



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

May 12, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Jackson County Plan Amendment
DLCD File Number 006-07

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 28, 2008

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Doug White, DLCD Community Services Specialist
John Renz, DLCD Regional Representative
Craig Anderson, Jackson County

<paa> ya

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DLCD

Notice of Adoption

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

☐ In person ☐ electronic ☐ mailed

DATE
STAMP

DEPT OF
MAY 08 2008
LAND CONSERVATION
AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: **Jackson County**

Local file number: **LRP2007-00009**

Date of Adoption: **5/6/2008**

Date Mailed: **5/6/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 12/6/2007

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☒ Other: **Sewer Extension-Public Health**

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

Allow an extension and connection to Rogue Valley Sewer Service on a rural parcel in order to abate a public health issue arising from a failing septic system.

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

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **8623 High Banks Road, Central Point**

Acres Involved: **14**

Specify Density: Previous: **1/80**

New: **N/A**

Applicable statewide planning goals:

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

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD # 006-07 (16577)

DLCD file No. _____

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

RVSS, Jackson County Fire Dist. 3, ODFW, DOGAMI, ODOT, FEMA, DLCD, DEQ, Jackson CO Roads,
Rogue Valley International Airport

Local Contact: **Craig Anderson**

Phone: (541) 774-6918 Extension:

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

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

City: **Medford**

Zip: **97501-2902**

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

ADOPTION SUBMITTAL REQUIREMENTS

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

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

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

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

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

IN THE MATTER OF BOARD OF COMMISSIONERS)
FILE LRP2007-00009, AN APPLICATION TO)
ALLOW CONNECTION TO PUBLIC SEWER)
SERVICE DUE TO A DOCUMENTED HEALTH)
HAZARD TO A SINGLE 14.32 ACRE PARCEL IN)
THE AR ZONING DISTRICT OF PROPERTY)
DESCRIBED AS TOWNSHIP 36 SOUTH, RANGE 2)
WEST, SECTION 16, TAX LOT 707, LOCATED AT)
8461 HIGH BANKS ROAD, CENTRAL POINT,)
APPROXIMATELY 0.66 MILES NORTHEAST OF)
THE INTERSECTION OF HIGH BANKS ROAD AND)
KIRTLAND ROAD. WILLIAM AND EILEEN COLE)
LEAVENS, OWNERS.)

ORDER of APPROVAL
No. 108-08

ORDER for approval for extension of public sewer service to a property to remedy an existing, documented health hazard. The property is legally described as Township 36 South, Range 2 West, Section 16, tax lot 707.

RECITALS:

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).

1. Pursuant to Oregon Administrative Rule (OAR), Chapter 660, Division 11, and the Board of County Commissioners adopted Ordinances 2004-1, 2004-2, and 2004-3. These Ordinances were effective on December 2, 2004.
2. Section 2.6 of the Land Development Ordinance states the procedures and requirements for filing an application.

1- ORDER; FILE LRP2007-00009
Applicant - William and Eileen Cole Leavens

108-08

3. Section 3.6 of the Land Development Ordinance states the approval criteria for public sewer service connection reviews.

Now, therefore,

The Jackson County Board of Commissioners finds and concludes as follows:

SECTION 1. FINDINGS OF FACT: Based upon the evidence and arguments, the Jackson County Board of Commissioners makes the following findings of fact with respect to this application. Where factual conflicts arose, the Board of Commissioners has resolved them consistent with these findings.

- 1.1 The Board of Commissioners finds that proper legal notice was sent to the applicant and property owners within 750 feet of the subject property and affected agencies on October 3, 2007. A media notice was sent to the Medford Mail Tribune on December 26, 2007, and a copy was sent to the Upper Rogue Independent. Legal notice was published in the Sunday, January 13, 2008 edition of the Medford Mail Tribune.
- 1.2 The Board of Commissioners finds that the Planning Commission Recommendations are based upon following proper process, the Planning Commission findings are consistent with available evidence and therefore their recommendations are reliable. The Planning Commission recommendation is hereby incorporated by reference as Exhibit 'A'.
- 1.3 The Board of Commissioners finds that the subject property is described as Township 36 South, Range 2 West, Section 16, tax lot 707. The subject property is located at 8461 High Banks Road.
- 1.4 The Board of Commissioners finds the subject property was determined to be lawfully established prior to countywide zoning, as evidenced by instrument C# 5496 dated December 18, 1970 and recorded in the official deed records of Jackson County.
- 1.5 The Board of Commissioners finds the current Comprehensive Plan Map Designation is Aggregate Resource Land and the zoning district is Aggregate Removal (AR).
- 1.6 The Board of Commissioners finds the subject property has access from High Banks Road, a County owned and maintained road, via TL 712 to the south by non-exclusive easement described at OR 2006-011844.
- 1.7 The Board of Commissioners finds that the subject property is within the Jackson County Rural Fire District No. 3 boundary.
- 1.8 The Board of Commissioners finds that police protection is provided by the Jackson County Sheriff's Office.
- 1.9 The Board of Commissioners finds that the subject property has one lawfully existing dwelling with accessory structures. There is a second lawfully established dwelling which requires a non-conforming use determination in order to determine its use as a non-conforming dwelling.

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Applicant - William and Eileen Cole Leavens

108-08

- 1.10 The Board of Commissioners finds that Whetstone Creek, running along the southwest property line of the subject parcel, is a designated wetlands.
- 1.11 The Board of Commissioners finds that the subject parcel is within the Rogue Valley Sewer Services district boundary and an RVSS sewer main is located approximately 2,850 feet to the south within the High Banks Road right-of-way.
- 1.12 The Board of Commissioners finds that the following agencies responded with comments to this application and their comments were considered by the Board of Commissioners: Jackson County Fire District #3, Oregon Department of Fish and Wildlife, Rogue Valley Sewer Services, the Oregon Department of Transportation, the Jackson County Environmental Quality Division and the Jackson County Airport.
- 1.13 The Board of Commissioners finds that property owners were notified and comments were received from two property owners. The property owner's comments were considered by the Board of Commissioners.

SECTION 2. LEGAL FINDINGS: To approve public sewer connection pursuant to Statewide Planning Goal 11, Public Facilities and Services, OAR 660-011-0060 the Board of Commissioners must find the proposal consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.6, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Land Development Ordinance.

The Board of Commissioners adopts the Findings in Section III of the Staff Report and the Planning Commission's amendments to those findings, incorporated herein and attached as Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments included in the record, the Board of Commissioners concludes that the proposed public sewer connection under Goal 11, Public Facilities and Services, is justified and in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, and Oregon Administrative Rules (OAR) 660-011-0060. Where factual conflicts arose, the Jackson County Board of Commissioners has resolved them consistent with these conclusions.

3.1 Statewide Planning Goals

- 3.1 Statewide Planning Goal 11: The Board of Commissioners concludes that this application complies with Statewide Planning Goal 11, OAR 660-011-0060 and JCLDO Section 3.6. Discussion of the ability to comply with Statewide Planning Goals is contained in the Findings in Section III of the staff report and the Planning Commissions amendments to these findings, attached hereto as Exhibit A.
- 3.2 Jackson County Comprehensive Plan: The Board of Commissioners concludes that this application complies with the Jackson County Comprehensive Plan as identified in Section IV of the Staff Report, attached hereto as Exhibit A.

3.3 Jackson County Land Development Ordinance: The Board of Commissioners concludes that this application complies with the Jackson County Land Development Ordinance as identified in Section IV of the Staff Report, attached hereto as Exhibit A.

3.4 The Board of Commissioners concludes that proper public notice was given.

SECTION 4. DECISION: The Jackson County Board of Commissioners hereby approves the public sewer connection, pursuant to Statewide Planning Goal 11, Public Facilities and Services, OAR 660-011-0060, allowing the extension of a sewer line to connect to the property described below to alleviate a documented health hazard. This approval applies to 14.32 acre parcel described as Township 36 South, Range 2 West, Section 16, tax lot 707, as illustrated on the zoning map attached hereto as Exhibit B.

APPROVED this ^{6th}~~14th~~ day of May, 2008, at Medford, Oregon.

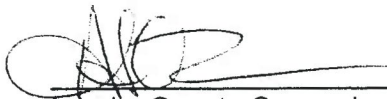
JACKSON COUNTY BOARD OF COMMISSIONERS

Absent
Dennis C. W. Smith, Chair


Jack Walker, Commissioner


Dave Gilmour, Commissioner

APPROVED AS TO LEGAL
SUFFICIENCY:


Interim County Counsel

ATTEST:

Nancy Mitchell
By: Recording Secretary

4- ORDER; FILE LRP2007-00009
Applicant - William and Eileen Cole Leavens

108-08

The Board of County Commissioner's Order 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 May 6, 2008, and the LUBA appeal period will expire on May 27, 2008. 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.

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5- ORDER; FILE LRP2007-00009
Applicant - William and Eileen Cole Leavens

EXHIBIT A

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

IN THE MATTER OF PLANNING COMMISSION)
FILE LRP2007-00009, AN APPLICATION TO)
ALLOW CONNECTION TO PUBLIC SEWER)
SERVICE DUE TO A DOCUMENTED HEALTH)
HAZARD TO A SINGLE 14.32 ACRE PARCEL)
IN THE AR ZONING DISTRICT OF PROPERTY)
DESCRIBED AS TOWNSHIP 36 SOUTH,)
RANGE 2 WEST, SECTION 16, TAX LOT 707,)
LOCATED AT 8461 HIGH BANKS ROAD,)
CENTRAL POINT, APPROXIMATELY 0.66)
MILES NORTHEAST OF THE INTERSECTION)
OF HIGH BANKS ROAD AND KIRTLAND)
ROAD. MATT ROPP LAND USE CONSULTING,)
INC., AGENT; WILLIAM AND EILEEN COLE)
LEAVENS, OWNERS.)

**RECOMMENDATION
FOR APPROVAL**

Jackson County Planning Commission: Recommends approval to allow connection to public sewer service due to a documented health hazard to a single 14.32 acre parcel in the AR zoning district on property described as Township 36 South, Range 2 West, Section 16, tax lot 707.

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. On September 5, 2007 an application to allow connection to public sewer service due to a documented health hazard to a single 14.32 acre parcel was submitted by the agent, Matt Ropp Consulting, Inc., for the owners, William and Eileen Cole Leavens. The application was deemed complete on October 2, 2007.

PROCEDURAL FINDINGS:

1. A notice of the proposed amendment was provided to the Department of Land Conservation and Development (DLCD) on December 6, 2007, 49 days prior to the first evidentiary hearing. A notice was published on Sunday, January 13, 2008 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on Thursday, January 24, 2008 at 9:00 a.m in the Jackson County Auditorium.
3. On January 24, 2008, the Jackson County Planning Commission held a properly advertised public hearing to consider the evidence and testimony on this application.

Now, therefore,

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

SECTION 1. FINDINGS OF FACT:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application. Where factual conflicts arose, the Planning Commission has resolved them consistent with these findings.

1.1 The Planning Commission finds that proper legal notice was sent to the applicant and property owners within 750 feet of the subject property and affected agencies on October 3, 2007. A media notice was sent to the Medford Mail Tribune on December 26, 2007. Legal notice was published in the Sunday, January 13, 2008 edition of the Medford Mail Tribune.

1.2 The Planning Commission finds that the subject property is described as Township 36 South, Range 2 West, Section 16, tax lot 707. The subject property is located at 8461 High Banks Road.

1.3 The Planning Commission finds the subject property was determined to be lawfully established prior to countywide zoning, as evidenced by instrument C# 5496 dated December 18, 1970 and recorded in the official deed records of Jackson County.

1.4 The current Comprehensive Plan Map Designation is Aggregate Resource Land and the zoning district is Aggregate Removal (AR).

1.5 The Planning Commission finds the subject property has access from High Banks Road, a County owned and maintained road, via TL 712 to the south by non-exclusive easement described at OR 2006-011844.

1.6 The Planning Commission finds that the subject property is within the Jackson County Fire District No. 3 boundary.

1.7 The Planning Commission finds that police protection is provided by the Jackson County Sheriff's Office.

1.8 The Planning Commission finds that the subject property has one lawfully existing dwelling with accessory structures. There is a second lawfully established dwelling which requires a non-conforming use determination in order to determine its use as a non-conforming dwelling.

1.9 The Planning Commission finds that the subject property is not within an Area of Special Concern.

1.10 The Planning Commission finds that Whetstone Creek, running along the southwest property line of the subject parcel is a designated wetlands.

1.11 The Planning Commission finds that the subject parcel is within the Rogue Valley Sewer district boundary and an RVSS sewer main is located approximately 2,850 feet to the south within the High Banks Road right-of-way.

1.12 The Planning Commission finds that the following agencies responded with comments to this application and their comments were considered by the Planning Commission: Jackson County Fire District #3, Oregon Department of Fish and Wildlife, Rogue Valley Sewer Services, the Oregon Department of Transportation, the Jackson County Environmental Quality Division and the Jackson County Airport.

1.13 The Planning Commission finds that property owners were notified and comments were received from two property owners. The property owner's comments were considered by the Planning Commission.

SECTION 2. LEGAL FINDINGS: To recommend approval of an application allowing connection to public sewer service due to a documented health hazard, the Planning Commission must find the application to be in conformance with Sections 3.1.5, 3.6, 4.4.5 and 7.1.2 of the Jackson County Land Development Ordinance which requires conformance with the applicable Statewide Planning Goals, Oregon Revised Statutes and Oregon Administrative Rules.

The Planning Commission adopts the Findings in Sections III of the Staff Report, incorporated herein and attached as Exhibit 1 with the following changes:

2.1 Amend Section III of the Staff Report, under LDO Section 3.1.5 to read:

FINDING: This application, processed under the Type 4 procedures of Chapter 2, seeks zoning authorization to extend and connect a sewer line to ~~one existing dwelling~~ *lawful uses* on a single parcel. As such, this application does not represent a new use or change in use. Section 3.1.4(B) applies only to uses. Therefore, Section 3.1.4(B) does not apply and this criterion is considered met.

2.2 Amend Section III of the Staff Report, under OAR 660-011-060 Sewer Service to Rural Lands (4)(a)(B) to read:

FINDING: Assessment records indicate the subject parcel is developed with a 1936 "stick-built" dwelling, *a 1975 mobile home and other accessory structures*. Furthermore, ~~this dwelling~~ *these uses* ~~has~~ have been identified as the source of the existing health hazard by the Jackson County Environmental Quality Division and DEQ. Therefore, this criterion is met.

2.3 Amend Section III of the Staff Report, under OAR 660-011-060 Sewer Service to Rural Lands (4)(b)(F) to read:

FINDING: As indicated above, the applicant is not requesting an increase in authorized density. The current proposal is to connect ~~an existing lawful dwelling~~ *uses* to sewer so as to mitigate a public health hazard.

The Planning Commission adopts the Conclusions in Sections IV of the Staff Report, incorporated herein and attached as Exhibit 1 with the following changes:

2.4 Amend Section IV of the Staff Report, under (G) to read:

The proposed connection will be allowed only for ~~the one permanent dwelling recognized lawful uses on the subject parcel, meeting the density requirements of the current LDO.~~

These findings demonstrate that the application is in conformance with the Statewide Planning Goals, Oregon Revised Statutes, Oregon Administrative Rules, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments included in the record, the Planning Commission concludes that the proposed connection to public sewer service due to a documented health hazard is justified and is in conformance with the Statewide Planning Goals, Oregon Revised Statutes, Oregon Administrative Rules, and the Jackson County Land Development Ordinance. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

3.1 Statewide Planning Goal 11: The Planning Commission concludes that this application complies with Statewide Planning Goal 11. Discussion of the ability to comply with Statewide Planning Goal 11 is contained in Section III of the staff report, attached hereto as Exhibit 1.

3.2 Jackson County Comprehensive Plan: The Planning Commission concludes that this application complies with the Jackson County Comprehensive Plan as identified in Section IV of the Staff Report, attached hereto as Exhibit 1.

3.3 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance as identified in Sections III and IV of the Staff Report, attached hereto as Exhibit 1, subject to the following conditions:

3.3.1 Prior to issuance of permits:

- A) A Goal 14 Deed Declaration shall be signed, notarized and recorded by the property owner, consistent with findings under approval criteria for OAR 660-011-0060(4)(b)(D). A copy of the recorded deed declaration shall be submitted to Development Services to be included in this file; and
- B) Floodplain review must be submitted and approved pursuant to development standards set forth in LDO Section 7.1.2(F)(6)(d), consistent with findings under approval criteria for LDO Section 7.1.2.
- C) The property owner shall provide evidence that the necessary permits have been obtained from Rogue Valley Sewer Services and the Jackson County Roads and Parks Department.

3.3.2 Only Township 36 South, Range 2 West, Section 16, Tax Lot 707 is allowed connection to public sewer service.

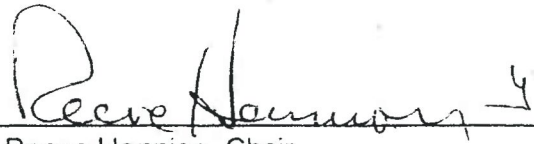
3.3.3 Pursuant to LDO Section 2.6.8, this approval is valid for four (4) years from the date of the final decision and will expire unless development has been initiated, as defined in LDO Section 13.3. This approval may be extended for an additional period not to exceed one year upon request.

3.4 The Planning Commission concludes that proper public notice was given.

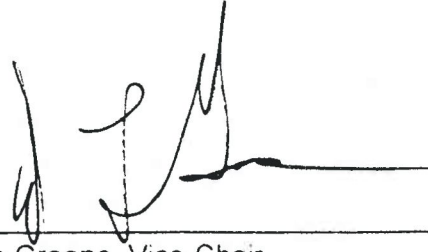
SECTION 4. RECOMMENDATION: The Jackson County Planning Commission: 1) recommends approval pursuant to Statewide Planning Goal 11, Public Facilities and Services, OAR 660-011-0060, to allow the extension of a sewer line to connect to the property described below to public sewer service to alleviate a documented health hazard. The conditions identified in Section 3, Conclusions, are included for this recommendation and in the Staff Report, attached hereto as Exhibit 1. The recommended approval applies to the 14.32 acre parcel described as Township 36 South, Range 2 West, Section 16, tax lot 707, as illustrated on the zoning map attached hereto as Exhibit 2.

This recommendation for APPROVAL adopted this 15th day of February, 2008, at Medford, Oregon.

JACKSON COUNTY PLANNING COMMISSION
(Vote: Y=Yes; N=No; A=Abstain)



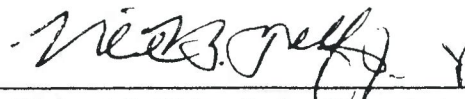
Reeve Hennion, Chair



Don Greene, Vice-Chair



Elizabeth Fugas, Commissioner



Richard B. Thierolf, Jr., Commissioner

ATTEST:



Lisa Canon, Recording Clerk

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**JACKSON COUNTY DEVELOPMENT SERVICES
TYPE 4 LAND USE PERMIT
PUBLIC SEWER CONNECTION
STAFF REPORT**

APPLICANT: William & Eileen Cole Leavens **FILE:** LRP2007-00009
8461 High Banks Road
Central Point, OR 97502

AGENT: Matt Ropp Consulting, Inc. **OWNER:** Same as Applicant
10 S. Bartlett St., Ste. 203
Medford, OR 97501

MAP DESCRIPTION:

TWP: 36 RANGE: 2W SECTION: 16 TAX LOT(s): 707

LOCATION: The property is located at 8461 High Banks Road, Central Point.

NATURE OF APPLICATION: A request for authorization to connect two existing dwellings to RVSS public sewer service. The dwellings are on a single 14.32 acre parcel in the AR zoning district. The subject parcel has been identified and appropriately documented by Jackson County Sanitation Division and Oregon Department of Environmental Quality as a health hazard situation. Both agencies have advised that connection to public sewer service and decommissioning of the existing unsafe septic system is necessary to eliminate the public health hazard. This proposal includes extension of an existing two inch pressurized sewer line approximately 2,850 feet to the north along High Banks Road.

STAFF RECOMMENDATION: Approval with conditions.

I. BACKGROUND INFORMATION

- A) **Lot or Parcel Creation:** The subject parcel was lawfully established prior to countywide zoning, as evidenced by instrument C# 5496 dated December 18, 1970 and recorded in the official deed records of Jackson County.
- B) **Fire Protection:** The property is protected by Jackson County Fire District #3.
- C) **Access:** The parcel is accessed from High Banks Road, a County owned and maintained road, via TL 712 to the south by non-exclusive easement described at OR 2006-011844.
- D) **Current Parcel Sizes:** 14.32 acres
- E) **Current Land Use:** Rural Residential/ aggregate mining reclamation; one lawfully existing dwelling.
- F) **Assessment:** Property Class 401, no special assessment
- G) **Areas of Special Concern (ASC):** None
- H) **Zoning Overlays:** Floodplain, Airport Concern
- I) **Previous Land Use Actions:** 02-18-LOT; Acknowledged lawful creation of subject parcel.

II. APPLICABLE CRITERIA

To approve this application, the County must find it to be in conformance with Sections 3.1.5, 3.6, 4.4.5 and 7.1.2 of the Jackson County Land Development Ordinance [OAR 660-011-0060 (4), (5), (6) and (7)].

III. FINDINGS OF CONFORMANCE WITH THE LDO

All standards, procedures, and criteria identified from the Land Development Ordinance (LDO) and applicable to this request have been reviewed by staff. The following findings reflect only the standards, procedures and criteria considered relevant to the issues identified in Section II of this report. Conditions required as part of any approval, are based upon review of the LDO and the findings established below.

LDO Section 3.1.5: *A Type 4 Permit requires review by the Planning Commission and the board of Commissioners, as applicable to ensure the proper integration of uses that may be suitable only in specific locations.*

- A) **Procedures:** *Applications for a Type 4 land use permit will follow the applicable review procedure set forth in Section 2.7 as identified in Table 2.7-2.*
- B) **Approval Criteria:** *The County may issue Type 4 Permits only upon finding that all of the applicable approval criteria set forth in Section 3.1.4(B) have been met.*

FINDING: This application, processed under the Type 4 procedures of Chapter 2, seeks zoning authorization to extend and connect a sewer line to one existing dwelling on a single parcel. As such, this application does not represent a new use or change in use. Section 3.1.4(B) applies only to uses. Therefore, Section 3.1.4(B) does not apply and this criterion is considered met.

LDO Section 3.6: Sewer Systems and Extensions on Rural Lands

LDO Section 3.6.2 - Procedure: *Permit applications for new sewer systems or sewer extensions to be constructed outside urban growth or unincorporated community boundaries in order to mitigate a public health hazard situation will be processed under the Type 4 procedures of this Ordinance, and in accordance with the provisions of OAR 660-011-0060. To be accepted as complete, a sewer permit application must be filed with a health hazard determination and recommendation from the Oregon Department of Environmental Quality (DEQ) or the Oregon Health Division.*

FINDING: The subject parcel is located approximately 0.50 miles north of the terminus of the nearest existing sewer line, and is approximately 0.87 miles northwest of the White City Urban Containment Boundary. Jackson County Environmental Quality Division inspected the subject parcel on May 1, 2007 and concluded that the current septic system is not functioning adequately and determined that a public health hazard situation exists. The Oregon Department of Environmental Quality (DEQ) reviewed the County's determination and concurred that a public health hazard exists that would most appropriately be mitigated

by connection to a sewer service. This application is being processed under the Type 4 procedures of the LDO and in accordance with the provisions of OAR 660-011-0060, which have been addressed below.

LDO Section 3.6.3 - Approval Criteria: *The basis for approval of a development permit for a sewer service to rural lands will be OAR 660-011-0060 to mitigate existing public health hazard situations, unless a goal exception is justified for another purpose.*

FINDING: Staff has identified the applicable Sections of OAR 660-011-0060 below. Where these standards are met outright, or can feasibly be met with conditions, this criterion is also met.

LDO 4.4.5 General Review Criteria for Type 2-4 Permits: *The use may be approved only where the use:*

- A) *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
- B) *Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

The applicant may demonstrate that these criteria will be satisfied through the imposition of conditions. Any conditions so imposed must be clear and objective. [ORS 215.296; OAR 660-033-0030(5)]

FINDING: The proposed sewer line extension and connection is not a new use or a change in use and thus will not result in adverse impacts, or increased costs for farm or forest practices on surrounding lands. Therefore, these criteria are met.

LDO Section 7.1.2 - Approval Criteria: *Prior to approval of floodplain review, the County will determine all of the following:*

- 1) *That all applicable development standards of Section 7.1.2(F) can feasibly be met; and*
- 2) *That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.*

FINDING: All applicable development standards set forth in LDO Section 7.1.2(F)(6)(d) can feasibly be met. Approval of this application will be conditioned on submission and approval of floodplain review pursuant to these standards.

OAR 660-011-060 Sewer Service to Rural Lands

- 4) *A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth*

boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the condition in subsections (a) and (b) of this section are met, as follows:

a) *The DEQ or the Oregon health Division initially:*

A) *Determines that a public health hazard exists in the area;*

FINDING: The Jackson County Environmental Quality Division has determined that the existing septic system is failing and that a public health hazard exists. The Oregon Department of Environmental Quality (DEQ) has reviewed the County's determination and concurs. Both agencies have provided statements recognizing the existence of a public health hazard and recommending connection to a sewer system, thus satisfying this criterion.

B) *Determines that the health hazard is caused by sewage from development that existed in the area on July 29, 1998;*

FINDING: Assessment records indicate the subject parcel is developed with a 1936 "stick-built" dwelling. Furthermore, this dwelling has been identified as the source of the existing health hazard by the Jackson County Environmental Quality Division and DEQ. Therefore, this criterion is met.

C) *Describes the physical location of the identified sources of the sewage contributing to the health hazard; and*

FINDING: A site plan showing the location of the failing system has been submitted with this application. A report from Robin Davis, Environmental Health Specialist with the Jackson County Environmental Quality Division, states: "It is clear the drainfield is not able to take the sewage load resulting in liquid backing up into the tank. During the wet season sewage undoubtedly will be at the ground surface over the drainfield area which constitutes a failure." In her report she indicates the soils on the site are composed of Agate-Winlo complex and are intermingled on the landscape. The Winlo soils are situated in rocky depressions that pond water during the wet season and surround the Agate soils in circular mounds. She states that standing water is typically present in these depressions for 4-6 months out of the year. She also states that, in general, soils on the site are shallow to a cemented hardpan which is impermeable and seasonally perches water. DEQ has concurred with this determination. These determinations, along with the attached map, satisfy this criterion.

D) *Determines that there is no practicable alternative to a sewer system in order to abate the public health hazard; and*

FINDING: The Jackson County Environmental Quality Division report states that: "The severe soils and groundwater conditions on this property makes finding a practicable repair septic site that meets current code impossible. The best possible solution to resolving the septic problem on this parcel... would be connection to the Rogue Valley Sewer Services." DEQ has concurred with this determination. Therefore, this criterion is met.

- b) *The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon health Division where appropriate:*

- A) *Determines the type of sewer system and service to be provided, pursuant to section (5) of this rule;*

FINDING: Jackson County recognizes the only solution to the hazard is connection to a sewer system. The subject parcel is within the Rogue Valley Sewer Services District and will be connected to their service, thus satisfying this criterion.

- B) *Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;*

FINDING: Based on soils mapping, presumably numerous additional parcels in the area have marginal or failing systems and could benefit from connection to the sewer system. However, only the subject property has been identified as the source of the health hazard. As a condition of approval, connection will be limited to the subject parcel, thus satisfying this criterion.

- C) *Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);*

FINDING: The service provider is Rogue Valley Sewer Services (RVSS). The RVSS District Engineer will establish the requirements for service connection; and a copy of these requirements will be provided to the applicant. As a condition of approval, the applicant will obtain all necessary permits from RVSS prior to release of building permits by Development Services, thus satisfying this criterion.

- D) *Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;*

FINDING: Development Services recommends that a Goal 14 Deed Declaration be recorded on the parcel as a condition of approval. This deed declaration will recognize that connection to a public sewer may not be used as a reason to increase density on the parcel. A copy of the recorded deed declaration shall be submitted to Development Services to be included in this file.

- E) *Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;*

FINDING: The subject property is zoned AR and contains existing residential development. The applicant is not requesting approval to increase residential density or to decrease minimum lot area requirements. As the net density for permanent dwellings is not being exceeded, a Goal 14 exception for urbanization is not required.

- F) *Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and*

FINDING: As indicated above, the applicant is not requesting an increase in authorized density. The current proposal is to connect an existing dwelling to sewer so as to mitigate a public health hazard.

- G) *Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.*

FINDING: The subject parcel is surrounded on three sides – the north, east and west – by land zoned AR, and to the south by land zoned EFU. The existing sewer line terminates south of the subject property on land zoned RR-5. The extension of the line will follow High Banks Road and will not impact any farm or forest lands. Therefore, the proposed extension will not force a significant change in nor significantly increase the cost of accepted farm practices on nearby lands. This criterion is met.

- 5) *Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:*

- a) *The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and*

FINDING: The Jackson County Environmental Quality Division report states that: "The severe soils and groundwater conditions on this property makes finding a practicable repair septic site that meets current code impossible. The best possible solution to resolving the septic problem on this parcel... would be connection to the Rogue Valley Sewer Services." DEQ has concurred with this determination, thus satisfying this criterion.

- b) *New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.*

FINDING: The health hazard area is within the Rogue Valley Sewer Services (RVSS) service area and RVSS will be the service provider, thus satisfying this criterion.

- 6) *The local government, based on recommendations from DEQ and, where appropriate, the Oregon Health Division, shall determine the area to be served by a sewer system necessary to abate a health hazard. The area shall include only the following:*
- a) *Lots and parcels that contain the identified sources of the sewage contributing to the health hazard;*

FINDING: The Jackson County Environmental Quality Division has determined that the subject property is the source of a health hazard due to the failing of the existing septic system. The Oregon Department of Environmental Quality (DEQ) has reviewed the County's determination and concurs. Connection to a sewer system will be limited to the subject parcel. This criterion is met.

- b) *Lots and parcels that are surrounded by or abut the parcels described in subsection (a) of this section, provided the local government demonstrates that, due to soils, insufficient lot size, or other conditions, there is a reasonably clear probability that onsite systems installed to serve uses on such lots or parcels will fail and further contribute to the health hazard.*

FINDING: Only the subject property has been identified as the source of the health hazard and connection to sewer service will be limited to the subject property. Therefore, this criterion is satisfied.

- 7) *The local government or agency responsible for the determinations pursuant to sections (4) through (6) of this rule shall provide notice to all affected local governments and special districts regarding opportunities to participate in such determinations.*

FINDING: Type 4 review procedures, followed during the processing of this application, require notice to all affected local governments and special districts. A mailing list, identifying these recipients, is attached with this application. This criterion is met.

IV. CONCLUSION

The proposal has been found to be consistent with the Jackson County Comprehensive Plan and Land Development Ordinance and Oregon Administrative Rule 660-011-0060 regulating extensions of public sewer facilities in rural areas for the following reasons:

- A. The Oregon Department of Environmental Quality, Western Region Office finds that the Jackson County Environmental Quality Department's documentation of the failing septic system fulfills the first and second requirements of OAR 660-011-060(a)(A & B) and the observations of severe site conditions meet the requirements of OAR 660-011-0060(a)(C & D).
- B. Jackson County Environmental Quality recognizes that public sewer connection abates the public health hazard.
- C. Jackson County Environmental Quality has established by on-site inspection that the subject property is the only property identified as the source of the sewage.

- D. The conditioning of Rogue Valley Sewer Service connection requirements and Standards satisfies OAR 660-011-0060(b)(C).
- E. Jackson County has adopted land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area in the acknowledged Land Development Ordinance.
- F. The subject property is zoned Aggregate Removal and meets the standards contained in the adopted and acknowledged Land Development Ordinance.
- G. The proposed connection will be allowed only for the one permanent dwelling, meeting the density requirements of the current LDO.
- H. The request is in compliance with the Agricultural Lands Element because the proposal has been found to meet the protection standards established in OAR 660-011-0060(4)(b)(G).
- I. The request is in compliance with the Environmental Quality Element Policies One (1) and Three (3). The subsurface sewage disposal system shall comply with all applicable state and federal requirements through the Rogue Valley Sewer Service permit process. Abatement of the documented health hazard through public sewer connection will mitigate potential impacts to surface and ground water quality.
- J. The request is in compliance with the Public Facilities Element Policy One (1) allowing for public sewer connection in rural areas where an existing health hazard is documented.

VI. STAFF RECOMMENDATION

Staff recommends approval of File LRP2007-00009, an application for a Type 4 land use decision to allow property described as Township 36 South, Range 2 West, Section 16, Tax Lot 707, to connect to public sewer service due to a documented health hazard situation, with the following conditions:

A. Prior to issuance of permits:

- 1) A Goal 14 Deed Declaration shall be signed, notarized and recorded by the property owner, consistent with findings under approval criteria for OAR 660-011-0060(4)(b)(D). A copy of the recorded deed declaration shall be submitted to Development Services to be included in this file; and
 - 2) Floodplain review must be submitted and approved pursuant to development standards set forth in LDO Section 7.1.2(F)(6)(d), consistent with findings under approval criteria for LDO Section 7.1.2.
 - 3) The property owner shall provide evidence that the necessary permits have been obtained from Rogue Valley Sewer Services and the Jackson County Roads and Parks Department.
- B. Only Township 36 South, Range 2 West, Section 16, Tax Lot 707 is allowed connection to public sewer service
 - C. Pursuant to LDO Section 2.6.8, this approval is valid for four (4) years from the date of the final decision and will expire unless development has been initiated, as defined in LDO Section 13.3. This approval may be extended for an additional period not to exceed one year upon request.

The County's final decision in this matter is limited to review of applicable zoning rules and land use law, as outlined in the Jackson County Comprehensive Plan, the Jackson County Land Development Ordinance, and the Oregon Administrative Rules and Oregon Revised Statutes relating to land use. Other County, State and Federal agencies may have regulatory review authority for development projects. The final land use decision neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating development.

JACKSON COUNTY PLANNING DIVISION



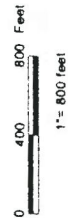
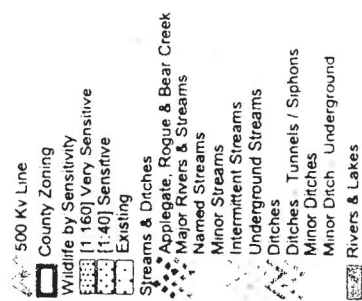
By: Craig Anderson
Planner III

Date: 1-08-08

cc: Owner/Applicant
RVSS
Jackson County Roads & Parks
DLCD

ZONING

APPLICANT:
LEAVENS
36-2W-16 TL 707
LRP2007-00009

EXHIBIT BJACKSON
COUNTY

This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied.

Plot date Sep 7, 2007, C:\GIS\PLANNING APR



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Planning Services

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