



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

07/23/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: Jackson County Plan Amendment
DLCD File Number 003-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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: Friday, August 03, 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: Mike Mattson, Jackson County
Jon Jinings, DLCD Community Services Specialist
Amanda Punton, DLCD Natural Resources Specialist

<paa> YA



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

JUL 16 2012

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Jackson County**

Local file number: **LRP2011-00006**

Date of Adoption: **7/11/2012**

Date Mailed: 7/13/12

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No 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".

Modification of the Jackson County Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an Environmental Zoning Map Overlay, by removing 672.2 acres from ASC 90-1 comprising the Dry Creek Landfill and adding 1,121.3 acres to ASC 90-1.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **NA**

to: **NA**

Zone Map Changed from: **NA**

to: **NA**

Location: **Dry Creek Landfill and 3.5 miles NE Prospect, OR**

Acres Involved: **1794**

Specify Density: Previous: **80**

New: **80**

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...

35-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. 003-11 (19113) [17106]

DLCD file No. _____

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

Oregon Dept. of Fish & Wildlife, DLCD, Oregon Dept of Forestry, U.S. Forest Service, Jackson County Fire Dist. 3

Local Contact: **Mike Mattson**

Phone: (541) 774-6937 Extension:

Address: **10 S. Oakdale Ave., Room 100**

Fax Number: **541-774-6791**

City: **Medford**

Zip: **97501-**

E-mail Address: **mattsomw@jacksoncounty.org**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.



**JACKSON
COUNTY**
Oregon

NOTICE OF ADOPTION

Pursuant to Oregon Revised Statutes (ORS) 197.615, you are hereby being notified that the Jackson County Board of Commissioners adopted Ordinance No. 2012-4 at a properly advertised public hearing on July 11, 2012, at 1:30 p.m., in the Auditorium of the Jackson County Offices, 10 South Oakdale, Medford, Oregon 97501.

The ordinance will go into effect on September 10, 2012 (60 days from the date of adoption). A description of the ordinance follows:

Ordinance No. 2012-4 amends the Jackson County Comprehensive Plan Map by removing properties from Area of Special Concern (ASC) 90-1, Deer and Elk Winter Range overlay and adding properties to Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat. Approximately 672 acres will be removed from ASC 90-1 and approximately 1,121 acres will be added to ASC 90-1. The properties to be removed are Township 36 South, Range 1 West, Section 35, a portion of Tax Lot 300; Township 37 South, Range 1 West, Section 01, Tax Lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, Tax Lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, Tax Lot 200. The properties to be added to ASC 90-1 are a portion of Township 32 South, Range 3 East, Section 24, Tax Lot 100 and Township 32 South, Range 3 East, Section 25, Tax Lot 100. File LRP2011-00006.

This notice is being mailed to you on July 13, 2012, which is within five working days after the adoption date of the ordinance(s) as required by ORS 197.615. If you have any questions on the effect of this ordinance, please contact **Mike Mattson** at Development Services, Room 100, County Offices, 10 South Oakdale, Medford, Oregon 97501. Telephone: Medford 774-6937; Jackson County residents outside of Medford's local calling area 1-800-452-5021 and enter the next four digit extension 6937.

You may review this ordinance, or you may purchase a copy for \$.25 for the first page and \$.10 for each additional page, at Development Services, Room 100, County Offices, 10 South Oakdale, Medford, Oregon 97501, between the hours of 8:00 a.m. and 4:00 p.m., Monday, Tuesday, Thursday and Friday; and 11:00 a.m. to 4:00 p.m on Wednesday.

The Board of County Commissioner's Ordinances are the final decisions on this action. Pursuant to State law, Jackson County is hereby notifying all persons who participated in the hearings, either in writing or orally. This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA).

You must appeal this decision within 21 days of the date it is mailed. This decision is being mailed on July 13, 2012, and the LUBA appeal period will expire on August 3, 2012. Please contact LUBA for specific appeal information. They are located at 550 Capitol Street N.E. Suite 235, Salem, Oregon 97301-2552. They can be reached at (503) 373-1265.

Attachments: Notary Packet

NOTARY PAGE

STATE OF OREGON)
)
COUNTY OF JACKSON)

I, Patricia A. Guida, being first duly sworn, depose and say that on behalf of Jackson County Development Services, I gave notice of Board of Commissioners Ordinance No. 2012-4 by mailing a copy of the Notice of Adoption by regular mail to each of the following named persons at their respective last known addresses, to wit: (as attached)

Each of said copies of the Notice were enclosed in a sealed envelope addressed to the persons at the addresses above set forth, with postage thereon fully prepaid and was deposited in the post office at Medford, Oregon, on July 13, 2012 .

Patricia A. Guida
Signature

Personally appeared before me this 13th day of July, 2012, the above named Patricia A. Guida who acknowledged the foregoing affidavit to be her voluntary act and deed.



Laura A. Marshall
Notary Public for Oregon
My Commission Expires: 2-6-2016

NOTICE OF ADOPTION SENT TO: AGENCIES AND INTERESTED PERSONS.

APPLICANT NAME: DRY CREEK LANDFILL LLC.
FILE NO: LRP2011-00006

FILE NO.LRP2011-00006
ADOPTION MAILING LIST
APPLICANT: DRY CREEK LANDFILL INC
MAILED: 7/13/12

APPLICANT LRP2011-00006
DRY CREEK LANDFILL INC
PO BOX 3187
CENTRAL POINT OR 97502

AGENT LRP2011-00006
JAY HARLAND
CSA PLANNING
4497 BROWNRIDGE , STE 101
MEDFORD OR 97504

STAFF LRP2011-00006
KELLY MADDING
DEVELOPMENT SERVICES DIRECTOR

STAFF LRP2011-00006
MIKE MATTSON
PLANNER

STAFF LRP2011-00006
RYAN KIRCHOFF
COUNTY COUNSEL

BOC LRP2011-00006
DON SKUNDRICK, CHAIR
BOARD OF COMMISSIONERS

BOC LRP2011-00006
DENNIS "C.W." SMITH
BOARD OF COMMISSIONERS

BOC LRP2011-00006
JOHN RACHOR
BOARD OF COMMISSIONERS

LRP2011-00006 CCI
BARBARA DECKER
3303 N VALLEY VIEW RD
ASHLAND OR 97520

LRP2011-00006 CCI
WALTER FITZGERALD
PO BOX 3984
CENTRAL POINT OR 97502

LRP2011-00006 CCI
BRENT MITCHELL
4450 FERN VALLEY RD
MEDFORD OR 97504

LRP2011-00006 CCI
KAREN BLAIR
32 N ORANGE ST
MEDFORD OR 97501

LRP2011-00006 CCI
ROSALIE LINDVIG
4415 INDEPENDENCE SCHOOL RD
MEDFORD OR 97501

IP LRP2011-00006
JOHN PATTERSON
JACKSON CO FIRE DIST #3
8383 AGATE RD
WHITE CITY OR 97503

IP LRP2011-00006
GREG ALEXANDER
OREGON DEPT OF FORESTRY
5286 TABLE ROCK RD
CENTRAL POINT OR 97502

IP LRP2011-00006
DAN ETHRIDGE
OREGON DEPT OF FISH & WILDLIFE
1495 E GREGORY RD
CENTRAL POINT OR 97502

IP LRP2011-00006
ROBERT SCOTT
UPPER ROGUE CAC
PO BOX 144
PROSPECT OR 97536

IP LRP2011-00006
LTM INCORPORATED
P O BOX 1145
MEDFORD OR 97501

IP LRP2011-00006
MEDFORD CITY OF
200 S IVY ST
MEDFORD OR 97501

IP LRP2011-00006
MARK VARGAS
OREGON DEPT OF FISH & WILDLIFE
1495 E GREGORY RD
CENTRAL POINT OR 97502

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF OREGON, COUNTY OF JACKSON

ORDINANCE NO. 2012-4

AN ORDINANCE AMENDING THE JACKSON COUNTY COMPREHENSIVE PLAN MAP BY REMOVING PROPERTIES FROM AREA OF SPECIAL CONCERN (ASC) 90-1, DEER AND ELK WINTER RANGE OVERLAY AND ADDING PROPERTIES TO JACKSON COUNTY'S GOAL 5 INVENTORY OF SIGNIFICANT RESOURCES, BLACK-TAILED DEER AND ROOSEVELT ELK WINTER RANGES, AND AREA OF SPECIAL CONCERN (ASC) 90-1, DEER AND ELK HABITAT. APPROXIMATELY 672 ACRES WILL BE REMOVED FROM ASC 90-1 AND APPROXIMATELY 1,121 ACRES WILL BE ADDED TO ASC 90-1. THE PROPERTIES TO BE REMOVED ARE TOWNSHIP 36 SOUTH, RANGE 1 WEST, SECTION 35, A PORTION OF TAX LOT 300; TOWNSHIP 37 SOUTH, RANGE 1 WEST, SECTION 01, TAX LOTS 204, 205, 209, 299, AND 300; TOWNSHIP 37 SOUTH, RANGE 1 WEST, SECTION 02, TAX LOTS 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, AND 202; A PORTION OF TOWNSHIP 37 SOUTH, RANGE 1 WEST, SECTION 12, TAX LOT 200. THE PROPERTIES TO BE ADDED TO ASC 90-1 ARE A PORTION OF TOWNSHIP 32 SOUTH, RANGE 3 EAST, SECTION 24, TAX LOT 100 AND TOWNSHIP 32 SOUTH, RANGE 3 EAST, SECTION 25, TAX LOT 100. FILE LRP2011-00006.

RECITALS:

1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).

2. A notice of the proposed amendment was submitted to the Oregon Department of Land Conservation and Development (DLCD) on December 22, 2012, 49 days prior to the first evidentiary hearing. A notice was published on Sunday, January 29, 2012 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on Thursday, February 9, 2012 at 9:00 a.m. in the Jackson County Auditorium.
3. A Minor Comprehensive Plan Map Amendment application was submitted to Jackson County by the applicant's agent, CSA Planning, Ltd., on October 3, 2011. The application was deemed incomplete on October 24, 2012. The agent submitted additional information to Development Services and the application was deemed complete on November 16, 2011. A public hearing before the Jackson County Planning Commission was scheduled for February 9, 2012.

The hearing was opened on February 9, 2012 and, because there was no quorum of Planning Commissioners, the hearing was continued to March 8, 2012.

4. A public hearing was held on March 8, 2012. Following testimony and arguments regarding this application, the Planning Commission voted to recommend approval of the amendment to the Board of County Commissioners.
5. A public hearing was scheduled before the Board of County Commissioners on Wednesday, May 30, 2012. A notice was published on Sunday, May 20, 2012 that a first evidentiary was scheduled before the Board of County Commissioners on Wednesday, May 30, 2012 at 1:30 p.m. in the Jackson County Auditorium
6. A public hearing was held on May 30, 2012. Following testimony and arguments regarding this application, the Board of County Commissioners voted to approve the amendment.

NOW, THEREFORE, the Board of County Commissioners of Jackson County ORDAINS as follows:

SECTION 1. FINDINGS OF FACT

Based upon the evidence and arguments presented, the Board of County Commissioners makes the following findings of fact with respect to this application. Where factual conflict arose, the Board of County Commissioners has resolved them consistent with these findings:

- 1.1 The Board of County Commissioners finds that proper legal notice was sent to the applicant, property owners within 750 of the subject properties and affected agencies on May 10, 2012. Legal notice was published in the Sunday, May 20, 2012 edition of the Medford Mail Tribune.

- 1.2 For the Dry Creek properties [properties to be removed], the Board of County Commissioners finds as follows:
 - 1.2.1 The current Comprehensive Plan Map Designations are Agricultural Land and Forestry/Open Space Land. The Zoning Districts are Exclusive Farm Use (EFU) and Open Space Reserve (OSR).
 - 1.2.2 These properties have access by Dry Creek Road, a County owned and maintained public road. Alternative access for the landfill properties is a private haul road from the landfill facilities north where it ultimately connects to Hwy 140, east of the Jackson County Sports Park facilities.
 - 1.2.3 Portions of these properties are within Jackson County Fire District No. 3.
 - 1.2.4 These properties are primarily used for a regional land-fill and composting facility and associated improvements.
 - 1.2.5 Except for a small area of 371W01, tax lot 300, these properties are within the Grizzly Unit of Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
 - 1.2.6 There are wetlands identified on some of these properties.
 - 1.2.7 The acreage of these properties is 930.5 acres. The total acreage to be removed from ASC 90-1 is 672.2 acres.
- 1.3 For the Prospect (Meriwether) properties [properties to be added], the Board of County Commissioners finds as follows:
 - 1.3.1 The current Comprehensive Plan Map Designation for these properties is Forestry/Open Space and the Zoning District is Forest Resource (FR).
 - 1.3.2 These properties are accessed through Svinth Road and Forest Service Road 6205, connecting to Butte Falls-Prospect Road to the south and Red Blanket Road to the north.
 - 1.3.3 These properties are not within a fire district.
 - 1.3.4 These properties are privately owned and managed forest land.

- 1.3.5 Portions of these properties are within the Upper Rogue Unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant Goal 5 resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
- 1.3.6 These properties include wetlands associated with stream features that originate on the properties. The applicant also indicates there are numerous springs throughout these properties.
- 1.3.7 The acreage of these properties is 1,280.7 acres. The acreage to be added to ASC 90-1, Deer and Elk Habitat, is 1,121.3 acres.
- 1.4 The Board of County Commissioners finds that the following agencies responded with comments to this application and their comments were considered by the Commissioners: Oregon Department of Fish and Wildlife, Jackson County Fire District No. 3, City of Medford, Oregon Department of Forestry, and Upper Rogue CAC. Agency comments were considered by the Commissioners.
- 1.5 The Board of County Commissioners finds that property owners were notified and comments were received from one (1) property owner. The property owner's comments were considered by the Commissioners.

SECTION 2. LEGAL FINDINGS

To approve an amendment to the Official Comprehensive Plan Map that modifies ASC 90-1, Deer and Elk Habitat, the Board of Commissioners must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

- 2.1 The Board of County Commissioners adopts fully the Planning Commissions Legal Findings, incorporated herein and attached within Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS

- 3.1 The Board of County Commissioners adopts fully the Planning Commission's conclusions, incorporated herein and attached within Exhibit A. These conclusions determine that the proposed amendment is in compliance with the Jackson County Land Development Ordinance, Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan.

SECTION 4. DECISION

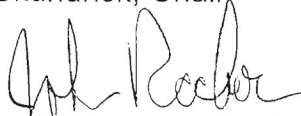
- 4.1 Based on the evidence in the record and testimony at the public hearing, the Board of County Commissioners approves a Minor Comprehensive Plan Amendment to remove 672.2 acres from Area of Special Concern (ASC) 90-1, Deer and Elk Habitat and add 1,121.3 acres to Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, on the following properties described as follows:
- 4.2.1 The properties to be removed from ASC 90-1 are Township 36 South, Range 1 West, Section 35, a portion of tax lot 300; Township 37 South, Range 1 West, Section 01, tax lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, tax lot 200, the map which is incorporated herein and attached within Exhibit A.
- 4.2.2 The properties to be added to Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat are a portion of Township 32 South, Range 3 East, Section 24, tax lot 100 and Township 32 South, Range 3 East, Section 25, tax lot 100, the map which is incorporated herein and attached within Exhibit A.

ADOPTED this 11th day of July, 2012, at Medford, Oregon.

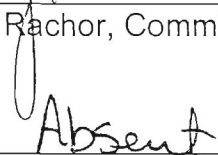
JACKSON COUNTY BOARD OF COMMISSIONERS



Don Skundrick, Chair

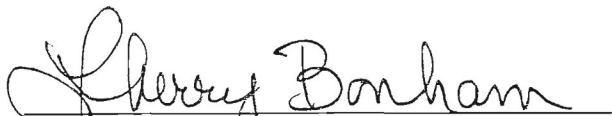


John Rachor, Commissioner



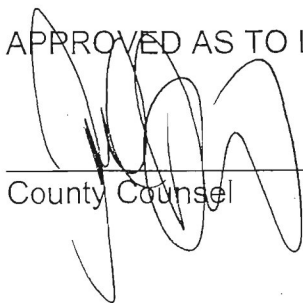
Dennis C.W. Smith, Commissioner

ATTEST:



By: Recording Secretary

APPROVED AS TO LEGAL SUFFICIENCY:



County Counsel

The Board of Commissioners' Ordinance is the final decision on this action. This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA). You must appeal this decision within 21 days of the date it is mailed. This decision is being mailed on July 13, 2012, and the LUBA appeal period will expire on August 3, 2012. Please contact LUBA for specific appeal information. They are located at 550 Capitol Street N.E. Suite 235, Salem, Oregon 97301-2552. They can be reached at (503) 373-1265.

BEFORE THE JACKSON COUNTY PLANNING COMMISSION
STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF CONSIDERATION OF A)
MINOR COMPREHENSIVE PLAN AMENDMENT)
TO REMOVE THE PROPERTIES FROM AREA)
OF SPECIAL CONCERN (ASC) 90-1, DEER)
AND ELK WINTER RANGE OVERLAY AND)
ADD PROPERTIES TO JACKSON COUNTY'S)
GOAL 5 INVENTORY OF SIGNIFICANT)
RESOURCES, BLACK-TAILED DEER AND)
ROOSEVELT ELK WINTER RANGES, AND)
AREA OF SPECIAL CONCERN (ASC) 90-1,)
DEER AND ELK HABITAT. APPROXIMATELY)
672 ACRES WILL BE REMOVED FROM ASC)
90-1 AND APPROXIMATELY 1,121 ACRES)
WILL BE ADDED TO ASC 90-1. THE)
PROPERTIES TO BE REMOVED ARE)
TOWNSHIP 36 SOUTH, RANGE 1 WEST,)
SECTION 35, A PORTION OF TAX LOT 300;)
TOWNSHIP 37 SOUTH, RANGE 1 WEST,)
SECTION 01, TAX LOTS 204, 205, 209, 299,)
AND 300; TOWNSHIP 37 SOUTH, RANGE 1)
WEST, SECTION 02, TAX LOTS 108, 109, 110,)
111, 112, 113, 114, 115, 116, 117, 122, 200, 201,)
AND 202; A PORTION OF TOWNSHIP 37)
SOUTH, RANGE 1 WEST, SECTION 12, TAX)
LOT 200. THE PROPERTIES TO BE ADDED TO)
ASC 90-1 ARE A PORTION OF TOWNSHIP 32)
SOUTH, RANGE 3 EAST, SECTION 24, TAX)
LOT 100 AND TOWNSHIP 32 SOUTH, RANGE)
3 EAST, SECTION 25, TAX LOT 100. DRY)
CREEK LANDFILL, INC., APPLICANT. FILE)
NO. LRP2011-00006.

RECOMMENDATION
FOR APPROVAL

Jackson County Planning Commission: Recommends approval of a Minor Comprehensive Plan Amendment to remove 672.2 acres from Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, and add 1,121.3 acres to the Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, on the following properties described as follows:

1. The properties to be removed from ASC 90-1 are Township 36 South, Range 1 West, Section 35, a portion of tax lot 300; Township 37 South, Range 1 West, Section 01, tax lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, tax lot 200.

2. The properties to be added to ASC 90-1 are a portion of Township 32 South, Range 3 East, Section 24, tax lot 100 and Township 32 South, Range 3 East, Section 25, tax lot 100.

RECITALS:

1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
2. A notice of the proposed amendment was submitted to the Oregon Department of Land Conservation and Development (DLCD) on December 22, 2012, 49 days prior to the first evidentiary hearing. A notice was published on Sunday, January 29, 2012 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on Thursday, February 9, 2012 at 9:00 a.m. in the Jackson County Auditorium.
3. A Minor Comprehensive Plan Map Amendment application was submitted to Jackson County by the applicant's agent, CSA Planning, Ltd., on October 3, 2011. The application was deemed incomplete on October 24, 2012. The agent submitted additional information to Development Services and the application was deemed complete on November 16, 2011. A public hearing before the Jackson County Planning Commission was scheduled for February 9, 2012.

The hearing was opened on February 9, 2012 and, because there was no quorum of Planning Commissioners, the hearing was continued to March 8, 2012.

4. A public hearing was held on March 8, 2012. Following testimony and arguments regarding this application, the Planning Commission voted to recommend approval of the amendment.

Now, therefore,

The Jackson County Planning Commission finds, concludes, and RECOMMENDS as follows:

SECTION 1, FINDINGS:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application.

- 1.1 The Planning Commission finds that proper legal notice was sent to the applicant and property owners within 750 feet of the subject properties and affected agencies on January 20, 2012. Legal notice was published in the Sunday, January 29, 2012 edition of the Medford Mail Tribune.
- 1.2 For the Dry Creek Properties, the Planning Commission finds as follows:
 - 1.1.1 The current Comprehensive Plan Map Designations are Agricultural Land and Forestry/Open Space Land. The Zoning Districts are Exclusive Farm Use (EFU) and Open Space Reserve (OSR).
 - 1.1.2 These properties are primarily accessed by Dry Creek Road, a County owned and maintained public. Alternative access for the landfill properties is a private access

2-File No. LRP2011-00006

CSA Planning, Ltd., Agent; Dry Creek Landfill, Inc., Applicant

road from the landfill facilities north where it ultimately connects to Hwy 140, east of the Jackson County Sports Park facilities.

- 1.1.3 Portions of these properties are within Jackson County Fire District No. 3.
 - 1.1.4 These properties are primarily used for a regional land-fill and composting facility and associated improvements.
 - 1.1.5 Except for a small area of 371W01, tax lot 300, these properties are within the Grizzly Unit of Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
 - 1.1.6 There are wetlands identified on some of these properties.
 - 1.1.7 The acreage of these properties is 930.5 acres. The total acreage to be removed from ASC 90-1 is 672.2 acres.
- 1.2 For the Prospect (Meriwether) properties, the Planning Commission finds as follows:
- 1.2.1 The current Comprehensive Plan Map Designation for these properties is Forestry/Open Space and the Zoning District is Forest Resource (FR).
 - 1.2.2 These properties are accessed through Svinth Road and Forest Service Road 6205, connecting to Butte Falls-Prospect Road to the south and Red Blanket Road to the north.
 - 1.2.3 These properties are not within a fire district.
 - 1.2.4 These properties are privately owned and managed forest land.
 - 1.2.5 Portions of these properties are within the Upper Rogue Unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant Goal 5 resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
 - 1.2.6 These properties include wetlands associated with stream features that originate on the properties. The applicant also indicates there are numerous springs throughout these properties.
 - 1.2.7 The acreage of these properties is 1,280.7 acres. The acreage to be added to ASC 90-1, Deer and Elk Habitat, is 1,121.3 acres.
- 1.3 The Planning Commission finds that the following agencies responded with comments to this application and their comments were considered by the Planning Commission: Oregon Department of Fish and Wildlife, Jackson County Fire District No. 3, City of Medford, Oregon Department of Forestry, and Upper Rogue CAC. Agency comments were considered by the Planning Commission.

- 1.4 The Planning Commission finds that property owners were notified and comments were received from one (1) property owner. The property owner's comments were considered by the Planning Commission.

SECTION 2, LEGAL FINDINGS:

To recommend approval of an amendment to the Official Comprehensive Plan Map in order to modify ASC 90-1, Deer and Elk Habitat, the Planning Commission must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

The Planning Commission adopts the Findings in the Staff Report, incorporated herein and attached as Exhibit 1. In addition, the Planning Commission adopts fully the applicant's findings and conclusions found in Exhibit 12, Pages 137-218. These findings and conclusions demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with the following specific findings:

- 2.1 For the Prospect (Meriwether) properties, the Planning Commission finds as follows:
 - 2.1.1 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds these properties are significant Goal 5 resources, deer and elk habitat, based upon the location, quality and quantity of the habitat, and should be added to Jackson County's inventory of significant Goal 5 resources, specifically the Black-tailed Deer and Roosevelt Elk Winter Range. The applicant has shown the Goal 5 Inventory Process has been followed pursuant to OAR 660-023-0030. The Oregon Department of Fish and Wildlife (ODFW) has determined this property is significant habitat, especially for elk (Record Exhibit 12, Pages 339-340).
 - 2.1.2 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds the ESEE Decision Process pursuant to OAR 660-023-0040 and the applicant's findings and conclusions through that process determined that the identified conflicting uses and the Goal 5 resource, deer and elk winter range, are both important compared to each other (See record Exhibit 12, Pages 160-179 and Pages 190-218). Conflicting uses should be allowed in a limited way pursuant to OAR 660-023-0040(5)(b) and should be subject to the limitations imposed by ASC 90-1. The Planning Commission concludes these properties should be added to the overlay map for ASC 90-1 and conflicting uses would be subject to the regulatory framework for ASC 90-1, specifically JCLDO Section 7.1.1(C).
 - 2.1.3 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds Jackson County currently has an adopted and acknowledged Goal 5 compliant protection program for Big Game Winter Range which is implemented through ASC 90-1 and JCLDO Section 7.1.1(C). The Planning Commission concludes that its program to achieve Goal 5 in context of this application is to recommend the adoption of an ordinance that amends ASC 90-1 to expand the Upper Rogue Especially Sensitive Winter Range Unit to include the Prospect (Meriwether) properties, incorporated herein and attached as Exhibit 2.

2.2 For the Dry Creek properties, the Planning Commission finds as follows:

2.2.1 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds that the Dry Creek properties are already included in Jackson County's inventory of significant Goal 5 resources, specifically the Black-tailed Deer and Roosevelt Elk Winter Range.

2.2.2 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds the ESEE consequences analysis submitted by the applicant determines that all identified conflicting uses should be allowed fully, pursuant to OAR 660-023-0040(5)(c), and the Planning Commission adopts the applicant's ESEE consequences analysis, Exhibit 12, Pages 160-179 and Pages 190-218 of the application record, as its own.

2.2.3 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds the Dry Creek properties, incorporated herein and attached as Exhibit 3, should be removed from ASC 90-1, Deer and Elk Habitat, Grizzly Unit.

SECTION 3, CONCLUSION:

Based upon the evidence included in the record, the Planning Commission concludes that the proposed amendment is in compliance with the Jackson County Land Development Ordinance, Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

3.1 Statewide Planning Goals: The Planning Commission concludes that this application complies with Statewide Planning Goals, specifically Goal 5. Discussion of compliance with Statewide Planning Goals is contained in Sections III and V of the staff report, attached hereto as Exhibit 1, and in Exhibit 12, Pages 184-188, of the application record.

3.2 Oregon Administrative Rules (OAR), 660-023-0030, 660-023-0040, 660-023-0050, and 660-023-0110: The Planning Commission concludes this application complies with the Oregon Administrative Rules. Discussion of compliance with the OAR's is contained in Sections IV of the staff report, attached hereto as Exhibit 1, and Exhibit 12, Pages 160-179 and Pages 190-218, of the application record.

3.3 Jackson County Comprehensive Plan and the Jackson County Transportation System Plan (TSP): The Planning Commission concludes this application complies with the Jackson County Comprehensive Plan, including the TSP. Discussion of compliance with Comprehensive Plan is contained in Section VI of the staff report, attached hereto as Exhibit 1, and in Exhibit 12, Pages 182-184, of the application record. The Planning Commission concludes a TIS waiver has been completed and is in the application record at Exhibit 27, Pages 489-490.

3.4 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance. Discussion of compliance with the LDO is contained in Section VI of the staff report, attached hereto as Exhibit 1, and in Exhibit 12, Pages 179-182 of the application record.

5-File No. LRP2011-00006

CSA Planning, Ltd., Agent; Dry Creek Landfill, Inc., Applicant

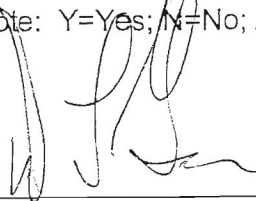
SECTION 4, RECOMMENDATION:

- 4.1 Based on the evidence in the record and testimony at the public hearing, the Planning Commission recommends approval of a Minor Comprehensive Plan Amendment to remove 672.2 acres from Area of Special Concern (ASC), Deer and Elk Habitat and add 1,121.3 acres to the Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, on the following properties described as follows:
 - 4.1.1 The properties to be removed from ASC 90-1 are Township 36 South, Range 1 West, Section 35, a portion of tax lot 300; Township 37 South, Range 1 West, Section 01, tax lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, tax lot 200 (Exhibit 3).
 - 4.1.2 The properties to be added to ASC 90-1 are a portion of Township 32 South, Range 3 East, Section 24, tax lot 100 and Township 32 South, Range 3 East, Section 25, tax lot 100 (Exhibit 2).
- 4.2 The Planning Commission recommends adoption of this amendment by the Board of Commissioners.

This recommendation for APPROVAL adopted this 26th day of April, 2012, at Medford, Oregon.

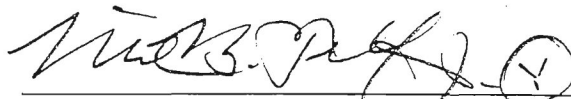
JACKSON COUNTY PLANNING COMMISSION

(Vote: Y=Yes; N=No; A=Abstain)



Don Greene, Chair

A



Richard B. Thierolf, Jr., Vice Chair



Joel Ockunzzi, Commissioner

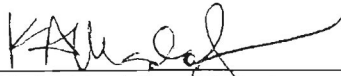
excused

Tahi Wouters, Commissioner



Craig Prewitt, Commissioner

ATTEST:



Kelly Madding, Development Services Director

- Exhibit 1: Staff Report
- Exhibit 2: Area to be added to ASC 90-1, Upper Rogue Unit
- Exhibit 3: Area to be removed from ASC 90-1, Grizzly Unit

**JACKSON COUNTY DEVELOPMENT SERVICES
COMPREHENSIVE PLAN AMENDMENT
STAFF REPORT**

APPLICANT: Dry Creek Landfill Inc.
P.O. Box 3187
Central Point, OR 97502

FILE: LRP2011-00006

AGENT: CSA Planning, Ltd.
4497 Brownridge, Suite 101
Medford, OR 97504

OWNER: Various owners

LEGAL DESCRIPTION: 361W35, tax lot 300; 371W01, tax lots 204, 205, 209, 299, 300; 371W02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, 202; 371W12, tax lot 200; 323E24, tax lot 100; 323E25, tax lot 100.

PROPOSAL: Minor Comprehensive Plan Map Amendment to modify the Jackson County Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an Environmental Zoning Map Overlay, by removing 672.2 acres comprising the Dry Creek Landfill and adding 1,121.3 acres approximately 3.5 miles north and east of the intersection of Hwy 62 and Mill Creek Dr., near Prospect, OR.

LOCATION: The northwestern edge of the Dry Creek properties lies approximately 1.2 miles northeast of the intersection of E. Vilas Road and N. Foothill Rd. The southwestern edge of these properties is approximately 2.7 miles southeast of the same intersection.

The northwestern edge of the Prospect area properties is approximately 1.5 miles northeast of the intersection of Matson Mill Rd. and Red Blanket Rd. The southwestern edge of these properties is approximately 1.7 miles southeast of the same intersection.

BACKGROUND: A Minor Comprehensive Plan Map Amendment application was submitted to Jackson County by the property owners' agent, CSA Planning, Ltd., on October 3, 2011. The application was deemed incomplete on October 24, 2011. The agent submitted additional information to Development Services on November 16, 2011. The application was deemed complete as of November 16, 2011. A first evidentiary public hearing before the Jackson County Planning Commission has been scheduled for February 9, 2012.

KEY ISSUES:

- Determine whether portions of the subject Dry Creek properties, 672.2 acres, should be removed from Jackson County's Area of Special Concern (ASC 90-1), Deer and Elk Habitat, a Zoning Map Overlay of the LDO, and 1,121.3 acres of the Prospect area properties be added to the inventory of significant Goal 5 resources for Black-tailed Deer and Roosevelt Elk Winter Ranges and ASC 90-1, Deer and Elk Habitat.

- Review the Economic, Social, Environmental and Energy (ESEE) consequences analysis to determine whether the analysis supports allowing certain or all conflicting uses fully notwithstanding the effects on deer and elk habitat, a significant Goal 5 resource. Also whether the ESEE analysis supports the addition of the acreage north and east of Prospect, OR, and whether to allow, limit, or prohibit conflicting uses on these properties.

I. FINDINGS OF FACT

A. **Access:** Dry Creek Landfill properties are primarily accessed by Dry Creek Road, a County owned and maintained public. Alternative access for the landfill properties is a private access road from the landfill facilities north where it ultimately connects to Hwy 140, near the Jackson County Sports Park facilities. The Prospect area properties are accessed by way of Svinth Road and Forest Service Road 6205, connecting to Butte Falls-Prospect Road to the south and Red Blanket Road to the north.

B. **Acreage:** The acreage of the Dry Creek properties is 930.5 acres. The amount of acreage to be removed is 672.2 acres. Acreage of the Prospect area properties is 1,280.7 acres. Amount of acreage to be added is 1,121.3 acres.

C. **Lot Legality:** Due to the number of properties and that the application is not a land development permit, lot legality has not been established through this application.

D. **Fire Protection:** Portions of the Dry Creek properties are within Jackson County Fire District No. 3. The Prospect area properties are not within a fire district.

E. **Irrigation:** No evidence that irrigation is available to the subject properties has been submitted.

F. **Zoning:** The Dry Creek properties are primarily zoned EFU with tax lot 117 split zoned EFU and OSR. The zoning for properties adjacent to the Dry Creek properties is as follows:

North: Open Space Reserve (OSR) & Exclusive Farm Use (EFU)

West: Open Space Reserve (OSR & Exclusive Farm Use (EFU)

South: Exclusive Farm Use (EFU)

East: Exclusive Farm Use (EFU) & Rural Residential (RR-5)

The Prospect area properties are zoned Forest Resource (FR). The zoning for the properties adjacent to the Prospect area properties is Forest Resource (FR).

G. **Land Use:** The Dry Creek properties are primarily used for the landfill and related facilities, as well as the Regional Composting Facility. The Prospect area properties are privately owned and managed forest land.

H. **Utilities:** Some of the Dry Creek properties have utilities being used or are available for use. There is no evidence of utility availability or use for the Prospect area properties.

The Dry Creek Landfill contains landfill gas generators that produce electricity from landfill gas collectors on site.

I. **Site Characteristics:** For the Dry Creek properties, most of the property is gentle to moderately slope with rock outcrop inclusions. Property elevations range from 1700 feet at the lowest point to 2160 at the highest. Beyond the limits of the landfill activity areas, vegetation consists of native grasses, limited colonies of wedgeleaf ceanothus (buck brush), various forbes, and scattered conifers amongst hardwood trees.

The Prospect area properties comprise a low elevation mesa, with gentle to flat slopes at the mesa top with steep side slopes extending to the broad Prospect to Union Creek valley floor below. The highest elevation is near the mesa top's northerly end, at approximately 3730 feet. The lowest point in elevation is 3260 feet - located at the extreme northern tip, where it nears South Red Blanket Road. The dominant tree species throughout the property is Douglas Fir of varying ages and distributions. These properties include well distributed large stands of mature fir and pine intermixed with pockets of young to medium ages conifer stands. Interspersed amongst the timber pockets and also distributed throughout, are a mixture of small and large clearings containing a variety of grasses and broadleaf plants.

K. **Water:** It is assumed that there is at least one well servicing the Dry Creek properties, possibly more. The applicant states that the Prospect area properties have numerous springs throughout.

L. **Wetlands:** For the Dry Creek properties, the upper reaches of Whetstone Creek flows through the northwest corner of the properties. Three un-named seasonal drainages cross the properties and eventually flow into Dry Creek near its confluence with Agate Lake. A small seasonal pond is located in the southeast corner of the properties.

For the Prospect area properties, stream features include Svinth Creek and two un-named tributaries of Red Blanket Cree. All originate on these properties. The applicant also indicates there are numerous springs throughout these properties.

M. **Urban Growth Boundary, Unincorporated Community, Urban Fringe:** None of the subject properties are within an Urban Growth Boundary, Unincorporated Community or Urban Fringe.

N. **Areas of Special Concern:** Except for a small area of 371W01, tax lot 300, the Dry Creek properties are within the Grizzly unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource.

Portions of the Prospect area properties are within the Upper Rogue unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource.

P. **Agency and Property Owner Comments:** Requests for comment were sent to

agencies and to property owners within 750 feet of the subject properties. Responses are summarized below.

1. Oregon Department of Fish and Wildlife submitted a comment asking the County to review previously submitted comments, which are part of the applicant's application. The letter is dated October 13, 2011. The concluding statement by Steven Niemela, Assistant District Wildlife Biologist, is "Based upon the uniqueness of DCL's [Dry Creek Landfill] circumstance, the goal of generating alternative energy, and the proposed mitigation, ODFW supports the removal of winter range protection on 680 acres of DCL's property."
2. The Oregon Department of Forestry had no comment on this application.
3. Jackson County Fire District No. 3 had no comment on this application.
4. One adjacent property owner had no comment on this application.

II. APPLICABLE CRITERIA

In order to approve this proposal, Jackson County must find the application is consistent with:

- A. Statewide Planning Goals: Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces (See OAR 660, Division 23)
- B. Oregon Administrative Rules: OAR's 660-023-0030 and 660-023-0110
- C. Jackson County Comprehensive Plan: Natural & Historic Resources Element (Policy 3); *Goal 5 Resources Background Document, 1990*, Section 2; Transportation System Plan (TSP), Sections 4.3.1(B)(c) and 4.3.1(D)
- D. Jackson County Land Development Ordinance: Section 3.7.3(C)

III. STATEWIDE PLANNING GOALS

- A. *Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces*

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

FINDING: Local governments are required to inventory specific natural resources. One of those resources is wildlife habitat. "Wildlife Habitat", as defined in OAR 660-023-0110(1)(b), "...is an area upon which wildlife depends in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites." In 1991,

through Ordinance 91-1, Jackson County adopted an inventory of significant deer and elk winter ranges, as mapped by Oregon Department of Fish and Wildlife (ODFW), and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, a Zoning Map Overlay, including measures designed to provide minimum protection of deer and elk winter range habitat (LDO Section 7.1.1(C)). Jackson County's Goal 5 inventory and protection measures were acknowledged by DLCD. Jackson County is currently in compliance with Statewide Planning Goal 5.

The current procedures and requirements for complying with Goal 5 are within OAR 660, Division 23. Compliance with Goal 5 regarding this application is addressed through this OAR.

IV. OREGON ADMINISTRATIVE RULES

A. OAR 660-023-0030, Inventory Process

1. *Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:*

- a) *Collect information about Goal 5 resource sites;*
- b) *Determine the adequacy of the information;*
- c) *Determine the significance of resource sites; and*
- d) *Adopt a list of significant resource sites.*

FINDING: The applicant states "...the subject application has submitted data from which to inventory the Goal 5 resource under OAR 660-023-0030 and that the subject application is a quasi-judicial PAPA and the initial inventory step inventory step in Step 2 is not necessarily applicable because the Board of Commissioners may rely on the information submitted in the application."

Staff agrees with the applicant that the initial Step 2 process is not necessary and that the Goal 5 inventory process has been completed for at least the Dry Creek properties. Additional data and information regarding both areas and properties has been submitted with this application, including a letter dated October 13, 2011 from Steve Niemela, Assistant District Wildlife Biologist, Oregon Department of Fish and Wildlife. In his letter

Mr. Niemela states “ODFW supports Dry Creek Landfill’s (DCL) effort to remove its property from the Especially Sensitive Deer and Elk Winter Range (ESDEWR) overlay (ASC 90-1). This decision is based on the nature of the DCL facility and the mitigation proposed in the packet we received from CSA Planning, Ltd. dated October 10, 2011.”

Mr. Niemela goes on to say “The historical precedent ODFW has established in reviewing proposed changes to the ESDEWR overlay in Jackson County is to recommend against removing designated habitat. However, DCL’s proposal is different because:

1. DCL existed before the adoption of the winter range overlay and related land use code
2. DCL has always been listed as a conflicting use with winter range in the Goal 5 Background Document (Section 2.3 A)
3. DCL provides a regionally significant service to the Rogue Valley
4. Impacts to winter range on DCL property will continue to grow and will largely not be mitigated for under current regulation
5. The proposed expansion into a natural gas generating facility corresponds with Oregon’s overall goal of increasing sources of alternative energy
6. The proposed plans do not conflict with Goal 8, which prohibits mitigation for the development of destination resorts in ESDWR”

In Mr. Niemela’s final paragraph he states “Based upon the uniqueness of DCL’s circumstance, the goal of generating alternative energy, and the proposed mitigation, ODFW supports the removal of winter range protection on 680 acres of DCL’s property.”

Staff finds that this additional data and information may be relied upon to determine any changes to the Goal 5 inventory for these areas.

2. *Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:*

(a) Notify state and federal resource management agencies and request current resource information; and

(b) Consider other information submitted in the local process.

FINDING: The applicant indicates that this initial step is not applicable because this project is part of a quasi-judicial site specific Goal 5 review and that notification of ODFW occurs as part of this process. The applicant also states that there has been or will be opportunity for additional information to be submitted into the record regarding the Goal 5 inventory process. The applicant explains that a letter from ODFW dated October 13, 2011 speaks to the habitat value of the proposed inclusion area of the Prospect area properties (Meriwether Properties).

The letter from ODFW also speaks to the Dry Creek properties. Mr. Niemela, ODFW,

states “Although the conifer stands that dominate the Red Blanket property are of lower quality to wintering black tailed deer than the ceanothus patches, oak woodlands, and grassland that dominate DCL property, the overall effect must consider the future impacts of expanding operations on the landfill. In addition, the Red Blanket property is an important transition area from summer range to the previously identified winter range lying immediately downhill, especially for elk. It is the opinion of ODFW that the proposed mitigation will provide an overall net benefit to wintering black-tailed deer and elk and meets the requirements of our mitigation policy.”

Staff finds that the information submitted with the application or to be submitted at hearing may be used to determine the adequacy of information for the potential Goal 5 site on the Prospect area properties. The Dry Creek properties are already on Jackson County’s Goal 5 inventory as a significant resource for deer and elk habitat.

3. *Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:*

(a) *Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.*

(b) *Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.*

(c) *Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.*

FINDING: With respect to the Prospect area properties, the applicant states “...the application provides evidence and findings of fact regarding the proposed Black-Tailed Deer and Roosevelt Elk Winter Range on the lands Identified in Exhibit 14. Specifically, the Application demonstrates that the habitat features described for the Upper Rogue Unit are present on the subject property such as the vegetation patterns and available feed. The Application provides first-hand accounts of intensive elk use of the site during the winter season by the property managers, Forest Capital Partners LLC. See, Exhibit

14. ODFW has provided a letter regarding this request noting the value of this land for winter range, especially for elk.” In conclusion, the applicant concludes there is adequate information to determine that winter range habitat exists on the Prospect area properties.

Regarding the Dry Creek properties the applicant indicates the properties are currently inventoried as significant deer and elk winter range. The applicant states “...the Application does not provide evidence or assert that the existing habitat inventory database is inadequate to review in more depth through the proposed re-examination of the Goal 5 process as it applies to these subject properties.”

Staff accepts the statements above indicating there is evidence that is adequate to determine whether the Prospect area properties should be inventoried as significant Goal 5 resources regarding deer and elk winter range and the Dry Creek properties are already identified as significant Goal 5 resources for deer and elk winter range.

4. *Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:*

(a) *The quality, quantity, and location information;*

(b) *Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and*

(c) *Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.*

FINDING: The applicant states for the Prospect area properties “...the Application provides evidence and findings of fact regarding Black-Tailed Deer and Roosevelt Elk Winter Range for the lands identified in Exhibit 14. Specifically, the Application demonstrates that the habitat features described for the upper Rogue Unit are present on the subject property such as vegetation patterns and available fee. The habitat is well located between two existing protected habitat areas to the north and south. The application provides first-hand accounts of intensive elk use of the site during the winter season by the property owner Forest Capital Partners, LLC. See, Exhibit 14. ODFW provided a letter dated October 13, 2011 that indicates these properties have winter range habitat value, especially for elk. These criteria are consistent with (a) above and there are no conflicting criteria to (b) or (c) above.” Staff agrees with these findings.

For the Dry Creek properties the applicant repeats their findings in 3 above and concludes “...this land and collection of properties is currently inventoried as significant Black-Tailed Deer and Roosevelt Elk Winter Range.” Staff agrees with this conclusion.

5. *Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.*

FINDINGS: The applicant concludes and states "...both the Grizzly Unit and the Upper Rogue Unit are already listed as significant Goal 5 resource sites and that the subject Application will make no change to those listings but only amend the precise locations where the Goal 5 protection program for those respective units will be applicable."

Staff believes that substantial evidence submitted by the applicant shows that the Prospect area properties should be fully identified as significant Goal 5 resources with regard to Black-tailed Deer and Elk Winter Range. Staff finds the Prospect area properties, including all of the subject properties rather than portions of the properties, should be added to Jackson County's inventory of Black-tailed Deer and Elk Winter Range and expands the boundaries of the Upper Rogue Unit of Area of Special Concern (ASC) 90-1 to include these properties fully.

6. *Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.*

FINDING: The applicant states that both units of winter range habitat are already listed as significant Goal 5 resource sites and no changes will be made to those listings, only the precise locations where the Goal 5 protection program will be applicable.

Staff finds that the Prospect area properties are not fully included within Jackson County's significant Goal 5 resource site, the Upper Rogue Unit, as shown on the Comprehensive Plan Natural and Historic Resources Element map of Black-tailed Deer and Elk Winter Range Units. This map was adopted as ASC 90-1 in 1991 along with protection measures for development within these units. Staff finds the evidence submitted regarding the Prospect area properties is adequate to determine the properties, including area not previously mapped, are a significant Goal 5 resource for Black-tailed Deer and Elk Winter Range.

Staff finds the Dry Creek area properties are already listed as significant Goal 5 resource sites.

7. *Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:*

(a) *The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and*

(b) *The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.*

FINDING: The applicant states that for this particular application Jackson County has an adopted and acknowledged Goal program for deer and elk habitat and there is no need to adopt interim protection measures

Ordinance 91-1 included maps of deer and elk winter ranges considered significant Goal 5 resources. These maps identified three different classes of winter range, as determined by ODFW: “Especially Sensitive”, “Sensitive”, and “Other”, with commensurate levels of protection provided to protect the carrying capacity of the range. The Dry Creek properties are within the Especially Sensitive winter range of the Grizzly unit. These properties are at the northern edge of the Grizzly unit.

The Prospect area properties have portions of the properties within the Upper Rogue unit of winter range habitat but are generally adjacent to the habitat. The designation of the Upper Rogue unit is Especially Sensitive habitat.

B. OAR 660-023-0040, ESEE Decision Process

1. *Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:*

- (a) *Identify conflicting uses;*
- (b) *Determine the impact area;*
- (c) *Analyze the ESEE consequences; and*
- (d) *Develop a program to achieve Goal 5.*

FINDING: The applicant concludes the conflicting uses have been established in Jackson County's Goal 5 Document, *Goal 5 Resources, Background Document 1990*. The applicant states the impact area has been identified and functions as the area that is significant and protected. The applicant has submitted a detailed ESEE consequences analysis, their Exhibit 2. There is also an ESEE consequences results summary in their Exhibit 1, Section V. The applicant requests the Commissioners incorporate and adopt these analyses.

Staff agrees with the applicant that conflicting uses and the impact areas have been identified in Jackson County's Goal 5 document and shall be used in this application. The detailed ESEE consequences analysis and ESEE consequences results summary may be used by the Commissioners as findings and conclusions for their decision should they agree with all of the findings and conclusions. The Commissioners may make other findings and conclusions with respect to the ESEE consequences analysis and ESEE consequences results summary. Staff will analyze these ESEE documents below.

The applicant further states "The Board of Commissioners further concludes that OAR 660-023-0040(1) recognizes that the Goal 5 decision process steps may be repeated where it is appropriate to do so. In the case of the subject application, the ESEE Consequences analysis in Section V and Exhibit 2 consider the conflicting uses individually and do not attempt to analyze the implications of new Goal 5 protection decisions. The Board of Commissioners herewith incorporate and adopt their conclusions of law below resulting in a Goal 5 decision to fully allow the landfill uses and roads on the Dry Creek Properties and on this basis conclude this decision warrants a return to the earlier steps in the Goal 5 process to evaluate the 'other conflicting uses' interrelationships with the landfill and road uses being fully allowed."

Staff suggests a detailed review of both the ESEE consequences analysis and the ESEE consequences results summary. A review of these documents may warrant a return to earlier steps in the Goal 5 process to evaluate "other conflicting uses" interrelationships with the landfill and road uses should the Commissioners determine they should be allowed fully. Staff has talked with DLCD's Goal 5 specialist Amanda Punton and she determined that this process may be applicable. Staff suggests a review of the applicant's findings to determine if the process followed by the applicant is warranted.

2. *Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:*

(a) *If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)*

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

FINDING: The applicant states that Jackson County's Goal 5 Background Document lists the conflicting uses for Black-tailed deer and Roosevelt elk and may rely upon the identified conflicting uses for the initial consequences analysis and the application of the Goal 5 process. These conflicting uses are identified below:

- Residential development on winter ranges
- Roads
- Landfills
- Commercial feedlots
- Airports
- Open concrete canals
- Woven-wire fence
- Dogs running at large
- Agricultural crops and young conifers damaged by browsing

Staff agrees that these identified conflicting uses may be used for the ESEE consequences analysis.

The applicant goes on to indicate that if the Commissioners were to reach a decision that landfill uses and road uses should be allowed fully, notwithstanding effects to winter range habitat, then the Commissioners should also return to earlier steps in the Goal 5 process to evaluate the "other conflicting uses" based upon a decision to fully allow landfill uses and road uses. The applicant encourages the Commissioners to then adopt the Iteration 2 Consequences Analysis in Section V of their Exhibit 1 in this application and repeat Step 2 in the process for the "other conflicting uses." The applicant makes findings for residential development, commercial feedlots, personal use airports, and open concrete canals stating. The applicant states for each conflicting use as follows:

- "...the presence of the landfill as a permanent use on the site and a decision to fully allow the landfill use is a decision that renders residential uses even less likely to be pursued by the owner of the active landfill. Therefore, the Board of Commissioners concludes residential uses need not be considered as a conflicting use at this location."
- "...the presence of the landfill as a permanent use on the sited and a decision to fully allow the landfill use is a decision that has little effect on the low likelihood of a commercial feedlot overall."
- "...the presence of the landfill as a permanent use on the site and a decision to fully allow the landfill use is a decision that renders a personal use very unlikely. The site is not well situated for a personal use airport because of conflicts with landfill operations and abundance of powerlines. Therefore, the Board of Commissioners concludes personal use airports need not even be considered conflicting at this location."
- "...the presence of the landfill as a permanent use on the site and a decision to

fully allow the landfill use is a decision has little effect on the low likelihood of an open concrete canal overall.”

The conclusion of the applicant is that the specific language of OAR 660-023-0040(2) does not require consideration of uses that are unlikely to occur because existing permanent uses occupy the site.

In order to make a determination that the permanent landfill use would preclude or make unlikely the above conflicting uses, staff believes more information is needed. For instance, the estimated termination date of the landfill and the estimated area and location of the final footprint of the landfill may be needed. Staff asks the Commissioners whether other information is needed to conclude certain conflicting uses are “unlikely” to occur because of existing permanent uses occupying the site.

3. *Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.*

FINDING: The applicant states “...for Big Game Winter Range Habitat the impact area utilized in the existing adopted and acknowledged Goal 5 Background document has been the area identified as significant habitat and that [it] is protected.” Staff agrees with applicant’s findings.

4. *Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.*

FINDING: With respect to the Prospect area properties, the applicant has provided ESEE consequences analysis, applicant’s Exhibit 2, applicant’s pgs. 1-29, and ESEE consequences analysis summary, Exhibit 1, Section V, pg. 22, *Iteration 1 – Goal 5 ESEE Consequences Analysis*. The applicant states “The results herein support the limited protection of the resource, as the results demonstrate some protection of the resource outweighs the benefits of fully allowing one or more conflicting uses and there are no permanent existing uses on site that warrant a re-examination of consequences considering the existing uses and interrelationship between conflicting uses.”

Staff finds the ESEE consequences analysis and ESEE consequences analysis summary are adequate for the County to determine whether to allow, limit, or prohibit the identified conflicting uses. Staff recommends the Commissioners adopt the ESEE

consequences analysis and the ESEE consequences analysis summary for the Prospect area properties.

Staff would note that a detailed ESEE consequences analysis was completed for the following conflicting uses:

- Residential development on winter ranges
- Roads
- Landfills
- Commercial feedlots
- Airports
- Open concrete canals

The applicant did not complete a detailed analysis for woven wire fences, dogs running-at-large and agriculture crops and young conifers damaged by browsing. In the applicant's Exhibit 2, *Detailed ESEE Consequences Analysis*, applicant's pgs. 28 and 29, the applicant makes findings for each conflicting use. In the applicant's Exhibit 1, applicant's pg. 24, the applicant states "Exhibit 2 provides detailed reasoning explaining why these three 'conflicting uses' are not independent land uses unto themselves for which consequences can be reasonably analyzed in context of a quasi-judicial map amendment request. The reasoning provided in Exhibit 2 is herewith incorporated and adopted and the resulting consequences for these 'uses' is that any decision to amend the Goal 5 Black-Tailed Deer and Roosevelt Elk Winter Range Units Map (ASC 90-1) will have not practical ESEE consequences with respect to the permissibility of any of these three 'conflicting uses.'"

In OAR 660-023-0010(1), the definition of "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses. This is the Goal 5 administrative rule currently being used for Jackson County. The Goal 5 Background document was completed in 1991 and used the process and definitions in OAR 660, Division 16. OAR 660-016-00005(1), *Identify Conflicting Uses*, states "It is the responsibility of local government to identify conflicts with inventories Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences."

Since OAR 660, Division 23 is the current Goal 5 process being used to analyze conflicting uses, the definition of "conflicting use" should be used and staff believes that the explanation above why these three "conflicting uses" are not independent land uses unto themselves is valid and staff suggests the Commissioners incorporate and adopt the applicant's Exhibit 2 for these uses.

Dry Creek Landfill Properties

FINDING: The applicant has submitted a detailed ESEE consequences analysis,

applicant's Exhibit 2, and a Goal 5 ESEE consequences analysis summary, applicant's Exhibit 1, Section V, *Iteration 1 – Goal 5 ESEE Consequences Analysis Summary*, applicant's pg. 22. In the applicant's Exhibit 1, Section V, applicant's pg. 21, the applicant states "The ESEE Consequences analysis results summary presented in this section includes two important considerations. OAR 660-023-0040(1) includes specific language that the Goal 5 process may return to earlier steps as part of the process and OAR 660-023-0040(2) does not require consideration of uses that are unlikely to occur because existing permanent uses occupy the site. Consistent with the two fore-mentioned provisions, Applicant's ESEE Consequences Analysis results summary is provided in two steps as follows.

- Iteration 1 – Summarize the consequences of the conflicting uses identified in the comprehensive plan individually without, or minimally, accounting for interrelationships between the uses and without accounting for existing permanent uses that occupy the site.
- Iteration 2 – When the outcome of Iteration 1 results in a decision to allow a conflicting use fully, the second step takes into consideration the interrelationships between the now fully allowed uses and existing permanent uses on-site by returning to earlier steps in the process. This reexamination of the consequences of the conflicting uses identified in the comprehensive plan accounts for the interrelationships between the uses and existing permanent uses that occupy the site."

Staff will review Iteration 1 first. The ESEE consequences analysis summary, Exhibit 1, Section V, *Iteration 1 – Goal 5 ESEE Consequences Analysis Summary*, applicant's pg. 22, and based upon applicant's Exhibit 2, *Detailed Goal 5 ESEE Consequences Analysis*, pgs. 1-29, makes the following positive consequences with respect to allowing, limiting or prohibiting specific conflicting uses for the Dry Creek properties.

- Residential Development – Limit: "Slightly Positive: The County's Goal 5 Habitat program would balance residential development benefits against habitat preservation benefits."
- Roads – Allow Fully: "Somewhat Positive: Road Development in this area supports the Regional Landfill and these outweigh the benefits of marginal additional habitat protection."
- Landfills – Allow Fully: "Positive: The ESEE benefits for the regional landfill use outweigh the ESEE benefits of any level of habitat protection."
- Commercial Feedlots – Limit: "Slightly Positive: The County's Goal 5 Habitat program would balance Feedlot development benefits against habitat preservation benefits."
- Airports – Limit: "Slightly Positive: The County's Goal 5 Habitat program would balance Airport development benefits against habitat preservation benefits."
- Open Concrete Canals – Prohibit: "Open canal prohibition would not outweigh the benefits of additional habitat protection."

The applicant's conclusions are to fully allow landfills and roads supporting the landfill, limit, through Jackson County's current regulations in JCLDO 7.1.1(C), residential development, commercial feedlots and airports, and prohibit open concrete canals.

Staff finds that the ESEE consequences analysis and consequences analysis summary

are adequate to determine whether to allow, limit or prohibit conflicting uses for the Dry Creek Landfill properties. The applicant states “Based on the results herein above, allowing the preexisting permanent landfill fully, a conflicting use, outweighs the benefits of protecting the resource, thus a reexamination of considering the existing uses and interrelationship between conflicting uses is warranted. Based upon Applicant’s Section IV, Findings of Fact Item A, the existing regional landfill and related facilities are found to be significant uses that dominate the site. Consistent with OAR 660-023-0040(1) and (2), an evaluation of conflicting use likelihood and subsequent consequences analysis is required.”

Staff believes the ESEE consequences analysis results, landfills and roads associated with the landfill should be allowed fully, may warrant reexamination of existing uses and their interrelationship between conflicting uses, although it is not required. However, should the Commissioners determine such a review and reexamination is necessary, staff will review the information from the applicant with regard to Iteration 2.

The applicant has included a summary table in applicant’s Exhibit 1, Section V, applicant’s pages 23 and 24. The results are reproduced below.

- Residential Development: “Unlikely use to occur considering the magnitude of existing landfill development and probability for landfill related impacts to grow. The use is not one that must continue to be considered conflicting.”
- Commercial Feedlots: “Except for reducing the limited area which a commercial feedlot could physically be sited, the existing and ongoing landfill uses are not likely to conflict with feedlots in general. The use is one that must be analyzed.”
 - Allow Fully: “Neutral to Slightly Positive: Considering the existing and likely increasing impacts associated with the landfill, residual impacts from Feedlot Development benefits equally offset the benefits of some level of additional habitat protection.”
 - Limit: “Slightly negative: Negative consequences of feed lot prohibition outweighs the positive marginal consequences of additional habitat protection.”
 - Prohibit: “Slightly Negative: Negative consequences of feed lot prohibition outweighs the positive marginal consequences of additional habitat protection.”
- Airports: “Unlikely use to occur, given the existing and ongoing landfill and landfill related uses and large number of power lines in the area. Wind associated with landing and taking off of aircraft would likely conflict with existing an ongoing landfill uses (blowing refuse). Further, the hilly terrain and power lines do not make for desirable landing/take-off areas.”
- Open Concrete Canals: “Except for reducing the limited area which an open concrete canal could physically be sited, the existing and ongoing landfill uses are not likely to conflict with open concrete canals in general.”
 - Allow Fully: “Neutral: Open Concrete Canal benefits balance the benefits of additional habitat protection – even considering existing impacts associated with the landfill.”
 - Limit: “N/A”
 - Prohibit: “Slightly Negative: Considering the existing and likely increasing impacts associated with the landfill, the marginal benefits of protecting habitat by prohibiting opening concrete canals are too

insignificant.”

- Other “Conflicting Uses”: “The County’s Goal 5 Background Document also identifies additional conflicting uses that include Woven Wire Fence, Dogs Running-at-Large, and Agricultural Crops and Young Conifers Damaged by Browsing. Exhibit 2 provides detailed reasoning explaining why these three ‘conflicting uses’ are not independent land uses unto themselves for which consequences can be reasonably analyzed in the context of a quasi-judicial map amendment. The reasoning provided in Exhibit 2 is herewith incorporated and adopted and the resulting consequences for these ‘uses’ is that any decision to amend the Goal 5 Black-Tailed Deer and Roosevelt Elk Winter Range Units Map (ASC 90-1) will have no practical ESEE consequences with respect to the permissibility of any of these three ‘conflicting uses.’”

In summary, staff finds the applicant’s results determine that residential development and airports are unlikely to occur based upon existing landfill development and future growth impacts, and need not be considered per OAR 660-023-0040(2). As stated in IV(B)(2) above, in order to make a determination that the permanent landfill use would preclude or make unlikely the above conflicting uses, staff believes more information is needed. For instance, the estimated termination date of the landfill and the estimated area and location of the final footprint of the landfill, as well as any other information the Commissioners may need to determine the conflicting uses are unlikely to occur in the future. Currently the existing footprint of the landfill and composting facilities is approximately 330 acres, about half of the acreage proposed to be removed from the winter range habitat.

With respect to the results regarding commercial feedlots and open concrete canals, the applicant indicates that the consequences for allowing fully commercial feedlots is neutral to slightly positive and allowing fully open concrete canals is neutral.

In addition to the Iteration 1 ESEE consequences analysis and the Iteration 2 reexamination of ESEE consequences considering existing uses and interrelationships with “other conflicting uses”, the applicant has submitted findings and conclusions regarding step 4 in applicant’s *Criterion 17*, applicant’s pages 33-36. The applicant states “The Board of Commissioners incorporate and adopt their conclusions of law above (OAR 660-023-0040(1)) that a return to the earlier steps in the Goal 5 process to reexamine the ‘other conflicting uses’ based upon the decision to fully protect the landfill and road uses is warranted. Consistent with these conclusions, the Board of Commissioners herewith incorporates and adopts the Iteration 2 Goal 5 Consequences Summary in Section V above and repeats the step 4 consequences analysis for the ‘other conflicting uses’ based upon a decision to fully allow the landfill and road uses for Dry Creek Properties....” The applicant goes on to identify the economic, social and environmental consequences when impacts of the landfill are accounted. The summary is included below.

- Residential Development: “Overall, the ultimate resulting consequences become neutral for limiting residential development when the impacts of the landfill are accounted.
 - **Note:** Staff would like to point out that the analysis for residential development is based on the determination that if “...a court, on review, were to conclude that the Board of Commissioners must continue to consider Residential Development a conflicting use despite its low

likelihood due to the presence of the landfill....”

- Commercial Feedlots: “Overall, the ultimate resulting consequences become slightly negative for limiting commercial feedlot development because if a feedlot were to locate at the site, despite its low likelihood overall, the feedlot does have the potential for economic and social benefits; conversely the consequence of allowing the feedlot fully becomes slightly positive for the inverse reasons.”
- Personal Use Airports: “Overall, the ultimate resulting consequences become slightly negative for limiting personal use airport development because if a personal use airport were to locate at the site, despite its low likelihood overall, the airport does have the potential for small economic and social benefits; conversely the consequence for allowing the airport fully becomes slightly positive for the inverse reasons.”
 - **Note:** Staff would like to point out that the analysis for personal use airports is based on the determination that if “...a court, on review, were to conclude that the Board of Commissioners must continue to consider Personal Use Airports a conflicting use despite its low likelihood due to the presence of the landfill....”
- Open Concrete Canals: “Overall, the ultimate resulting consequences become slightly negative for limiting open concrete canal development because if an open concrete canal were to locate at the site, despite its low likelihood overall, the canal would have some positive economic and social benefits or it would not be constructed at all; conversely the consequence of allowing the open concrete canal fully becomes slightly positive for the inverse reasons.”

CONCLUSIONS: Staff finds that the initial ESEE consequences analysis, applicant’s Exhibit 2, along with the ESEE consequences analysis summary, applicant’s Exhibit 1, pg. 22, are adequate to analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use(s), per OAR 660-023-0040(4). Specifically, this analysis concludes that the landfill and roads associated with the landfill should be fully allowed.

The second analysis, Iteration 2, a reexamination of ESEE consequences considering existing uses and interrelationships with “other conflicting uses”, considers an evaluation of conflicting use likelihood and subsequent consequences analysis, consistent with the language of OAR 660-023-0040(1) and (2). This analysis found that residential development and airports did not need to be considered because they are unlikely to occur because of the impacts of the landfill. The other conflicting uses were found by the applicant to warrant a subsequent consequences analysis which found that because of the impacts of the landfill, they should be allowed fully. Staff finds that in order to determine the likelihood of whether to consider residential development and airports unlikely because existing permanent uses (landfill) occupy the site, more information regarding the present and future impacts of the landfill is needed. Staff also recommends that the Commissioners determine if Iteration 2 is may be necessary.

The third analysis stems from the proposition that a court, on review, concludes that residential development and airports must be considered conflicting uses, the applicant returns to the consequence analysis step and augments the consequence to account for the implication of the decision to allow the landfill use and road uses fully and the use’s interrelationships. In this analysis, the consequences become neutral for limiting residential development and slightly positive for airports. Staff again recommends that the Commissioners determine if this third analysis is necessary.

5. *Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:*

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

FINDING: With respect to the Prospect area properties, the applicant request Jackson County adopt the ESEE analysis which shows that for most all of the identified conflicting uses, the resource site and the conflicting uses are both important compared to each other. On this basis, that applicant asks the Commissioners to amend ASC 90-1 to allow the conflicting uses but in a manner that limits such uses by including them within ASC 90-1 pursuant to OAR 660-023-0040(5)(b). The properties will then be subject to the regulations and standards of JCLDO Section 7.1.1(C), Deer and Elk Habitat. Staff agrees with the applicant's findings and recommends the same.

Dry Creek Landfill Properties

FINDING: The applicant has extensive findings and conclusion in applicant's Exhibit 1, Criterion 18, applicant's pgs. 36-39. Staff will try to summarize these findings below.

1. The applicant states "The Board of Commissioners herewith incorporates and adopts the ESEE Analysis in Section V. The Board of Commissioners herewith elects to consider the actual land uses for the Dry Creek Properties which is a regional landfill and road uses to support the same. Thus, the Board of Commissioners concludes the negative consequences of limiting or prohibiting the landfill use are substantial. Based upon this reasoning, the Board of Commissioners concludes that the regional landfill use is of sufficient importance relative to the Big Game Winter Range Habitat, that removal of the ASC 90-1

overlay from the identified Dry Creek properties is warranted, pursuant to OAR 660-023-0040(5)(c).” The applicant goes on to state in detail why the landfill use should be fully allowed in this area, as summarized below.

- a. There are adverse economic consequences to limiting landfill development.
- b. There are significant social costs that correlate with cost of waste disposal services.
- c. Solid waste is an important environmental issue.
- d. There is a second dimension to the environmental issues associated with concentrated solid waste disposal and this is the conversion of landfill gas to energy.

Staff agrees with the applicant regarding the Iteration 1 ESEE Consequences Analysis and that the regional landfill use is of sufficient importance relative to the Big Game Winter Range Habitat, that removal of the ASC 90-1 overlay is warranted. Staff believes the ESEE consequences analysis and the explanation of why the landfill uses should be fully allowed are adequate to determine these properties should be removed from ASC 90-1.

Staff would like to note to the Commissioners that the applicant and applicant's agent submitted a request for a pre-application conference, PRE2011-00011, and during that conference, July 7, 2011, the applicant indicated the main reason for removal of these properties from ASC 90-1 was to develop an energy facility for the conversion of landfill gas to energy. In correlation to this, the Oregon Department of Fish and Wildlife stated in their letter dated October 13, 2011, “Based upon the uniqueness of DCL’s circumstance, the goal of generating alternative energy, and the proposed mitigation, ODFW supports the removal of winter range protection on 680 acres of DCL’s property.” Staff believes this is an important consideration with regard to the removal of these properties from ASC 90-1.

2. The applicant goes on to indicate the Commissioners adopt the Iteration 2 Consequences Analysis in Section V. – The applicant states “Based upon the foregoing decision to fully allow the landfill use and road uses, the Board of Commissioners concluded herein above that the ‘other conflicting uses’ should be reexamined under Steps 2 and 4 of the Goal 5 decision process to account for the decision to allow landfill full[y] and the road uses fully.” The applicant includes conclusions with respect to the “other conflicting uses” and why they should be allowed fully. Staff summarizes these reasons below.
 - a. For residential development and personal use airports the applicant states that these uses need not be considered conflicting uses because these uses are unlikely to be located on property being operated for a regional landfill, pursuant to OAR 660-023-0040(2). As an addendum to this conclusion, the applicant states that if a Court were to require these uses to continue to be considered as conflicting uses, protection of the resource site under OAR 660-023-0040(5)(a) or (b), prohibit and limit the uses, are insignificant because the landfill will dominate the resource site. For these reasons, the applicant believes these uses should be allowed fully.
 - b. For commercial feedlot development and open concrete canal development, the applicant concludes protection of the resource site

under OAR 660-023-0040(5)(a) or (b), prohibit and limit the uses, are insignificant because the landfill will dominate the resource site. For these reasons, the applicant believes these uses should be allowed fully.

Staff has previously indicated that to determine if a use is found unlikely to develop, more information is needed to make this determination. Staff has also stated that the Iteration 2 consequences analysis for “other conflicting uses” should be determined to be warranted for this application by the Commissioners.

In conclusion, the Iteration 1 consequences analysis found that the only conflicting uses that should be allowed fully, pursuant to OAR 660-023-0040(5)(c) were landfills and the roads associated with the landfill. The Iteration 2 consequences analysis contradicts the initial analysis to conclude that all conflicting uses should be allowed fully. Staff believes the Iteration 1 consequences analysis confirms the removal the Dry Creek properties from ASC 90-1, Deer and Elk Habitat, which will allow a significantly important regional landfill to continue and expand. Staff recommends the Commissioners find the ESEE analysis demonstrates that the landfill and the roads associated with the landfill are of sufficient importance relative to the resource site to allow these uses fully, notwithstanding the possible impacts on the resource site, pursuant to OAR 660-023-0040(5)(c).

C. OAR 660-023-0050 Programs to Achieve Goal 5

1. *For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).*

2. *When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:*

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for

different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

3. *In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:*

(a) *Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and*

(b) *Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).*

FINDING: The applicant states "...the Board of Commissioners concludes it already has an adopted and acknowledged Goal 5 compliant protection program for Big Game Winter Range implemented through ASC90-1. The Board of Commissioners concludes that its program to achieve Goal 5 in context of this application is to adopt an ordinance that amends ASC 90-1 to expand the Upper Rogue Especially Sensitive Winter Range Unit to include the lands owned by the Meriwether Southern Oregon Lands and Timber LLC as identified in Applicant's Exhibit 12b and Table B1 in Section IV of this document, and to remove from ASC 90-1 the lands in the Grizzly Especially Sensitive Winter Range Unit identified in Applicant's Exhibit 12a and Table A1 in Section IV of this document."

Should the Commissioners conclude that the Iteration 1 ESEE consequences analysis demonstrates that the landfill and the roads associated with the landfill are of sufficient importance relative to the resource site to allow these uses fully, notwithstanding the possible impacts on the resource site, pursuant to OAR 660-023-0040(5)(c), then an ordinance amending the language of JCLDO Section 7.1.1(C) to fully allow these uses in the Grizzly Especially Sensitive Winter Range Unit and the standards and regulations of Section 7.1.1(C) are not applicable.

Should the Commissioners conclude that the Iteration 1 ESEE consequences analysis and the Iteration 2 consequences analysis demonstrate that all conflicting uses are of sufficient importance relative to the resource site to allow these uses fully, then the conclusion as stated by the applicant above should be followed.

D. OAR 660-023-0110 Wildlife Habitat

1. *For purposes of this rule, the following definitions apply:*

(a) *"Documented" means that an area is shown on a map published or issued by a state or federal agency or by a professional with demonstrated expertise in habitat identification.*

(b) *"Wildlife habitat" is an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.*

FINDING: Staff finds the subject application correctly applies these definitions.

2. *Local governments shall conduct the inventory process and determine significant wildlife habitat as set forth in OAR 660-023-0250(5) by following either the safe harbor methodology described in section (4) of this rule or the standard inventory process described in OAR 660-023-0030.*

FINDING: Staff finds the subject application has utilized the standard inventory process described in OAR 660-023-0030.

3. *When gathering information regarding wildlife habitat under the standard inventory process in OAR 660-023-0030(2), local governments shall obtain current habitat inventory information from the Oregon Department of Fish and Wildlife (ODFW), and other state and federal agencies. These inventories shall include at least the following:*

(a) *Threatened, endangered, and sensitive wildlife species habitat information;*

(b) *Sensitive bird site inventories; and*

(c) *Wildlife species of concern and/or habitats of concern identified and mapped by ODFW (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs).*

FINDING: The applicant states "The Board of Commissioners concludes this standard is directed at legislative amendments and OAR 660-023-0030(1) provides that application of OAR 660-023-0030(2) referenced above may rely on information and data supplied by an applicant as part of a site-specific quasi-judicial amendment."

4. *Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in this section. Under the safe harbor, local governments may determine that "wildlife" does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:*

(a) *The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;*

(b) *The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;*

(c) *The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);*

(d) *The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or*

(e) *The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).*

FINDING: Staff finds this application relies on the determination of habitat significance under OAR 660-023-0040 and not the safe harbor criteria above.

5. *For certain threatened or endangered species sites, publication of location information may increase the threat of habitat or species loss. Pursuant to ORS 192.501(13), local governments may limit publication, display, and availability of location information for such sites. Local governments may adopt inventory maps of these areas, with procedures to allow limited availability to property owners or other specified parties.*

FINDING: Staff finds that Roosevelt Elk and Black-tailed Deer are not a threatened or endangered species. This criterion is not applicable.

6. *As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.*

FINDING: The applicant states “The Board of Commissioners concludes the subject application is a quasi-judicial map amendment that affects only where the County’s adopted and acknowledged Goal 5 protection program for Deer and Elk Habitat will be applied but includes no proposal to alter the structure of the program itself. The Board of Commissioners further concludes that the quasi-judicial notification and hearings procedures necessarily provide an opportunity to coordinate with the appropriate state and federal agencies regarding habitat for Roosevelt Elk and Black-tailed Deer.”

Staff agrees with these findings.

V. OREGON STATEWIDE PLANNING GOALS

A. Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: The applicant states that because this application follows the Type 4 procedure under the Jackson County Land Development Ordinance and affected property owners and agencies have the opportunity to participate in the process, this is consistent with Goal 1. Staff agrees with the applicant's findings.

B. *Goal 2: Land Use Planning*

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: The applicant states "...this goal is met because this application is following the Type 4 procedures to assure due process and coordination with affected agencies as required under the Jackson County Land Development Ordinance, consistent with its acknowledged." Staff finds that the application contains adequate evidence to determine a decision on this application. This criterion is met.

C. *Goal 3: Agricultural Lands*

To preserve and maintain agricultural lands.

FINDING: The applicant indicates that this goal is met because the property is not changing the underlying Exclusive Farm Use (EFU) zoning or the Agricultural Land Plan Designation. Staff agrees with the applicant's finding.

D. *Goal 4: Forest Lands*

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

FINDING: The applicant states this goal is met because there is no change to the underlying Forest Resource (FR) zoning or to the Forestry/Open Space Land Plan Designation. Staff agrees with the applicants findings.

E. *Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces*

To protect natural resources and conserve scenic and historic areas and open spaces.

FINDING: Staff finds that Goal 5 for deer and elk habitat is implemented by administrative rule OAR 660, Division 23. Evidence and information has been submitted by the applicant and is adequate for the Commissioners to determine a decision regarding Goal 5. This criterion is met.

F. *Goal 6: Air, Water and Land Resources Quality*

To maintain and improve the quality of the air, water and land resources of the state.

FINDING: The applicant states "The Jackson County Comprehensive Plan

Environmental Quality Element sets forth policies and strategies for managing the quality of air, water and land resources. The Board of Commissioners concludes Goal 6 is achieved through the adherence to State and County environmental quality requirements and that there is no aspect of the Goal 5 Black-Tailed Deer and Roosevelt Elk Winter Range designation that relates in a manner that would constitute independent decisional criteria for the subject application and the amendment is therefore consistent with Goal 6. Staff agrees with the applicant's findings.

- G. *Goal 7: Areas Subject to Natural Hazards*
To protect people and property from natural hazards.

FINDING: The applicant concludes that Black-Tailed Deer and Roosevelt Elk Winter Range designations have no appreciable effect on lands uses that would alter the manner in which Jackson County plans to minimize natural hazards risks through its Goal 7 land use planning program. Staff agrees with the applicant's findings.

- H. *Goal 8: Recreational Needs*
To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreations facilities including destination resorts.

FINDING: The applicant states "The Board of Commissioners concludes that Deer and Elk Habitat is relevant to recreational needs through the implication for deer and elk populations and the associated recreational opportunities for hunting and wildlife viewing. The Board of Commissioners concludes that the Goal 5 process addresses these Goal 8 issues through the evaluation of economic and social implication of the Goal 5 protection decisions and that the proposed map amendment have considered the same. On this basis, the Board of Commissioners incorporates and adopts the Goal 5 Analysis in Section V and relies on that analysis to conclude the Goal 8 recreational needs have been adequately addressed in the manner prescribed by OAR 660 Division 23."

Staff finds that whether the Commissioners adopt the Iteration 1 consequences analysis alone or both the Iteration 1 analysis and the Iteration 2 consequences analysis, both have adequately addressed the Goal 8 criterion and this criterion is met.

- I. *Goal 9: Economic Development*
To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The applicant states "The Board of Commissioners concludes that is relevant to Economic Development through the implications for deer and elk populations and the associated recreational opportunities for hunting and wildlife viewing as well as the economic impacts of limiting or prohibiting conflicting uses. The Board of Commissioners concludes that the Goal 5 process addresses these Goal 9 issues through the evaluation of economic implication of the Goal 5 resource protection decisions and that the proposed map amendment have considered the same. On this basis, the Board of Commissioners incorporates and adopts the Goal 5 Analysis in Section V and relies on that analysis to conclude the Goal 9 economic development needs have been adequately addressed in the manner prescribed by OAR 660 Division 23."

Staff finds that whether the Commissioners adopt the Iteration 1 consequences analysis alone or both the Iteration 1 analysis and the Iteration 2 consequences analysis, both have adequately addressed the Goal 9 criterion and this criterion is met.

- J. *Goal 10: Housing*
To provide for the housing needs of citizens of the state.

FINDING: The applicant concludes that winter range designations have minimal effect on land uses that would alter the manner in which housing is planned in Jackson County through its Goal 10 land use planning program. Staff agrees with the applicant's finding.

- K. *Goal 11: Public Facilities and Services*
To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The applicant states "The Board of Commissioners concludes that Black-Tailed Deer and Roosevelt Elk Winter Range designation have no appreciable effect on land uses that would alter the manner in which Public Facilities and Services are demanded in Jackson County, but could alter the manner in which services are provided. An essential public service is refuse collection and disposal. The proposed amendments will reduce regulatory risk to the region's solid waste disposal facility and thereby support the long-term needs for this essential public facility to the benefit of Jackson County's Goal 11 land use planning program." Staff agrees with applicant's findings.

- L. *Goal 12: Transportation*
To provide and encourage a safe, convenient and economic transportation system.

FINDING: The applicants concludes the amendment will have no appreciable effect on land uses that would alter the manner in which transportation facilities and services are demanded in Jackson County and will not alter the County's transportation land use planning programs. Staff agrees with the applicant's findings.

- M. *Goal 12: Energy Conservation*
To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

FINDING: The applicant states "The Board of Commissioners conclude that Black-Tailed Deer and Roosevelt Elk Winter Range is relevant to energy conservation that could be caused by the limitation or prohibition of conflicting uses. The Board of Commissioners concludes that the Goal 5 process addresses these Goal 13 issues through the evaluation of energy implications of Goal 5 resource protection decisions and that the proposed map amendment have considered the same. On this basis, the Board of Commissioners incorporates and adopts the Goal 5 Analysis in Section V and relies on that analysis to conclude the Goal 13 energy conservation needs have been adequately addressed in the manner prescribed by OAR 660 Division 23."

Staff finds that whether the Commissioners adopt the Iteration 1 consequences analysis

alone or both the Iteration 1 analysis and the Iteration 2 consequences analysis, both have adequately addressed the Goal 13 criterion and this criterion is met.

N. *Urbanization*

To provide for an orderly and efficient transition from rural to urban land use.

FINDING: The applicant concludes that the proposed amendments are relevant to Goal 14 in an indirect and limited way. The applicant states "...intensive urbanization requires environmentally sound and economic refuse disposal and the amendment herein will reduce regulatory risk to the region's solid waste disposal facility in manner that supports long-term urbanization goals of Jackson County." Staff agrees with the applicant's findings.

VI. **JACKSON COUNTY COMPREHENSIVE PLAN**

A. *Map Designations Element, Policy 1*

Minor map amendment requests to the Jackson County Comprehensive Plan will be reviewed through the quasi-judicial Type 4 process established in the Jackson County Land Development Ordinance. Amending the map designation of only a portion of a resource designated parcel or tract will not be considered unless the purpose is to limit uses to those justified through the Goal 2 Exceptions procedure, to implement protection of a Goal 5 resource, to establish industrial lands consistent with the provisions of this Plan, or to implement an unincorporated community plan or urban growth management agreement.

FINDING: The applicant states "Jackson County concludes that the proposed map amendment has been appropriately considered through a quasi-judicial Type 4 process as established in JCLDO Chapter 2. As evidenced by Exhibits 4a and 4b, all subject properties are designate as either Forestry/Open Space Land or Agricultural Land. Despite amending only portions of the subject parcels, this application has as its purpose the proper protection of a Goal 5 resource. Therefore, the Board of Commissioners concludes these amendments affecting only portions of resource designated parcels, is permissible and appropriate under Map Designations Element, Policy 1 with which this application is deemed to comply."

Staff agrees with the applicant's findings.

B. *Natural and Historic Resources Element, Policy 3*

The fish and wildlife resources of Jackson County are valuable for economic, aesthetic, and ecological reasons. The conservation of fish and wildlife resources is of considerable importance to the county, especially as pressure increases to convert natural habitat areas into developed areas.

POLICY: IN CONJUNCTION WITH THE OREGON DEPARTMENT OF FISH AND WILDLIFE AND OTHER AFFECTED AGENCIES, THE COUNTY SHALL PROVIDE FOR THE PROTECTION OF A PRODUCTIVE AND HEALTHY FISH AND WILDLIFE COMMUNITY AND HABITAT, AND SHALL PROTECT THREATENED OR ENDANGERED SPECIES.

IMPLEMENTATION STRATEGIES:

1. *Utilize overlay zoning technique to designate specific habitat areas for special development review.*
2. *Require clustering of structures where conventional development is likely to have a significant adverse impact upon a valuable fish and wildlife habitat. Winter range area for deer and or elk could be protected by grouping homesites. If a clustering approach is not used, densities should be limited to one unit per 40 acres in sensitive winter range areas and one unit per 160 acres in especially sensitive deer and elk winter range areas.*
3. *In conjunction with the Oregon Department of Fish and Wildlife, and other affected agencies, provide for the retention of fish and wildlife habitat by developing programs which would provide for the purchase or donation of such land or the use of conservation easements.*
4. *Revise and amend the Jackson County Land Development Ordinance or develop new ordinances to ensure their compatibility with habitat preservation. One such revision would be the requirement of special riparian vegetation protection for all developments bordering on, or including streams.*

FINDING: Jackson County relies upon the Oregon Department of Fish and Wildlife (ODFW) as experts regarding deer and elk winter range habitat. The applicant has submitted a letter dated October 13, 2011 indicating their support of this application. While Policy 3 is not a criterion, it provides the nexus between ODFW, Jackson County and the winter range habitat protection.

- C. Goal 5 Resources Background Document 1990 (Open Spaces, Scenic and Natural Areas, and Historic Resources), Section 2

FINDING: Jackson County has had maps identifying deer and elk winter range habitat since 1982. The current maps and protection measures for deer and elk habitat were adopted in 1991 through Ordinance 91-1. The Goal 5 Resources Background Document determined conflicting uses as well as protection measures based upon an ESEE consequences analysis. The purpose of this amendment is to remove the Dry Creek properties from ASC 90-1 and the protection requirements of JCLDO Section 7.1.1(C). The amendment also adds the Prospect area properties to Jackson County's Goal 5 inventory as a significant resource for deer and elk winter range habitat and requires protection through the measures identified in JCLDO Section 7.1.1(C).

Staff does not identify criteria within the background document but includes it as a reference document.

- D. Jackson County Transportation System Plan (TSP), Policy 4.3.1-B(c)
- 4.3.1-B Plan amendments, zone changes and type 3 and 4 land use permits need to demonstrate that adequate transportation planning has been*

done to support the proposed land use.

c. *Ensure that quasi-judicial comprehensive plan changes, zone changes and type 3 and 4 land use permits will not result in land uses that are incompatible with the public transportation facilities they will use. To meet this requirement, criteria "i, ii and iii" below must be demonstrated to be met through a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. Compliance with criteria "i, ii and iii" will be considered sufficient to demonstrate compliance with the Transportation Planning Rule. The TIS requirement may be waived if the Planning Director and the County Engineer administratively concur in writing that sufficient specific evidence is provided from affected transportation management agencies that the cumulative effect of approving the proposed plan amendment, zone change or type 3 or 4 land use permit, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in the MPO) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans (RTP 6-1).*

i. *Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment pursuant to policy 4.3.3-D).*

ii. *Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to policy 4.3.3-D).*

iii. *Approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel. A facility used by the subject parcel is defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional*

state facilities.

FINDING: The applicant has requested a waiver of the required Traffic Impact Study (TIS). As of the writing of this staff report, the TIS waiver has not been received. Staff believes the waiver will be approved and will submit it to the record as soon as it is received.

VII. JACKSON COUNTY LAND DEVELOPMENT ORDINANCE

A. Section 3.7.3(C), Amendments to the Comprehensive Plan or Zoning Maps

Approval Criteria

Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole. In addition, the following specific approval criteria apply:

C) *Minor Comprehensive Plan Map or Zoning Map Amendments (Quasi-Judicial)* *All proposed minor map amendments will be reviewed for compliance with the criteria set forth below and with all other applicable provisions of this Ordinance and the Comprehensive Plan¹:*

1) *Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured;*

FINDING: The applicant states that the removal and addition of lands to ASC 90-1 will not result in a change to the allowable uses in the underlying zoning districts nor are new uses being proposed as part of this application that would alter travel, public safety, or utility demands in any way. The applicant concludes there will be no effects on public safety, transportation, and utility facilities and services. Staff agrees with the applicant's findings and this criterion is met.

2) *The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both;*

FINDING: The applicant states "This application is a Goal 5 amendment that modifies the areas where ASC 90-1 – JCLDO Section 7.1.1(C) – are to apply and the Board of Commissioners interprets this criterion to apply to map amendments that are not directed specifically at the mapping of an ASC. Consistent with this interpretation, the Board of Commissioners concludes the revised maps will properly implement ASC 90-1 by applying the designation to those areas where the Goal 5 analysis and process adopted herein determines such application is necessary and appropriate." Staff agrees with the applicant's findings.

¹ These criteria are superseded in Aggregate Resource plan and zone amendments by OAR 660-023-0180. The applicable criteria in aggregate amendment cases is found in the Map Designation Element of the Comprehensive Plan, other elements of this Plan, and in other sections of this LDO.

3) *On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element;*

FINDING: The applicant indicates while these properties are resource lands, the map amendments conform to the criteria of Policy 1 of the Comprehensive Plan Map Designations Element because that policy provides exception (applicable to this application) to the *whole parcel rule* in the context of Goal 5 amendments. Staff agrees with the applicant's findings and this criterion is met.

4) *Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14;*

FINDING: The applicant states that this amendment deals exclusively with Goal 5 and produces no effect on the minimum residential lot sizes permitted in the base zoning districts. Therefore, this criterion is not applicable. Staff agrees.

5) *Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation;*

FINDING: No Zoning Map Amendment is sought as part of this application and this criterion is not applicable.

6) *In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated; and*

FINDING: The applicant states "...community benefit is demonstrated by ensuring the long-term viability and maximum utilization of the means to dispose of solid waste, and by properly inventorying and designating land in accordance with the established criteria outlined [in the] Map Designation Element of the Jackson County Plan, Goal 5 and its implementing rule."

Staff finds community benefit is demonstrated by ensuring the long-term viability of Jackson County's regional landfill and ancillary uses to the landfill.

7) *In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other property in the vicinity, and any other factors deemed to be relevant to the application.*

FINDING: Staff finds that the applicant has submitted evidence that is adequate to determine the appropriateness of the proposed redesignation.

B. Section 7.1.1(C) ASC 90-1 Deer and Elk Habitat

C) **ASC 90-1 Deer and Elk Habitat**1) *Description*

This area includes all lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds as described in the Natural and Historic Resources Element (Chapter 16) of the Comprehensive Plan. Such lands are identified as winter range habitat on base maps prepared by the Oregon Department of Fish and Wildlife (ODFW) and adopted by the Board of Commissioners as ASC 90-1. Winter range is classified by ODFW as "Especially Sensitive," "Sensitive", and "Other", with commensurate levels of protection provided to protect the carrying capacity of the range as set forth in the Jackson County Comprehensive Plan.

a) *Winter range units classified by ODFW as "Especially Sensitive" include:*

- i) Upper Applegate Unit*
- ii) Agate Flat Unit*
- iii) Lake Creek Unit*
- iv) Grizzly Unit*
- v) Big Butte Creek Unit*
- vi) Upper Rogue Unit*
- vii) Elk Creek Unit*

b) *Winter range units classified by ODFW as "Sensitive" include:*

- i) Trail Creek Unit*
- ii) Cottonwood Creek Unit*
- iii) Lower Applegate Unit*
- iv) Evans Creek Unit*

c) *Units identified by ODFW as "Other Winter Range" include:*

- i) Sardine Creek Unit*
- ii) West Valley Unit*
- iii) Dead Indian Memorial Road Unit*

2) *Minimum Parcel Size*

New parcels that are created by partition or subdivision in winter range units will comply with the following minimum parcel sizes:

- a) Especially Sensitive Winter Range units: 160 acres;*
- b) Sensitive Winter Range units: 40 acres, or the minimum parcel size required by the underlying zoning district, whichever is larger; and*
- c) Other Winter Range units may be divided according to the prevailing minimum parcel/lot size for the zoning district.*

3) *Gating Requirements*

New private roads will be gated between November and April (where permitted by law) to protect wintering deer and elk. Individual driveways to dwellings or other buildings that are within 300 feet of a public road are exempt from gating requirements.

- 4) *The standards of this subsection are deemed to comply with the deer and elk habitat protection measures recommended by ODFW and therefore do not require ODFW comment on Type 1 permits issued in conformance with this subsection. A first dwelling on a lawfully created lot or parcel will be located within 300 feet of an existing:*
- a) *Public or private road;*
 - b) *Driveway that provides access to an existing dwelling on another parcel (provided the new dwelling unit will not take access on it unless the driveway is improved to the private road standards of Section 9.5.3); or*
 - c) *Other developed access way that existed as shown on the County 2001 aerials or other competent evidence (e.g., a road or driveway for a legal easement recorded prior to the aerial date).*

To be considered under the locational criteria of this subsection, any access must, at a minimum, conform with the emergency vehicle access standards of Section 9.5.4. When an initial dwelling is proposed to be sited in an alternative location that does not conform to the standards of this subsection, the alternative location may be allowed through a Type 2 review process in accordance with subsection (6), below.

- 5) *General Development Standards*
- The following standards apply to all discretionary land use permits subject to review under this Section, unless a condition of approval when the parcel was created required compliance with prior habitat protection standards. The land use decision will include findings that the proposed use will have minimal adverse impact on winter deer and elk habitat based on:*
- a) *Consistency with maintenance of long-term habitat values of browse and forage, cover, sight obstruction;*
 - b) *Consideration of the cumulative effects of the proposed action and other development in the area on habitat carrying capacity; and*
 - c) *Location of dwellings and other development within 300 feet of an existing public or private road, or driveway that provides access to an existing dwelling as shown on the County 2001 aerials or other competent evidence. When it can be demonstrated that habitat values and carrying capacity are afforded equal or greater protection through a different development pattern an alternative location may*

be allowed through the discretionary review process described in subsection (6), below;

d) Dwellings other than the initial dwelling on a lot or parcel will comply with one (1) of the following, as applicable:

- i) A maximum overall density (within the tract) of one (1) dwelling unit per 160 acres in Especially Sensitive Winter Range units, or one (1) dwelling unit per 40 acres in Sensitive Winter Range units; or
- ii) Clustering of new structures within a 200-foot radius of the existing dwelling to achieve the same development effect as would be achieved under i), above.

6) ODFW Approved Alternate Siting Plan
Initial dwellings and other development may be sited in locations that do not conform with subsections (4) and (5) above when the applicant demonstrates at least one (1) of the following:

- a) The wildlife habitat protection measures required by Section 7.1.1(C)(4) will render the parcel unbuildable; or
- b) A written authorization approving an alternate siting plan is received from ODFW. Any such authorization must include a statement from ODFW that confirms habitat values and carrying capacity will be afforded equal or greater protection if the dwelling or other development is sited in the alternate location. The written authorization must be made on ODFW letterhead or forms and be signed by an ODFW official with authority to make habitat protection decisions. Authorization of an alternative dwelling location will not release an applicant from compliance with any other applicable standard of this Ordinance.

FINDING: The application is to remove the Dry Creek properties from ASC 90-1 and add the Prospect properties to ASC 90-1. This Section is added as reference to the protection measures for development in this ASC and is not considered criteria.

C. Section 7.1.1(K) ASC 90-10 Ecologically or Scientifically Significant Natural Areas

- 1) *Description*
This area includes all lands on which ecologically or scientifically significant natural areas are located. These sites are illustrated on a map contained in the Goal 5 background document and the Natural and Historic Resources Element of the Jackson County Comprehensive Plan, and are either protected or subject to limitations on conflicting uses where they would affect the features and values associated with each site.
- 2) *Special Regulations*

These identified sites are considered protected under Statewide Planning Goal 5, its related Administrative Rules, and Jackson County Comprehensive Plan policies, in addition to management plans and objectives established for each site by federal, state and other local jurisdictions. All land use actions, other than forest operations which are governed by the Oregon Forest Practices Act, that are inconsistent with the stated management and objectives for "2A" and "3A" sites will be prohibited. Land use actions proposed on or adjacent to "3C" sites will be evaluated under a Type 2 process pursuant to Section 3.1.3 to ensure that potentially conflicting uses are adequately limited to retain the resource value identified in the Comprehensive Plan and identified in the Goal 5 Resources Background Document.

FINDING: The parcel described as 361W35, tax lot 300, is within natural area site JA 66, Old Growth Forest Stand. In Jackson County's *Goal 5 Background Document 1990*, it determines this site as an unimportant or unprotected natural area and states:

"This site contains a severely stunted stand of conifers on the northern end of Roxy Ann Butte, near Agate Lake. The trees are apparently located between two aggregate quarries and continue to exist because the current owner/operator values them as a vegetative buffer. According to the property owner, a large site once existed but the previous owner removed the trees although they are very small in diameter."

This tax lot is at the southern edge of the natural area. The site has a Goal 5 designation of "3B", which allows conflicting uses to occur. Because the landfill has been in existence since 1971 and conflicting uses area allowed fully, the current application to remove the Dry Creek properties from ASC 90-1 will have no affect on this natural area.

VII. APPLICANT PROVISO

In applicant's Exhibit 1, Section VII, applicant's pg. 49, the applicant states a proviso as included below:

"Applicant, without requirement, has sought to voluntarily replace the habitat lands proposed to be removed from the landfill property. To that end, prior to filing and in connection with this application, Applicant entered into an agreement with Forest Capital Partners, LLC which has agreed to have its property included in the overlay described in the Jackson County Land Development Ordinance (JCLDO) as ASWC 90-1. Applicant however, offers this exchange of lands with the proviso that inclusion of the described Meriwether properties in the Exhibit B, Deer and Elk Winter Range Habitat map of Ordinance 91-1 (ASC 90-1) is contingent upon removal of the Dry Creek properties from the said map."

ODFW has approved the removal of the Dry Creek properties from ASC 90-1 partially based upon the mitigation for lost winter range habitat by adding the Prospect area properties to the Upper Rogue Unit winter range habitat. It is unclear to staff whether ODFW would still approve the removal of the Dry Creek properties from ASC 90-1 if the Prospect area properties were not part of this application. Staff believes the Commissioners should consider this alternative.

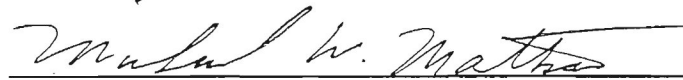
VII. STAFF CONCLUSIONS:

The applicant has submitted an extensive ESEE consequences analysis regarding both areas. For the Prospect area properties, staff recommends the Planning Commission designate these properties significant Goal 5 resources and they shall be placed on Jackson County's inventory of Black-tailed Deer and Roosevelt Elk Winter Range. Staff recommends the Commissioners adopt the ESEE consequences analysis and summary for the Prospect area properties (Meriwether Properties). Staff also recommends that Area of Special Concern (ASC) 90-1, JCLDO Section 7.1.1(C), Deer and Elk Habitat, be expanded to include fully the Prospect area properties, specifically 323E24, tax lot 100 and 323E25, tax lot 100.

The applicant has substantial evidence in the Dry Creek properties Iteration 1 ESEE consequences analysis to determine that landfills and roads associated with the landfill should be allowed fully. Should the Commissioners determine that based upon the determination to fully allow landfills and roads, a return to preceding steps to review "other conflicting uses" with regard to their interrelationship with landfills and roads is warranted, staff asks the Commissioners to review Iteration 2. If the Commissioners agree with the applicant's findings and conclusions regarding Iteration 1 and 2, they should adopt the applicant's findings and conclusions and direct staff to prepare a Recommendation of Approval for the Board of Commissioners.

Should the Commissioners determine the applicant has not submitted substantial evidence to approve this application, they should direct staff to prepare a Recommendation of Denial for the Board of Commissioners.

JACKSON COUNTY COMPREHENSIVE PLANNING MANAGER

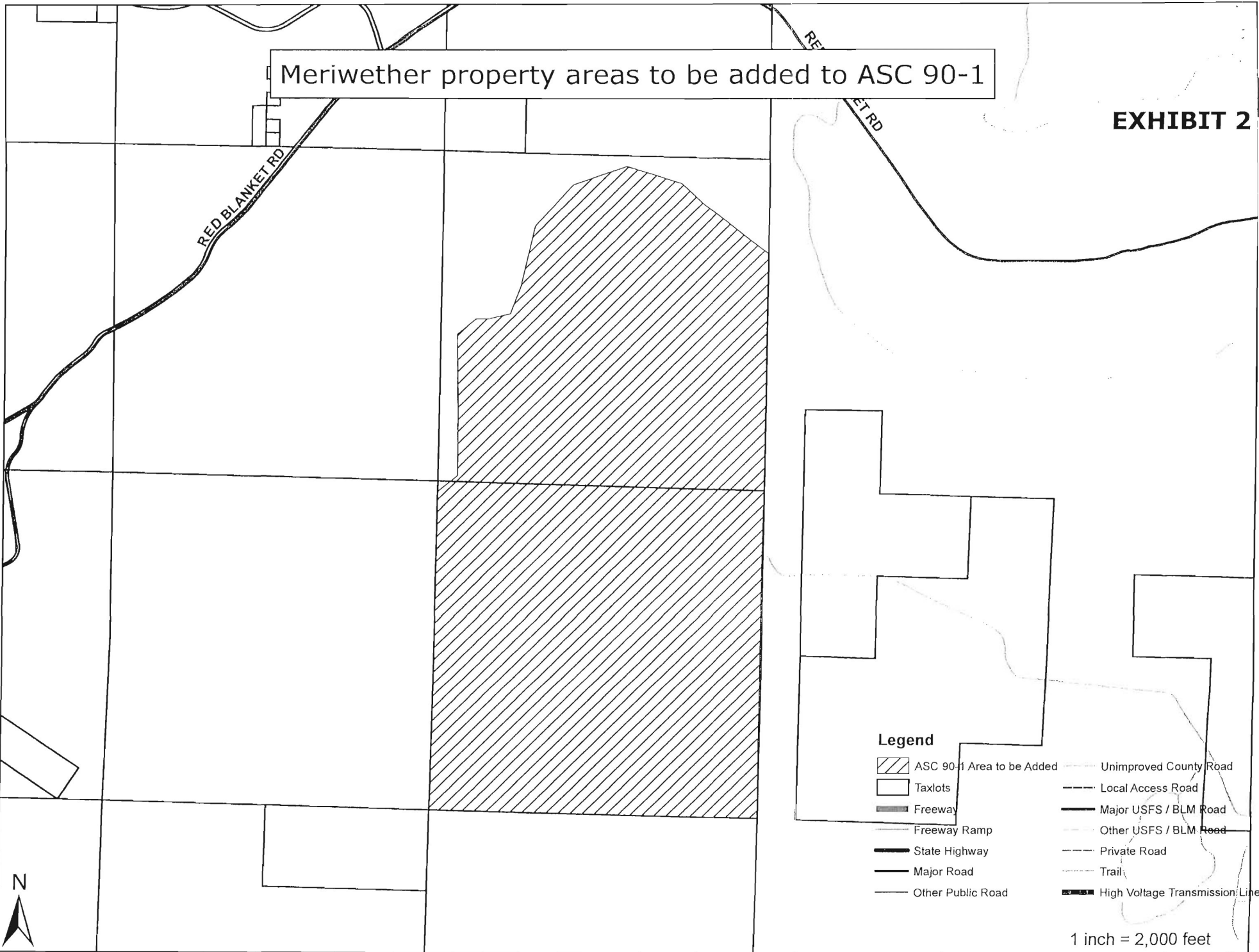


By: Michael W. Mattson, Planner II

Date: 1-29-12

Meriwether property areas to be added to ASC 90-1

EXHIBIT 2



1 inch = 2,000 feet

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF OREGON, COUNTY OF JACKSON

ORDINANCE NO. 2012-5

AN EMERGENCY ORDINANCE AMENDING THE JACKSON COUNTY COMPREHENSIVE PLAN MAP BY REMOVING PROPERTIES FROM AREA OF SPECIAL CONCERN (ASC) 90-1, DEER AND ELK WINTER RANGE OVERLAY AND ADDING PROPERTIES TO JACKSON COUNTY'S GOAL 5 INVENTORY OF SIGNIFICANT RESOURCES, BLACK-TAILED DEER AND ROOSEVELT ELK WINTER RANGES, AND AREA OF SPECIAL CONCERN (ASC) 90-1, DEER AND ELK HABITAT. APPROXIMATELY 672 ACRES WILL BE REMOVED FROM ASC 90-1 AND APPROXIMATELY 1,121 ACRES WILL BE ADDED TO ASC 90-1. THE PROPERTIES TO BE REMOVED ARE TOWNSHIP 36 SOUTH, RANGE 1 WEST, SECTION 35, A PORTION OF TAX LOT 300; TOWNSHIP 37 SOUTH, RANGE 1 WEST, SECTION 01, TAX LOTS 204, 205, 209, 299, AND 300; TOWNSHIP 37 SOUTH, RANGE 1 WEST, SECTION 02, TAX LOTS 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, AND 202; A PORTION OF TOWNSHIP 37 SOUTH, RANGE 1 WEST, SECTION 12, TAX LOT 200. THE PROPERTIES TO BE ADDED TO ASC 90-1 ARE A PORTION OF TOWNSHIP 32 SOUTH, RANGE 3 EAST, SECTION 24, TAX LOT 100 AND TOWNSHIP 32 SOUTH, RANGE 3 EAST, SECTION 25, TAX LOT 100. FILE LRP2011-00006.

RECITALS:

1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).

2. A notice of the proposed amendment was submitted to the Oregon Department of Land Conservation and Development (DLCD) on December 22, 2012, 49 days prior to the first evidentiary hearing. A notice was published on Sunday, January 29, 2012 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on Thursday, February 9, 2012 at 9:00 a.m. in the Jackson County Auditorium.
3. A Minor Comprehensive Plan Map Amendment application was submitted to Jackson County by the applicant's agent, CSA Planning, Ltd., on October 3, 2011. The application was deemed incomplete on October 24, 2012. The agent submitted additional information to Development Services and the application was deemed complete on November 16, 2011. A public hearing before the Jackson County Planning Commission was scheduled for February 9, 2012.

The hearing was opened on February 9, 2012 and, because there was no quorum of Planning Commissioners, the hearing was continued to March 8, 2012.

4. A public hearing was held on March 8, 2012. Following testimony and arguments regarding this application, the Planning Commission voted to recommend approval of the amendment to the Board of County Commissioners.
5. A public hearing was scheduled before the Board of County Commissioners on Wednesday, May 30, 2012. A notice was published on Sunday, May 20, 2012 that a first evidentiary was scheduled before the Board of County Commissioners on Wednesday, May 30, 2012 at 1:30 p.m. in the Jackson County Auditorium
6. A public hearing was held on May 30, 2012. Following testimony and arguments regarding this application, the Board of County Commissioners voted to approve the amendment.

NOW, THEREFORE, the Board of County Commissioners of Jackson County ORDAINS as follows:

SECTION 1. FINDINGS OF FACT

Based upon the evidence and arguments presented, the Board of County Commissioners makes the following findings of fact with respect to this application. Where factual conflict arose, the Board of County Commissioners has resolved them consistent with these findings:

- 1.1 The Board of County Commissioners finds that proper legal notice was sent to the applicant, property owners within 750 of the subject properties and affected agencies on May 10, 2012. Legal notice was published in the Sunday, May 20, 2012 edition of the Medford Mail Tribune.

- 1.2 For the Dry Creek properties [properties to be removed], the Board of County Commissioners finds as follows:
 - 1.2.1 The current Comprehensive Plan Map Designations are Agricultural Land and Forestry/Open Space Land. The Zoning Districts are Exclusive Farm Use (EFU) and Open Space Reserve (OSR).
 - 1.2.2 These properties have access by Dry Creek Road, a County owned and maintained public road. Alternative access for the landfill properties is a private haul road from the landfill facilities north where it ultimately connects to Hwy 140, east of the Jackson County Sports Park facilities.
 - 1.2.3 Portions of these properties are within Jackson County Fire District No. 3.
 - 1.2.4 These properties are primarily used for a regional land-fill and composting facility and associated improvements.
 - 1.2.5 Except for a small area of 371W01, tax lot 300, these properties are within the Grizzly Unit of Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
 - 1.2.6 There are wetlands identified on some of these properties.
 - 1.2.7 The acreage of these properties is 930.5 acres. The total acreage to be removed from ASC 90-1 is 672.2 acres.
- 1.3 For the Prospect (Meriwether) properties [properties to be added], the Board of County Commissioners finds as follows:
 - 1.3.1 The current Comprehensive Plan Map Designation for these properties is Forestry/Open Space and the Zoning District is Forest Resource (FR).
 - 1.3.2 These properties are accessed through Svinth Road and Forest Service Road 6205, connecting to Butte Falls-Prospect Road to the south and Red Blanket Road to the north.
 - 1.3.3 These properties are not within a fire district.
 - 1.3.4 These properties are privately owned and managed forest land.

- 1.3.5 Portions of these properties are within the Upper Rogue Unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant Goal 5 resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
- 1.3.6 These properties include wetlands associated with stream features that originate on the properties. The applicant also indicates there are numerous springs throughout these properties.
- 1.3.7 The acreage of these properties is 1,280.7 acres. The acreage to be added to ASC 90-1, Deer and Elk Habitat, is 1,121.3 acres.
- 1.4 The Board of County Commissioners finds that the following agencies responded with comments to this application and their comments were considered by the Commissioners: Oregon Department of Fish and Wildlife, Jackson County Fire District No. 3, City of Medford, Oregon Department of Forestry, and Upper Rogue CAC. Agency comments were considered by the Commissioners.
- 1.5 The Board of County Commissioners finds that property owners were notified and comments were received from one (1) property owner. The property owner's comments were considered by the Commissioners.

SECTION 2. LEGAL FINDINGS

To approve an amendment to the Official Comprehensive Plan Map that modifies ASC 90-1, Deer and Elk Habitat, the Board of Commissioners must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

- 2.1 The Board of County Commissioners adopts fully the Planning Commissions Legal Findings, incorporated herein and attached within Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS

- 3.1 The Board of County Commissioners adopts fully the Planning Commission's conclusions, incorporated herein and attached within Exhibit A. These conclusions determine that the proposed amendment is in compliance with the Jackson County Land Development Ordinance, Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan.

SECTION 4. DECISION

- 4.1 Based on the evidence in the record and testimony at the public hearing, the Board of County Commissioners approves a Minor Comprehensive Plan Amendment to remove 672.2 acres from Area of Special Concern (ASC) 90-1, Deer and Elk Habitat and add 1,121.3 acres to Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, on the following properties described as follows:
- 4.2.1 The properties to be removed from ASC 90-1 are Township 36 South, Range 1 West, Section 35, a portion of tax lot 300; Township 37 South, Range 1 West, Section 01, tax lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, tax lot 200, the map which is incorporated herein and attached within Exhibit A.
- 4.2.2 The properties to be added to Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, are a portion of Township 32 South, Range 3 East, Section 24, tax lot 100 and Township 32 South, Range 3 East, Section 25, tax lot 100, the map which is incorporated herein and attached within Exhibit A.

SECTION 5. EMERGENCY DECLARED

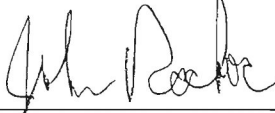
- 5.1 The Applicant provided a letter requesting an emergency ordinance and explained the nature and basis for the emergency declaration and the same is found as Exhibit 11 at page 74 of the Board of County Commissioner record. At the hearing, the Board of Commissioners reviewed this request and the rationale provided therein, and on that basis, directed an emergency ordinance be drafted. Therefore, this Ordinance being necessary to the health, safety and welfare of the people of Jackson County, an emergency is hereby declared to exist and this Ordinance shall take effect upon adoption and shall be deemed automatically repealed 120 days from its enactment pursuant to Section 14(4) of the Home Rule Charter of Jackson County, Oregon.

ADOPTED this 11th day of July, 2012, at Medford, Oregon.

JACKSON COUNTY BOARD OF COMMISSIONERS



Don Skundrick, Chair



John Rachor, Commissioner

Absent

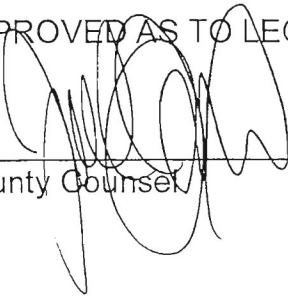
Dennis C.W. Smith, Commissioner

ATTEST:



By: Recording Secretary

APPROVED AS TO LEGAL SUFFICIENCY:



County Counsel

~~The Board of Commissioners' Ordinance is the final decision on this action. This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA). You must appeal this decision within 21 days of the date it is mailed. This decision is being mailed on _____, 2012, and the LUBA appeal period will expire on _____, 2012. Please contact LUBA for specific appeal information. They are located at 550 Capitol Street N.E. Suite 235, Salem, Oregon 97301-2552. They can be reached at (503) 373-1265.~~

BEFORE THE JACKSON COUNTY PLANNING COMMISSION
STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF CONSIDERATION OF A)
 MINOR COMPREHENSIVE PLAN AMENDMENT)
 TO REMOVE THE PROPERTIES FROM AREA)
 OF SPECIAL CONCERN (ASC) 90-1, DEER)
 AND ELK WINTER RANGE OVERLAY AND)
 ADD PROPERTIES TO JACKSON COUNTY'S)
 GOAL 5 INVENTORY OF SIGNIFICANT)
 RESOURCES, BLACK-TAILED DEER AND)
 ROOSEVELT ELK WINTER RANGES, AND)
 AREA OF SPECIAL CONCERN (ASC) 90-1,)
 DEER AND ELK HABITAT. APPROXIMATELY)
 672 ACRES WILL BE REMOVED FROM ASC)
 90-1 AND APPROXIMATELY 1,121 ACRES)
 WILL BE ADDED TO ASC 90-1. THE)
 PROPERTIES TO BE REMOVED ARE)
 TOWNSHIP 36 SOUTH, RANGE 1 WEST,)
 SECTION 35, A PORTION OF TAX LOT 300;)
 TOWNSHIP 37 SOUTH, RANGE 1 WEST,)
 SECTION 01, TAX LOTS 204, 205, 209, 299,)
 AND 300; TOWNSHIP 37 SOUTH, RANGE 1)
 WEST, SECTION 02, TAX LOTS 108, 109, 110,)
 111, 112, 113, 114, 115, 116, 117, 122, 200, 201,)
 AND 202; A PORTION OF TOWNSHIP 37)
 SOUTH, RANGE 1 WEST, SECTION 12, TAX)
 LOT 200. THE PROPERTIES TO BE ADDED TO)
 ASC 90-1 ARE A PORTION OF TOWNSHIP 32)
 SOUTH, RANGE 3 EAST, SECTION 24, TAX)
 LOT 100 AND TOWNSHIP 32 SOUTH, RANGE)
 3 EAST, SECTION 25, TAX LOT 100. DRY)
 CREEK LANDFILL, INC., APPLICANT. FILE)
 NO. LRP2011-00006.

RECOMMENDATION
FOR APPROVAL

Jackson County Planning Commission: Recommends approval of a Minor Comprehensive Plan Amendment to remove 672.2 acres from Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, and add 1,121.3 acres to the Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, on the following properties described as follows:

1. The properties to be removed from ASC 90-1 are Township 36 South, Range 1 West, Section 35, a portion of tax lot 300; Township 37 South, Range 1 West, Section 01, tax lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, tax lot 200.

2. The properties to be added to ASC 90-1 are a portion of Township 32 South, Range 3 East, Section 24, tax lot 100 and Township 32 South, Range 3 East, Section 25, tax lot 100.

RECITALS:

1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
2. A notice of the proposed amendment was submitted to the Oregon Department of Land Conservation and Development (DLCD) on December 22, 2012, 49 days prior to the first evidentiary hearing. A notice was published on Sunday, January 29, 2012 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on Thursday, February 9, 2012 at 9:00 a.m. in the Jackson County Auditorium.
3. A Minor Comprehensive Plan Map Amendment application was submitted to Jackson County by the applicant's agent, CSA Planning, Ltd., on October 3, 2011. The application was deemed incomplete on October 24, 2012. The agent submitted additional information to Development Services and the application was deemed complete on November 16, 2011. A public hearing before the Jackson County Planning Commission was scheduled for February 9, 2012.

The hearing was opened on February 9, 2012 and, because there was no quorum of Planning Commissioners, the hearing was continued to March 8, 2012.

4. A public hearing was held on March 8, 2012. Following testimony and arguments regarding this application, the Planning Commission voted to recommend approval of the amendment.

Now, therefore,

The Jackson County Planning Commission finds, concludes, and RECOMMENDS as follows:

SECTION 1, FINDINGS:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application.

- 1.1 The Planning Commission finds that proper legal notice was sent to the applicant and property owners within 750 feet of the subject properties and affected agencies on January 20, 2012. Legal notice was published in the Sunday, January 29, 2012 edition of the Medford Mail Tribune.
- 1.2 For the Dry Creek Properties, the Planning Commission finds as follows:
 - 1.1.1 The current Comprehensive Plan Map Designations are Agricultural Land and Forestry/Open Space Land. The Zoning Districts are Exclusive Farm Use (EFU) and Open Space Reserve (OSR).
 - 1.1.2 These properties are primarily accessed by Dry Creek Road, a County owned and maintained public. Alternative access for the landfill properties is a private access

2-File No. LRP2011-00006

CSA Planning, Ltd., Agent; Dry Creek Landfill, Inc., Applicant

road from the landfill facilities north where it ultimately connects to Hwy 140, east of the Jackson County Sports Park facilities.

- 1.1.3 Portions of these properties are within Jackson County Fire District No. 3.
 - 1.1.4 These properties are primarily used for a regional land-fill and composting facility and associated improvements.
 - 1.1.5 Except for a small area of 371W01, tax lot 300, these properties are within the Grizzly Unit of Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
 - 1.1.6 There are wetlands identified on some of these properties.
 - 1.1.7 The acreage of these properties is 930.5 acres. The total acreage to be removed from ASC 90-1 is 672.2 acres.
- 1.2 For the Prospect (Meriwether) properties, the Planning Commission finds as follows:
- 1.2.1 The current Comprehensive Plan Map Designation for these properties is Forestry/Open Space and the Zoning District is Forest Resource (FR).
 - 1.2.2 These properties are accessed through Svinth Road and Forest Service Road 6205, connecting to Butte Falls-Prospect Road to the south and Red Blanket Road to the north.
 - 1.2.3 These properties are not within a fire district.
 - 1.2.4 These properties are privately owned and managed forest land.
 - 1.2.5 Portions of these properties are within the Upper Rogue Unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource, and are listed on Jackson County's inventory of significant Goal 5 resources, Black-tailed Deer and Roosevelt Elk Winter Ranges.
 - 1.2.6 These properties include wetlands associated with stream features that originate on the properties. The applicant also indicates there are numerous springs throughout these properties.
 - 1.2.7 The acreage of these properties is 1,280.7 acres. The acreage to be added to ASC 90-1, Deer and Elk Habitat, is 1,121.3 acres.
- 1.3 The Planning Commission finds that the following agencies responded with comments to this application and their comments were considered by the Planning Commission: Oregon Department of Fish and Wildlife, Jackson County Fire District No. 3, City of Medford, Oregon Department of Forestry, and Upper Rogue CAC. Agency comments were considered by the Planning Commission.

- 1.4 The Planning Commission finds that property owners were notified and comments were received from one (1) property owner. The property owner's comments were considered by the Planning Commission.

SECTION 2, LEGAL FINDINGS:

To recommend approval of an amendment to the Official Comprehensive Plan Map in order to modify ASC 90-1, Deer and Elk Habitat, the Planning Commission must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

The Planning Commission adopts the Findings in the Staff Report, incorporated herein and attached as Exhibit 1. In addition, the Planning Commission adopts fully the applicant's findings and conclusions found in Exhibit 12, Pages 137-218. These findings and conclusions demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with the following specific findings:

- 2.1 For the Prospect (Meriwether) properties, the Planning Commission finds as follows:
 - 2.1.1 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds these properties are significant Goal 5 resources, deer and elk habitat, based upon the location, quality and quantity of the habitat, and should be added to Jackson County's inventory of significant Goal 5 resources, specifically the Black-tailed Deer and Roosevelt Elk Winter Range. The applicant has shown the Goal 5 Inventory Process has been followed pursuant to OAR 660-023-0030. The Oregon Department of Fish and Wildlife (ODFW) has determined this property is significant habitat, especially for elk (Record Exhibit 12, Pages 339-340).
 - 2.1.2 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds the ESEE Decision Process pursuant to OAR 660-023-0040 and the applicant's findings and conclusions through that process determined that the identified conflicting uses and the Goal 5 resource, deer and elk winter range, are both important compared to each other (See record Exhibit 12, Pages 160-179 and Pages 190-218). Conflicting uses should be allowed in a limited way pursuant to OAR 660-023-0040(5)(b) and should be subject to the limitations imposed by ASC 90-1. The Planning Commission concludes these properties should be added to the overlay map for ASC 90-1 and conflicting uses would be subject to the regulatory framework for ASC 90-1, specifically JCLDO Section 7.1.1(C).
 - 2.1.3 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds Jackson County currently has an adopted and acknowledged Goal 5 compliant protection program for Big Game Winter Range which is implemented through ASC 90-1 and JCLDO Section 7.1.1(C). The Planning Commission concludes that its program to achieve Goal 5 in context of this application is to recommend the adoption of an ordinance that amends ASC 90-1 to expand the Upper Rogue Especially Sensitive Winter Range Unit to include the Prospect (Meriwether) properties, incorporated herein and attached as Exhibit 2.

2.2 For the Dry Creek properties, the Planning Commission finds as follows:

2.2.1 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds that the Dry Creek properties are already included in Jackson County's inventory of significant Goal 5 resources, specifically the Black-tailed Deer and Roosevelt Elk Winter Range.

2.2.2 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds the ESEE consequences analysis submitted by the applicant determines that all identified conflicting uses should be allowed fully, pursuant to OAR 660-023-0040(5)(c), and the Planning Commission adopts the applicant's ESEE consequences analysis, Exhibit 12, Pages 160-179 and Pages 190-218 of the application record, as its own.

2.2.3 Based upon evidence in the record and testimony at the public hearing, the Planning Commission finds the Dry Creek properties, incorporated herein and attached as Exhibit 3, should be removed from ASC 90-1, Deer and Elk Habitat, Grizzly Unit.

SECTION 3, CONCLUSION:

Based upon the evidence included in the record, the Planning Commission concludes that the proposed amendment is in compliance with the Jackson County Land Development Ordinance, Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

3.1 Statewide Planning Goals: The Planning Commission concludes that this application complies with Statewide Planning Goals, specifically Goal 5. Discussion of compliance with Statewide Planning Goals is contained in Sections III and V of the staff report, attached hereto as Exhibit 1, and in Exhibit 12, Pages 184-188, of the application record.

3.2 Oregon Administrative Rules (OAR), 660-023-0030, 660-023-0040, 660-023-0050, and 660-023-0110: The Planning Commission concludes this application complies with the Oregon Administrative Rules. Discussion of compliance with the OAR's is contained in Sections IV of the staff report, attached hereto as Exhibit 1, and Exhibit 12, Pages 160-179 and Pages 190-218, of the application record.

3.3 Jackson County Comprehensive Plan and the Jackson County Transportation System Plan (TSP): The Planning Commission concludes this application complies with the Jackson County Comprehensive Plan, including the TSP. Discussion of compliance with Comprehensive Plan is contained in Section VI of the staff report, attached hereto as Exhibit 1, and in Exhibit 12, Pages 182-184, of the application record. The Planning Commission concludes a TIS waiver has been completed and is in the application record at Exhibit 27, Pages 489-490.

3.4 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance. Discussion of compliance with the LDO is contained in Section VI of the staff report, attached hereto as Exhibit 1, and in Exhibit 12, Pages 179-182 of the application record.

5-File No. LRP2011-00006

CSA Planning, Ltd., Agent; Dry Creek Landfill, Inc., Applicant

SECTION 4, RECOMMENDATION:

4.1 Based on the evidence in the record and testimony at the public hearing, the Planning Commission recommends approval of a Minor Comprehensive Plan Amendment to remove 672.2 acres from Area of Special Concern (ASC), Deer and Elk Habitat and add 1,121.3 acres to the Jackson County's Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, on the following properties described as follows:

4.1.1 The properties to be removed from ASC 90-1 are Township 36 South, Range 1 West, Section 35, a portion of tax lot 300; Township 37 South, Range 1 West, Section 01, tax lots 204, 205, 209, 299, and 300; Township 37 South, Range 1 West, Section 02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, and 202; a portion of Township 37 South, Range 1 West, Section 12, tax lot 200 (Exhibit 3).

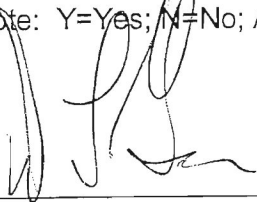
4.1.2 The properties to be added to ASC 90-1 are a portion of Township 32 South, Range 3 East, Section 24, tax lot 100 and Township 32 South, Range 3 East, Section 25, tax lot 100 (Exhibit 2).

4.2 The Planning Commission recommends adoption of this amendment by the Board of Commissioners.

This recommendation for APPROVAL adopted this 26th day of April, 2012, at Medford, Oregon.

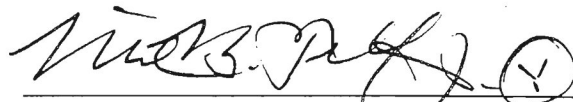
JACKSON COUNTY PLANNING COMMISSION

(Vote: Y=Yes; N=No; A=Abstain)



Don Greene, Chair

A



Richard B. Thierolf, Jr., Vice-Chair



Joel Ockunzzi, Commissioner

excused

Tahi Wouters, Commissioner



Craig Prewitt, Commissioner

ATTEST:



Kelly Madding, Development Services Director

- Exhibit 1: Staff Report
- Exhibit 2: Area to be added to ASC 90-1, Upper Rogue Unit
- Exhibit 3: Area to be removed from ASC 90-1, Grizzly Unit

**JACKSON COUNTY DEVELOPMENT SERVICES
COMPREHENSIVE PLAN AMENDMENT
STAFF REPORT**

APPLICANT: Dry Creek Landfill Inc.
P.O. Box 3187
Central Point, OR 97502

FILE: LRP2011-00006

AGENT: CSA Planning, Ltd.
4497 Brownridge, Suite 101
Medford, OR 97504

OWNER: Various owners

LEGAL DESCRIPTION: 361W35, tax lot 300; 371W01, tax lots 204, 205, 209, 299, 300; 371W02, tax lots 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 200, 201, 202; 371W12, tax lot 200; 323E24, tax lot 100; 323E25, tax lot 100.

PROPOSAL: Minor Comprehensive Plan Map Amendment to modify the Jackson County Goal 5 inventory of significant resources, Black-tailed Deer and Roosevelt Elk Winter Ranges, and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, an Environmental Zoning Map Overlay, by removing 672.2 acres comprising the Dry Creek Landfill and adding 1,121.3 acres approximately 3.5 miles north and east of the intersection of Hwy 62 and Mill Creek Dr., near Prospect, OR.

LOCATION: The northwestern edge of the Dry Creek properties lies approximately 1.2 miles northeast of the intersection of E. Vilas Road and N. Foothill Rd. The southwestern edge of these properties is approximately 2.7 miles southeast of the same intersection.

The northwestern edge of the Prospect area properties is approximately 1.5 miles northeast of the intersection of Matson Mill Rd. and Red Blanket Rd. The southwestern edge of these properties is approximately 1.7 miles southeast of the same intersection.

BACKGROUND: A Minor Comprehensive Plan Map Amendment application was submitted to Jackson County by the property owners' agent, CSA Planning, Ltd., on October 3, 2011. The application was deemed incomplete on October 24, 2011. The agent submitted additional information to Development Services on November 16, 2011. The application was deemed complete as of November 16, 2011. A first evidentiary public hearing before the Jackson County Planning Commission has been scheduled for February 9, 2012.

KEY ISSUES:

- Determine whether portions of the subject Dry Creek properties, 672.2 acres, should be removed from Jackson County's Area of Special Concern (ASC 90-1), Deer and Elk Habitat, a Zoning Map Overlay of the LDO, and 1,121.3 acres of the Prospect area properties be added to the inventory of significant Goal 5 resources for Black-tailed Deer and Roosevelt Elk Winter Ranges and ASC 90-1, Deer and Elk Habitat.

- Review the Economic, Social, Environmental and Energy (ESEE) consequences analysis to determine whether the analysis supports allowing certain or all conflicting uses fully notwithstanding the effects on deer and elk habitat, a significant Goal 5 resource. Also whether the ESEE analysis supports the addition of the acreage north and east of Prospect, OR, and whether to allow, limit, or prohibit conflicting uses on these properties.

I. FINDINGS OF FACT

A. **Access:** Dry Creek Landfill properties are primarily accessed by Dry Creek Road, a County owned and maintained public. Alternative access for the landfill properties is a private access road from the landfill facilities north where it ultimately connects to Hwy 140, near the Jackson County Sports Park facilities. The Prospect area properties are accessed by way of Svinth Road and Forest Service Road 6205, connecting to Butte Falls-Prospect Road to the south and Red Blanket Road to the north.

B. **Acreage:** The acreage of the Dry Creek properties is 930.5 acres. The amount of acreage to be removed is 672.2 acres. Acreage of the Prospect area properties is 1,280.7 acres. Amount of acreage to be added is 1,121.3 acres.

C. **Lot Legality:** Due to the number of properties and that the application is not a land development permit, lot legality has not been established through this application.

D. **Fire Protection:** Portions of the Dry Creek properties are within Jackson County Fire District No. 3. The Prospect area properties are not within a fire district.

E. **Irrigation:** No evidence that irrigation is available to the subject properties has been submitted.

F. **Zoning:** The Dry Creek properties are primarily zoned EFU with tax lot 117 split zoned EFU and OSR. The zoning for properties adjacent to the Dry Creek properties is as follows:

North: Open Space Reserve (OSR) & Exclusive Farm Use (EFU)

West: Open Space Reserve (OSR) & Exclusive Farm Use (EFU)

South: Exclusive Farm Use (EFU)

East: Exclusive Farm Use (EFU) & Rural Residential (RR-5)

The Prospect area properties are zoned Forest Resource (FR). The zoning for the properties adjacent to the Prospect area properties is Forest Resource (FR).

G. **Land Use:** The Dry Creek properties are primarily used for the landfill and related facilities, as well as the Regional Composting Facility. The Prospect area properties are privately owned and managed forest land.

H. **Utilities:** Some of the Dry Creek properties have utilities being used or are available for use. There is no evidence of utility availability or use for the Prospect area properties.

The Dry Creek Landfill contains landfill gas generators that produce electricity from landfill gas collectors on site.

I. **Site Characteristics:** For the Dry Creek properties, most of the property is gentle to moderately slope with rock outcrop inclusions. Property elevations range from 1700 feet at the lowest point to 2160 at the highest. Beyond the limits of the landfill activity areas, vegetation consists of native grasses, limited colonies of wedgeleaf ceanothus (buck brush), various forbes, and scattered conifers amongst hardwood trees.

The Prospect area properties comprise a low elevation mesa, with gentle to flat slopes at the mesa top with steep side slopes extending to the broad Prospect to Union Creek valley floor below. The highest elevation is near the mesa top's northerly end, at approximately 3730 feet. The lowest point in elevation is 3260 feet - located at the extreme northern tip, where it nears South Red Blanket Road. The dominant tree species throughout the property is Douglas Fir of varying ages and distributions. These properties include well distributed large stands of mature fir and pine intermixed with pockets of young to medium ages conifer stands. Interspersed amongst the timber pockets and also distributed throughout, are a mixture of small and large clearings containing a variety of grasses and broadleaf plants.

K. **Water:** It is assumed that there is at least one well servicing the Dry Creek properties, possibly more. The applicant states that the Prospect area properties have numerous springs throughout.

L. **Wetlands:** For the Dry Creek properties, the upper reaches of Whetstone Creek flows through the northwest corner of the properties. Three un-named seasonal drainages cross the properties and eventually flow into Dry Creek near its confluence with Agate Lake. A small seasonal pond is located in the southeast corner of the properties.

For the Prospect area properties, stream features include Svinth Creek and two un-named tributaries of Red Blanket Cree. All originate on these properties. The applicant also indicates there are numerous springs throughout these properties.

M. **Urban Growth Boundary, Unincorporated Community, Urban Fringe:** None of the subject properties are within an Urban Growth Boundary, Unincorporated Community or Urban Fringe.

N. **Areas of Special Concern:** Except for a small area of 371W01, tax lot 300, the Dry Creek properties are within the Grizzly unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource.

Portions of the Prospect area properties are within the Upper Rogue unit of ASC 90-1, Deer and Elk Habitat, an identified Goal 5 significant resource.

P. **Agency and Property Owner Comments:** Requests for comment were sent to

agencies and to property owners within 750 feet of the subject properties. Responses are summarized below.

1. Oregon Department of Fish and Wildlife submitted a comment asking the County to review previously submitted comments, which are part of the applicant's application. The letter is dated October 13, 2011. The concluding statement by Steven Niemela, Assistant District Wildlife Biologist, is "Based upon the uniqueness of DCL's [Dry Creek Landfill] circumstance, the goal of generating alternative energy, and the proposed mitigation, ODFW supports the removal of winter range protection on 680 acres of DCL's property."
2. The Oregon Department of Forestry had no comment on this application.
3. Jackson County Fire District No. 3 had no comment on this application.
4. One adjacent property owner had no comment on this application.

II. APPLICABLE CRITERIA

In order to approve this proposal, Jackson County must find the application is consistent with:

- A. Statewide Planning Goals: Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces (See OAR 660, Division 23)
- B. Oregon Administrative Rules: OAR's 660-023-0030 and 660-023-0110
- C. Jackson County Comprehensive Plan: Natural & Historic Resources Element (Policy 3); *Goal 5 Resources Background Document, 1990*, Section 2; Transportation System Plan (TSP), Sections 4.3.1(B)(c) and 4.3.1(D)
- D. Jackson County Land Development Ordinance: Section 3.7.3(C)

III. STATEWIDE PLANNING GOALS

- A. *Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces*

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

FINDING: Local governments are required to inventory specific natural resources. One of those resources is wildlife habitat. "Wildlife Habitat", as defined in OAR 660-023-0110(1)(b), "...is an area upon which wildlife depends in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites." In 1991,

through Ordinance 91-1, Jackson County adopted an inventory of significant deer and elk winter ranges, as mapped by Oregon Department of Fish and Wildlife (ODFW), and Area of Special Concern (ASC) 90-1, Deer and Elk Habitat, a Zoning Map Overlay, including measures designed to provide minimum protection of deer and elk winter range habitat (LDO Section 7.1.1(C)). Jackson County's Goal 5 inventory and protection measures were acknowledged by DLCD. Jackson County is currently in compliance with Statewide Planning Goal 5.

The current procedures and requirements for complying with Goal 5 are within OAR 660, Division 23. Compliance with Goal 5 regarding this application is addressed through this OAR.

IV. OREGON ADMINISTRATIVE RULES

A. OAR 660-023-0030, Inventory Process

1. *Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:*

- a) *Collect information about Goal 5 resource sites;*
- b) *Determine the adequacy of the information;*
- c) *Determine the significance of resource sites; and*
- d) *Adopt a list of significant resource sites.*

FINDING: The applicant states "...the subject application has submitted data from which to inventory the Goal 5 resource under OAR 660-023-0030 and that the subject application is a quasi-judicial PAPA and the initial inventory step inventory step in Step 2 is not necessarily applicable because the Board of Commissioners may rely on the information submitted in the application."

Staff agrees with the applicant that the initial Step 2 process is not necessary and that the Goal 5 inventory process has been completed for at least the Dry Creek properties. Additional data and information regarding both areas and properties has been submitted with this application, including a letter dated October 13, 2011 from Steve Niemela, Assistant District Wildlife Biologist, Oregon Department of Fish and Wildlife. In his letter

Mr. Niemela states “ODFW supports Dry Creek Landfill's (DCL) effort to remove its property from the Especially Sensitive Deer and Elk Winter Range (ESDEWR) overlay (ASC 90-1). This decision is based on the nature of the DCL facility and the mitigation proposed in the packet we received from CSA Planning, Ltd. dated October 10, 2011.”

Mr. Niemela goes on to say “The historical precedent ODFW has established in reviewing proposed changes to the ESDEWR overlay in Jackson County is to recommend against removing designated habitat. However, DCL’s proposal is different because:

1. DCL existed before the adoption of the winter range overlay and related land use code
2. DCL has always been listed as a conflicting use with winter range in the Goal 5 Background Document (Section 2.3 A)
3. DCL provides a regionally significant service to the Rogue Valley
4. Impacts to winter range on DCL property will continue to grow and will largely not be mitigated for under current regulation
5. The proposed expansion into a natural gas generating facility corresponds with Oregon’s overall goal of increasing sources of alternative energy
6. The proposed plans do not conflict with Goal 8, which prohibits mitigation for the development of destination resorts in ESDWR”

In Mr. Niemela’s final paragraph he states “Based upon the uniqueness of DCL’s circumstance, the goal of generating alternative energy, and the proposed mitigation, ODFW supports the removal of winter range protection on 680 acres of DCL’s property.”

Staff finds that this additional data and information may be relied upon to determine any changes to the Goal 5 inventory for these areas.

2. Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

(a) Notify state and federal resource management agencies and request current resource information; and

(b) Consider other information submitted in the local process.

FINDING: The applicant indicates that this initial step is not applicable because this project is part of a quasi-judicial site specific Goal 5 review and that notification of ODFW occurs as part of this process. The applicant also states that there has been or will be opportunity for additional information to be submitted into the record regarding the Goal 5 inventory process. The applicant explains that a letter from ODFW dated October 13, 2011 speaks to the habitat value of the proposed inclusion area of the Prospect area properties (Meriwether Properties).

The letter from ODFW also speaks to the Dry Creek properties. Mr. Niemela, ODFW,

states “Although the conifer stands that dominate the Red Blanket property are of lower quality to wintering black tailed deer than the ceanothus patches, oak woodlands, and grassland that dominate DCL property, the overall effect must consider the future impacts of expanding operations on the landfill. In addition, the Red Blanket property is an important transition area from summer range to the previously identified winter range lying immediately downhill, especially for elk. It is the opinion of ODFW that the proposed mitigation will provide an overall net benefit to wintering black-tailed deer and elk and meets the requirements of our mitigation policy.”

Staff finds that the information submitted with the application or to be submitted at hearing may be used to determine the adequacy of information for the potential Goal 5 site on the Prospect area properties. The Dry Creek properties are already on Jackson County’s Goal 5 inventory as a significant resource for deer and elk habitat.

3. *Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:*

(a) *Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.*

(b) *Information on quality shall indicate a resource site’s value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.*

(c) *Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.*

FINDING: With respect to the Prospect area properties, the applicant states “...the application provides evidence and findings of fact regarding the proposed Black-Tailed Deer and Roosevelt Elk Winter Range on the lands Identified in Exhibit 14. Specifically, the Application demonstrates that the habitat features described for the Upper Rogue Unit are present on the subject property such as the vegetation patterns and available feed. The Application provides first-hand accounts of intensive elk use of the site during the winter season by the property managers, Forest Capital Partners LLC. See, Exhibit

14. ODFW has provided a letter regarding this request noting the value of this land for winter range, especially for elk.” In conclusion, the applicant concludes there is adequate information to determine that winter range habitat exists on the Prospect area properties.

Regarding the Dry Creek properties the applicant indicates the properties are currently inventoried as significant deer and elk winter range. The applicant states “...the Application does not provide evidence or assert that the existing habitat inventory database is inadequate to review in more depth through the proposed re-examination of the Goal 5 process as it applies to these subject properties.”

Staff accepts the statements above indicating there is evidence that is adequate to determine whether the Prospect area properties should be inventoried as significant Goal 5 resources regarding deer and elk winter range and the Dry Creek properties are already identified as significant Goal 5 resources for deer and elk winter range.

4. *Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:*

(a) *The quality, quantity, and location information;*

(b) *Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and*

(c) *Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.*

FINDING: The applicant states for the Prospect area properties “...the Application provides evidence and findings of fact regarding Black-Tailed Deer and Roosevelt Elk Winter Range for the lands identified in Exhibit 14. Specifically, the Application demonstrates that the habitat features described for the upper Rogue Unit are present on the subject property such as vegetation patterns and available fee. The habitat is well located between two existing protected habitat areas to the north and south. The application provides first-hand accounts of intensive elk use of the site during the winter season by the property owner Forest Capital Partners, LLC. See, Exhibit 14. ODFW provided a letter dated October 13, 2011 that indicates these properties have winter range habitat value, especially for elk. These criteria are consistent with (a) above and there are no conflicting criteria to (b) or (c) above.” Staff agrees with these findings.

For the Dry Creek properties the applicant repeats their findings in 3 above and concludes “...this land and collection of properties is currently inventoried as significant Black-Tailed Deer and Roosevelt Elk Winter Range.” Staff agrees with this conclusion.

5. *Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.*

FINDINGS: The applicant concludes and states "...both the Grizzly Unit and the Upper Rogue Unit are already listed as significant Goal 5 resource sites and that the subject Application will make no change to those listings but only amend the precise locations where the Goal 5 protection program for those respective units will be applicable."

Staff believes that substantial evidence submitted by the applicant shows that the Prospect area properties should be fully identified as significant Goal 5 resources with regard to Black-tailed Deer and Elk Winter Range. Staff finds the Prospect area properties, including all of the subject properties rather than portions of the properties, should be added to Jackson County's inventory of Black-tailed Deer and Elk Winter Range and expands the boundaries of the Upper Rogue Unit of Area of Special Concern (ASC) 90-1 to include these properties fully.

6. *Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.*

FINDING: The applicant states that both units of winter range habitat are already listed as significant Goal 5 resource sites and no changes will be made to those listings, only the precise locations where the Goal 5 protection program will be applicable.

Staff finds that the Prospect area properties are not fully included within Jackson County's significant Goal 5 resource site, the Upper Rogue Unit, as shown on the Comprehensive Plan Natural and Historic Resources Element map of Black-tailed Deer and Elk Winter Range Units. This map was adopted as ASC 90-1 in 1991 along with protection measures for development within these units. Staff finds the evidence submitted regarding the Prospect area properties is adequate to determine the properties, including area not previously mapped, are a significant Goal 5 resource for Black-tailed Deer and Elk Winter Range.

Staff finds the Dry Creek area properties are already listed as significant Goal 5 resource sites.

7. *Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:*

(a) *The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and*

(b) *The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.*

FINDING: The applicant states that for this particular application Jackson County has an adopted and acknowledged Goal program for deer and elk habitat and there is no need to adopt interim protection measures

Ordinance 91-1 included maps of deer and elk winter ranges considered significant Goal 5 resources. These maps identified three different classes of winter range, as determined by ODFW: “Especially Sensitive”, “Sensitive”, and “Other”, with commensurate levels of protection provided to protect the carrying capacity of the range. The Dry Creek properties are within the Especially Sensitive winter range of the Grizzly unit. These properties are at the northern edge of the Grizzly unit.

The Prospect area properties have portions of the properties within the Upper Rogue unit of winter range habitat but are generally adjacent to the habitat. The designation of the Upper Rogue unit is Especially Sensitive habitat.

B. OAR 660-023-0040, ESEE Decision Process

1. *Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:*

- (a) *Identify conflicting uses;*
- (b) *Determine the impact area;*
- (c) *Analyze the ESEE consequences; and*
- (d) *Develop a program to achieve Goal 5.*

FINDING: The applicant concludes the conflicting uses have been established in Jackson County's Goal 5 Document, *Goal 5 Resources, Background Document 1990*. The applicant states the impact area has been identified and functions as the area that is significant and protected. The applicant has submitted a detailed ESEE consequences analysis, their Exhibit 2. There is also an ESEE consequences results summary in their Exhibit 1, Section V. The applicant requests the Commissioners incorporate and adopt these analyses.

Staff agrees with the applicant that confliction uses and the impact areas have been identified in Jackson County's Goal 5 document and shall be used in this application. The detailed ESEE consequences analysis and ESEE consequences results summary may be used by the Commissioners as findings and conclusions for their decision should they agree with all of the findings and conclusions. The Commissioners may make other findings and conclusions with respect to the ESEE consequences analysis and ESEE consequences results summary. Staff will analyze these ESEE documents below.

The applicant further states "The Board of Commissioners further concludes that OAR 660-023-0040(1) recognizes that the Goal 5 decision process steps may be repeated where it is appropriate to do so. In the case of the subject application, the ESEE Consequences analysis in Section V and Exhibit 2 consider the conflicting uses individually and do not attempt to analyze the implications of new Goal 5 protection decisions. The Board of Commissioners herewith incorporate and adopt their conclusions of law below resulting in a Goal 5 decision to fully allow the landfill uses and roads on the Dry Creek Properties and on this basis conclude this decision warrants a return to the earlier steps in the Goal 5 process to evaluate the 'other conflicting uses' interrelationships with the landfill and road uses being fully allowed."

Staff suggests a detailed review of both the ESEE consequences analysis and the ESEE consequences results summary. A review of these documents may warrant a return to earlier steps in the Goal 5 process to evaluate "other conflicting uses" interrelationships with the landfill and road uses should the Commissioners determine they should be allowed fully. Staff has talked with DLCD's Goal 5 specialist Amanda Punton and she determined that this process may be applicable. Staff suggests a review of the applicant's findings to determine if the process followed by the applicant is warranted.

2. Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

FINDING: The applicant states that Jackson County's Goal 5 Background Document lists the conflicting uses for Black-tailed deer and Roosevelt elk and may rely upon the identified conflicting uses for the initial consequences analysis and the application of the Goal 5 process. These conflicting uses are identified below:

- Residential development on winter ranges
- Roads
- Landfills
- Commercial feedlots
- Airports
- Open concrete canals
- Woven-wire fence
- Dogs running at large
- Agricultural crops and young conifers damaged by browsing

Staff agrees that these identified conflicting uses may be used for the ESEE consequences analysis.

The applicant goes on to indicate that if the Commissioners were to reach a decision that landfill uses and road uses should be allowed fully, notwithstanding effects to winter range habitat, then the Commissioners should also return to earlier steps in the Goal 5 process to evaluate the "other conflicting uses" based upon a decision to fully allow landfill uses and road uses. The applicant encourages the Commissioners to then adopt the Iteration 2 Consequences Analysis in Section V of their Exhibit 1 in this application and repeat Step 2 in the process for the "other conflicting uses." The applicant makes findings for residential development, commercial feedlots, personal use airports, and open concrete canals stating. The applicant states for each conflicting use as follows:

- "...the presence of the landfill as a permanent use on the site and a decision to fully allow the landfill use is a decision that renders residential uses even less likely to be pursued by the owner of the active landfill. Therefore, the Board of Commissioners concludes residential uses need not be considered as a conflicting use at this location."
- "...the presence of the landfill as a permanent use on the sited and a decision to fully allow the landfill use is a decision that has little effect on the low likelihood of a commercial feedlot overall."
- "...the presence of the landfill as a permanent use on the site and a decision to fully allow the landfill use is a decision that renders a personal use very unlikely. The site is not well situated for a personal use airport because of conflicts with landfill operations and abundance of powerlines. Therefore, the Board of Commissioners concludes personal use airports need not even be considered conflicting at this location."
- "...the presence of the landfill as a permanent use on the site and a decision to

fully allow the landfill use is a decision has little effect on the low likelihood of an open concrete canal overall.”

The conclusion of the applicant is that the specific language of OAR 660-023-0040(2) does not require consideration of uses that are unlikely to occur because existing permanent uses occupy the site.

In order to make a determination that the permanent landfill use would preclude or make unlikely the above conflicting uses, staff believes more information is needed. For instance, the estimated termination date of the landfill and the estimated area and location of the final footprint of the landfill may be needed. Staff asks the Commissioners whether other information is needed to conclude certain conflicting uses are “unlikely” to occur because of existing permanent uses occupying the site.

3. *Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.*

FINDING: The applicant states “...for Big Game Winter Range Habitat the impact area utilized in the existing adopted and acknowledged Goal 5 Background document has been the area identified as significant habitat and that [it] is protected.” Staff agrees with applicant’s findings.

4. *Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.*

FINDING: With respect to the Prospect area properties, the applicant has provided ESEE consequences analysis, applicant’s Exhibit 2, applicant’s pgs. 1-29, and ESEE consequences analysis summary, Exhibit 1, Section V, pg. 22, *Iteration 1 – Goal 5 ESEE Consequences Analysis*. The applicant states “The results herein support the limited protection of the resource, as the results demonstrate some protection of the resource outweighs the benefits of fully allowing one or more conflicting uses and there are no permanent existing uses on site that warrant a re-examination of consequences considering the existing uses and interrelationship between conflicting uses.”

Staff finds the ESEE consequences analysis and ESEE consequences analysis summary are adequate for the County to determine whether to allow, limit, or prohibit the identified conflicting uses. Staff recommends the Commissioners adopt the ESEE

consequences analysis and the ESEE consequences analysis summary for the Prospect area properties.

Staff would note that a detailed ESEE consequences analysis was completed for the following conflicting uses:

- Residential development on winter ranges
- Roads
- Landfills
- Commercial feedlots
- Airports
- Open concrete canals

The applicant did not complete a detailed analysis for woven wire fences, dogs running-at-large and agriculture crops and young conifers damaged by browsing. In the applicant's Exhibit 2, *Detailed ESEE Consequences Analysis*, applicant's pgs. 28 and 29, the applicant makes findings for each conflicting use. In the applicant's Exhibit 1, applicant's pg. 24, the applicant states "Exhibit 2 provides detailed reasoning explaining why these three 'conflicting uses' are not independent land uses unto themselves for which consequences can be reasonably analyzed in context of a quasi-judicial map amendment request. The reasoning provided in Exhibit 2 is herewith incorporated and adopted and the resulting consequences for these 'uses' is that any decision to amend the Goal 5 Black-Tailed Deer and Roosevelt Elk Winter Range Units Map (ASC 90-1) will have not practical ESEE consequences with respect to the permissibility of any of these three 'conflicting uses.'"

In OAR 660-023-0010(1), the definition of "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses. This is the Goal 5 administrative rule currently being used for Jackson County. The Goal 5 Background document was completed in 1991 and used the process and definitions in OAR 660, Division 16. OAR 660-016-00005(1), *Identify Conflicting Uses*, states "It is the responsibility of local government to identify conflicts with inventories Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences."

Since OAR 660, Division 23 is the current Goal 5 process being used to analyze conflicting uses, the definition of "conflicting use" should be used and staff believes that the explanation above why these three "conflicting uses" are not independent land uses unto themselves is valid and staff suggests the Commissioners incorporate and adopt the applicant's Exhibit 2 for these uses.

Dry Creek Landfill Properties

FINDING: The applicant has submitted a detailed ESEE consequences analysis,

applicant's Exhibit 2, and a Goal 5 ESEE consequences analysis summary, applicant's Exhibit 1, Section V, *Iteration 1 – Goal 5 ESEE Consequences Analysis Summary*, applicant's pg. 22. In the applicant's Exhibit 1, Section V, applicant's pg. 21, the applicant states "The ESEE Consequences analysis results summary presented in this section includes two important considerations. OAR 660-023-0040(1) includes specific language that the Goal 5 process may return to earlier steps as part of the process and OAR 660-023-0040(2) does not require consideration of uses that are unlikely to occur because existing permanent uses occupy the site. Consistent with the two fore-mentioned provisions, Applicant's ESEE Consequences Analysis results summary is provided in two steps as follows.

- Iteration 1 – Summarize the consequences of the conflicting uses identified in the comprehensive plan individually without, or minimally, accounting for interrelationships between the uses and without accounting for existing permanent uses that occupy the site.
- Iteration 2 – When the outcome of Iteration 1 results in a decision to allow a conflicting use fully, the second step takes into consideration the interrelationships between the now fully allowed uses and existing permanent uses on-site by returning to earlier steps in the process. This reexamination of the consequences of the conflicting uses identified in the comprehensive plan accounts for the interrelationships between the uses and existing permanent uses that occupy the site."

Staff will review Iteration 1 first. The ESEE consequences analysis summary, Exhibit 1, Section V, *Iteration 1 – Goal 5 ESEE Consequences Analysis Summary*, applicant's pg. 22, and based upon applicant's Exhibit 2, *Detailed Goal 5 ESEE Consequences Analysis*, pgs. 1-29, makes the following positive consequences with respect to allowing, limiting or prohibiting specific conflicting uses for the Dry Creek properties.

- Residential Development – Limit: "Slightly Positive: The County's Goal 5 Habitat program would balance residential development benefits against habitat preservation benefits."
- Roads – Allow Fully: "Somewhat Positive: Road Development in this area supports the Regional Landfill and these outweigh the benefits of marginal additional habitat protection."
- Landfills – Allow Fully: "Positive: The ESEE benefits for the regional landfill use outweigh the ESEE benefits of any level of habitat protection."
- Commercial Feedlots – Limit: "Slightly Positive: The County's Goal 5 Habitat program would balance Feedlot development benefits against habitat preservation benefits."
- Airports – Limit: "Slightly Positive: The County's Goal 5 Habitat program would balance Airport development benefits against habitat preservation benefits."
- Open Concrete Canals – Prohibit: "Open canal prohibition would not outweigh the benefits of additional habitat protection."

The applicant's conclusions are to fully allow landfills and roads supporting the landfill, limit, through Jackson County's current regulations in JCLDO 7.1.1(C), residential development, commercial feedlots and airports, and prohibit open concrete canals.

Staff finds that the ESEE consequences analysis and consequences analysis summary

are adequate to determine whether to allow, limit or prohibit conflicting uses for the Dry Creek Landfill properties. The applicant states “Based on the results herein above, allowing the preexisting permanent landfill fully, a conflicting use, outweighs the benefits of protecting the resource, thus a reexamination of considering the existing uses and interrelationship between conflicting uses is warranted. Based upon Applicant’s Section IV, Findings of Fact Item A, the existing regional landfill and related facilities are found to be significant uses that dominate the site. Consistent with OAR 660-023-0040(1) and (2), an evaluation of conflicting use likelihood and subsequent consequences analysis is required.”

Staff believes the ESEE consequences analysis results, landfills and roads associated with the landfill should be allowed fully, may warrant reexamination of existing uses and their interrelationship between conflicting uses, although it is not required. However, should the Commissioners determine such a review and reexamination is necessary, staff will review the information from the applicant with regard to Iteration 2.

The applicant has included a summary table in applicant’s Exhibit 1, Section V, applicant’s pages 23 and 24. The results are reproduced below.

- Residential Development: “Unlikely use to occur considering the magnitude of existing landfill development and probability for landfill related impacts to grow. The use is not one that must continue to be considered conflicting.”
- Commercial Feedlots: “Except for reducing the limited area which a commercial feedlot could physically be sited, the existing and ongoing landfill uses are not likely to conflict with feedlots in general. The use is one that must be analyzed.”
 - Allow Fully: “Neutral to Slightly Positive: Considering the existing and likely increasing impacts associated with the landfill, residual impacts from Feedlot Development benefits equally offset the benefits of some level of additional habitat protection.”
 - Limit: “Slightly negative: Negative consequences of feed lot prohibition outweighs the positive marginal consequences of additional habitat protection.”
 - Prohibit: “Slightly Negative: Negative consequences of feed lot prohibition outweighs the positive marginal consequences of additional habitat protection.”
- Airports: “Unlikely use to occur, given the existing and ongoing landfill and landfill related uses and large number of power lines in the area. Wind associated with landing and taking off of aircraft would likely conflict with existing an ongoing landfill uses (blowing refuse). Further, the hilly terrain and power lines do not make for desirable landing/take-off areas.”
- Open Concrete Canals: “Except for reducing the limited area which an open concrete canal could physically be sited, the existing and ongoing landfill uses are not likely to conflict with open concrete canals in general.”
 - Allow Fully: “Neutral: Open Concrete Canal benefits balance the benefits of additional habitat protection – even considering existing impacts associated with the landfill.”
 - Limit: “N/A”
 - Prohibit: “Slightly Negative: Considering the existing and likely increasing impacts associated with the landfill, the marginal benefits of protecting habitat by prohibiting opening concrete canals are too

insignificant.”

- Other “Conflicting Uses”: “The County’s Goal 5 Background Document also identifies additional conflicting uses that include Woven Wire Fence, Dogs Running-at-Large, and Agricultural Crops and Young Conifers Damaged by Browsing. Exhibit 2 provides detailed reasoning explaining why these three ‘conflicting uses’ are not independent land uses unto themselves for which consequences can be reasonably analyzed in the context of a quasi-judicial map amendment. The reasoning provided in Exhibit 2 is herewith incorporated and adopted and the resulting consequences for these ‘uses’ is that any decision to amend the Goal 5 Black-Tailed Deer and Roosevelt Elk Winter Range Units Map (ASC 90-1) will have no practical ESEE consequences with respect to the permissibility of any of these three ‘conflicting uses.’”

In summary, staff finds the applicant’s results determine that residential development and airports are unlikely to occur based upon existing landfill development and future growth impacts, and need not be considered per OAR 660-023-0040(2). As stated in IV(B)(2) above, in order to make a determination that the permanent landfill use would preclude or make unlikely the above conflicting uses, staff believes more information is needed. For instance, the estimated termination date of the landfill and the estimated area and location of the final footprint of the landfill, as well as any other information the Commissioners may need to determine the conflicting uses are unlikely to occur in the future. Currently the existing footprint of the landfill and composting facilities is approximately 330 acres, about half of the acreage proposed to be removed from the winter range habitat.

With respect to the results regarding commercial feedlots and open concrete canals, the applicant indicates that the consequences for allowing fully commercial feedlots is neutral to slightly positive and allowing fully open concrete canals is neutral.

In addition to the Iteration 1 ESEE consequences analysis and the Iteration 2 reexamination of ESEE consequences considering existing uses and interrelationships with “other conflicting uses”, the applicant has submitted findings and conclusions regarding step 4 in applicant’s *Criterion 17*, applicant’s pages 33-36. The applicant states “The Board of Commissioners incorporate and adopt their conclusions of law above (OAR 660-023-0040(1)) that a return to the earlier steps in the Goal 5 process to reexamine the ‘other conflicting uses’ based upon the decision to fully protect the landfill and road uses is warranted. Consistent with these conclusions, the Board of Commissioners herewith incorporates and adopts the Iteration 2 Goal 5 Consequences Summary in Section V above and repeats the step 4 consequences analysis for the ‘other conflicting uses’ based upon a decision to fully allow the landfill and road uses for Dry Creek Properties...” The applicant goes on to identify the economic, social and environmental consequences when impacts of the landfill are accounted. The summary is included below.

- Residential Development: “Overall, the ultimate resulting consequences become neutral for limiting residential development when the impacts of the landfill are accounted.
 - **Note:** Staff would like to point out that the analysis for residential development is based on the determination that if “...a court, on review, were to conclude that the Board of Commissioners must continue to consider Residential Development a conflicting use despite its low

likelihood due to the presence of the landfill....”

- Commercial Feedlots: “Overall, the ultimate resulting consequences become slightly negative for limiting commercial feedlot development because if a feedlot were to locate at the site, despite its low likelihood overall, the feedlot does have the potential for economic and social benefits; conversely the consequence of allowing the feedlot fully becomes slightly positive for the inverse reasons.”
- Personal Use Airports: “Overall, the ultimate resulting consequences become slightly negative for limiting personal use airport development because if a personal use airport were to locate at the site, despite its low likelihood overall, the airport does have the potential for small economic and social benefits; conversely the consequence for allowing the airport fully becomes slightly positive for the inverse reasons.”
 - **Note:** Staff would like to point out that the analysis for personal use airports is based on the determination that if “...a court, on review, were to conclude that the Board of Commissioners must continue to consider Personal Use Airports a conflicting use despite its low likelihood due to the presence of the landfill....”
- Open Concrete Canals: “Overall, the ultimate resulting consequences become slightly negative for limiting open concrete canal development because if an open concrete canal were to locate at the site, despite its low likelihood overall, the canal would have some positive economic and social benefits or it would not be constructed at all; conversely the consequence of allowing the open concrete can fully becomes slightly positive for the inverse reasons.”

CONCLUSIONS: Staff finds that the initial ESEE consequences analysis, applicant’s Exhibit 2, along with the ESEE consequences analysis summary, applicant’s Exhibit 1, pg. 22, are adequate to analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use(s), per OAR 660-023-0040(4). Specifically, this analysis concludes that the landfill and roads associated with the landfill should be fully allowed.

The second analysis, Iteration 2, a reexamination of ESEE consequences considering existing uses and interrelationships with “other conflicting uses”, considers an evaluation of conflicting use likelihood and subsequent consequences analysis, consistent with the language of OAR 660-023-0040(1) and (2). This analysis found that residential development and airports did not need to be considered because they are unlikely to occur because of the impacts of the landfill. The other conflicting uses were found by the applicant to warrant a subsequent consequences analysis which found that because of the impacts of the landfill, they should be allowed fully. Staff finds that in order to determine the likelihood of whether to consider residential development and airports unlikely because existing permanent uses (landfill) occupy the site, more information regarding the present and future impacts of the landfill is needed. Staff also recommends that the Commissioners determine if Iteration 2 is may be necessary.

The third analysis stems from the proposition that a court, on review, concludes that residential development and airports must be considered conflicting uses, the applicant returns to the consequence analysis step and augments the consequence to account for the implication of the decision to allow the landfill use and road uses fully and the use’s interrelationships. In this analysis, the consequences become neutral for limiting residential development and slightly positive for airports. Staff again recommends that the Commissioners determine if this third analysis is necessary.

5. *Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:*

(a) *A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.*

(b) *A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.*

(c) *A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.*

FINDING: With respect to the Prospect area properties, the applicant request Jackson County adopt the ESEE analysis which shows that for most all of the identified conflicting uses, the resource site and the conflicting uses are both important compared to each other. On this basis, that applicant asks the Commissioners to amend ASC 90-1 to allow the conflicting uses but in a manner that limits such uses by including them within ASC 90-1 pursuant to OAR 660-023-0040(5)(b). The properties will then be subject to the regulations and standards of JCLDO Section 7.1.1(C), Deer and Elk Habitat. Staff agrees with the applicant's findings and recommends the same.

Dry Creek Landfill Properties

FINDING: The applicant has extensive findings and conclusion in applicant's Exhibit 1, Criterion 18, applicant's pgs. 36-39. Staff will try to summarize these findings below.

1. The applicant states "The Board of Commissioners herewith incorporates and adopts the ESEE Analysis in Section V. The Board of Commissioners herewith elects to consider the actual land uses for the Dry Creek Properties which is a regional landfill and road uses to support the same. Thus, the Board of Commissioners concludes the negative consequences of limiting or prohibiting the landfill use are substantial. Based upon this reasoning, the Board of Commissioners concludes that the regional landfill use is of sufficient importance relative to the Big Game Winter Range Habitat, that removal of the ASC 90-1

overlay from the identified Dry Creek properties is warranted, pursuant to OAR 660-023-0040(5)(c).” The applicant goes on to state in detail why the landfill use should be fully allowed in this area, as summarized below.

- a. There are adverse economic consequences to limiting landfill development.
- b. There are significant social costs that correlate with cost of waste disposal services.
- c. Solid waste is an important environmental issue.
- d. There is a second dimension to the environmental issues associated with concentrated solid waste disposal and this is the conversion of landfill gas to energy.

Staff agrees with the applicant regarding the Iteration 1 ESEE Consequences Analysis and that the regional landfill use is of sufficient importance relative to the Big Game Winter Range Habitat, that removal of the ASC 90-1 overlay is warranted. Staff believes the ESEE consequences analysis and the explanation of why the landfill uses should be fully allowed are adequate to determine these properties should be removed from ASC 90-1.

Staff would like to note to the Commissioners that the applicant and applicant’s agent submitted a request for a pre-application conference, PRE2011-00011, and during that conference, July 7, 2011, the applicant indicated the main reason for removal of these properties from ASC 90-1 was to develop an energy facility for the conversion of landfill gas to energy. In correlation to this, the Oregon Department of Fish and Wildlife stated in their letter dated October 13, 2011, “Based upon the uniqueness of DCL’s circumstance, the goal of generating alternative energy, and the proposed mitigation, ODFW supports the removal of winter range protection on 680 acres of DCL’s property.” Staff believes this is an important consideration with regard to the removal of these properties from ASC 90-1.

2. The applicant goes on to indicate the Commissioners adopt the Iteration 2 Consequences Analysis in Section V. The applicant states “Based upon the foregoing decision to fully allow the landfill use and road uses, the Board of Commissioners concluded herein above that the ‘other conflicting uses’ should be reexamined under Steps 2 and 4 of the Goal 5 decision process to account for the decision to allow landfill full[y] and the road uses fully.” The applicant includes conclusions with respect to the “other conflicting uses” and why they should be allowed fully. Staff summarizes these reasons below.
 - a. For residential development and personal use airports the applicant states that these uses need not be considered conflicting uses because these uses are unlikely to be located on property being operated for a regional landfill, pursuant to OAR 660-023-0040(2). As an addendum to this conclusion, the applicant states that if a Court were to require these uses to continue to be considered as conflicting uses, protection of the resource site under OAR 660-023-0040(5)(a) or (b), prohibit and limit the uses, are insignificant because the landfill will dominate the resource site. For these reasons, the applicant believes these uses should be allowed fully.
 - b. For commercial feedlot development and open concrete canal development, the applicant concludes protection of the resource site

under OAR 660-023-0040(5)(a) or (b), prohibit and limit the uses, are insignificant because the landfill will dominate the resource site. For these reasons, the applicant believes these uses should be allowed fully.

Staff has previously indicated that to determine if a use is found unlikely to develop, more information is needed to make this determination. Staff has also stated that the Iteration 2 consequences analysis for “other conflicting uses” should be determined to be warranted for this application by the Commissioners.

In conclusion, the Iteration 1 consequences analysis found that the only conflicting uses that should be allowed fully, pursuant to OAR 660-023-0040(5)(c) were landfills and the roads associated with the landfill. The Iteration 2 consequences analysis contradicts the initial analysis to conclude that all conflicting uses should be allowed fully. Staff believes the Iteration 1 consequences analysis confirms the removal the Dry Creek properties from ASC 90-1, Deer and Elk Habitat, which will allow a significantly important regional landfill to continue and expand. Staff recommends the Commissioners find the ESEE analysis demonstrates that the landfill and the roads associated with the landfill are of sufficient importance relative to the resource site to allow these uses fully, notwithstanding the possible impacts on the resource site, pursuant to OAR 660-023-0040(5)(c).

C. OAR 660-023-0050 Programs to Achieve Goal 5

1. *For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).*

2. *When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:*

(a) *It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;*

(b) *It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or*

(c) *It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for*

different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

3. *In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:*

(a) *Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and*

(b) *Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).*

FINDING: The applicant states "...the Board of Commissioners concludes it already has an adopted and acknowledged Goal 5 compliant protection program for Big Game Winter Range implemented through ASC90-1. The Board of Commissioners concludes that its program to achieve Goal 5 in context of this application is to adopt an ordinance that amends ASC 90-1 to expand the Upper Rogue Especially Sensitive Winter Range Unit to include the lands owned by the Meriwether Southern Oregon Lands and Timber LLC as identified in Applicant's Exhibit 12b and Table B1 in Section IV of this document, and to remove from ASC 90-1 the lands in the Grizzly Especially Sensitive Winter Range Unit identified in Applicant's Exhibit 12a and Table A1 in Section IV of this document."

Should the Commissioners conclude that the Iteration 1 ESEE consequences analysis demonstrates that the landfill and the roads associated with the landfill are of sufficient importance relative to the resource site to allow these uses fully, notwithstanding the possible impacts on the resource site, pursuant to OAR 660-023-0040(5)(c), then an ordinance amending the language of JCLDO Section 7.1.1(C) to fully allow these uses in the Grizzly Especially Sensitive Winter Range Unit and the standards and regulations of Section 7.1.1(C) are not applicable.

Should the Commissioners conclude that the Iteration 1 ESEE consequences analysis and the Iteration 2 consequences analysis demonstrate that all conflicting uses are of sufficient importance relative to the resource site to allow these uses fully, then the conclusion as stated by the applicant above should be followed.

D. OAR 660-023-0110 Wildlife Habitat

1. *For purposes of this rule, the following definitions apply:*

(a) *"Documented" means that an area is shown on a map published or issued by a state or federal agency or by a professional with demonstrated expertise in habitat identification.*

(b) *"Wildlife habitat" is an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.*

FINDING: Staff finds the subject application correctly applies these definitions.

2. *Local governments shall conduct the inventory process and determine significant wildlife habitat as set forth in OAR 660-023-0250(5) by following either the safe harbor methodology described in section (4) of this rule or the standard inventory process described in OAR 660-023-0030.*

FINDING: Staff finds the subject application has utilized the standard inventory process described in OAR 660-023-0030.

3. *When gathering information regarding wildlife habitat under the standard inventory process in OAR 660-023-0030(2), local governments shall obtain current habitat inventory information from the Oregon Department of Fish and Wildlife (ODFW), and other state and federal agencies. These inventories shall include at least the following:*

(a) *Threatened, endangered, and sensitive wildlife species habitat information;*

(b) *Sensitive bird site inventories; and*

(c) *Wildlife species of concern and/or habitats of concern identified and mapped by ODFW (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs).*

FINDING: The applicant states "The Board of Commissioners concludes this standard is directed at legislative amendments and OAR 660-023-0030(1) provides that application of OAR 660-023-0030(2) referenced above may rely on information and data supplied by an applicant as part of a site-specific quasi-judicial amendment."

4. *Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in this section. Under the safe harbor, local governments may determine that "wildlife" does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:*

(a) *The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;*

(b) *The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;*

(c) *The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);*

(d) *The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or*

(e) *The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).*

FINDING: Staff finds this application relies on the determination of habitat significance under OAR 660-023-0040 and not the safe harbor criteria above.

5. *For certain threatened or endangered species sites, publication of location information may increase the threat of habitat or species loss. Pursuant to ORS 192.501(13), local governments may limit publication, display, and availability of location information for such sites. Local governments may adopt inventory maps of these areas, with procedures to allow limited availability to property owners or other specified parties.*

FINDING: Staff finds that Roosevelt Elk and Black-tailed Deer are not a threatened or endangered species. This criterion is not applicable.

6. *As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.*

FINDING: The applicant states “The Board of Commissioners concludes the subject application is a quasi-judicial map amendment that affects only where the County’s adopted and acknowledged Goal 5 protection program for Deer and Elk Habitat will be applied but includes no proposal to alter the structure of the program itself. The Board of Commissioners further concludes that the quasi-judicial notification and hearings procedures necessarily provide an opportunity to coordinate with the appropriate state and federal agencies regarding habitat for Roosevelt Elk and Black-tailed Deer.”

Staff agrees with these findings.

V. OREGON STATEWIDE PLANNING GOALS

A. *Goal 1: Citizen Involvement*

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: The applicant states that because this application follows the Type 4 procedure under the Jackson County Land Development Ordinance and affected property owners and agencies have the opportunity to participate in the process, this is consistent with Goal 1. Staff agrees with the applicant's findings.

B. *Goal 2: Land Use Planning*

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: The applicant states "...this goal is met because this application is following the Type 4 procedures to assure due process and coordination with affected agencies as required under the Jackson County Land Development Ordinance, consistent with its acknowledged." Staff finds that the application contains adequate evidence to determine a decision on this application. This criterion is met.

C. *Goal 3: Agricultural Lands*

To preserve and maintain agricultural lands.

FINDING: The applicant indicates that this goal is met because the property is not changing the underlying Exclusive Farm Use (EFU) zoning or the Agricultural Land Plan Designation. Staff agrees with the applicant's finding.

D. *Goal 4: Forest Lands*

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

FINDING: The applicant states this goal is met because there is no change to the underlying Forest Resource (FR) zoning or to the Forestry/Open Space Land Plan Designation. Staff agrees with the applicants findings.

E. *Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces*

To protect natural resources and conserve scenic and historic areas and open spaces.

FINDING: Staff finds that Goal 5 for deer and elk habitat is implemented by administrative rule OAR 660, Division 23. Evidence and information has been submitted by the applicant and is adequate for the Commissioners to determine a decision regarding Goal 5. This criterion is met.

F. *Goal 6: Air, Water and Land Resources Quality*

To maintain and improve the quality of the air, water and land resources of the state.

FINDING: The applicant states "The Jackson County Comprehensive Plan

Environmental Quality Element sets forth policies and strategies for managing the quality of air, water and land resources. The Board of Commissioners concludes Goal 6 is achieved through the adherence to State and County environmental quality requirements and that there is no aspect of the Goal 5 Black-Tailed Deer and Roosevelt Elk Winter Range designation that relates in a manner that would constitute independent decisional criteria for the subject application and the amendment is therefore consistent with Goal 6. Staff agrees with the applicant's findings.

- G. *Goal 7: Areas Subject to Natural Hazards*
To protect people and property from natural hazards.

FINDING: The applicant concludes that Black-Tailed Deer and Roosevelt Elk Winter Range designations have no appreciable effect on lands uses that would alter the manner in which Jackson County plans to minimize natural hazards risks through its Goal 7 land use planning program. Staff agrees with the applicant's findings.

- H. *Goal 8: Recreational Needs*
To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreations facilities including destination resorts.

FINDING: The applicant states "The Board of Commissioners concludes that Deer and Elk Habitat is relevant to recreational needs through the implication for deer and elk populations and the associated recreational opportunities for hunting and wildlife viewing. The Board of Commissioners concludes that the Goal 5 process addresses these Goal 8 issues through the evaluation of economic and social implication of the Goal 5 protection decisions and that the proposed map amendment have considered the same. On this basis, the Board of Commissioners incorporates and adopts the Goal 5 Analysis in Section V and relies on that analysis to conclude the Goal 8 recreational needs have been adequately addressed in the manner prescribed by OAR 660 Division 23."

Staff finds that whether the Commissioners adopt the Iteration 1 consequences analysis alone or both the Iteration 1 analysis and the Iteration 2 consequences analysis, both have adequately addressed the Goal 8 criterion and this criterion is met.

- I. *Goal 9: Economic Development*
To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The applicant states "The Board of Commissioners concludes that is relevant to Economic Development through the implications for deer and elk populations and the associated recreational opportunities for hunting and wildlife viewing as well as the economic impacts of limiting or prohibiting conflicting uses. The Board of Commissioners concludes that the Goal 5 process addresses these Goal 9 issues through the evaluation of economic implication of the Goal 5 resource protection decisions and that the proposed map amendment have considered the same. On this basis, the Board of Commissioners incorporates and adopts the Goal 5 Analysis in Section V and relies on that analysis to conclude the Goal 9 economic development needs have been adequately addressed in the manner prescribed by OAR 660 Division 23."

Staff finds that whether the Commissioners adopt the Iteration 1 consequences analysis alone or both the Iteration 1 analysis and the Iteration 2 consequences analysis, both have adequately addressed the Goal 9 criterion and this criterion is met.

- J. *Goal 10: Housing*
To provide for the housing needs of citizens of the state.

FINDING: The applicant concludes that winter range designations have minimal affect on land uses that would alter the manner in which housing is planned in Jackson County through its Goal 10 land use planning program. Staff agrees with the applicant's finding.

- K. *Goal 11: Public Facilities and Services*
To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The applicant states "The Board of Commissioners concludes that Black-Tailed Deer and Roosevelt Elk Winter Range designation have no appreciable effect on land uses that would alter the manner in which Public Facilities and Services are demanded in Jackson County, but could alter the manner in which services are provided. An essential public service is refuse collection and disposal. The proposed amendments will reduce regulatory risk to the region's solid waste disposal facility and thereby support the long-term needs for this essential public facility to the benefit of Jackson County's Goal 11 land use planning program." Staff agrees with applicant's findings.

- L. *Goal 12: Transportation*
To provide and encourage a safe, convenient and economic transportation system.

FINDING: The applicants concludes the amendment will have no appreciable effect on land uses that would alter the manner in which transportation facilities and services are demanded in Jackson County and will not alter the County's transportation land use planning programs. Staff agrees with the applicant's findings.

- M. *Goal 12: Energy Conservation*
To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

FINDING: The applicant states "The Board of Commissioners conclude that Black-Tailed Deer and Roosevelt Elk Winter Range is relevant to energy conservation that could be caused by the limitation or prohibition of conflicting uses. The Board of Commissioners concludes that the Goal 5 process addresses these Goal 13 issues through the evaluation of energy implications of Goal 5 resource protection decisions and that the proposed map amendment have considered the same. On this basis, the Board of Commissioners incorporates and adopts the Goal 5 Analysis in Section V and relies on that analysis to conclude the Goal 13 energy conservation needs have been adequately addressed in the manner prescribed by OAR 660 Division 23."

Staff finds that whether the Commissioners adopt the Iteration 1 consequences analysis

alone or both the Iteration 1 analysis and the Iteration 2 consequences analysis, both have adequately addressed the Goal 13 criterion and this criterion is met.

N. *Urbanization*

To provide for an orderly and efficient transition from rural to urban land use.

FINDING: The applicant concludes that the proposed amendments are relevant to Goal 14 in an indirect and limited way. The applicant states "...intensive urbanization requires environmentally sound and economic refuse disposal and the amendment herein will reduce regulatory risk to the region's solid waste disposal facility in manner that supports long-term urbanization goals of Jackson County." Staff agrees with the applicant's findings.

VI. **JACKSON COUNTY COMPREHENSIVE PLAN**

A. *Map Designations Element, Policy 1*

Minor map amendment requests to the Jackson County Comprehensive Plan will be reviewed through the quasi-judicial Type 4 process established in the Jackson County Land Development Ordinance. Amending the map designation of only a portion of a resource designated parcel or tract will not be considered unless the purpose is to limit uses to those justified through the Goal 2 Exceptions procedure, to implement protection of a Goal 5 resource, to establish industrial lands consistent with the provisions of this Plan, or to implement an unincorporated community plan or urban growth management agreement.

FINDING: The applicant states "Jackson County concludes that the proposed map amendment has been appropriately considered through a quasi-judicial Type 4 process as established in JCLDO Chapter 2. As evidenced by Exhibits 4a and 4b, all subject properties are designate as either Forestry/Open Space Land or Agricultural Land. Despite amending only portions of the subject parcels, this application has as its purpose the proper protection of a Goal 5 resource. Therefore, the Board of Commissioners concludes these amendments affecting only portions of resource designated parcels, is permissible and appropriate under Map Designations Element, Policy 1 with which this application is deemed to comply."

Staff agrees with the applicant's findings.

B. *Natural and Historic Resources Element, Policy 3*

The fish and wildlife resources of Jackson County are valuable for economic, aesthetic, and ecological reasons. The conservation of fish and wildlife resources is of considerable importance to the county, especially as pressure increases to convert natural habitat areas into developed areas.

POLICY: IN CONJUNCTION WITH THE OREGON DEPARTMENT OF FISH AND WILDLIFE AND OTHER AFFECTED AGENCIES, THE COUNTY SHALL PROVIDE FOR THE PROTECTION OF A PRODUCTIVE AND HEALTHY FISH AND WILDLIFE COMMUNITY AND HABITAT, AND SHALL PROTECT THREATENED OR ENDANGERED SPECIES.

IMPLEMENTATION STRATEGIES:

1. *Utilize overlay zoning technique to designate specific habitat areas for special development review.*
2. *Require clustering of structures where conventional development is likely to have a significant adverse impact upon a valuable fish and wildlife habitat. Winter range area for deer and or elk could be protected by grouping homesites. If a clustering approach is not used, densities should be limited to one unit per 40 acres in sensitive winter range areas and one unit per 160 acres in especially sensitive deer and elk winter range areas.*
3. *In conjunction with the Oregon Department of Fish and Wildlife, and other affected agencies, provide for the retention of fish and wildlife habitat by developing programs which would provide for the purchase or donation of such land or the use of conservation easements.*
4. *Revise and amend the Jackson County Land Development Ordinance or develop new ordinances to ensure their compatibility with habitat preservation. One such revision would be the requirement of special riparian vegetation protection for all developments bordering on, or including streams.*

FINDING: Jackson County relies upon the Oregon Department of Fish and Wildlife (ODFW) as experts regarding deer and elk winter range habitat. The applicant has submitted a letter dated October 13, 2011 indicating their support of this application. While Policy 3 is not a criterion, it provides the nexus between ODFW, Jackson County and the winter range habitat protection.

- C. Goal 5 Resources Background Document 1990 (Open Spaces, Scenic and Natural Areas, and Historic Resources), Section 2

FINDING: Jackson County has had maps identifying deer and elk winter range habitat since 1982. The current maps and protection measures for deer and elk habitat were adopted in 1991 through Ordinance 91-1. The Goal 5 Resources Background Document determined conflicting uses as well as protection measures based upon an ESEE consequences analysis. The purpose of this amendment is to remove the Dry Creek properties from ASC 90-1 and the protection requirements of JCLDO Section 7.1.1(C). The amendment also adds the Prospect area properties to Jackson County's Goal 5 inventory as a significant resource for deer and elk winter range habitat and requires protection through the measures identified in JCLDO Section 7.1.1(C).

Staff does not identify criteria within the background document but includes it as a reference document.

- D. Jackson County Transportation System Plan (TSP), Policy 4.3.1-B(c)
- 4.3.1-B Plan amendments, zone changes and type 3 and 4 land use permits need to demonstrate that adequate transportation planning has been*

done to support the proposed land use.

c. *Ensure that quasi-judicial comprehensive plan changes, zone changes and type 3 and 4 land use permits will not result in land uses that are incompatible with the public transportation facilities they will use. To meet this requirement, criteria "i, ii and iii" below must be demonstrated to be met through a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. Compliance with criteria "i, ii and iii" will be considered sufficient to demonstrate compliance with the Transportation Planning Rule. The TIS requirement may be waived if the Planning Director and the County Engineer administratively concur in writing that sufficient specific evidence is provided from affected transportation management agencies that the cumulative effect of approving the proposed plan amendment, zone change or type 3 or 4 land use permit, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in the MPO) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans (RTP 6-1).*

i. *Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment pursuant to policy 4.3.3-D).*

ii. *Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to policy 4.3.3-D).*

iii. *Approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel. A facility used by the subject parcel is defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional*

state facilities.

FINDING: The applicant has requested a waiver of the required Traffic Impact Study (TIS). As of the writing of this staff report, the TIS waiver has not been received. Staff believes the waiver will be approved and will submit it to the record as soon as it is received.

VII. JACKSON COUNTY LAND DEVELOPMENT ORDINANCE

A. Section 3.7.3(C), Amendments to the Comprehensive Plan or Zoning Maps

Approval Criteria

Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole. In addition, the following specific approval criteria apply:

C) *Minor Comprehensive Plan Map or Zoning Map Amendments (Quasi-Judicial)*

All proposed minor map amendments will be reviewed for compliance with the criteria set forth below and with all other applicable provisions of this Ordinance and the Comprehensive Plan¹:

1) *Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured;*

FINDING: The applicant states that the removal and addition of lands to ASC 90-1 will not result in a change to the allowable uses in the underlying zoning districts nor are new uses being proposed as part of this application that would alter travel, public safety, or utility demands in any way. The applicant concludes there will be no affects on public safety, transportation, and utility facilities and services. Staff agrees with the applicant's findings and this criterion is met.

2) *The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both;*

FINDING: The applicant states "This application is a Goal 5 amendment that modifies the areas where ASC 90-1 – JCLDO Section 7.1.1(C) – are to apply and the Board of Commissioners interprets this criterion to apply to map amendments that are no directed specifically at the mapping of an ASC. Consistent with this interpretation, the Board of Commissioners concludes the revised maps will properly implement ASC 90-1 by applying the designation to those areas where the Goal 5 analysis and process adopted herein determines such application is necessary and appropriate." Staff agrees with the applicant's findings.

¹ These criteria are superseded in Aggregate Resource plan and zone amendments by OAR 660-023-0180. The applicable criteria in aggregate amendment cases is found in the Map Designation Element of the Comprehensive Plan, other elements of this Plan, and in other sections of this LDO.

3) *On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element;*

FINDING: The applicant indicates while these properties are resource lands, the map amendments conform to the criteria of Policy 1 of the Comprehensive Plan Map Designations Element because that policy provides exception (applicable to this application) to the *whole parcel rule* in the context of Goal 5 amendments. Staff agrees with the applicant's findings and this criterion is met.

4) *Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14;*

FINDING: The applicant states that this amendment deals exclusively with Goal 5 and produces no effect on the minimum residential lot sizes permitted in the base zoning districts. Therefore, this criterion is not applicable. Staff agrees.

5) *Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation;*

FINDING: No Zoning Map Amendment is sought as part of this application and this criterion is not applicable.

6) *In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated; and*

FINDING: The applicant states "...community benefit is demonstrated by ensuring the long-term viability and maximum utilization of the means to dispose of solid waste, and by properly inventorying and designating land in accordance with the established criteria outlined [in the] Map Designation Element of the Jackson County Plan, Goal 5 and its implementing rule."

Staff finds community benefit is demonstrated by ensuring the long-term viability of Jackson County's regional landfill and ancillary uses to the landfill.

7) *In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other property in the vicinity, and any other factors deemed to be relevant to the application.*

FINDING: Staff finds that the applicant has submitted evidence that is adequate to determine the appropriateness of the proposed redesignation.

B. Section 7.1.1(C) ASC 90-1 Deer and Elk Habitat

C) **ASC 90-1 Deer and Elk Habitat**1) *Description*

This area includes all lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds as described in the Natural and Historic Resources Element (Chapter 16) of the Comprehensive Plan. Such lands are identified as winter range habitat on base maps prepared by the Oregon Department of Fish and Wildlife (ODFW) and adopted by the Board of Commissioners as ASC 90-1. Winter range is classified by ODFW as "Especially Sensitive," "Sensitive", and "Other", with commensurate levels of protection provided to protect the carrying capacity of the range as set forth in the Jackson County Comprehensive Plan.

a) *Winter range units classified by ODFW as "Especially Sensitive" include:*

- i) Upper Applegate Unit*
- ii) Agate Flat Unit*
- iii) Lake Creek Unit*
- iv) Grizzly Unit*
- v) Big Butte Creek Unit*
- vi) Upper Rogue Unit*
- vii) Elk Creek Unit*

b) *Winter range units classified by ODFW as "Sensitive" include:*

- i) Trail Creek Unit*
- ii) Cottonwood Creek Unit*
- iii) Lower Applegate Unit*
- iv) Evans Creek Unit*

c) *Units identified by ODFW as "Other Winter Range" include:*

- i) Sardine Creek Unit*
- ii) West Valley Unit*
- iii) Dead Indian Memorial Road Unit*

2) *Minimum Parcel Size*

New parcels that are created by partition or subdivision in winter range units will comply with the following minimum parcel sizes:

- a) Especially Sensitive Winter Range units: 160 acres;*
- b) Sensitive Winter Range units: 40 acres, or the minimum parcel size required by the underlying zoning district, whichever is larger; and*
- c) Other Winter Range units may be divided according to the prevailing minimum parcel/lot size for the zoning district.*

3) *Gating Requirements*

New private roads will be gated between November and April (where permitted by law) to protect wintering deer and elk. Individual driveways to dwellings or other buildings that are within 300 feet of a public road are exempt from gating requirements.

- 4) *The standards of this subsection are deemed to comply with the deer and elk habitat protection measures recommended by ODFW and therefore do not require ODFW comment on Type 1 permits issued in conformance with this subsection. A first dwelling on a lawfully created lot or parcel will be located within 300 feet of an existing:*
- a) *Public or private road;*
 - b) *Driveway that provides access to an existing dwelling on another parcel (provided the new dwelling unit will not take access on it unless the driveway is improved to the private road standards of Section 9.5.3); or*
 - c) *Other developed access way that existed as shown on the County 2001 aerials or other competent evidence (e.g., a road or driveway for a legal easement recorded prior to the aerial date).*

To be considered under the locational criteria of this subsection, any access must, at a minimum, conform with the emergency vehicle access standards of Section 9.5.4. When an initial dwelling is proposed to be sited in an alternative location that does not conform to the standards of this subsection, the alternative location may be allowed through a Type 2 review process in accordance with subsection (6), below.

- 5) *General Development Standards*
The following standards apply to all discretionary land use permits subject to review under this Section, unless a condition of approval when the parcel was created required compliance with prior habitat protection standards. The land use decision will include findings that the proposed use will have minimal adverse impact on winter deer and elk habitat based on:
- a) *Consistency with maintenance of long-term habitat values of browse and forage, cover, sight obstruction;*
 - b) *Consideration of the cumulative effects of the proposed action and other development in the area on habitat carrying capacity; and*
 - c) *Location of dwellings and other development within 300 feet of an existing public or private road, or driveway that provides access to an existing dwelling as shown on the County 2001 aerials or other competent evidence. When it can be demonstrated that habitat values and carrying capacity are afforded equal or greater protection through a different development pattern an alternative location may*

be allowed through the discretionary review process described in subsection (6), below;

d) *Dwellings other than the initial dwelling on a lot or parcel will comply with one (1) of the following, as applicable:*

- i) *A maximum overall density (within the tract) of one (1) dwelling unit per 160 acres in Especially Sensitive Winter Range units, or one (1) dwelling unit per 40 acres in Sensitive Winter Range units; or*
- ii) *Clustering of new structures within a 200-foot radius of the existing dwelling to achieve the same development effect as would be achieved under i), above.*

6) *ODFW Approved Alternate Siting Plan*

Initial dwellings and other development may be sited in locations that do not conform with subsections (4) and (5) above when the applicant demonstrates at least one (1) of the following:

- a) *The wildlife habitat protection measures required by Section 7.1.1(C)(4) will render the parcel unbuildable; or*
- b) *A written authorization approving an alternate siting plan is received from ODFW. Any such authorization must include a statement from ODFW that confirms habitat values and carrying capacity will be afforded equal or greater protection if the dwelling or other development is sited in the alternate location. The written authorization must be made on ODFW letterhead or forms and be signed by an ODFW official with authority to make habitat protection decisions. Authorization of an alternative dwelling location will not release an applicant from compliance with any other applicable standard of this Ordinance.*

FINDING: The application is to remove the Dry Creek properties from ASC 90-1 and add the Prospect properties to ASC 90-1. This Section is added as reference to the protection measures for development in this ASC and is not considered criteria.

C. Section 7.1.1(K) ASC 90-10 Ecologically or Scientifically Significant Natural Areas

1) *Description*

This area includes all lands on which ecologically or scientifically significant natural areas are located. These sites are illustrated on a map contained in the Goal 5 background document and the Natural and Historic Resources Element of the Jackson County Comprehensive Plan, and are either protected or subject to limitations on conflicting uses where they would affect the features and values associated with each site.

2) *Special Regulations*

These identified sites are considered protected under Statewide Planning Goal 5, its related Administrative Rules, and Jackson County Comprehensive Plan policies, in addition to management plans and objectives established for each site by federal, state and other local jurisdictions. All land use actions, other than forest operations which are governed by the Oregon Forest Practices Act, that are inconsistent with the stated management and objectives for "2A" and "3A" sites will be prohibited. Land use actions proposed on or adjacent to "3C" sites will be evaluated under a Type 2 process pursuant to Section 3.1.3 to ensure that potentially conflicting uses are adequately limited to retain the resource value identified in the Comprehensive Plan and identified in the Goal 5 Resources Background Document.

FINDING: The parcel described as 361W35, tax lot 300, is within natural area site JA 66, Old Growth Forest Stand. In Jackson County's *Goal 5 Background Document 1990*, it determines this site as an unimportant or unprotected natural area and states:

"This site contains a severely stunted stand of conifers on the northern end of Roxy Ann Butte, near Agate Lake. The trees are apparently located between two aggregate quarries and continue to exist because the current owner/operator values them as a vegetative buffer. According to the property owner, a large site once existed but the previous owner removed the trees although they are very small in diameter."

This tax lot is at the southern edge of the natural area. The site has a Goal 5 designation of "3B", which allows conflicting uses to occur. Because the landfill has been in existence since 1971 and conflicting uses area allowed fully, the current application to remove the Dry Creek properties from ASC 90-1 will have no affect on this natural area.

VII. APPLICANT PROVISIO

In applicant's Exhibit 1, Section VII, applicant's pg. 49, the applicant states a proviso as included below:

"Applicant, without requirement, has sought to voluntarily replace the habitat lands proposed to be removed from the landfill property. To that end, prior to filing and in connection with this application, Applicant entered into an agreement with Forest Capital Partners, LLC which has agreed to have its property included in the overlay described in the Jackson County Land Development Ordinance (JCLDO) as ASWC 90-1. Applicant however, offers this exchange of lands with the proviso that inclusion of the described Meriwether properties in the Exhibit B, Deer and Elk Winter Range Habitat map of Ordinance 91-1 (ASC 90-1) is contingent upon removal of the Dry Creek properties from the said map."

ODFW has approved the removal of the Dry Creek properties from ASC 90-1 partially based upon the mitigation for lost winter range habitat by adding the Prospect area properties to the Upper Rogue Unit winter range habitat. It is unclear to staff whether ODFW would still approve the removal of the Dry Creek properties from ASC 90-1 if the Prospect area properties were not part of this application. Staff believes the Commissioners should consider this alternative.

VII. STAFF CONCLUSIONS:

The applicant has submitted an extensive ESEE consequences analysis regarding both areas. For the Prospect area properties, staff recommends the Planning Commission designate these properties significant Goal 5 resources and they shall be placed on Jackson County's inventory of Black-tailed Deer and Roosevelt Elk Winter Range. Staff recommends the Commissioners adopt the ESEE consequences analysis and summary for the Prospect area properties (Meriwether Properties). Staff also recommends that Area of Special Concern (ASC) 90-1, JCLDO Section 7.1.1(C), Deer and Elk Habitat, be expanded to include fully the Prospect area properties, specifically 323E24, tax lot 100 and 323E25, tax lot 100.

The applicant has substantial evidence in the Dry Creek properties Iteration 1 ESEE consequences analysis to determine that landfills and roads associated with the landfill should be allowed fully. Should the Commissioners determine that based upon the determination to fully allow landfills and roads, a return to preceding steps to review "other conflicting uses" with regard to their interrelationship with landfills and roads is warranted, staff asks the Commissioners to review Iteration 2. If the Commissioners agree with the applicant's findings and conclusions regarding Iteration 1 and 2, they should adopt the applicant's findings and conclusions and direct staff to prepare a Recommendation of Approval for the Board of Commissioners.

Should the Commissioners determine the applicant has not submitted substantial evidence to approve this application, they should direct staff to prepare a Recommendation of Denial for the Board of Commissioners.

JACKSON COUNTY COMPREHENSIVE PLANNING MANAGER

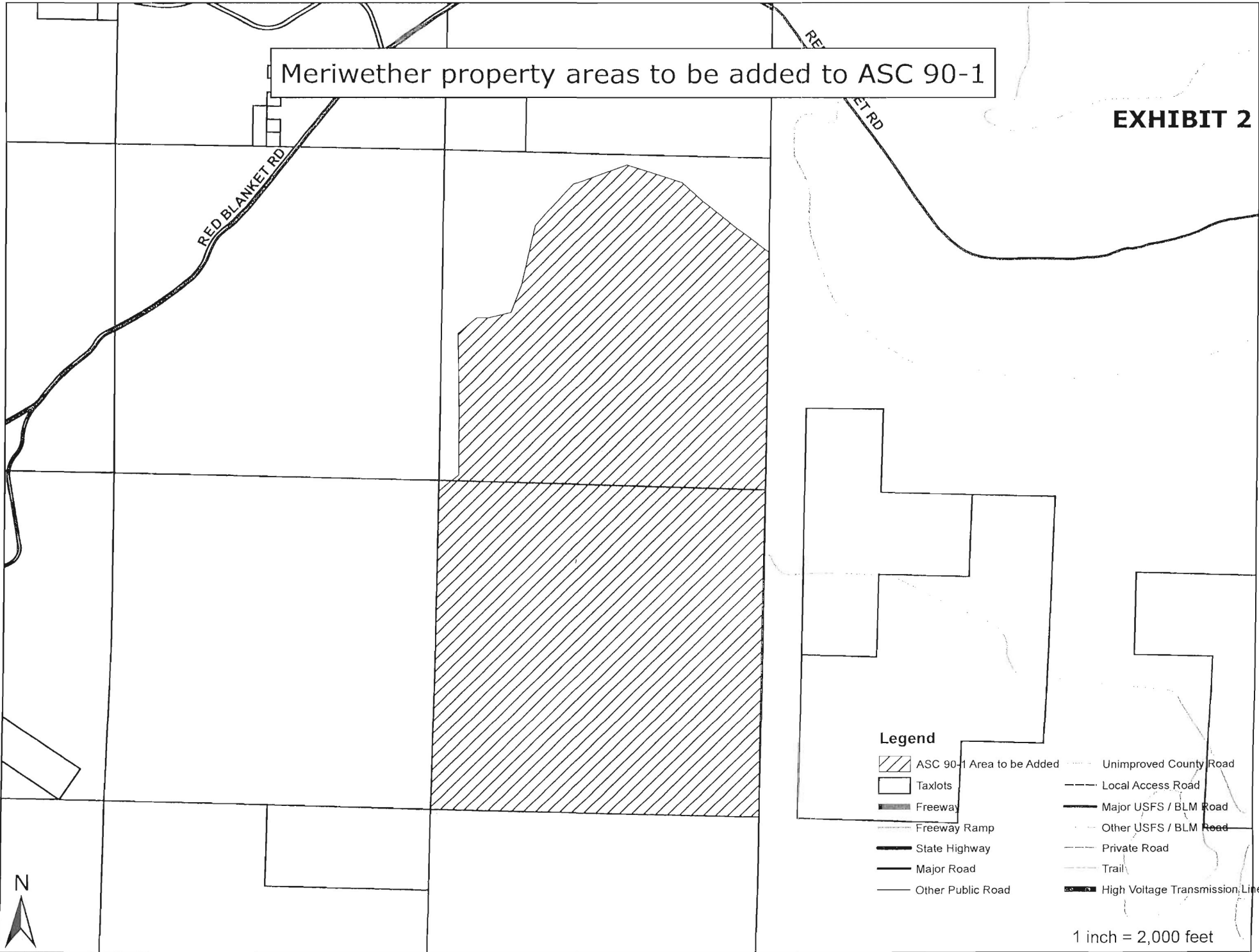


By: Michael W. Mattson, Planner II

Date: 1-29-12

Meriwether property areas to be added to ASC 90-1

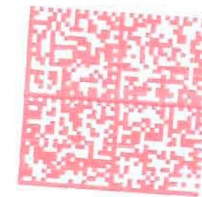
EXHIBIT 2





Development Services

10 South Oakdale Ave., Room 100
Medford, Oregon 97501-2902



Hasler

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\$05.65
07/13/2012
Mailed From 97501
US POSTAGE

DLCD
ATTN: PLAN AMENDMENT
SPECIALIST
635 CAPITOL STREET NE STE 150
SALEM OR 97301-2540



Label 107R, January 2008