify an existing dwelling from a 160 acre Farm Related dwelling to a 160/200 Acre Forest Dwelling pursuant to Coos County Zoning and Land Development Ordinance (LDO) §4.8.525(A). The third request is a review and approval of a Conditional Use for a Forest Template Dwelling pursuant to LDO §4.8.525(B) on tax lot 805. The last request is a review and approval of a property line adjustment as listed pursuant to LDO §3.3.152 between tax lots 800 and 803.

1 WHEREAS, on May 11, 2012, Kenneth & Debra Heistand filed a multi part
2 application with consent of all property owners to amend the Coos County
3 Comprehensive Plan Map and the Zoning Map to change the current zoning for
4 the subject property from Exclusive Farm Use to Forest Mixed Use; reclassify
5 a dwelling; site another dwelling; and adjust a property line as described in
6 detail on page 1 of this ordinance;

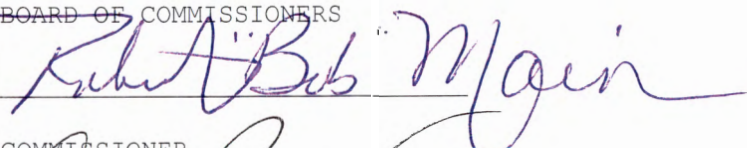
7 WHEREAS, the applications were considered by the Planning Commission at
8 public hearing on August 2, 2012, and following deliberation, the Planning
9 Commission recommended the Board of Commissioners approve all the proposals;

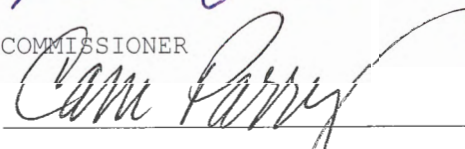
10 WHEREAS, consideration for this ordinance complies with Coos County Zoning &
11 Land Development Ordinance Section 5.1.400 criteria for rezones.

12 WHEREAS, all notices to interested property owners and interested parties
13 have been provided pursuant to law; now therefore, THE BOARD OF COMMISSIONERS
14 adopts the Findings and Conclusions in Attachment "A".

15 ADOPTED this 21st day of August 2012.

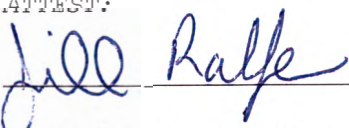
16 BOARD OF COMMISSIONERS

17 
18 COMMISSIONER

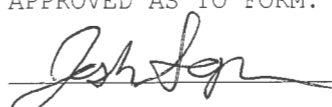
19 
20 COMMISSIONER

21 
22 COMMISSIONER

23 ATTEST:

24 
25 Recording Secretary

APPROVED AS TO FORM:


Office of Legal Counsel

ATTACHMENT A

FILE NO. : AM-12-01/RZ-12-01/HBCU-12-02/HBCU-12-03/PLA-12-14

The property is described as Township 27 Range 12 Section 28 Tax Lots 800, 801, 803, & 805

REQUEST 1 : The property owners, Kenneth & Debra Heistand, James & Tonya Tucker and Levi & Jennifer Westgaard have applied to rezone from Exclusive Farm Use (EFU) to Forest Mixed Use (FMU) and amend the Coos County Comprehensive Plan designation (CCCP) from Agriculture to Forest on tax lots 800, 801, 803, and 805. The file number for this request is AM-12-01/RZ-1201. The applicable criteria can be found in Coos County Zoning and Land Development Ordinance (LDO) - §2.1.200 Definition of "Agricultural Lands" and "Forest Land"; §5.1.400 Decision of the Hearings Body for a Rezone; and, the Coos County Comprehensive Plan (CCCP) - Policy 5.3 Agricultural Lands and Policy 5.4 Forest Lands which is also referenced in the LDO Appendix 1, Volume I.

REQUEST 2 : The applicants Kenneth & Debra Heistand have applied on tax lot 803 which is owned by James and Tonya Tucker to allow a Forest Dwelling as cited in LDO §4.8.525(A) 160/200 Acre Dwelling. This may be allowed as a hearings body conditional use if the criteria in OAR 660-006-0027(2)(b) and ORS 215.740(1)(b)(2)&(3) have been satisfied.

REQUEST 3 : The applicants Kenneth & Debra Heistand have applied on tax lot 805 which is owned by Levi & Jennifer Westgaard to allow for a Forest Dwelling pursuant to LDO §4.8.525(B) Template Dwelling, §4.8.600 Mandatory Siting Standards Required for dwellings and Structures in the Forest Zone, §4.8.700 Fire Siting and Safety Standards and applicable setbacks in §4.8.750.

REQUEST 4 : Kenneth & Debra Heistand and James & Tonya Tucker have applied for a single property line adjustment between tax lots 800 and 803. The property line adjustment is subject to the criteria listed in LDO §3.3.152 Approval Criteria for Property Line Adjustments.

I. APPLICABLE STANDARDS & CRITERIA

Pursuant to §5.0.400 Consolidated Applications, applications for more than one land use decision may be submitted together for concurrent review. If the applications involve different review processes, they will be heard or decided under the higher review procedure. In this case it requires a hearing before the Planning Commission. The Planning Commission may recommend the application without conditions, recommend the application with conditions or deny the application. If the Planning Commission recommends the application to the Board of Commissioners then they will make the final decision. Applications that are paired with a Plan Amendment and/or Rezone application shall be contingent upon final approval of the amendment by the Board of Commissioners. If the Board denies the amendment, then any other applications submitted concurrently and dependent upon it shall also be denied.

II. BASIC FINDINGS

A. **LOCATION:** The subject Properties are located northeast of the City of Coquille off of Fairview Road.

B. **ZONING:** The property is currently zoned Exclusive Farm Use (EFU). The proposed zoned is Forest Mixed Use (FMU).

ATTACHMENT A

- C. **SPECIAL CONSIDERATIONS:** This property does not have any special consideration.
- D. **SURROUNDING LAND USES:** Northwest of the subject properties is a mix of zone including Rural Residential-5, EFU and Forest. The northern boundary on the southeast side of the property abuts EFU zoning and the southern side boundary abuts Forest zoning. The southern boundary mostly borders Forest zoning, with a little area in the south west abutting EFU. The zone map is included with this report. The area in which the property is located is diverse with forest, farm and residential uses.
- E. **SITE DESCRIPTION:** The property has a steep ridge that seems to traverse the property from the northwestern corner to the southeastern corner. The ridge is mostly tree covered. There are some pasture areas around the toe of the ridge but the boundary of the property seems to be heavily treed.
- F. **BACKGROUND:** The following information is from the planning files.
- On April 14, 1982, the Planning Department approved a conditional use application requesting approval of a dwelling in conjunction with farm use. There were 2 existing dwellings on the property in 1982, conventional single-family dwelling and a mobile home.
 - On January 4, 1984, zoning clearance letter VL-84-04 was issued based on the conditional use approval that was obtained in 1982.
 - On January 11, 1984, vested right conditional use application VR-84-1 was approved. The vested right application required a demonstration that the dwelling approved in 1982 was substantially completed or vested.

A parcel shall be considered vested for completion of the construction of a nonconforming use when an administrative conditional use is granted, based on findings establishing the good faith of the property owner is making expenditures to lawfully develop his property in a given manner; the amount of reliance on any prior zoning classification in purchasing the property and making expenditures to develop the property; the extent to which the expenditures relate principally to the use of an applicant claims is vested, rather than to ancillary improvements, such as but not limited to roads, driveways, which could support other uses allowed as of right; the extent of the purported vested use as compared to the uses allowed in the subsequent zoning ordinances; Whether the expenditures made prior to existing zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to the purported vested use which would in fact have been made on the subject property but for the passage of the existing zoning regulation; and the ratio of the prior expenditures to the total cost of the proposed use.

- On November 29, 1984, the Planning Department issued zoning clearance VL-84-599 authorizing construction of the farm help dwelling that was allowed by the 1982 conditional use based on the vested right approval.

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- On August 1, 1985, zoning clearance letter VL-85-370 was issued authorizing a replacement dwelling. VL-85-370 was updated on August 7, 1985 to allow a site evaluation.
- On July 30, 1986, zoning clearance VL-86-266 was issued authorizing construction of an agricultural building.
- On October 17, 1989, zoning clearance VL-89-475 was issued authorizing construction of a single-family dwelling based on VR-84-01. There were two grandfathered dwelling identified at this time.
- On December 29, 1994, zoning clearance ZCL-89-475 was issued authorizing a farm building to be located in the same location as the existing farm building.
- On October 23, 2003, a discrete parcel certification prepared by Fidelity National Title Company (Fidelity) that consisted of 5 discrete parcels was reviewed and concurred with.

There have been several property line adjustment completed reconfiguring the property to the current layout.

G. **NOTICE & COMMENTS:** Notice requirements of 5.0.900 were followed. Notice was posted and mailed to Department of Land Conservation and Development, Fairview Fire Department, Planning Commission, Board of Commissioners, and adjacent property owners on July 12, 2012. To date no official comments have been received. If the Planning Commission makes a recommendation to the Board of Commissioners that hearing will be published in *The World Newspaper* on August 10, 2012.

III. ADDITIONAL FINDINGS

REQUEST 1- Comprehensive Plan Map Amendment/Rezone – tax lots 800, 801, 803, and 805

A. COMPREHENSIVE PLAN AMENDMENT AND ZONE CHANGE

1. Definitions

§2.1.200 Agricultural Lands: Those lands designated in the Coos County Comprehensive Plan (Volume 1 "Balance of County") for inclusion in Exclusive Farm Use (EFU) Zones. These lands include Soil Capability Class I, II, III, and IV lands as defined by the United States Soil Conservation Service in their Soil Capability Classification system and other lands suitable for farm use.

Oregon Statewide Planning Goal 3 Definition of Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility,

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suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event. More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal. Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

§ 2.1.200 Forestland: Those lands designated in the Coos County Comprehensive Plan (Volume I “Balance of County”) for inclusion in a Forest Lands zone. These areas include (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses, (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation, (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use, and (4) other forested lands which provide urban buffers, wind breaks, wildlife and fisheries, livestock habitat, scenic corridors and recreational use.

Oregon Statewide Planning Goal 4 defines forest land: Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

FINDING: The property is made of six different types of soils as listed below:

- Dement silt loam, 12% to 30% slopes (2.5 +/- acres)
- Honey grove silty clay loam, 3% to 30% slopes (63 +/- acres)
- Honey silty clay loam, 30% to 50% slopes (12.6 +/- acres)
- Preacher-Bohannon loams, 3% to 30% slopes (66.1 +/- acres)
- Preacher-Bohannon loams, 33% to 60% slopes (158.4 +/- acres)
- Preacher-Bohannon loams, 60% to 90% slopes (17.8 +/- acres)

According to the soil report the majority of the property has forest soils with only 0.8% of the total containing farm soils. The farm soils are not considered to be high-value farm soils according to §2.1.200. The site index for forest is 111 to 126 for Douglas-fir and 123 to 163 for western hemlock which seems to be consistent with forest zoning.

2. §5.1.400 of the CCZLDO in order for the Hearings Body to recommend approval of the application to the Board of Commissioners the following must be addressed:
 - a. the rezoning will conform with the Comprehensive Plan or Section 5.1.250; and
 - b. the rezoning will not seriously interfere with permitted uses on other nearby parcels; and

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- c. the rezoning will comply with other policies and ordinances as may be adopted by the Board of Commissioners.

FINDING: The applicants have demonstrated that soils within the proposed amendment area are primarily forest with very little farm. Statewide Planning Goal 4 explains forestland shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operation. Furthermore, forestation or reforestation should be encouraged on land suitable for such purposes, including marginal agricultural land not needed for farm use. In this case the land has soils that are conducive for forest; therefore, rezoning would conform to the Comprehensive Plan which was acknowledged to implement the Statewide Planning Goals including Statewide Planning Goal 4.

The subject properties are located in an area of mixed uses. The uses are primarily resource with some residential to the north. The applicants have been using the properties to grow trees and grazing, but due to the change in market they have mainly been managing the properties for forestry. They are receiving a forest tax deferral. Therefore, rezoning these parcels would not interfere with permitted uses on other nearby parcels.

There are no other ordinances or policies that the Board has adopted or have proposed that would conflict with the proposed zone.

Policy 5.4 Forest Lands

Plan Implementation Strategy (8) Coos County shall consider, and approve where appropriately justified, changes from... [agriculture to forestry], upon findings which establish:

- a. That the proposed rezone would be at least as effective at conserving the resource as the existing zone.
- b. That the proposed rezones would not create a non-conforming use.
- c. That the applicant for the proposed rezone has certified that he/she understands that the rezone, if granted, could have significant tax consequences.

This strategy recognizes:

- a. That agriculture and forestry are closely related in Coos County because the land resource base is capable of and suitable for supporting both agricultural and forest use and activities;
- b. That this simplified plan revision process for agriculture and forest plan designations is necessary to help support the existing commercial agricultural and forest enterprises because it enables individual management decisions to be made in a timely manner as a response to changing market conditions.

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FINDING: According to the soil data the properties that are proposed for rezone are suitable for farm or forest use. The soils are not high-value farm but can be utilize for grazing. The applicants intend to manage the property mostly as forest.

The proposed zoning would be as effective at conserving the resources as the current EFU zoning and the rezone would not create any non-conforming uses. Two of the dwellings existed prior to any zoning and are grandfathered. The dwelling that was approved in 1982 was approved under the interim zoning ordinance which was not acknowledged by the LCDC. Therefore, the property owners went through the vested right process in 1984 because the development was not complete but was there was a substantial financial investment in what was completed. Therefore, pursuant to § 1.1.975 Vested Right criteria states that a parcel shall be considered vested for completion of the construction of a nonconforming use when an administrative conditional use is granted based on the findings that establishing that the property was making expenditures to lawfully develop his property in a given manner; and the amount of reliance on any prior zoning classification in purchasing the property and making expenditures to develop the property. The Heistand family purchased the property in 1960 prior to any zoning. In 1982 they made a good faith effort to obtain necessary permits to construct a dwelling that was accessory to the use. The dwelling was not completed when the permits expired; therefore, they had to apply to obtain a vested right or apply under current law. The vested right criterion explains what types of investment and the ratio of expenditures are acceptable. The criterion also states that the vesting would be used as compared to any uses allowed in the subsequent zoning ordinances. Therefore, this classified this dwelling as a permitted use once the current ordinance was acknowledged.

The applicants have acknowledged that they are aware that if the rezone is granted there may be significant tax consequences.

REQUEST 2 -160 Acre Forest Dwelling Request – Tax Lot 803

§ 4.8.525(A) Forest Dwellings

A dwelling in the Forest zone may be allowed as a conditional use 160/200 ACRE DWELLING. A single-family dwelling may be allowed as a hearing's body conditional use if the following criteria are satisfied: OAR-660-006-0027¹ (1)(e)(B), (4), (5), (6), and ORS 215.740(1)(b), (2), (3). [PL-010-005 1/12/2006]

OAR 660-06-0027(2)(b)

If a dwelling is not allowed pursuant to section (1) of this rule, a large tract forest dwelling authorized under ORS 215.740 may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract that does not include a dwelling:..(b) In western Oregon of at least 160 contiguous² acres or 200 acres in the same ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed

¹ This criterion was referenced incorrectly by an adopted text amendment in 2006. The correct reference is 660-06-0027(2)(b)

² CONTIGUOUS: Adjoining with a common boundary of two or more points. Properties shall not be considered contiguous if divided by: a) a public dedicated road, public dedicated alleyway, County road, and State or Federal highway; or, b) a water body, when the underlying fee ownership is claimed by the State; or, c) an intervening ownership.

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restriction shall be filed pursuant to section (7) of this rule for all tracts that are used to meet the acreage requirements of this subsection.

FINDING: Once the rezone is approved then the applicants are required to reapply under the forest criteria for the dwelling. The property consists of 160 contiguous acres based on a property line adjustment (PLA 12-14), that was approved on May 11, 2012. The property owners agree to file a deed restriction pursuant to section (7) as cited below. The current configuration of the property will meets the criteria once the rezone is approved.

(7)(a) The applicant for a dwelling authorized by subsections (2)(a) or (b) of this rule that requires one or more lot or parcel to meet minimum acreage requirements shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is locate.

(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.

(c) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located.

(d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section.

(e) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

FINDING: The waiver of right to object forest and farm practices management covenant will be required to be recorded at the clerk's office once the decision is final.

215.740 Large tract forestland dwelling; criteria; rules.

(1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:...(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section...

(2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway....

(c) The Land Conservation and Development Commission shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which

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counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section. [1993 c.792 §4(2),(3),(5)]

FINDINGS: The applicants are applying for a large tract dwelling on property that is part of a rezone request. This application will qualify for this dwelling once the rezone has been approved.

§ 4.8.600 - Mandatory Siting Standards Required for Dwellings and Structures in the Forest Zone.

The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones... These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands.

- A. Dwellings and structures shall be sited on the parcel so that:
 - 1. They have the least impact on nearby or adjoining forest or agricultural lands; and
 - 2. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized; and
 - 3. The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
 - 4. The risks associated with wildfires are minimized.
- B. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules. For the purposes of this Section, evidence of a domestic water supply means:
 - 1. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
 - 2. A water use permit issued by the Water Resources Department for the use described in the application; or
 - 3. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the County upon completion of the well.
- C. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

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§ 4.8.700 - Fire Siting and Safety Standards

All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards. The Planning Director may authorize alternative forms of fire protection when it is determined that these standards are impracticable.

The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the applicant is outside the rural fire protection district, the applicant shall provide evidence that he has contacted the Department of Forestry of the proposed development.

A. Firebreak:

1. A firebreak shall be established and maintained around all structures, including decks, for a distance of at least 30 feet in all directions. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.
2. Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.
3. A secondary fire break of at least 100 feet radius around the primary safety zone shall be established and maintained. Vegetation should be pruned (to at least 8 feet in height) and spaced so that fire will not spread between the crowns of trees. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees. The primary fuel-free break and secondary break areas shall be provided and maintained on land surrounding the dwelling that is owned or controlled by the owner. A variance application will not be required if the parcel's configuration (shape and/or size) does not allow the primary or secondary fire break to be met. (OR-98-01-002PL)

B. All **new** and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.

C. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).

D. The dwelling shall not be sited on a slope of greater than 40 percent.

E. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

F. The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.

G. Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment.

ATTACHMENT A

H. Access to new dwellings shall meet road and driveway standards in Chapter VII.

§ 4.8.750 – Development Standards (B) & (I)

(B) Setbacks: All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from any right-of-way line, whichever is greater.

(I) Riparian Vegetation Protection - Riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained.

FINDING: The dwelling is already in existence. The property is located with the Coquille RFPD and pursuant to the plot plan submitted with the application, all siting and safety standards have been met.

REQUEST 3 -Forest Dwelling Request (Template) - Tax Lot 805

Coos County Zoning and Land Development Ordinance

§4.8.525(B) Template Dwelling (only applicable criteria shown)

A single-family dwelling on a lot or parcel located within a forest zone may be allowed as a conditional use if:

1. There are no other dwellings on the tract on which the dwelling will be sited.
2. There are no deed restrictions established on the lots or parcels that make up the tract which do not allow a dwelling.
3. The lot or parcel on which the dwelling is to be located is predominantly composed of soils that are capable of producing the following cubic feet per acre per year:...

	Cf/Ac/Yr of Growth		
	0-49	50-85	+85
Required minimum number of lots or parcels or portions thereof existing on January 1, 1993, within a 160-acre square centered on the subject tract.	3	7	11
Required minimum number of dwellings existing on January 1, 1993, on the lots or parcels	3	3	3

NOTE: Lots or parcels within urban growth boundaries shall not be used to satisfy the above requirements

5. If a tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.
6. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan and its implementing measures.

FINDING: This property is owned by Levi and Jennifer Westgaard's name and there are no other dwellings on the property within their tract. There are no deed restrictions on this discrete parcel that would prohibit a dwelling on the subject property. Based on soil types and cubic foot per acre per year growth, this criterion requires a demonstration of 11

ATTACHMENT A

parcels and 3 dwellings within 160 acre rectangle centered on the subject tract. After applying the template to the subject property it exceeds the number of parcels and dwelling. Therefore, the criteria listed in Section 4.8.525(B) have been complied with.

§ 4.8.600. Mandatory Siting Standards Required for Dwellings and Structures in the Forest Zone. The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones. Replacement dwellings may be sited in close proximity to the existing developed homesite. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands.

These criteria may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees, and shall be considered together with the requirements in Section 4.8.700 to identify the building site.

A. Dwellings and structures shall be sited on the parcel so that:

1. They have the least impact on nearby or adjoining forest or agricultural lands; and
2. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized; and
3. The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
4. The risks associated with wildfires are minimized.

B. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules. For the purposed of this Section, evidence of a domestic water supply means:

1. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
2. A water use permit issued by the Water Resources Department for the use described in the application; or
3. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the County upon completion of the well.

C. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

D. Approval of a dwelling shall be subject to the following additional requirements:

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1. Approval of a dwelling requires the owner to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
2. The Planning Department shall notify the County Assessor of the above condition at the time the dwelling is approved.
3. The property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The Assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report of where the survey report indicates that minimum stocking requirements have not been met.
4. Upon notification by the Assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, it will notify the owner and Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

FINDING: The applicants have explained that the siting of the dwelling will meet the siting standards. The applicant is required to supply verification from the Water Resources Department (WRD) that a water use permit is not required for the use described in the application. This will be a condition of approval. An access permit and a driveway confirmation will be required prior to receiving a zoning compliance letter. A notice of decision for this application will be provided to ODF, Assessor's office, and WRD to ensure these criteria will be complied with. The property has been utilized for forest and the Oregon Department of Forestry stocking requirements will be met. As a condition of approval the dwelling will have to meet the siting criteria.

§ 4.8.700 Fire Siting and Safety Standards

All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards. The Planning Director may authorize alternative forms of fire protection when it is determined that these standards are impracticable. The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the applicant is outside the rural fire protection district, the applicant shall provide evidence that he has contacted the Department of Forestry of the proposed development.

A. Firebreak:

1. A firebreak shall be established and maintained around all structures, including decks, for a distance of at least 30 feet in all directions. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8

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- feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.
2. Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.
 3. A secondary fire break of at least 100 feet radius around the primary safety zone shall be established and maintained. Vegetation should be pruned (to at least 8 feet in height) and spaced so that fire will not spread between the crowns of trees. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees. The primary fuel-free break and secondary break areas shall be provided and maintained on land surrounding the dwelling that is owned or controlled by the owner. A variance application will not be required if the parcel's configuration (shape and/or size) does not allow the primary or secondary fire break to be met. (OR-98-01-002PL)
- B. All **new** and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.
 - C. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond)
 - D. The dwelling shall not be sited on a slope of greater than 40 percent.
 - E. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.
 - F. The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.
 - G. Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment.
 - H. Access to new dwellings shall meet road and driveway standards in Chapter VII.

FINDING: The applicants have explained that they will meet the fire criteria at the time the dwelling will be sited. It is the responsibility of the property owner to ensure that all criteria are met at the time the dwelling is sited. The property owner is required to obtain a driveway confirmation prior to obtaining a zoning compliance letter and at that time the driveway and access are required to meet the standards in Chapter VII. This property is located within the Coquille RFPD. It appears these criteria will have been met based on the application submitted.

REQUEST 4 – Property Line Adjustment

The applicants are requesting to do a property line adjustment between tax lots 800 and 803. The reconfiguration will reduce the acreage of tax lot 803 to approximately 10 acres. Tax lot 803 was the property that was approved for the 160 forest dwelling.

§ 3.3.152 Approval Criteria.

A property line adjustment may be approved if it complies with all of the following:

1. The existing lots or parcels were lawfully created in accordance with Section 3.3.800;

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FINDING: After review staff determined these were discrete parcels created prior to 1986. Tax lot 803 was reconfigured through a property line adjustment; therefore, they are lawfully created parcels.

2. No new parcels will result from the adjustment;

FINDING: The proposal will not create new parcels.

3. All buildings and improvements (e.g., septic systems, wells, etc.) will comply with the minimum setback requirements from the adjusted property line, unless the building or improvement does not currently comply, in which case the building or improvement shall not be rendered more nonconforming by the adjustment;

FINDING: According to the plot plan it shows they comply with the setback requirements will be complied with.

4. All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.

FINDING: The size of the properties will accommodate the uses permitted; however, the applicants did apply for a dwelling based on the 160 dwelling criteria. Therefore, the Planning Commission needs to consider if this will still accommodate the use if the property is reduced down to ten acres.

5. Resulting lots or parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions:
 - a. One or both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum lot or parcel size for the applicable zone; or
 - b. Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment, or
 - c. Property line adjustments by a public body for the purpose of incorporating excess right-of-way property into adjacent property shall not be subject to minimum lot size requirements.

FINDING: This adjustment complies with the criteria in subsection a.

6. Property line adjustments on land zoned Exclusive Farm Use, Forest and Forest Mixed Use may not be used to:
 - a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the

ATTACHMENT A

- abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
- c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

FINDING: This adjustment is not being used to qualify a dwelling; therefore, this criterion does not apply.

7. The adjustment shall not result in parcel(s) that overlap a city limit or county line.

FINDING: The adjustment will not result in parcels overlapping city limits or county lines.

8. The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided.

FINDING: The adjustment will not affect the accesses to either parcel.

9. If any of the parcels involved in the lot line adjustment(s) is subject to conditions of a prior land use permit, then the area added to that parcel shall be subject to any conditions imposed under the permit.

FINDING: As the date of this report there are no conditions on this property that would prohibit the property line adjustment. A property line adjustment deed must be recorded with the County Clerk which shall contain the names of the parties, the description of the adjusted property line, references to original recorded documents, and signatures of all parties with proper acknowledgement (ORS 92.190). The deed shall also contain a separate description of the area being conveyed from one parcel to the other and shall contain a statement that the conveyance is part of a property line adjustment. This must be completed before any other land use decisions can be made on the subject properties. To complete the process, please submit a copy of your recorded property line adjustment deed to the Coos County Planning Department.

Pursuant to ORS 308.210(3), all taxes, fees, or other charges must be paid before the Assessor's office can process the property line adjustment deed.

IV. CONCLUSION & RECOMMENDATION

The applicants have demonstrated that the rezone area is suitable for a forest mixed use designation. The applicants have supplied written testimony and evidence to show that the dwelling criteria can be met for both the 160 forest dwelling request and the template dwelling request once the rezone has been approved. There will be some conditions associated.

The applicant makes an argument that by decreasing the size of the parcel with the dwelling that tract of land gaining property will be better managed for resource purposes which would be compliant with the intent of protecting resource lands but I am not convinced that directly addresses the 160 acre dwelling authorization.

ATTACHMENT A

V. Conditions of Approval

Tax Lot 803

1. A “Forest Management Covenant” which recognizes the right of adjacent and nearby property owners to conduct forest operations consistent with the Forest Practices Act and Rules has been recorded with the Coos County Clerk and a copy provided to the Planning Department.

Tax Lot 805

1. A “Forest Management Covenant” which recognizes the right of adjacent and nearby property owners to conduct forest operations consistent with the Forest Practices Act and Rules has been recorded with the Coos County Clerk and a copy provided to the Planning Department.
2. Prior to obtaining a ZCL to site the dwelling, evidence shall be provided that the dwelling’s domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.
3. Prior to obtaining a ZCL, a Road/Driveway Confirmation form must be signed by the County Roadmaster that the Road/Driveway has been improved in accordance with Chapter VII of the LDO.
4. All siting and fire safety criteria will be met in §4.8.600, §4.8.700 and §4.8.750 requires the following:

Tax Lot 803 & 800

1. If the application is approved it may be subject to a survey and within one year of the date of final approval and a property line adjustment a deed must be recorded with the County Clerk which shall contain the names of the parties, the description of the adjusted property line, references to original recorded documents, and signatures of all parties with proper acknowledgement (ORS 92.190). The deed shall also contain a separate description of the area being conveyed from one parcel to the other and shall contain a statement that the conveyance is part of a property line adjustment. This must be completed before any other land use decisions can be made on the subject properties. To complete the process, please submit a copy of your recorded property line adjustment deed to the Coos County Planning Department.
2. Pursuant to ORS 308.210(3), all taxes, fees, or other charges must be paid before the Assessor’s office can process the property line adjustment deed.

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF AMENDING THE COOS)
COUNTY COMPREHENSIVE PLAN & COOS) ORDINANCE 12-08-003PL
COUNTY ZONING & LAND DEVELOPMENT)
ORDINANCE (Heistand, Tucker and)
Westgaard REZONE, Hearings Body)

Applications and Property Line

Adjustment)

This matter came before the Coos County Board of Commissioners sitting for the transaction of business on the August 21, 2012, concerning amendments to the Coos county Comprehensive Plan and Coos County Zoning & Land Development Ordinance. Specifically, The Board considered multi application in conjunction with a plan amendment and rezone of the subject property described as Township 27S Range 12W Section 28 Tax Lots 800, 801, 803 and 805. The second request is a Hearings Body Conditional use on tax lot 803 to reclassify an existing dwelling from a 160 acre Farm Related dwelling to a 160/200 Acre Forest Dwelling pursuant to Coos County Zoning and Land Development Ordinance (LDO)§4.8.525(A). The third request is a review and approval of a Conditional Use for a Forest Template Dwelling pursuant to LDO §4.8.525(B) on tax lot 805. The last request is a review and approval of a property line adjustment as listed pursuant to LDO §3.3.152 between tax lots 800 and 803.

1 WHEREAS, on May 11, 2012, Kenneth & Debra Heistand filed a multi part
2 application with consent of all property owners to amend the Coos County
3 Comprehensive Plan Map and the Zoning Map to change the current zoning for
4 the subject property from Exclusive Farm Use to Forest Mixed Use; reclassify
5 a dwelling; site another dwelling; and adjust a property line as described in
6 detail on page 1 of this ordinance;

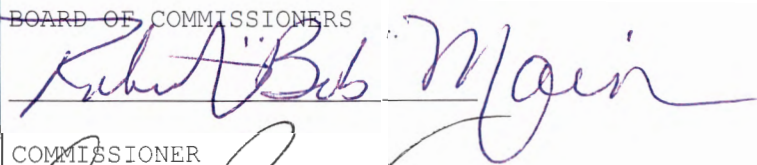
7 WHEREAS, the applications were considered by the Planning Commission at
8 public hearing on August 2, 2012, and following deliberation, the Planning
9 Commission recommended the Board of Commissioners approve all the proposals;

10 WHEREAS, consideration for this ordinance complies with Coos County Zoning &
11 Land Development Ordinance Section 5.1.400 criteria for rezones.

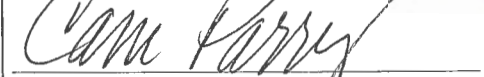
12 WHEREAS, all notices to interested property owners and interested parties
13 have been provided pursuant to law; now therefore, THE BOARD OF COMMISSIONERS
14 adopts the Findings and Conclusions in Attachment "A".

15 ADOPTED this 21st day of August 2012.

16 BOARD OF COMMISSIONERS

17 

18 COMMISSIONER

19 

20 COMMISSIONER

21 

22 COMMISSIONER

23 ATTEST:

24 

25 Recording Secretary

APPROVED AS TO FORM:



Office of Legal Counsel

ATTACHMENT A

FILE NO. : AM-12-01/RZ-12-01/HBCU-12-02/HBCU-12-03/PLA-12-14

The property is described as Township 27 Range 12 Section 28 Tax Lots 800, 801, 803, & 805

REQUEST 1 : The property owners, Kenneth & Debra Heistand, James & Tonya Tucker and Levi & Jennifer Westgaard have applied to rezone from Exclusive Farm Use (EFU) to Forest Mixed Use (FMU) and amend the Coos County Comprehensive Plan designation (CCCP) from Agriculture to Forest on tax lots 800, 801, 803, and 805. The file number for this request is AM-12-01/RZ-1201. The applicable criteria can be found in Coos County Zoning and Land Development Ordinance (LDO) - §2.1.200 Definition of "Agricultural Lands" and "Forest Land"; §5.1.400 Decision of the Hearings Body for a Rezone; and, the Coos County Comprehensive Plan (CCCP) - Policy 5.3 Agricultural Lands and Policy 5.4 Forest Lands which is also referenced in the LDO Appendix 1, Volume I.

REQUEST 2 : The applicants Kenneth & Debra Heistand have applied on tax lot 803 which is owned by James and Tonya Tucker to allow a Forest Dwelling as cited in LDO §4.8.525(A) 160/200 Acre Dwelling. This may be allowed as a hearings body conditional use if the criteria in OAR 660-006-0027(2)(b) and ORS 215.740(1)(b)(2)&(3) have been satisfied.

REQUEST 3 : The applicants Kenneth & Debra Heistand have applied on tax lot 805 which is owned by Levi & Jennifer Westgaard to allow for a Forest Dwelling pursuant to LDO §4.8.525(B) Template Dwelling, §4.8.600 Mandatory Siting Standards Required for dwellings and Structures in the Forest Zone, §4.8.700 Fire Siting and Safety Standards and applicable setbacks in §4.8.750.

REQUEST 4 : Kenneth & Debra Heistand and James & Tonya Tucker have applied for a single property line adjustment between tax lots 800 and 803. The property line adjustment is subject to the criteria listed in LDO §3.3.152 Approval Criteria for Property Line Adjustments.

I. APPLICABLE STANDARDS & CRITERIA

Pursuant to §5.0.400 Consolidated Applications, applications for more than one land use decision may be submitted together for concurrent review. If the applications involve different review processes, they will be heard or decided under the higher review procedure. In this case it requires a hearing before the Planning Commission. The Planning Commission may recommend the application without conditions, recommend the application with conditions or deny the application. If the Planning Commission recommends the application to the Board of Commissioners then they will make the final decision. Applications that are paired with a Plan Amendment and/or Rezone application shall be contingent upon final approval of the amendment by the Board of Commissioners. If the Board denies the amendment, then any other applications submitted concurrently and dependent upon it shall also be denied.

II. BASIC FINDINGS

A. **LOCATION:** The subject Properties are located northeast of the City of Coquille off of Fairview Road.

B. **ZONING:** The property is currently zoned Exclusive Farm Use (EFU). The proposed zoned is Forest Mixed Use (FMU).

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- C. **SPECIAL CONSIDERATIONS:** This property does not have any special consideration.
- D. **SURROUNDING LAND USES:** Northwest of the subject properties is a mix of zone including Rural Residential-5, EFU and Forest. The northern boundary on the southeast side of the property abuts EFU zoning and the southern side boundary abuts Forest zoning. The southern boundary mostly borders Forest zoning, with a little area in the south west abutting EFU. The zone map is included with this report. The area in which the property is located is diverse with forest, farm and residential uses.
- E. **SITE DESCRIPTION:** The property has a steep ridge that seems to traverse the property from the northwestern corner to the southeastern corner. The ridge is mostly tree covered. There are some pasture areas around the toe of the ridge but the boundary of the property seems to be heavily treed.
- F. **BACKGROUND:** The following information is from the planning files.
- On April 14, 1982, the Planning Department approved a conditional use application requesting approval of a dwelling in conjunction with farm use. There were 2 existing dwellings on the property in 1982, conventional single-family dwelling and a mobile home.
 - On January 4, 1984, zoning clearance letter VL-84-04 was issued based on the conditional use approval that was obtained in 1982.
 - On January 11, 1984, vested right conditional use application VR-84-1 was approved. The vested right application required a demonstration that the dwelling approved in 1982 was substantially completed or vested.

A parcel shall be considered vested for completion of the construction of a nonconforming use when an administrative conditional use is granted, based on findings establishing the good faith of the property owner is making expenditures to lawfully develop his property in a given manner; the amount of reliance on any prior zoning classification in purchasing the property and making expenditures to develop the property; the extent to which the expenditures relate principally to the use of an applicant claims is vested, rather than to ancillary improvements, such as but not limited to roads, driveways, which could support other uses allowed as of right; the extent of the purported vested use as compared to the uses allowed in the subsequent zoning ordinances; Whether the expenditures made prior to existing zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to the purported vested use which would in fact have been made on the subject property but for the passage of the existing zoning regulation; and the ratio of the prior expenditures to the total cost of the proposed use.

- On November 29, 1984, the Planning Department issued zoning clearance VL-84-599 authorizing construction of the farm help dwelling that was allowed by the 1982 conditional use based on the vested right approval.

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- On August 1, 1985, zoning clearance letter VL-85-370 was issued authorizing a replacement dwelling. VL-85-370 was updated on August 7, 1985 to allow a site evaluation.
- On July 30, 1986, zoning clearance VL-86-266 was issued authorizing construction of an agricultural building.
- On October 17, 1989, zoning clearance VL-89-475 was issued authorizing construction of a single-family dwelling based on VR-84-01. There were two grandfathered dwelling identified at this time.
- On December 29, 1994, zoning clearance ZCL-89-475 was issued authorizing a farm building to be located in the same location as the existing farm building.
- On October 23, 2003, a discrete parcel certification prepared by Fidelity National Title Company (Fidelity) that consisted of 5 discrete parcels was reviewed and concurred with.

There have been several property line adjustment completed reconfiguring the property to the current layout.

G. **NOTICE & COMMENTS:** Notice requirements of 5.0.900 were followed. Notice was posted and mailed to Department of Land Conservation and Development, Fairview Fire Department, Planning Commission, Board of Commissioners, and adjacent property owners on July 12, 2012. To date no official comments have been received. If the Planning Commission makes a recommendation to the Board of Commissioners that hearing will be published in *The World Newspaper* on August 10, 2012.

III. ADDITIONAL FINDINGS

REQUEST 1- Comprehensive Plan Map Amendment/Rezone -- tax lots 800, 801, 803, and 805

A. COMPREHENSIVE PLAN AMENDMENT AND ZONE CHANGE

1. Definitions

§2.1.200 Agricultural Lands: Those lands designated in the Coos County Comprehensive Plan (Volume 1 "Balance of County") for inclusion in Exclusive Farm Use (EFU) Zones. These lands include Soil Capability Class I, II, III, and IV lands as defined by the United States Soil Conservation Service in their Soil Capability Classification system and other lands suitable for farm use.

Oregon Statewide Planning Goal 3 Definition of Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility,

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suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event. More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal. Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

§ 2.1.200 Forestland: Those lands designated in the Coos County Comprehensive Plan (Volume I “Balance of County”) for inclusion in a Forest Lands zone. These areas include (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses, (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation, (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use, and (4) other forested lands which provide urban buffers, wind breaks, wildlife and fisheries, livestock habitat, scenic corridors and recreational use.

Oregon Statewide Planning Goal 4 defines forest land: Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

FINDING: The property is made of six different types of soils as listed below:

- Dement silt loam, 12% to 30% slopes (2.5 +/- acres)
- Honey grove silty clay loam, 3% to 30% slopes (63 +/- acres)
- Honey silty clay loam, 30% to 50% slopes (12.6 +/- acres)
- Preacher-Bohannon loams, 3% to 30% slopes (66.1 +/- acres)
- Preacher-Bohannon loams, 33% to 60% slopes (158.4 +/- acres)
- Preacher-Bohannon loams, 60% to 90% slopes (17.8 +/- acres)

According to the soil report the majority of the property has forest soils with only 0.8% of the total containing farm soils. The farm soils are not considered to be high-value farm soils according to §2.1.200. The site index for forest is 111 to 126 for Douglas-fir and 123 to 163 for western hemlock which seems to be consistent with forest zoning.

2. §5.1.400 of the CCZLDO in order for the Hearings Body to recommend approval of the application to the Board of Commissioners the following must be addressed:
 - a. the rezoning will conform with the Comprehensive Plan or Section 5.1.250; and
 - b. the rezoning will not seriously interfere with permitted uses on other nearby parcels; and

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- c. the rezoning will comply with other policies and ordinances as may be adopted by the Board of Commissioners.

FINDING: The applicants have demonstrated that soils within the proposed amendment area are primarily forest with very little farm. Statewide Planning Goal 4 explains forestland shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operation. Furthermore, forestation or reforestation should be encouraged on land suitable for such purposes, including marginal agricultural land not needed for farm use. In this case the land has soils that are conducive for forest; therefore, rezoning would conform to the Comprehensive Plan which was acknowledged to implement the Statewide Planning Goals including Statewide Planning Goal 4.

The subject properties are located in an area of mixed uses. The uses are primarily resource with some residential to the north. The applicants have been using the properties to grow trees and grazing, but due to the change in market they have mainly been managing the properties for forestry. They are receiving a forest tax deferral. Therefore, rezoning these parcels would not interfere with permitted uses on other nearby parcels.

There are no other ordinances or policies that the Board has adopted or have proposed that would conflict with the proposed zone.

Policy 5.4 Forest Lands

Plan Implementation Strategy (8) Coos County shall consider, and approve where appropriately justified, changes from... [agriculture to forestry], upon findings which establish:

- a. That the proposed rezone would be at least as effective at conserving the resource as the existing zone.
- b. That the proposed rezones would not create a non-conforming use.
- c. That the applicant for the proposed rezone has certified that he/she understands that the rezone, if granted, could have significant tax consequences.

This strategy recognizes:

- a. That agriculture and forestry are closely related in Coos County because the land resource base is capable of and suitable for supporting both agricultural and forest use and activities;
- b. That this simplified plan revision process for agriculture and forest plan designations is necessary to help support the existing commercial agricultural and forest enterprises because it enables individual management decisions to be made in a timely manner as a response to changing market conditions.

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FINDING: According to the soil data the properties that are proposed for rezone are suitable for farm or forest use. The soils are not high-value farm but can be utilize for grazing. The applicants intend to manage the property mostly as forest.

The proposed zoning would be as effective at conserving the resources as the current EFU zoning and the rezone would not create any non-conforming uses. Two of the dwellings existed prior to any zoning and are grandfathered. The dwelling that was approved in 1982 was approved under the interim zoning ordinance which was not acknowledged by the LCDC. Therefore, the property owners went through the vested right process in 1984 because the development was not complete but was there was a substantial financial investment in what was completed. Therefore, pursuant to § 1.1.975 Vested Right criteria states that a parcel shall be considered vested for completion of the construction of a nonconforming use when an administrative conditional use is granted based on the findings that establishing that the property was making expenditures to lawfully develop his property in a given manner; and the amount of reliance on any prior zoning classification in purchasing the property and making expenditures to develop the property. The Heistand family purchased the property in 1960 prior to any zoning. In 1982 they made a good faith effort to obtain necessary permits to construct a dwelling that was accessory to the use. The dwelling was not completed when the permits expired; therefore, they had to apply to obtain a vested right or apply under current law. The vested right criterion explains what types of investment and the ratio of expenditures are acceptable. The criterion also states that the vesting would be used as compared to any uses allowed in the subsequent zoning ordinances. Therefore, this classified this dwelling as a permitted use once the current ordinance was acknowledged.

The applicants have acknowledged that they are aware that if the rezone is granted there may be significant tax consequences.

REQUEST 2 -160 Acre Forest Dwelling Request – Tax Lot 803

§ 4.8.525(A) Forest Dwellings

A dwelling in the Forest zone may be allowed as a conditional use 160/200 ACRE DWELLING. A single-family dwelling may be allowed as a hearing's body conditional use if the following criteria are satisfied: OAR-660-006-0027¹ (1)(e)(B), (4), (5), (6), and ORS 215.740(1)(b), (2), (3). [PL-010-005 1/12/2006]

OAR 660-06-0027(2)(b)

If a dwelling is not allowed pursuant to section (1) of this rule, a large tract forest dwelling authorized under ORS 215.740 may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract that does not include a dwelling...(b) In western Oregon of at least 160 contiguous² acres or 200 acres in the same ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed

¹ This criterion was referenced incorrectly by an adopted text amendment in 2006. The correct reference is 660-06-0027(2)(b)

² CONTIGUOUS: Adjoining with a common boundary of two or more points. Properties shall not be considered contiguous if divided by: a) a public dedicated road, public dedicated alleyway, County road, and State or Federal highway; or, b) a water body, when the underlying fee ownership is claimed by the State; or, c) an intervening ownership.

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restriction shall be filed pursuant to section (7) of this rule for all tracts that are used to meet the acreage requirements of this subsection.

FINDING: Once the rezone is approved then the applicants are required to reapply under the forest criteria for the dwelling. The property consists of 160 contiguous acres based on a property line adjustment (PLA 12-14), that was approved on May 11, 2012. The property owners agree to file a deed restriction pursuant to section (7) as cited below. The current configuration of the property will meets the criteria once the rezone is approved.

(7)(a) The applicant for a dwelling authorized by subsections (2)(a) or (b) of this rule that requires one or more lot or parcel to meet minimum acreage requirements shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is locate.

(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.

(c) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located.

(d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section.

(e) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

FINDING: The waiver of right to object forest and farm practices management covenant will be required to be recorded at the clerk's office once the decision is final.

215.740 Large tract forestland dwelling; criteria; rules.

(1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:...(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section...

(2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway....

(c) The Land Conservation and Development Commission shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which

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counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section. [1993 c.792 §4(2),(3),(5)]

FINDINGS: The applicants are applying for a large tract dwelling on property that is part of a rezone request. This application will qualify for this dwelling once the rezone has been approved.

§ 4.8.600 - Mandatory Siting Standards Required for Dwellings and Structures in the Forest Zone.

The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones... These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands.

- A. Dwellings and structures shall be sited on the parcel so that:
 - 1. They have the least impact on nearby or adjoining forest or agricultural lands; and
 - 2. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized; and
 - 3. The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
 - 4. The risks associated with wildfires are minimized.
- B. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules. For the purposes of this Section, evidence of a domestic water supply means:
 - 1. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
 - 2. A water use permit issued by the Water Resources Department for the use described in the application; or
 - 3. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the County upon completion of the well.
- C. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

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§ 4.8.700 - Fire Siting and Safety Standards

All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards. The Planning Director may authorize alternative forms of fire protection when it is determined that these standards are impracticable.

The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the applicant is outside the rural fire protection district, the applicant shall provide evidence that he has contacted the Department of Forestry of the proposed development.

A. Firebreak:

1. A firebreak shall be established and maintained around all structures, including decks, for a distance of at least 30 feet in all directions. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.
2. Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.
3. A secondary fire break of at least 100 feet radius around the primary safety zone shall be established and maintained. Vegetation should be pruned (to at least 8 feet in height) and spaced so that fire will not spread between the crowns of trees. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees. The primary fuel-free break and secondary break areas shall be provided and maintained on land surrounding the dwelling that is owned or controlled by the owner. A variance application will not be required if the parcel's configuration (shape and/or size) does not allow the primary or secondary fire break to be met. (OR-98-01-002PL)

- B. All **new** and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.
- C. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).
- D. The dwelling shall not be sited on a slope of greater than 40 percent.
- E. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.
- F. The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.
- G. Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment.

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H. Access to new dwellings shall meet road and driveway standards in Chapter VII.

§ 4.8.750 – Development Standards (B) & (I)

(B) Setbacks: All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from any right-of-way line, whichever is greater.

(I) Riparian Vegetation Protection - Riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained.

FINDING: The dwelling is already in existence. The property is located with the Coquille RFPD and pursuant to the plot plan submitted with the application, all siting and safety standards have been met.

REQUEST 3 -Forest Dwelling Request (Template) - Tax Lot 805

Coos County Zoning and Land Development Ordinance

§4.8.525(B) Template Dwelling (only applicable criteria shown)

A single-family dwelling on a lot or parcel located within a forest zone may be allowed as a conditional use if:

1. There are no other dwellings on the tract on which the dwelling will be sited.
2. There are no deed restrictions established on the lots or parcels that make up the tract which do not allow a dwelling.
3. The lot or parcel on which the dwelling is to be located is predominantly composed of soils that are capable of producing the following cubic feet per acre per year:...

	Cf/Ac/Yr of Growth		
	0-49	50-85	+85
Required minimum number of lots or parcels or portions thereof existing on January 1, 1993, within a 160-acre square centered on the subject tract.	3	7	11
Required minimum number of dwellings existing on January 1, 1993, on the lots or parcels	3	3	3

NOTE: Lots or parcels within urban growth boundaries shall not be used to satisfy the above requirements

5. If a tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.
6. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan and its implementing measures.

FINDING: This property is owned by Levi and Jennifer Westgaard's name and there are no other dwellings on the property within their tract. There are no deed restrictions on this discrete parcel that would prohibit a dwelling on the subject property. Based on soil types and cubic foot per acre per year growth, this criterion requires a demonstration of 11

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parcels and 3 dwellings within 160 acre rectangle centered on the subject tract. After applying the template to the subject property it exceeds the number of parcels and dwelling. Therefore, the criteria listed in Section 4.8.525(B) have been complied with.

§ 4.8.600. Mandatory Siting Standards Required for Dwellings and Structures in the Forest Zone. The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones. Replacement dwellings may be sited in close proximity to the existing developed homesite. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands.

These criteria may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees, and shall be considered together with the requirements in Section 4.8.700 to identify the building site.

A. Dwellings and structures shall be sited on the parcel so that:

1. They have the least impact on nearby or adjoining forest or agricultural lands; and
2. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized; and
3. The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
4. The risks associated with wildfires are minimized.

B. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules. For the purposed of this Section, evidence of a domestic water supply means:

1. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
2. A water use permit issued by the Water Resources Department for the use described in the application; or
3. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the County upon completion of the well.

C. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

D. Approval of a dwelling shall be subject to the following additional requirements:

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1. Approval of a dwelling requires the owner to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
2. The Planning Department shall notify the County Assessor of the above condition at the time the dwelling is approved.
3. The property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The Assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report of where the survey report indicates that minimum stocking requirements have not been met.
4. Upon notification by the Assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, it will notify the owner and Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

FINDING: The applicants have explained that the siting of the dwelling will meet the siting standards. The applicant is required to supply verification from the Water Resources Department (WRD) that a water use permit is not required for the use described in the application. This will be a condition of approval. An access permit and a driveway confirmation will be required prior to receiving a zoning compliance letter. A notice of decision for this application will be provided to ODF, Assessor's office, and WRD to ensure these criteria will be complied with. The property has been utilized for forest and the Oregon Department of Forestry stocking requirements will be met. As a condition of approval the dwelling will have to meet the siting criteria.

§ 4.8.700 Fire Siting and Safety Standards

All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards. The Planning Director may authorize alternative forms of fire protection when it is determined that these standards are impracticable. The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the applicant is outside the rural fire protection district, the applicant shall provide evidence that he has contacted the Department of Forestry of the proposed development.

A. Firebreak:

1. A firebreak shall be established and maintained around all structures, including decks, for a distance of at least 30 feet in all directions. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8

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- feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.
2. Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.
 3. A secondary fire break of at least 100 feet radius around the primary safety zone shall be established and maintained. Vegetation should be pruned (to at least 8 feet in height) and spaced so that fire will not spread between the crowns of trees. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees. The primary fuel-free break and secondary break areas shall be provided and maintained on land surrounding the dwelling that is owned or controlled by the owner. A variance application will not be required if the parcel's configuration (shape and/or size) does not allow the primary or secondary fire break to be met. (OR-98-01-002PL)
- B. All **new** and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.
 - C. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond)
 - D. The dwelling shall not be sited on a slope of greater than 40 percent.
 - E. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.
 - F. The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.
 - G. Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment.
 - H. Access to new dwellings shall meet road and driveway standards in Chapter VII.

FINDING: The applicants have explained that they will meet the fire criteria at the time the dwelling will be sited. It is the responsibility of the property owner to ensure that all criteria are met at the time the dwelling is sited. The property owner is required to obtain a driveway confirmation prior to obtaining a zoning compliance letter and at that time the driveway and access are required to meet the standards in Chapter VII. This property is located within the Coquille RFPD. It appears these criteria will have been met based on the application submitted.

REQUEST 4 – Property Line Adjustment

The applicants are requesting to do a property line adjustment between tax lots 800 and 803. The reconfiguration will reduce the acreage of tax lot 803 to approximately 10 acres. Tax lot 803 was the property that was approved for the 160 forest dwelling.

§ 3.3.152 Approval Criteria.

A property line adjustment may be approved if it complies with all of the following:

1. The existing lots or parcels were lawfully created in accordance with Section 3.3.800;

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FINDING: After review staff determined these were discrete parcels created prior to 1986. Tax lot 803 was reconfigured through a property line adjustment; therefore, they are lawfully created parcels.

2. No new parcels will result from the adjustment;

FINDING: The proposal will not create new parcels.

3. All buildings and improvements (e.g., septic systems, wells, etc.) will comply with the minimum setback requirements from the adjusted property line, unless the building or improvement does not currently comply, in which case the building or improvement shall not be rendered more nonconforming by the adjustment;

FINDING: According to the plot plan it shows they comply with the setback requirements will be complied with.

4. All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.

FINDING: The size of the properties will accommodate the uses permitted; however, the applicants did apply for a dwelling based on the 160 dwelling criteria. Therefore, the Planning Commission needs to consider if this will still accommodate the use if the property is reduced down to ten acres.

5. Resulting lots or parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions:
 - a. One or both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum lot or parcel size for the applicable zone; or
 - b. Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment, or
 - c. Property line adjustments by a public body for the purpose of incorporating excess right-of-way property into adjacent property shall not be subject to minimum lot size requirements.

FINDING: This adjustment complies with the criteria in subsection a.

6. Property line adjustments on land zoned Exclusive Farm Use, Forest and Forest Mixed Use may not be used to:
 - a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the

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abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

- c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

FINDING: This adjustment is not being used to qualify a dwelling; therefore, this criterion does not apply.

7. The adjustment shall not result in parcel(s) that overlap a city limit or county line.

FINDING: The adjustment will not result in parcels overlapping city limits or county lines.

8. The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided.

FINDING: The adjustment will not affect the accesses to either parcel.

9. If any of the parcels involved in the lot line adjustment(s) is subject to conditions of a prior land use permit, then the area added to that parcel shall be subject to any conditions imposed under the permit.

FINDING: As the date of this report there are no conditions on this property that would prohibit the property line adjustment. A property line adjustment a deed must be recorded with the County Clerk which shall contain the names of the parties, the description of the adjusted property line, references to original recorded documents, and signatures of all parties with proper acknowledgement (ORS 92.190). The deed shall also contain a separate description of the area being conveyed from one parcel to the other and shall contain a statement that the conveyance is part of a property line adjustment. This must be completed before any other land use decisions can be made on the subject properties. To complete the process, please submit a copy of your recorded property line adjustment deed to the Coos County Planning Department.

Pursuant to ORS 308.210(3), all taxes, fees, or other charges must be paid before the Assessor's office can process the property line adjustment deed.

IV. CONCLUSION & RECOMMENDATION

The applicants have demonstrated that the rezone area is suitable for a forest mixed use designation. The applicants have supplied written testimony and evidence to show that the dwelling criteria can be met for both the 160 forest dwelling request and the template dwelling request once the rezone has been approved. There will be some conditions associated.

The applicant makes an argument that by decreasing the size of the parcel with the dwelling that tract of land gaining property will be better managed for resource purposes which would be compliant with the intent of protecting resource lands but I am not convinced that directly addresses the 160 acre dwelling authorization.

V. Conditions of Approval

Tax Lot 803

1. A “Forest Management Covenant” which recognizes the right of adjacent and nearby property owners to conduct forest operations consistent with the Forest Practices Act and Rules has been recorded with the Coos County Clerk and a copy provided to the Planning Department.

Tax Lot 805

1. A “Forest Management Covenant” which recognizes the right of adjacent and nearby property owners to conduct forest operations consistent with the Forest Practices Act and Rules has been recorded with the Coos County Clerk and a copy provided to the Planning Department.
2. Prior to obtaining a ZCL to site the dwelling, evidence shall be provided that the dwelling’s domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.
3. Prior to obtaining a ZCL, a Road/Driveway Confirmation form must be signed by the County Roadmaster that the Road/Driveway has been improved in accordance with Chapter VII of the LDO.
4. All siting and fire safety criteria will be met in §4.8.600, §4.8.700 and §4.8.750 requires the following:

Tax Lot 803 & 800

1. If the application is approved it may be subject to a survey and within one year of the date of final approval and a property line adjustment a deed must be recorded with the County Clerk which shall contain the names of the parties, the description of the adjusted property line, references to original recorded documents, and signatures of all parties with proper acknowledgement (ORS 92.190). The deed shall also contain a separate description of the area being conveyed from one parcel to the other and shall contain a statement that the conveyance is part of a property line adjustment. This must be completed before any other land use decisions can be made on the subject properties. To complete the process, please submit a copy of your recorded property line adjustment deed to the Coos County Planning Department.
2. Pursuant to ORS 308.210(3), all taxes, fees, or other charges must be paid before the Assessor’s office can process the property line adjustment deed.



DEPT OF

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LAND CONSERVATION
AND DEVELOPMENT

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