



# 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

## AMENDED NOTICE OF ADOPTED AMENDMENT

December 27, 2007



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Benton County Plan Amendment  
DLCD File Number 002-07

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: January 4, 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  
Ron Eber, DLCD Farm/Forest Specialist  
Greg Verret, Benton County

<paa> ya/

# 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



Jurisdiction: **Benton County**

Local file number: **LU-07-057**

Date of Adoption: **12/4/2007**

Date Mailed: **12/14/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 8/31/2007

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".  
Re-zone 33 acres from Multi-Purpose Agriculture (an exclusive farm use zone) to Forest Conservation.

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

Plan Map Changed from: **Agriculture**

to: **Forestry**

Zone Map Changed from: **Multi-Purpose Agriculture** to: **Forest Conservation**

Location: **Approx. 2.5 mi. W of Alsea, on N side of Alsea Hwy**

Acres Involved: **33**

Specify Density: Previous:

New:

Applicable statewide planning goals:

- |                          |                          |                                     |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                 | <b>2</b>                 | <b>3</b>                            | <b>4</b>                            | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
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Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

DLCD file No. 002-07 (16568)

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

ODOT

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Local Contact: **Greg Verret**

Phone: **(541) 766-6294** Extension:

Address: **360 SW Avery Ave**

Fax Number: **541-766-6891**

City: **Corvallis**

Zip: **97333-**

E-mail Address: **greg.verret@co.benton.or.us**

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## **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](http://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](mailto: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](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

**RECORDING COVER SHEET  
OTHER THAN FOR LIENS OR  
CONVEYANCES, PER ORS 205.234**

*THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON  
PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING.  
ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE  
TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.*

**AFTER RECORDING RETURN TO**

*Name and address of the person authorized to receive the  
instrument after recording, as required by ORS 205.180(4)  
and ORS 205.238.*

Board of Commissioners  
Lisa Grisham

1. **NAME(S) OF THE TRANSACTION(S)**, described in the attached instrument and required by ORS 205.234(a).

*Note: Transaction as defined by ORS 205.010 "means any action required or permitted by state law or rule or federal law or regulation to be recorded including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property."*

**In the Matter of Amending the Benton County Comprehensive Plan Map  
and Zoning Map:**

Ordinance 2007-0225; and

Exhibit 1 – Planning File LU-07-057, Legal Description of Zone Change Area; and

Exhibit 2 – Planning File LU-07-057, Map of Zone Change Area; and

Exhibit 3 – Planning File LU-06-023, Finding of Fact & Conclusions of Law

2. **DIRECT PARTY**, name(s) of the person(s) described in ORS 205.125(1)(b) or  
**GRANTOR**, as described in ORS 205.160.

\_\_\_\_\_  
Benton County  
\_\_\_\_\_

3. **INDIRECT PARTY**, name(s) of the person(s) described in ORS 205.125(1)(a) or  
**GRANTEE**, as described in ORS 205.160.

\_\_\_\_\_  
Benton County  
\_\_\_\_\_

BENTON COUNTY, OREGON 2007-431150  
MI-MISCR  
Cnt=1 Str=7 COUNTER2 12/11/2007 03:49:52 PM  
This is a no fee document **NO FEE**



I, James V. Morales, County Clerk for Benton  
County, Oregon, do hereby certify that the instrument  
identified herein was recorded in the Clerk  
records.

James V. Morales - County Clerk





**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY  
STATE OF OREGON**

**In the Matter of Amending the Benton )                   ORDINANCE  
County Comprehensive Plan Map and )  
Zoning Map.                                )                   No. 2007-0225**

**WHEREAS**, the applicant's submitted an application for a Comprehensive Plan Map Amendment and Zoning Map Amendment on June 15, 2007, for a 33-acre parcel identified as Township 14 South, Range 8 West, Section 3, Tax Lot 1700 and Township 14 South, Range 8 West, Section 10, Tax Lot 1200; and

**WHEREAS**, the requested action would change the property's designation on the Benton County Comprehensive Plan Map from Agriculture to Forestry, and would change the property's designation on the Benton County Zoning Map from Multi-Purpose Agriculture to Forest Conservation; and

**WHEREAS**, the Benton County Planning Commission held a duly advertised public hearing on October 16, 2007, and voted to recommend that the Board of Commissioners approve the Zoning Map Amendment and Comprehensive Plan Map Amendment; and

**WHEREAS**, the Benton County Board of Commissioners held a duly advertised public hearing on October 30, 2007, to consider the request; and

**WHEREAS**, the Board of County Commissioners finds that the proposed Map Amendments comply with the criteria of Benton County Code 53.505 through 53.525, and are consistent with the applicable policies and procedures of the Comprehensive Plan; and

**WHEREAS**, the Benton County Board of Commissioners has considered the staff report, the application materials, the testimony of witnesses, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the application for a Comprehensive Plan Map and Zoning Map Amendment and Goal Exception, and conducted the First Reading of the proposed Ordinance on November 20, 2007; and

**WHEREAS**, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on December 4, 2007.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

- PART I:**     Short Title. Amendments to the Zoning Map and Comprehensive Plan Map.
- PART II:**    Authority. The Board of County Commissioners of Benton County has authority to amend the Zoning Map and Comprehensive Plan Map pursuant to ORS Chapter 215 and the Benton County Charter.
- PART III.**   Application No. LU-07-057 is hereby approved, based on the Findings and Conclusions contained in the attached "Exhibit 3" and hereby adopted and incorporated herein.

**PART IV.** Benton County Comprehensive Plan Map is hereby amended to identify the property described on the attached "Exhibit 1" as Forestry. This property is also shown on the map in "Exhibit 2".


**PART V.** Benton County Zoning Map is hereby amended to identify the property described on the attached "Exhibit 1" as Forest Conservation. This property is also shown on the map in "Exhibit 2".

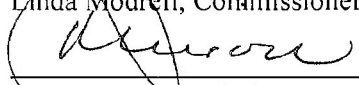
**PART VI.** The effective date for these amendments to the Benton County Comprehensive Plan Map and Zoning Map will be:

First Reading: November 20, 2007  
Second Reading: 4 December 2007  
Effective Date: 8 January 2008

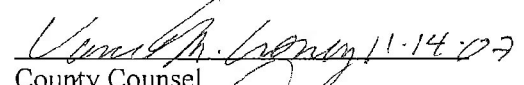
**BENTON COUNTY BOARD OF COMMISSIONERS**

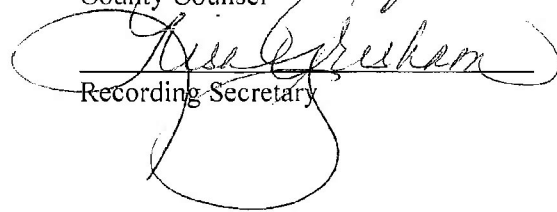
  
Annabelle Jaramillo, Chair

  
Linda Modrell, Commissioner

  
Jay Dixon, Commissioner

Approved as to Form:

  
County Counsel

  
Recording Secretary

**Exhibit 1**

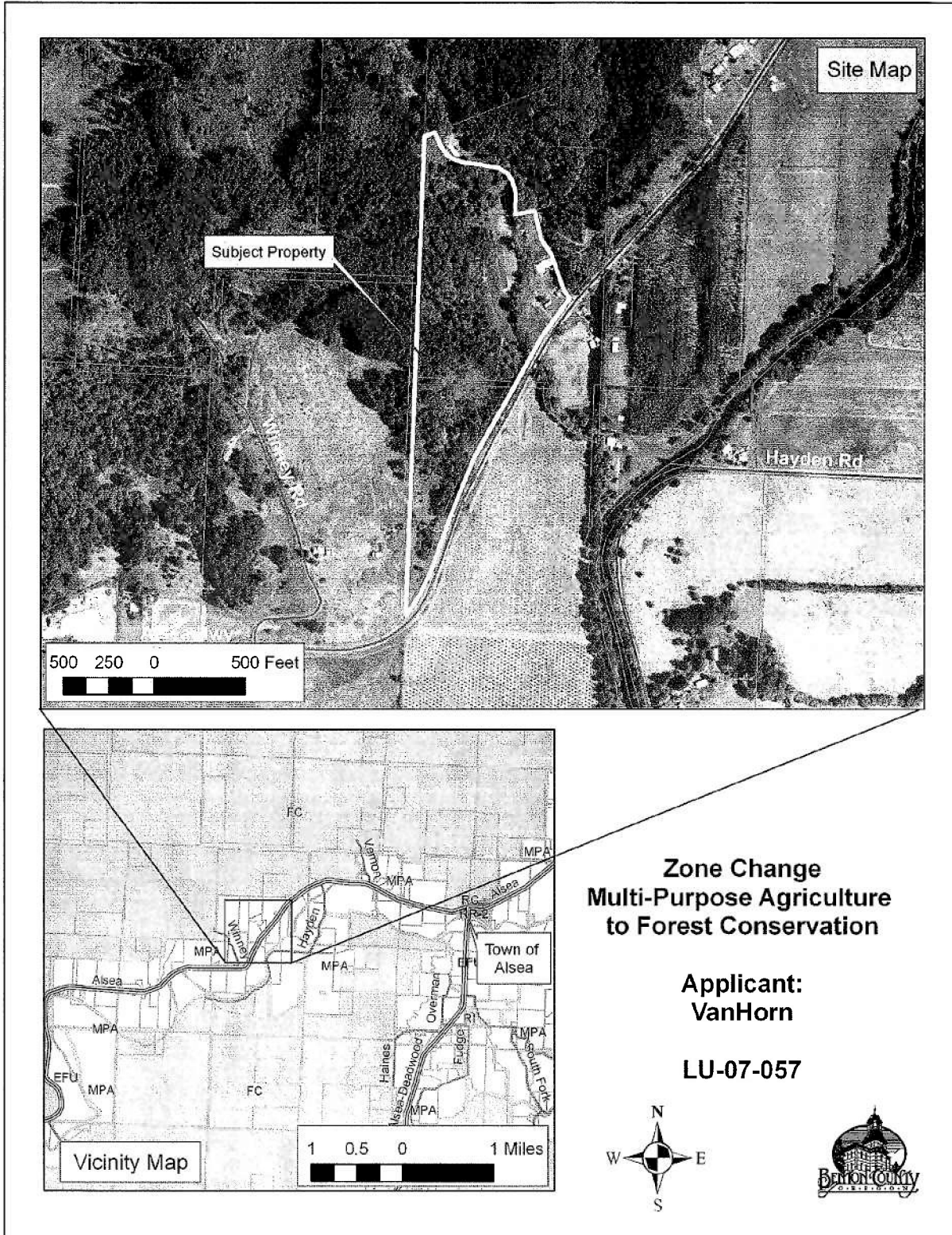
**Legal Description of Zone Change Area**  
**VanHorn Zone Change; File No. LU-07-057**

The following described real property in the County of Benton and State of Oregon:

Parcel 1, Partition Plat No. 2000-029, Filed October 20, 2000, as M-290234-00, Benton County, Oregon.

**Exhibit 2**

**Map of Zone Change Area  
VanHorn Zone Change; File No. LU-07-057**





**Exhibit 3**

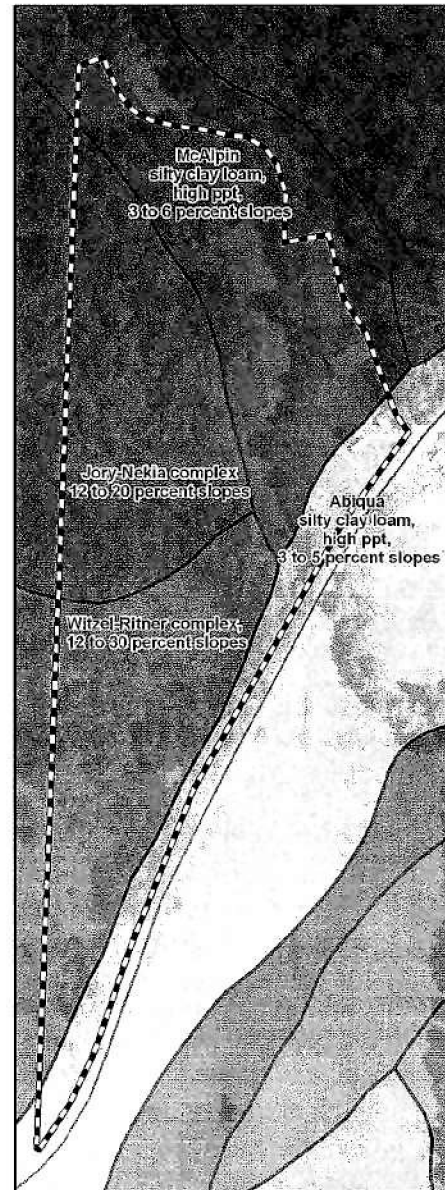
**Findings of Fact and Conclusions of Law**  
**Starr Zone Change; File No. LU-06-023**

**A. GENERAL FINDINGS**

The subject property contains 33 acres, in a mix of forest and open ground. Schoolhouse Creek runs north-south through the property. The property contains two dwellings, a barn, and accessory structures.

The eastern portion of the property is gently sloping, while the western portion is steeply sloped.

Soils on the subject property are a mix of agricultural and forestry soils.



Soil Type	Agricultural Class	Forest Rating (ft <sup>3</sup> of wood fiber/acre/yr)	Percent of Property
McAlpin	II	120 (est.)	30%
Abiqua	II	200	10%
Jory-Nekia complex	III (non-high-value)	157-178	30%
Witzel-Ritner complex	VI (non-high-value)	70-134	30%

According to the applicant’s statement (Attachment A), the property was once part of a larger acreage that functioned as a dairy, farm, and timber operation. The acreage was divided up and sold in the 1990s. The subject 33 acres is one piece of that original.

The purpose of the Multi-Purpose Agriculture Zone is to: “preserve and protect lands for continued agricultural and forestry uses; conserve and protect open space, wildlife habitats, and other uses associated with agriculture; encourage continued development of the local agricultural base; and protect and preserve the social and economic base of the community.” [BCC 56.005]

The Development Code states that “the Multi-Purpose Agriculture Zone is applied to areas in the Alsea and Lobster Valleys where there is a mix of forested hillsides and agricultural river valleys that are divided into ownerships averaging approximately twenty (20) acres. This resource zone is intended to apply to areas where large scale agriculture cannot or does not exist, primarily due to the narrow width of the valleys, unfarmable steep hillsides and other social and economic factors. This area also contains lands which may not be suitable for resource use because of site specific characteristics. Agricultural and forestry operations in these areas are generally conducted by individuals who derive less than fifty percent (50%) of their income from farming or forestry. Therefore, Multi-Purpose Agriculture zoning recognizes that a non-resource use can be an acceptable secondary use when it can be shown not to interfere with resource uses or detract from the resource base.” [BCC 56.010]

The subject property was created in its current configuration by Partition Plat 2000-029. That partition divided the 76-acre property into a 43-acre parcel south of Highway 34 zoned Exclusive Farm Use, and the subject 33-acre parcel north of the highway zoned MPA.

Under the proposed Forest Conservation zoning, one of the dwellings could potentially be divided off onto its own parcel. The MPA zoning allows such a division only if the dwelling has been approved as a non-farm dwelling.

## **B. FINDINGS APPLYING DEVELOPMENT CODE CRITERIA and COMPREHENSIVE PLAN POLICIES**

**53.505 Zone Change Criteria. The Official Zoning Map may be amended if:**

**(1) The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied;**

**Findings:** The applicant states that the property is committed to forest use. Farm use of the property ended in the early 1990s when the flat agricultural portion of the original farm ownership was separated from this steeper, forested portion. Water rights for irrigation went with the flatter property. The subject property is rugged, forested terrain except for the areas along Schoolhouse Creek where the existing structures are located. The flat portions have been heavily altered with rock and structures, making this area unsuitable for agricultural use.

**Analysis and Conclusion:** The majority of the property is forested. Based on topography and tree cover, approximately 6 acres appear potentially available for agriculture. This includes the area of the two dwellings. The connection of this land to other, more suitable agricultural land appears to have been what made agriculture a viable use. With those lands now in separate ownership, forestry is likely to be the primary resource use on the property. This change in circumstances occurred in the time since the current zoning was applied.

At the same time, the MPA zoning is not completely inappropriate given the “purpose” and “standards of application” for that zone.

The Board of Commissioners concludes that either MPA or Forest Conservation is an appropriate zone for the property, but given the predominance of forestland compared to agricultural land, FC is more appropriate. **This criterion is met.**

**(2) The impact on adjacent properties will be minimal;**

**Findings in favor:** The applicant’s submittal states: “Rezoning these properties to forest conservation would not negatively impact public services, in fact would be beneficial to community development in the following ways:

- the Alsea area has seen a decline in forest uses and would benefit from secondary forest commerce;
- the related reduction in school population could be slightly ameliorated;
- patronage of local businesses would increase.”

**Analysis and Conclusion:** No new development would occur as a result of this zone change. The Board of Commissioners concludes that impacts will be minimal. **This criterion is met.**

**(3) Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area; and**

**Findings:** No new development is anticipated to result from the proposed zone change. The property could potentially be divided, but even in that event an easement and single approach to Alsea Highway would be maintained.

**Conclusion:** No increase in the level of public services is anticipated. **This criterion is met.**

**(4) The proposed zone change is consistent with the policies of the Comprehensive Plan.**

**Findings:** The Board of Commissioners has identified the following policies as relevant to the proposal.

**3.1.1 Agricultural lands as defined by Statewide Planning Goal 3, which are not developed or committed to non-farm uses, shall be protected with appropriate resource designations on the Comprehensive Plan and Zoning Maps.**

**Comprehensive Plan Map amendments from “Agriculture” to a non-resource designation shall require an exception to Goal 3.**

Findings: The subject property meets the definition of both agricultural land and forestland. The proposed zone is a resource zone. Re-zoning to Forest Conservation would be consistent with this policy.

**3.1.10 For agricultural lands, soil capability shall be a prime factor used by Benton County in making land use decisions.**

Findings: Approximately 40% of the subject property contains Class II agricultural soils. Another 30% contains Class III non-high-value soils, and the last 30% contains Class VI soils. In sum, the property's soils are 40% excellent for agriculture, 30% moderate, and 30% poor. Regarding forest productivity, 40% of the mapped soils are excellent for tree production, and the remaining 60% are somewhere between moderate and poor. Slope from the soils mapping indicate 60% of the property has slopes of 12% or more, presenting significant challenges for agriculture on the majority of the property. On this basis, either farm or forest zoning would be appropriate for the property.

**4.1.4 Benton County shall promote the management of resource lands to ensure a sustained yield of forest products.**

Findings: Farm and forest zoning both allow forest management. The Forest Conservation zone is specifically designed to facilitate sustained yield of forest products.

**Analysis and Conclusion:** The proposed zoning of Forest Conservation is consistent with the identified policies of the Comprehensive Plan.

**C. FINDINGS FOR AMENDING THE COMPREHENSIVE PLAN MAP**

**Chapter 17 of the Benton County Comprehensive Plan contains the procedures and criteria for amending the Comprehensive Plan Map:**

**Amendments to the Plan Map may be approved when compliance with all elements of the Comprehensive Plan and with statewide land use land use planning goals can be shown.**

**Map amendments requiring goal exceptions shall comply with procedure and standards of OAR 660 Division 4 and State goals.**

**Findings:** Compliance with the elements of the Comprehensive Plan is addressed in Section B of this findings document. Zoning as MPA or FC any land that meets the definition of both agricultural land and forest land will be consistent with the Statewide Planning Goals.

The applicant cites a public need in that: "Rezoning these properties to forest conservation would not negatively impact public services, in fact would be beneficial to community development in the following ways:

- the Alsea area has seen a decline in forest uses and would benefit from secondary forest commerce;
- the related reduction in school population could be slightly ameliorated,
- patronage of local businesses would increase."

A public need also could be found to exist in that appropriate zoning of property enables efficient utilization of land.

**Conclusion:** The proposed Comprehensive Plan Map amendment from MPA to FC has been found consistent with the Comprehensive Plan and statewide goals. The public need for this map amendment is not clearly defined; nonetheless, a public need for the amendment can be found to



exist and no public need for maintaining the current zoning has been identified. **This criterion has been met.**

#### **D. FINDINGS APPLYING TRANSPORTATION PLANNING RULE**

**OAR 660-012-0060**

**Plan and Land Use Regulation Amendments**

**(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:**

- (a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;**
- (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;**
- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or**
- (d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.**

**(2) A plan or land use regulation amendment significantly affects a transportation facility if it:**

- (a) Changes the functional classification of an existing or planned transportation facility;**
- (b) Changes standards implementing a functional classification system;**
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility;**  
**or**
- (d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.**

**Findings:** The proposed zone change would not allow additional development.

**Conclusion:** The zone change would not significantly affect a transportation facility. This criterion does not apply.

#### **E. SUMMARY AND CONCLUSION**

**The Board of Commissioners' findings and conclusions are:**

Development Code Zone Change Criteria: The proposed zoning is marginally more appropriate than the current zoning, because most of the property is steeply sloped and forested. Impact on adjacent properties will be minimal. The proposed change would be consistent with the policies of the Comprehensive Plan.

Criteria for Amending the Comprehensive Plan Map: A public need, though not a strong one, can be demonstrated. Consistency with Comprehensive Plan policies and statewide goals has been demonstrated.

Compliance with Transportation Planning Rule: Does not apply.

**Overall Conclusion: The proposal has been found to comply with the approval criteria; therefore, The Board of Commissioners concludes that the application should be approved.**