



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

08/19/2013

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 001-08R

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: Wednesday, September 04, 2013

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: Craig Anderson, Jackson County
Jon Jinings, DLCD Community Services Specialist

<paa> YA/I



FORM 2

DLCD

Notice of Adoption

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

In person electronic mailed

DATE STAMP

DEPT OF

AUG 16 2013

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **Jackson County**

Local file number: **LRP2007-00008**

Date of Adoption: **8/14/2013**

Date Mailed: **8/14/2013**

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: **Code interpretation per LUBA**

Remand No. 2011-075

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

The adopted ordinance provides an interpretation of Jackson County Land Development Ordinance (LDO) 3.7.3(C)(1) per LUBA's remand of County Ordinance #2011-9, which approved a Goal 11 Exception to allow ODOT's proposed Siskiyou Safety Rest Area to connect to the City of Ashland's municipal water supply.

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: **between mileposts 12 and 13 within the Interstate 5 right of way (east side), approximately 500 feet south of the City of Ashland Urban Growth Boundary (UGB)**

Acres Involved: **approx. 18**

Specify Density: Previous: **N/A**

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
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...(N/A, no amendment was adopted)

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. 001-08R (16636) [17580]

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

City of Ashland, Jackson County Roads, ODOT, DLCD, FHWA

Local Contact: **Criag Anderson, Senior Planner**

Phone: (541) 774-6918 Extension:

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

Fax Number: **541-774-7118**

City: **Medford**

Zip: **97501-2902**

E-mail Address: **anderscm@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. 2013-8 at a properly advertised public hearing on August 14, 2013, 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 October 14, 2013 (61 days from the date of adoption). A description of the ordinance follows:

Ordinance No. 2013-8 interprets the meaning of Jackson County Land Development Ordinance criterion 3.7.3(C)(1) in response to the Oregon Land Use Board of Appeals remand of Ordinance No. 2011-9, which amended the Jackson County Comprehensive Plan by taking a "reasons" goal exception to Goal 11 to allow urban level water service to be extended and connected to the Siskiyou Safety Rest Area/Welcome Center, located on 18 acre property described as Township 39 South, Range 1 East, Section 24 (right of way), between mileposts 12 and 13 within the Interstate 5 right of way (east side), approximately 500 feet south of the City of Ashland Urban Growth Boundary (UGB). File No. LRP2007-00008.

This notice is being mailed to you on August 14, 2013, 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 **Craig Anderson** at Development Services, Room 100, County Offices, 10 South Oakdale, Medford, Oregon 97501. Telephone: Medford 774-6918; Jackson County residents outside of Medford's local calling area 1-800-452-5021 and enter the next four digit extension 6918.

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 August 14, 2013, and the LUBA appeal period will expire on September 4, 2013. 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: Zoning Map
Notary Packet

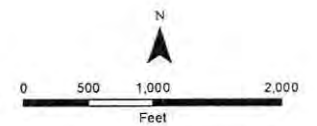


PROPOSED SISKIYOU WELCOME CENTER

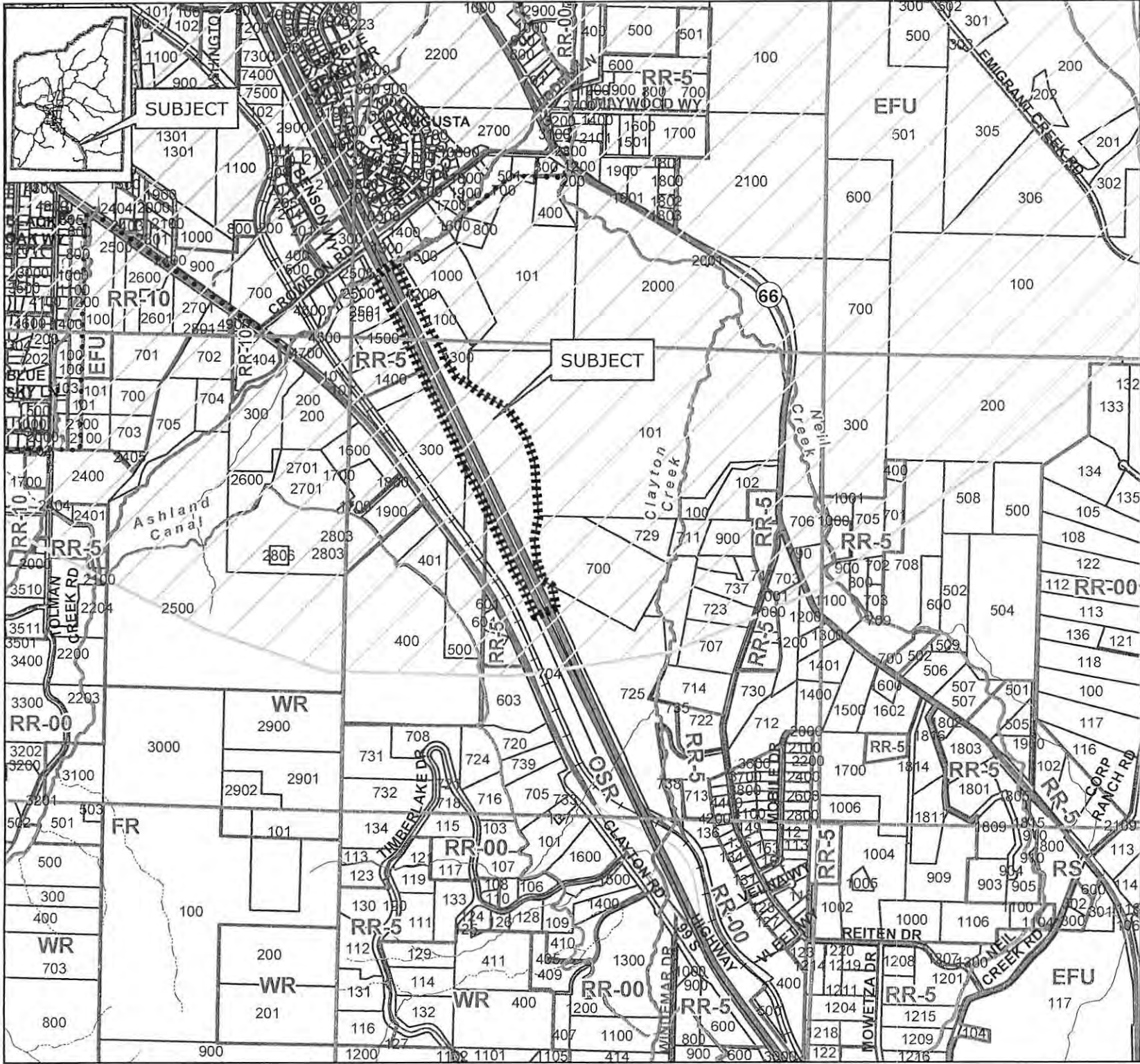
ZONING

APPLICANT:
ODOT
39-1E-24
RIGHT-OF-WAY
LRP2007-00008

-  Subject Lot
-  County Zoning - Outline
-  Airport Concern.lyr
- Streams & Ditches**
-  Applegate, Rogue, Bear Creek
-  Rivers and Major Streams
-  Named Streams
-  Minor Streams
-  Intermittent Streams
-  Underground Streams
-  Ditches
-  Ditches - Tunnels / Siphons
-  Urban Growth Boundary.lyr
-  Sections



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.



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. 2013-8 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 August 14, 2013.

Patricia A. Guida
Signature

Personally appeared before me this 14th day of August, 2013, the above named Patricia A. Guida who acknowledged the foregoing affidavit to be her voluntary act and deed.



Marisa J. Harris
Notary Public for Oregon
My Commission Expires: 7/23/14

NOTICE OF ADOPTION SENT TO: APPLICANT AND INTERESTED PERSONS.

APPLICANT NAME: ODOT – REST AREA REMAND II
FILE NO: LRP2007-00008

FILE NO. LRP2007-00008 RM2
ADOPTION LABELS
APPLICANT: ODOT
DATE CREATED: 8/14/13

APPLICANT LRP2007-00008
JANE RANDELMAN
ODOT
100 ANTELPOE RD
WHITE CITY OR 97503

BOC LRP2007-00008
DON SKUNDRICK, CHAIR
BOARD OF COMMISSIONERS

BOC LRP2007-00008
DOUG BREIDENTHAL
BOARD OF COMMISSIONERS

BOC LRP2007-00008
JOHN RACHOR
BOARD OF COMMISSIONERS

STAFF LRP2007-00008
KELLY MADDING, DIRECTOR
DEVELOPMENT SERVICES

STAFF LRP2007-00008
CRAIG ANDERSON
PLANNER

AGENCY LRP2007-00008
RICK WHITLOCK
COUNTY COUNSEL

IP LRP2007-00008
CONNIE FOLAND
500 REITEN DR
ASHLAND OR 97520

IP LRP2007-00008
WALTER FITZGERALD
PO BOX 3984
CENTRAL POINT OR 97502

IP LRP2007-00008
BRENT MITCHELL
4450 FERN VALLEY RD
MEDFORD OR 97504

IP LRP2007-00008
ROSALIE LINDVIG
4415 INDEPENDENCE SCHOOL RD
MEDFORD OR 97501

IP LRP2007-00008
BARBARA DECKER
3303 N VALLEY VIEW RD
ASHLAND OR 97520

IP LRP2007-00008
DAN FOLLIARD
1032 OAK KNOLL DRIVE
ASHLAND OR 97520

IP LRP2007-00008
HANS/REVE ROCKE
890 TWIN PINES CIRCLE
ASHLAND OR 97502

IP LRP2007-00008
SHARON MIRANDA
488 CROWSON RD
ASHLAND OR 97520

IP LRP2007-00008
GINNY PORTER
1033 OAK KNOLL DR
ASHLAND OR 97520

IP LRP2007-00008
GERALD/KAY STEIN
806 CYPRESS PT LOOP
ASHLAND OR 97520

IP LRP2007-00008
ALLEN BAKER
1042 OAK KNOLL DR
ASHLAND OR 97520

IP LRP2007-00008
BOB RASMUSSEN
1530 N MOUNTAIN AVE
ASHLAND OR 9752

IP LRP2007-00008
SUE LAWRENCE
550 CROWSON RD
ASHLAND OR 97520

IP LRP2007-00008
CHRIS SKREPETOS
4424 HWY 66
ASHLAND OR 97520

BEFORE THE BOARD OF COMMISSIONERS
STATE OF OREGON, COUNTY OF JACKSON
ORDINANCE NO. 2013-8

AN ORDINANCE INTERPRETING THE MEANING OF JACKSON COUNTY LAND DEVELOPMENT ORDINANCE CRITERION 3.7.3(C)(1) IN RESPONSE TO THE OREGON LAND USE BOARD OF APPEALS REMAND OF ORDINANCE NO. 2011-9, WHICH AMENDED THE JACKSON COUNTY COMPREHENSIVE PLAN BY TAKING A "REASONS" GOAL EXCEPTION TO GOAL 11 TO ALLOW URBAN LEVEL WATER SERVICE TO BE EXTENDED AND CONNECTED TO THE SISKIYOU SAFETY REST AREA/WELCOME CENTER, LOCATED ON 18 ACRE PROPERTY DESCRIBED AS TOWNSHIP 39 SOUTH, RANGE 1 EAST, SECTION 24 (RIGHT OF WAY), BETWEEN MILEPOSTS 12 AND 13 WITHIN THE INTERSTATE 5 RIGHT OF WAY (EAST SIDE), APPROXIMATELY 500 FEET SOUTH OF THE CITY OF ASHLAND URBAN GROWTH BOUNDARY (UGB). FILE NO. LRP2007 00008.

RECITALS:

1. Pursuant to Chapters 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
2. On November 8, 2011, the Oregon Land Use Board of Appeals (LUBA) remanded Ordinance No. 2011-9 back to Jackson County on three issues: 1) To determine the applicability of Jackson County Land Development Ordinance (LDO) criterion 3.7.3(C)(1) with respect to a Goal 11 exception; 2) To interpret the meaning of LDO 3.7.3(C)(1); and 3) To determine the relevancy of the "Ashland testimony" with respect to findings of conformance with LDO 3.7.3(C)(1). LUBA's remand was affirmed without opinion by the Oregon Court of Appeals on March 7, 2012.
3. On July 17, 2013, the Jackson County Board of Commissioners (Board) held a properly advertised public hearing to consider the evidence and testimony on LUBA's remand.

SECTION 1. FINDINGS OF FACT

Based on the evidence and arguments presented, the Board makes the following findings of fact with respect to these proceedings. Where factual conflict arose, the Board has resolved them consistent with these findings:

- 1.1 The Board finds that proper legal notice was provided to the applicant, affected property owners and affected agencies on June 26, 2013 for a public hearing on this matter. Legal notice was published in the Sunday, July 7, 2013 edition of the Medford Mail Tribune.

SECTION 2. LEGAL FINDINGS

- 2.1 The Board notes that the below Findings are based on the arguments and Findings contained in the Staff Report, incorporated by reference and attached as Exhibit "A." The below Findings respond to the three issues raised in LUBA's remand.

- 2.1.1 **FINDING:** A Goal Exception is an amendment to a comprehensive plan (OAR 660-004-0005). Section 3.7.1 of the LDO lists the types of comprehensive plan amendments in Jackson County. A Goal 11 exception for connection to an urban water source for the Rest Area is appropriately classified as a "Minor Comprehensive Plan or Zoning Map Amendment" (LDO Section 3.7.1(B)(1)). In addition to an amendment of the Jackson County Comprehensive Plan, a Goal 11 exception requires an amendment to the special zoning map designation "Area of Special Concern (ASC) 2003-1: Goal 11 Exception Areas" (LDO 7.3.3(B)). Minor comprehensive plan or zoning map amendments are subject to approval criteria found under LDO 3.7.3(C). For these reasons, the approval of a "reasons" exception to Goal 11 to allow urban level water service to be extended and connected to the Rest Area requires compliance with LDO 3.7.3(C)(1).

- 2.1.2 **FINDING:**LDO 3.7.3(C) and 3.7.3(C)(1) state that:

"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 Plan:

(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;"

The Board interprets LDO 3.7.3(C)(1) as requiring a determination that the existing physical infrastructure and delivery capacity of the utility facilities at the subject property are adequate or can be made adequate by the applicant to provide service to the property. In interpreting this provision, the Board considered how the provision implements policies adopted in the comprehensive plan that assure the protection of the health, safety, and general welfare of the citizens of Jackson County. This interpretation is consistent with important comprehensive planning goals and policies and

aligns with the development review processes adopted in the LDO.

In interpreting LDO 3.7.3(C)(1), the Board relied on the Staff Report and makes the following clarifications:

Testimony was presented that the term "**adequate** . . . utility facilities and services" requires an interpretation that would additionally require consideration of assurances of the adequacy of water service to meet the needs of the proposed use. This interpretation is not consistent with the express language of the provision and the practical considerations of development for the following reasons:

1. The express language of the provision does not support this interpretation:
 - a. LDO 3.7.3(C)(1) is broken into two sentences that distinguish transportation facilities from other types of facilities and services by requiring that, in the case of the former, "transportation facilities must exist or be assured." A demonstration that "adequate . . . facilities and services can be provided" means only that it must be feasible that the facilities and services "can be provided" and does not require that they "must exist or be assured" as that more demanding criteria applies only to transportation facilities.
 - b. The implementing term "**can be provided**" is not a mandate requiring a showing that utility facilities are actually provided or assured. Instead, the words "**can be provided**" requires a determination of the feasibility of providing those utility facilities and services to the site. The determination of whether utility facilities and services "**can be provided**" requires a determination that infrastructure is available or can be made available to extend the utility to the subject property and that a utility service provider is available to provide the identified utility. Testimony was presented that the term "**can be provided**" should be interpreted as a mandate requiring evidence of a service agreement that demonstrates that the utility service will be assured. But the meaning of "**can be provided**" does not involve such a demanding interpretation. Had the intent been to make the provision mandatory, the terms "**shall be provided**" or "**will be provided**" would have been used. The word "**can**," unlike the words "**will**" or "**shall**," requires a subjective determination of the "ability to" provide, or the "feasibility of" providing the infrastructure to the subject property.
2. Testimony was presented that an interpretation of this land use provision that does not require assurance of adequate water service would be contrary to the goals and objectives of the comprehensive plan to protect the public health, safety, and general welfare. The Board finds that the above interpretation is not contrary to the goals and objectives of the comprehensive plan to protect the public health, safety and general welfare.
 - a. LDO 3.7.3(C)(1) reinforces the public requirements to coordinate and plan for public infrastructure consistent with Goal 11 to ensure that that

public infrastructure is available or will be available to the subject property at the time it is needed. Public facility plans are required to identify the water, sewer, and transportation facilities that are needed to support the designated land uses and to assure that this infrastructure is available for approved uses. The public bears the cost of constructing, extending, and maintaining this system of public facilities.

In contrast, the property owner is responsible for negotiating and obtaining a utility service agreement and paying for the use of those utilities with a utility provider. These contractual agreements do not involve the county or require the county to take action. If the applicant is unable to secure an adequate service agreement with the utility provider, then the county will not issue permits for occupancy. Thus, the interests of the public are appropriately protected by this interpretation.

2.1.3 **FINDING:** The above interpretation of LDO 3.7.3(C)(1) notes that assurances by utility providers are not required in order to find conformance with this criterion. Therefore, "the Ashland testimony," characterized by LUBA in the Remand, Final Opinion, and Order in LUBA No. 2011-075 as testimony and evidence challenging the findings of conformance with LDO 3.7.3(C)(1) on the basis of the lack of assurances from a utility provider, is irrelevant and should be disregarded.

2.2 The Board finds that testimony and evidence was provided by surrounding property owners that included objections and concerns related to the proposed amendments and that this testimony and evidence was considered during the Board's deliberations.

SECTION 3. CONCLUSIONS

- 3.1 The Board concludes that proper public notice was given.
- 3.2 The Board hereby adopts the Legal Findings in Section 2. These Findings are based on the arguments and Findings contained in the Staff Report, incorporated by reference and attached as Exhibit "A."

SECTION 4. DECISION

Now, therefore,


The Board of County Commissioners of Jackson County ordain as follows:

- 4.1. Based on the record of the public hearing, the Board hereby adopts the Legal Findings in Section 2 in response to LUBA's remand of Ordinance 2011-9. FILE: LRP2007-00008.

- 4.2. Based on the adoption of the Legal Findings in Section 2, the Board hereby approves and ratifies Ordinance No. 2011-09 which approved an amendment to the Jackson County Comprehensive Plan by taking a "reasons" goal exception to Goal 11 to allow urban level water service to be extended and connected to the Siskiyou Safety Rest Area/Welcome Center. The subject property is approximately 18 acres and legally described as Township 39 South, Range 1 East, Section 24 (right of way), located between mileposts 12 and 13 within the Interstate 5 right-of-way (east side), approximately 500 feet south of the City of Ashland Urban Growth Boundary (UGB), owned by the Oregon Department of Transportation.

ADOPTED this 14th day of August, 2013, at Medford, Oregon.

JACKSON COUNTY BOARD OF COMMISSIONERS



Don Skundrick, Chair

Absent

Doug Breidenthal, Commissioner




John Pachor, Commissioner

ATTEST:



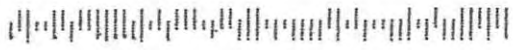
By: Recording Secretary

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 August 14, 2013, and the LUBA appeal period will expire on September 4, 2013. 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.



Development Services

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



Hasler

U16H26515385

\$0.1320

08/14/2013

Mailed From 97501
US POSTAGE

DEPT OF
AUG 16 2013
LAND CONSERVATION
AND DEVELOPMENT

PLAN AMENDMENT SPECIALIST
DLCD
635 CAPITOL ST NE STE 150
SALEM OR 97301-2540