



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

September 21, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Josephine County Plan Amendment
DLCD File Number 003-03



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: October 5, 2007

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.**

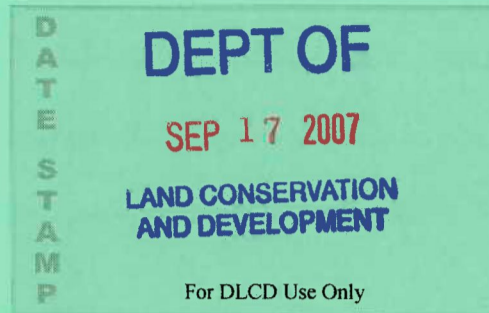
Cc: Doug White, DLCD Community Services Specialist
John Renz, DLCD Regional Representative
Michael Snider, Josephine County

<paa> ya/

NR01

2 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: Josephine Local file number: 36-05-05, TL 200 & 300
 Date of Adoption: 12/27/2006 Date Mailed: 9/13/2007
 Date original Notice of Proposed Amendment was mailed to DLCD: 7/8/2003

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input checked="" type="checkbox"/> Other: <u>Deer Winter Rng Map Amnd</u> |

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

Approval of a request for amending the Comprehensive Plan Map of Josephine County from Forest to Residential; amending the Zoning Map of Josephine County from Woodlot Resource to Rural Residential 5 acre minimum (RR-5); and amending the Josephine County Deer Winter Range Map to remove the subject property from an area designated as critical deer winter habitat.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Same

Plan Map Changed from: Forest Resource to: Residential
 Zone Map Changed from: Woodlot Resource to: Rural Residential 5 (RR-5)
 Location: 2635 Scoville Road Acres Involved: 54.5 acres
 Specify Density: Previous: _____ New: _____
 Applicable Statewide Planning Goals: Goal 4 - Forest Lands & Goal 14 - Urbanization
 Was and Exception Adopted? YES NO

DLCD File No.: 003-03(13033)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (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

Affected State or Federal Agencies, Local Governments or Special Districts:

ODFW

Local Contact: **Michael Snider** Phone: **(541) 474-5421** Extension: **5424**

Address: **510 NW 4th Street** City: **Grants Pass OR**

Zip Code + 4: **97526-** Email Address: **msnider@co.josephine.or.u**

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

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 copy this form on to 8-1/2x11 green paper only; or 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.



Josephine County, Oregon

Board of Commissioners: Jim Raffenburg • Dave Toler • Dwight F. Ellis

PLANNING OFFICE

Michael Snider, Director
510 NW 4th Street / Grants Pass, OR 97526
(541) 474-5421 / FAX (541) 474-5422
E-MAIL - planning@co.josephine.or.us

September 13, 2007

Mara Ulloa
Plan Amendment Specialist, DLCD
635 Capitol St NE Ste 150
Salem OR 97301-2540

**Re: 36-05-05, Tax Lots 200 and 300; Property Owners: David and Antoinette Sumner
Comprehensive Plan and Zone Change (CP/ZC); Ordinance No. 2006-04**

Dear Mara:

On December 20, 2006 our office forwarded to you our *Notice of Non-Legislative Land Use Decision*, together with a copy of the *Findings and Decision* regarding the above noted property. I am not sure if you have recorded the final adoption notice sent to you on January 11, 2005 or not. Therefore, I am enclosing documentation for your file with some background for this matter.

The original application for this CP/ZC was reviewed by the Josephine County Rural Planning Commission (RPC) in August of 2003. At that time, the first *Notice of Proposed Amendment* was mailed to you. The RPC denied the application, and a second evidentiary hearing was heard before the Board of County Commissioners (BOCC) on November 26, 2003. That hearing was continued to three separate dates with no resolution. The BOCC reconsidered the matter at a December 2004 hearing and approved the comprehensive plan amendments, as well as the tentative plan for a Planned Unit Development (PUD). The decision was final on January 11, 2005, and Ms. Jordan forwarded the findings, decision notice, and certificate of mailing for the comprehensive plan amendment, zone map change, and deer winter range map change for the property, together with the *DLCD Notice of Adoption*. Ms. Jordan stated within her letter, that if there were no appeals, our office would proceed with the processing of the Ordinance.

However, the January 11, 2005 decision was appealed to the Land Use Board of Appeals (LUBA) and LUBA remanded the application back to the county on November 17, 2005. The BOCC heard the remand issues on August 9, 2006, continued it to September 6, 2006, October 4, 2006, and finally October 11, 2006, whereat the BOCC resolved the remand issues, and approved the CP/ZC and PUD. This decision was then appealed to LUBA in December of 2006.

During that time, the Findings from the October 11, 2006 approval were read and signed before the BOCC on December 13, 2006 and the first reading of the Ordinance No. 2006-04 was at the same hearing. Our *Notice of Non-Legislative Land Use Decision* and signed *Findings & Decision* were mailed to your office on December 20, 2006. The second reading and adoption of Ordinance No. 2006-04 by the BOCC was at the December 27, 2006 hearing.

* OFFICE HOURS 8-12 & 1-3 (Mon & Fri) 8-12 (Tues & Thurs) Closed Wed *

"Josephine County is an Affirmative Action/Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973"

Mara Ulloa, DLCD
Page 2
September 13, 2007

Meanwhile the LUBA matter was continuing until recently, when the appellant withdrew his appeal. Since this has just transpired, I have been trying to reconstruct the record of events and obtain all of the documents you need.

Therefore, the enclosed documents are an outline of the events for this application request and the adoption of Ordinance No. 2006-04 for the comprehensive plan amendment, zone map change, and deer winter range map change. I am not sure if Ms. Jordan's letter of January 11, 2005 with the attached adoption notice accomplished notification to you of the adoption of the ordinance, thus my letter of explanation and enclosures.

Enclosed documents:

1. Copy of DLCD Notice of Proposed Amendment with mailing date of 07/08/03;
2. Copy of Carol Jordan's letter to Larry French dated January 11, 2005 with attachment of DLCD Notice of Adoption;
3. Copy of Josephine County Board of Commissioners Agenda for the Weekly Business Session for August 9, 2006 and Minutes for that same meeting;
4. Copy of Josephine County Board of Commissioners Agenda for the Weekly Business Session for September 6, 2006 and Minutes for that same meeting;
5. Copy of Josephine County Board of Commissioners Agenda for the Weekly Business Session for October 4, 2006 and Minutes for that same meeting;
6. Copy of Josephine County Board of Commissioners Agenda for the Weekly Business Session for October 11, 2006 and Minutes for that same meeting;
7. Copy of Josephine County Board of Commissioners Agenda for the Weekly Business Session for December 13, 2006 and Minutes for that same meeting;
8. Copy of Josephine County Board of Commissioners Agenda for the Weekly Business Session for December 27, 2006 and Minutes for that same meeting;
9. Copy of the Notice of Non-Legislative Land Use Decision dated December 20, 2006 with attached Findings and Decision dated and signed December 13, 2006;
10. Copy of our notification to the Assessor's Office with attached signed Ordinance No. 2006-04 and maps; and
11. Two copies of original DLCD Notices of Adoption with attached signed Ordinance No. 2006-04 and maps.

I have included the new *Notices of Adoption* even though an original one was sent back in January of 2005. I apologize for the size of the packet, but wanted to make sure you had all you might require. If this is more than what you require for future notices, please advise. Should you have any questions, please call me. Thank you.

Sincerely,



Anne Ingalls
Sr. Department Specialist
Josephine County Planning Office
510 NW 4th Street
Grants Pass OR 97526
541/474-5423
aingalls@co.josephine.or.us

Encs.: As referenced in letter

**BEFORE THE BOARD OF COMMISSIONERS
FOR JOSEPHINE COUNTY, OREGON**

ORDINANCE NO. 2006-04

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN MAP OF JOSEPHINE COUNTY (ORDINANCE 81-11 AS AMENDED), FROM FOREST TO RESIDENTIAL AND AMENDING THE ZONING MAP OF JOSEPHINE COUNTY (ORDINANCE 85-1 AS AMENDED), FROM WOODLOT RESOURCE TO RURAL RESIDENTIAL (5 ACRE MINIMUM), AND ALSO AMENDING THE JOSEPHINE COUNTY DEER WINTER RANGE MAP TO REMOVE THE SUBJECT PROPERTY FROM AN AREA DESIGNATED AS CRITICAL DEER WINTER HABITAT (ORD 85-29). THE SUBJECT PROPERTY IS IDENTIFIED IN THE JOSEPHINE COUNTY ASSESSOR'S RECORDS AS MAP T36, R5 , SECTION 5, TAX LOTS 200 AND 300. THE PROPERTY OWNERS ARE DAVID AND ANTOINETTE SUMNER.

WHEREAS, the Planning Commission held a hearing in August of 2003 and made a recommended decision to the Board of Commissioners as required by the county's comprehensive plan; and

WHEREAS, the Board of Commissioners also held public hearings on February 18, 2004, and December 22, 2004, and thereupon approved the plan and map amendments as described above; and

WHEREAS, the Board's decision was appealed to the Oregon Land Use Board of Appeals (LUBA) by Wayne McKy and Hal Anthony, which resulted in a remand decision; and

WHEREAS, the Board further considered the applications during remand hearings on August 9, October 4 and October 11, 2006, to consider LUBA's remand decision, after which the Board approved the requested plan and map amendments;

NOW, THEREFORE, based on the foregoing, the Board of County Commissioners of Josephine County Oregon, does ordain as follows:

SECTION 1: Comprehensive Plan Map Amendment

The Josephine County Comprehensive Plan Map is hereby amended from Forest to Residential for the property identified as Assessor's Map: Township 36, Range 5, Section 5, Tax Lots 200 and 300.

SECTION 2: Zone Map Amendment

The Josephine County Zoning Map is hereby amended from Woodlot Resource to Rural Residential (5 Acre Minimum) for property identified as Assessor's Map: Township 36, Range 5, Section 5, Tax Lots 200 and 300.

SECTION 3. Deer Winter Range Map Amendment

The Josephine County Deer Winter Range Map is hereby amended to remove the subject property from an area designated for "critical deer winter range habitat" on the county's Deer Winter Range Habitat map, the property being described as Assessor's Map: Township 36, Range 6, Section 5, Tax Lots 200 and 300.

SECTION 4: Affirmation

Except as otherwise provided herein, Josephine County Ordinances 81-11 and 85-1 are hereby affirmed as originally adopted, and heretofore amended.

SECTION 5: Effective Date

First reading by the Board of County Commissioners this 13th day of December, 2006.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this 27th day of December, 2006. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

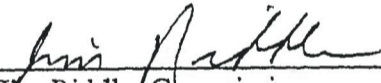
JOSEPHINE COUNTY BOARD OF COMMISSIONERS



Dwight F. Ellis, Chair



Jim Raffenburg, Vice Chair



Jim Riddle, Commissioner

ATTEST:



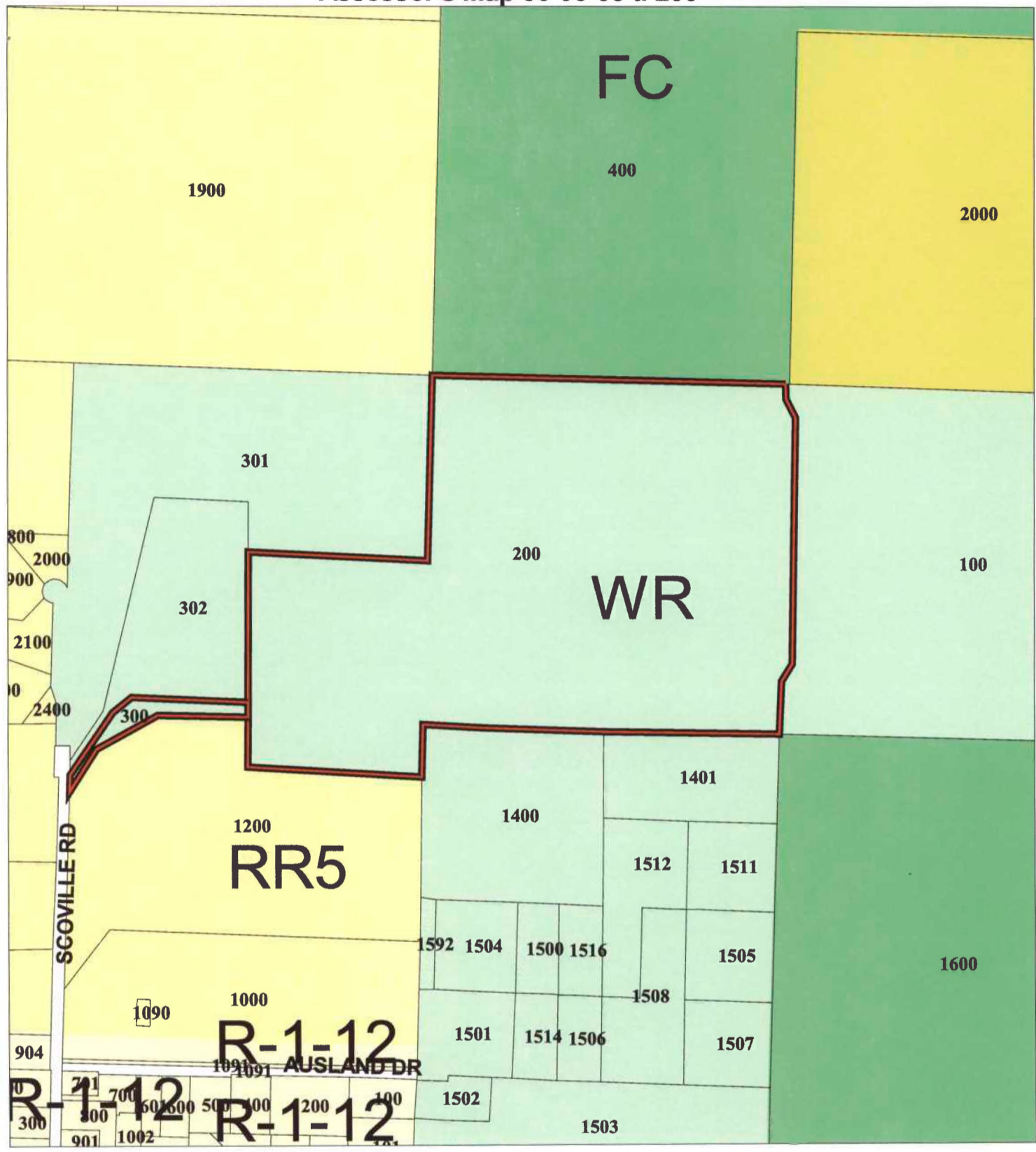
Recording Secretary

APPROVED AS TO FORM:



Steven R. Rich, County Counsel

Assessor's Map 36-05-05 tl 200



Legend

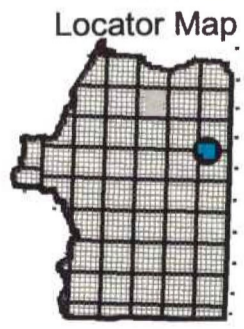
- Taxlots
- Zone**
- S-Serpentine
- FC-Forest Commercial
- WR-Woodlot Resource
- RC-Rural Commercial
- RR5-Rural Residential 5 Acre
- (GP R-1-12) Low Density Residential



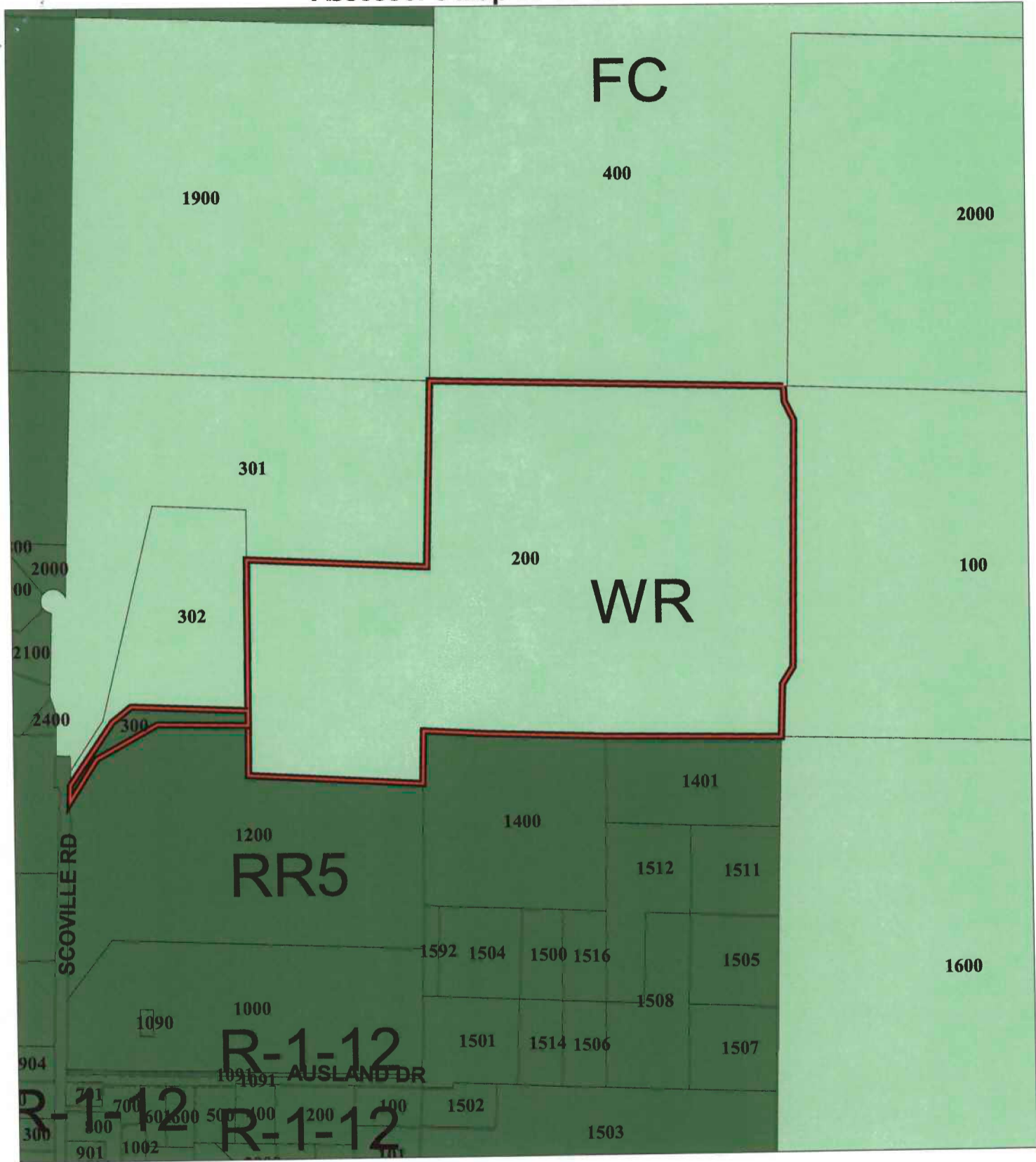
The information on this map is furnished for general interest purposes only. This information is provided without warranties of any kind, express or implied, and it should not be used to support any purchase or other investment. Neither Josephine County, Cave Junction, nor Grants Pass will accept responsibility for any errors or inaccuracies in the depicted information.



Scale
1:6000



Assessor's Map 36-05-05 tl 200



Legend

| Deer Habitat | |
|--------------|-------------------------------------|
| | Areas of Impact |
| | Deer Winter Range |
| | Trails |
| Zone | |
| | S-Serpentine |
| | FC-Forest Commercial |
| | WR-Woodlot Resource |
| | RC-Rural Commercial |
| | RR5-Rural Residential 5 Acres |
| | (GP R-1-12) Low Density Residential |



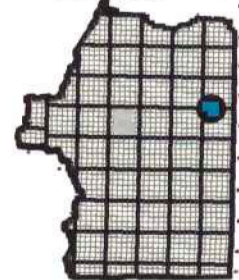
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Scale
1:6000



Locator Map



Creation date: Thursday, September 13, 2007 C:\Puma\puma.apr



Josephine County, Oregon

Board of Commissioners: Jim Riddle, Dwight Ellis & Jim Raffenburg

PLANNING OFFICE

Michael Snider, Director

510 NW 4th Street / Grants Pass, OR 97526

(541) 474-5421 / FAX (541) 474-5422

E-MAIL - planning@co.josephine.or.us

December 20, 2006

NOTICE OF NON-LEGISLATIVE LAND USE DECISION

The Josephine County Board of Commissioners

Notice is hereby given that a remand land use decision has been made by the Josephine County Board of Commissioners regarding the request described below. This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal. The rules for filing appeals to LUBA are governed by Oregon Administrative Rules, Chapter 661, Division 10. Forms for filing an appeal, and information regarding the applicable time limits for doing so, can be obtained from LUBA. Information for contacting LUBA is provided below. All questions regarding LUBA appeal procedures and requirements must be directed to LUBA or to your attorney. A copy of the Board's Findings & Decision may be viewed at the planning office, and copies may be purchased.

DECISION INFORMATION

DECISION: The Board of County Commissioners determined the subject property qualifies as non-forest land because it meets the criteria for non-forest land contained in Article 46.050.B.2 of the Josephine County Rural Land Development Code and Goal 11, Policy 3.B.2 of the Josephine County Comprehensive Plan Goals and Policies. This decision specifically addresses a single assignment of error in LUBA's remand decision in *Anthony and McKy vs. Josephine County (Sumner)*, No. 2005-028. This decision applies the "Combination of Proofs" test to determine whether the property described qualifies as non-forest.

DATE OF DECISION: December 13, 2006

LEGAL DESCRIPTION: 36-05-05, Tax Lots 200 & 300

LUBA INFORMATION: LUBA may be contacted at: Land Use Board of Appeals, 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, 503 373-1265, or on the internet, at <http://luba.state.or.us/>

☎ OFFICE HOURS 8-12 & 1-3 (Mon & Fri) 8-12 (Tues, Wed, Thurs) ☎

"Josephine County is an Affirmative Action/Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973"

CERTIFICATE OF MAILING

I hereby certify that individual copies of the attached *Notice of Non-Legislative Land Use Decision*, issued on behalf of the Josephine County Board of County Commissioners and dated **December 20, 2006**, were deposited in the United States mail on **December 20, 2006**, addressed to the following persons or organizations:

Mara Ulloa
Plan Amendment Specialist
DLCD
635 Capitol St NE Ste 150
Salem OR 97301-2540


Planning Department
510 NW 4th Street
Grants Pass, OR 97526

Hal Anthony
3995 Russell Road
Grants Pass OR 97526

Wayne Mcky
6497 Hugo Road
Grants Pass OR 97526

Alex Forrester
545 A Street
Ashland OR 97520

David & Antoinette Sumner
2935 Scoville Road
Grants Pass OR 97526



Anne Ingalls
Sr. Department Specialist
Josephine County Planning

RECEIVED

DEC -14 2006

BEFORE THE BOARD COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY
STATE OF OREGON

In the matter of a remand request for amendment }
of the Josephine County Comprehensive Plan Map }
from Forest to Residential and the Zone Map from }
from Woodlot Resource (WR) to Rural Residential, }
5 acre minimum (RR-5) because the land qualifies }
as non-resource land per Section 46.050.B.2 of the }
Josephine County Rural Land Development Code }
Property: 2635 Scoville Road }
Grants Pass }
Legal: T36-R05-S05, TL 200 and 300 }
Applicant: David Sumner }
Property Owners: David and Anoinette Sumner }
Representative: Alex Forrester, Project Planner }
Parties to Appeal: Wayne McKy, Hal Anthony and }
Josephine County }

**FINDINGS &
DECISION**

I. RECITALS

• **Original Decision:**

The original application was reviewed by the Josephine County Rural Planning Commission in August of 2003. By a vote of 8-1, the commission recommended the application be denied. A second evidentiary hearing on the application was held by the Board of County Commissioners on November 26, 2003, to consider the Planning Commission's recommendation. This hearing was continued to three subsequent dates. At the close of the hearing on February 18, 2004, the two participating commissioners each made conflicting motions, both of which failed for lack of a second. The hearing adjourned without action. Later, on December 22, 2004, the two commissioners reconvened to continue deliberations. On this occasion an acceptable motion was made, seconded and approved. By a 2-0 vote, commissioners Harold Haugen and Jim Riddle approved the proposed comprehensive plan amendments. In addition, the commissioners approved a Planned Unit Development tentative plan for the property. This decision was final on January 11, 2005.

- **LUBA Appeal**

Participants Wayne McKy and Hal Anthony appealed this decision to the Oregon Land Use Board of Appeals (LUBA). Another individual, Holger Sommer, asked to intervene in the McKy-Anthony appeal, but this request was denied by LUBA because Mr. Sommer did not participate in the hearings. LUBA remanded the application to the County on November 17, 2005. Mr. Sommer applied for a Remand Hearing on December 30, 2005.

- **Grounds for Remand**

The McKy-Anthony appeal raised three assignments of error at LUBA by arguing the county erred in:

- (1) Concluding the property is non-resource because the majority of the soils are not rated in the Internal Rate of Return (IRR) system; and
- (2) In relying in the IRR system to make its decision; and
- (3) In relying on the applicant's expert witness rather than the Oregon Department of Fish & Wildlife to determine the property is impacted deer winter range.

LUBA denied the second and third assignments of error, but upheld the first assignment.

Under the first assignment of error, LUBA ruled the County could not assume land is non-resource because the majority of soils are unrated by the IRR system. This ruling is consistent with the earlier Meade remand (LUBA No. 2004-131), where LUBA ruled the county cannot assume that unrated soils are non-commercial forest soils in applying IRR formulas.

Per LUBA's earlier decision in the Meade case, and now in this remand, the County finds that the IRR system can only be used to determine when land is forest/non-forest land when all of the following conditions exist:

- (1) IRR soils are present on an authorized tax lot; and
- (2) Those soils compose more than 50% of the property; and
- (3) The rated soil or soils have an IRR or CIRRR that is below 3.5

According to the Josephine County Soil Survey, the soils on the Sommer property include Brockman cobbly clay loam (12-D), Vannoy-Voories complex (79-F), Cornutt-Dubakella complex (21-F) and Holland sandy loam (42-C) (see table on following page).

| Soils Table | | | |
|----------------------------------|------|-------|-----|
| Soils | IRR | Acres | % |
| Brockman cobbly clay loam (12-D) | -- | 32.4 | 52% |
| Vannoy-Voories complex (79-F) | 2.91 | 15.6 | 34% |
| Cornutt-Dubakella complex (21-F) | 2.78 | 4.6 | 12% |
| Holland sandy loam (42C) | 3.83 | 1.3 | 2% |

As can be seen by the Soils Table above, (Staff Report, p. 3) the Brockman soil (12B) is not listed on Table 6 of the Josephine County Soil Survey, and therefore is "unrated". These soils comprise over 50% of the subject property. In concluding their review of Petitioners' first assignment of error, LUBA states:

"The County also argues that if we adhere to our holding in Sommer, we should remand the decision to allow the applicant to present evidence that the subject property should be designated nonresource pursuant to Goal 11, Policy 3(B)(2). It explains that the challenged decision relied on its assumption that the non-rated soils are nonresource and therefore concluded that the subject property was non-forest land, pursuant to Policy 3(B)(1). Accordingly, it did not apply Policy 3(B)(2), which provides that where a determination cannot be made using the IRR system, an applicant may demonstrate that the land is not protected by Goal 4 by demonstrating that the land is unsuitable for commercial forest uses based upon certain factors. We agree that it is proper for the challenged decision to be remanded for the county to apply Policy 3(B)(2)." (LUBA No. 2005-028, p.9)

In the Applicant's Remand hearing request, Applicant requested the county not schedule the remand hearing date until "such time as the applicant has procured the services of appropriate specialists..." (County Staff Report, Exhibit A, p. 12) The applicant requested further that the hearing not be confined to the record of the earlier proceeding, but rather opened for the submittal of new evidence relative to RLDC section 46.050.B.2. The county agreed.

On March 1, 2006, Norman M. Foeller, Registered Professional Forester, submitted a qualification statement for expert witness required by Josephine County, together with his résumé (see Staff Report, Exhibit C). Mr. Foeller then examined the subject property and prepared a "Forest Productivity Analysis" (hereafter "Report") to evaluate the forest productivity of the subject property.

The county set a hearing date of August 9, 2006, and prepared a staff report. At the hearing opening, Holger Sommer, acting as the representative of Wayne McKy, objected (Mr. Sommer submitted written documentation of his representation in the remand hearing for party Wayne McKy). Sommer objected to the participation of Sumner (owner and applicant) and Forrester (applicant's agent) in the remand hearing, as they had missed an opportunity to file as interveners in the case. The Board recognized the objection, and continued the hearing until such time as a decision could be made on whether to hear the matter.

The Board determined that Josephine County had a significant interest in resolving the procedural, interpretation and policy issues regarding the LUBA remand and the “combination of proofs test” for determining the presence or non-presence of forest lands, and consequently approved BCC Order no. 2006-157. In this Order the Board initiated a remand proceeding pursuant to section 33.130(B) of the Josephine County Rural Land Development Code (RLDC). In their Order, the Board limited issues to Section. 46.050.B.2 of the RLDC, limited the parties to be Wayne McKy, Hal Anthony, and Josephine County, and directed the County Planning Director to represent the county in the remand hearing. (See Order no. 2006-157.) Before the August 9 hearing was continued, County Counsel, Steven Rich had noted that the remand was sent by LUBA back to the Board of County Commissioners, that the applicant was still the applicant and he had a right to have the issue heard, and that the county is able to submit evidence and call witnesses, as a party, but neither the applicant nor his agent may participate in the hearing.

The Board’s remand hearing was scheduled for October 4, 2006. A written notice was given September 7. The notice did not mention agent Forrester, and applicant Sumner was not mentioned except as a property owner. The Remand Hearing was held on October 4, 2006, and new evidence was received from the parties. After receiving testimony and allowing rebuttal according to the County’s Land Use Hearing Rules, the public testimony portion of the hearing was closed. The hearing was continued to October 11 in order to allow Board review of the verbal testimony and written evidence submitted during the hearing. On October 11, 2006, the Board reconvened for purposes of deliberation. Following deliberation, the Board found in a 2-0 vote that with the existing evidence on the record and new evidence submitted at the remand hearing, the criteria for the “combination of proof test”, as given in the Josephine County Comprehensive Plan, Goal 11, Policy 3, and implemented by RLDC section 46.050.B.2, had been met.

II. Remand Procedure Appropriate

The appeal of land use decisions is covered by Josephine County RLDC Article 33, with Section 33.130 specifically governing Remand hearings. In relevant part, Section 33.130.A-E is given below.¹

¹ 33.130 – REMAND HEARINGS

Hearings to consider remanded land use decisions shall be governed by the applicable rules for applications, hearings and appeals as set forth in this code, except as follows:

- A. A remand proceeding shall be initiated by an appeal application on forms prescribed by the Planning Director, together with the fee for remand hearings. The application must be filed within 45 days from the date of the final opinion and order remanding the county’s decision. Except as provided in subsection B below, only the applicant as defined in Section 11.030 of this code may file a remand application.
- B. All remand proceedings shall be conducted exclusively by the Board unless the Board delegates jurisdiction to another review body by resolution. This grant of jurisdiction is intended to supersede any other grant of jurisdiction in this code. In addition, the Board reserves the right to initiate a remand proceeding pursuant to Section 31.030 of this code.

Those items set forth in *italics*, below, are excerpts of County Comprehensive Plan policy, RLDC ordinance sections, Oregon Revised Statutes or Oregon Administrative Rules, or excerpts from LUBA cases or submitted testimony. The Board of County Commissioners' discussion, findings and conclusions are presented in standard type face below.

- **RLDC 33.130.A – Application**

The applicant is defined by section 11.030 of the RLDC:

APPLICANT. The property owner, (or contract-purchaser, attorney, or representative holding a valid Power of Attorney) requesting approval of a proposed land use action by review or hearing body.

The applicant in this case is the property owner, David Sumner, and his representative is Alex Forrester, who holds a valid limited power of attorney from the owner. The applicant and agent filed an appeal application form on December 30, 2005. The required fee of \$1500 accompanied the remand application form.

The Board finds that David Sumner qualifies as the applicant per RLDC section 11.030. The Board finds that the Remand appeal application was filed on December 30, 2005, which is within 45 days of the LUBA Remand decision of the November 17, 2005.

The Board concludes that the application for remand proceeding was timely filed by the appropriate party with fee as is required by RLDC33.130.A, and may be heard in the manner required by Section 33.130.

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- C. The applicant in a remand proceeding shall specify in the application whether the remand hearing will be confined to the record of the earlier proceeding or whether the remand hearing will involve the introduction of new evidence. In the event the remand hearing is confined to the earlier record, the applicant shall submit amended findings with the remand application. The remand hearing shall be confined to the earlier record unless the review body opens the record for new evidence pursuant to Sections 33.080.E or 33.090.F.
 - D. Participation in the remand hearing shall be strictly limited to those persons or organizations who were legal parties in the higher appeal. Procedures shall therefore be limited in the following respects:
 - 1. Written notice shall be given only to the persons or entities who were parties to the higher appeal.
 - 2. Only parties to the higher appeal may represent arguments (in the case of a hearing on the record), or present evidence, witnesses, testimony and arguments (in the event new evidence is allowed) in the remand hearing.
 - 3. Josephine County shall always be considered a party in the remand proceeding even if it did not submit briefs or make arguments in the higher appeal(s).
 - E. The remand hearing shall not consider any issue or issues other than those specified for remand in the remanding decision, and no other evidence, testimony or arguments shall be allowed regarding other issues within the scope of the Board's original action.

- **RLDC 33.130.B - Conduct of Hearing**

The Board of County Commissioners has been the exclusive review body for this Remand proceeding. The Board concludes that this requirement has been met.

- **RLDC 33.130.C - Record Open for New Evidence**

In his Remand hearing application, applicant Sumner requested that “the county not schedule the remand hearing date until such time as the applicant has procured the services of appropriate specialists and until these specialists have examined the property...” (County Staff Report, Exhibit A, Remand Application, p.12).

The Board concludes that the applicant appropriately requested that the record be opened for new evidence regarding the remand issue.

- **(RLDC 33.130.F.6) Eliminating the 90 day action period when an amendment to an acknowledged is involved.²**

The Board finds that as the request is for a Comprehensive Plan Amendment, the 90 day limit on Board review does not apply.

- **Forest Productivity Analysis Credible**

Applicant secured the services of Norman M. Foeller, a Registered Professional Forester. Josephine County requires that someone who purports to be an “expert witness” submit their qualifications per the requirements of the county “Qualification Statement for Expert Witnesses.” The Board finds that Mr. Foeller’s submittal met the requirements of the county. (See Staff Report, Exhibit C, Expert Witness Resume.)

The Foeller resume shows that Mr. Foeller has been a professional forester since 1968, and has worked for the federal government and the forest products industry as a consulting forester; that Foeller has a Bachelor of Science in Forest Management from Oregon State University (1968); that he is a Registered Professional Forester in California (License no. 369) and a 38 year member of the Society of American Foresters,

² RLDC 33.130.F. The following special time limits shall apply to remand applications:

1. The review body shall take final action on a remand application within 90 days of the effective date of the final remand order; and
2. The effective date of the final order is the last day for filing a petition for judicial review of a final order of LUBA, or if judicial review of LUBA’s order is sought by the Oregon Court of Appeals or the Supreme Court, the 90-day period shall not begin until final resolution of the judicial review; and
3. In any case, the 90-day period shall not begin until the applicant requests in writing that the county proceed with the application on remand; and
4. The 90-day period may be extended for a reasonable period of time at the request of the applicant; and
5. The 90 day period applies only to decisions wholly within the authority and control of the county; and
6. The 90 day period does not apply to a remand proceeding concerning an amendment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land use regulation that was forwarded to the Director of Land Conservation and Development under ORS 197.610

with prior affiliations including the Association of Consulting Foresters and Southern Oregon Timber Industries Association. Mr. Foeller has "cruised millions of board feet and thousands of acres of forest land for purchase, management analysis and estate appraisals." He has been principal consultant for Forest Systems and Management, Inc., performing timber cruising, logging analysis, and appraisal of public agency timber sales for forest product companies in Oregon, Washington and California, supervising five employees and four subcontractors.

After submitting his qualifications (March 1, 2006), Mr. Foeller visited the subject property site, took measurements and borings, reviewed the available background data, and produced a "Forest Productivity Analysis" (Hereafter, "Report". See Staff Report, Exhibit B, p. 15-23), dated March 10, 2006. On March 28, 2006, Rick Dryer, Grants Pass Unit Forester for the Oregon Department of Forestry, reviewed the site evaluation and stated the following:

"Mr. Foeller's work was done according to accepted practices within the forestry business and his conclusions are supported by the data presented." (Staff Report, Exhibit B, p. 24)

The Board of County Commissioners finds that Mr. Foeller's testimony is that of an expert witness, and finds that his qualifications as expert witness for the review of forest productivity meets the requirements for evidence found in RLDC Section 46.050.B.2. The Board finds that a representative of ODF reviewed the Report and found the methodology "was done according to accepted practices". The Board concludes that it may rely upon the Report.

- **33.130.D – Remand Hearing Participation**

The original Remand hearing scheduled for August 9, 2006, was noticed, and the parties to the appeal were listed as Wayne McKy, Hal Anthony, David Sumner, and Alexander Forrester. The participation of Sumner and Forrester was challenged by opponents (see Item I, above). This challenge was recognized by the Board. Subsequent notice for the remand proceeding initiated by the Board of County Commissioners did not list Sumner or Forrester as a party. Sumner was listed only as the property owner.

The Board concludes that opponents' objections to the participation of Sumner and Forrester were recognized by the Board, and the subsequent notice met the requirements of RLDC 33.130.D.1.

Opponents have challenged the appropriateness of the Board reviewing Mr. Foeller's Forest Productivity Analysis. The Board finds that the county has a significant interest in resolving procedural, interpretation and policy issues regarding the application of the "combination of proofs test" for determining the presence or non-presence of forest lands per county Comprehensive Plan Goal", Policy 3.B.2.

Following this interest, the Board issued Order No. 2006-157³, initiating a remand hearing regarding the Sumner request for Comprehensive Plan and Zone Map Amendments. The issue was limited to “the interpretation and application of Section 46.050.B.2 of the Rural Land Development Code.” (This section implements County Comprehensive Plan Goal 11, Policy 3, and the language is virtually identical.) The parties to the hearing were limited to Wayne McKy, Hal Anthony and Josephine County. Planning Director Snider was directed to represent the county in the remand hearing, and the hearing was to be open to new evidence and arguments relevant to RLDC 46.050.B.2 as presented by the parties to the hearing.

The Board initiated remand proceeding per RLDC 33.130.B (see above). The county is a party to the higher appeal per RLDC 33.130.D.3. The order initiating the proceeding required Planning Director Michael Snider to represent the county in the remand hearing, which would include the presentation of new evidence and the calling of witnesses. Mr. Snider proceeded in the hearing to submit Mr. Foeller’s Forest Productivity Analysis as new evidence and called Mr. Foeller as a witness.

³ Josephine County Commissioners Order No. 2006-157 (in relevant part)

WHEREAS, On January 11, 2005, the Board of County Commissioners approved the land use request by David and Antoinette Sumner to change the comprehensive plan and zone map designations for Tls 200 and 300 from Forest/Woodlot Resource to Residential/Rural Residential, and to amend the county’s Critical Deer Winter Range inventory map from protected deer winter range to non-protected; and

WHEREAS, this decision involves important procedures, criteria and policies regarding the interpretation and implementation of the county’s comprehensive plan regarding the determination of non-resource lands by evaluating the commercial productivity of forest lands; and

WHEREAS, the Oregon Land Use Board of Appeals (LUBA) reviewed the Board’s decision by way of appeal by Wayne McKy and Hal Anthony, and on November 17, 2005, by order remanded it to the county for determination of compliance with Section 46.050.B.2 of the Josephine County Rural Land Development Code (the land is non-forest land based upon a combination of proofs); and

WHEREAS, the Board hereby declares its interest in resolving procedural, interpretation and policies issues regarding LUBA’s remand decision and the application of the combination of proofs test for determining the presence or non-presence of non-forest lands; and

WHEREAS, pursuant to Section 33.130 of the Josephine County Rural Land Development Code (RLDC), the Board of County Commissioners on its own motion hereby initiates a rehearing of the captioned land use decision remanded from LUBA, pursuant to Section 31.030 of the RLDC; now, therefore,

IT IS HEREBY ORDERED that a hearing on remand regarding Sumners’ request for comprehensive plan and zone map amendments be scheduled for this Board’s consideration at the earliest convenient time, subject to the following:

- [1] The only issue to be considered shall be the interpretation and application of Section 46.050.B.2 of the Rural Land Development Code; and
- [2] The parties to the remand hearing shall be Wayne McKy, Hal Anthony and Josephine County; and
- [3] The Planning Director shall represent the county in the remand hearing; and
- [4] The remand hearing shall be open to new evidence and arguments; only the parties identified in [2] above may submit evidence or make arguments; and
- [5] The Planning Director shall cause written notice of the remand hearing to be given to those persons who were parties to the LUBA appeal, as required by Section 33.130.D.1 of the Rural Land Development Code.

During the hearing, only Mr. Anthony, Mr. Sommer (representing Mr. McKy) and Planning Director Snider (representing Josephine County) made statements or submitted new evidence.

The Board finds that, as the county had a significant interest in the matter, it was appropriate and within county ordinance to initiate the hearing and appoint Planning Director Snider to represent the county. The Board concludes that all those presenting evidence, testimony and arguments were parties to the higher appeal and that the hearing met the requirements of RLDC 33.130.D.

III. Remand Issue: JCCP Goal 11, Policy 3.B.2, "Combination of Proofs Test"

Applicant's request is to redesignate the subject property from Forest to Residential and rezone the property from Woodlot Resource (WR) to Rural Residential-5 acre minimum (RR-5).

In order to redesignate the property from a resource designation (Forest) to a non-resource designation (Residential), the county is required to either:

- (1) Take an exception to Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands), pursuant to ORS197.732, or
- (2) Demonstrate that neither Goal 3 nor Goal 4 applies to the subject property; *i.e.*, that the land is "non-resource".

In its original decision the Board took the second approach and applied Goal 11, Policy 3 of the Josephine County Comprehensive Plan (JCCP), specifically Policy 3.B.1. This policy, acknowledged by LCDC, uses the Internal Rate of Return method (IRR) to determine the forest productivity of soils. The Board took the position that the Josephine County Soil Survey Table 6, "Woodland Management and Productivity", stated that "Only the soils suitable for production of commercial trees are listed." The predominant soil of the subject property, Brockman cobbly clay loam, 12-D, makes up 52% of the subject property and is not listed in table 6.

The County then concluded that soil 12-D was not suitable for protection of commercial trees. LUBA, however, found that Table 6 also has a note that states "Absence of an entry indicates that information was not available.", and found therefore that the fact that a soil is "unlisted" cannot be used to demonstrate that the soil is not suitable for commercial tree production (*Sommer v. Josephine County*, 201 Or App 528, __ P3d ____ 2005). The *Sommer* decision was affirmed by the Court of Appeals without opinion.

The Board did not apply Policy 3.B.2, which provides for a demonstration that the land is not protected by Goal 4 based upon certain factors, where a determination cannot be made using the IRR system. LUBA then went on to state:

"We agree that it is proper for the challenged decision to be remanded for the county to apply Policy 3.B.2." (LUBA # 2005-028, p. 9)

Josephine County Comprehensive Plan, Goal 11, Policy 3.B.2 is implemented by RLDC 46.050.B.2. The wording of the implementing ordinance is virtually identical in all relevant part to Goal 11, Policy 3.B.2 thru Goal 11 Policy 3.F. JCCP Goal 11 Policy 4, "Application of Policy", dealing with new impending applications at the time of policy adoption, is not repeated in the RLDC. JCCP Goal 11 Policy 5, "Meaning of the Term 'Significant' " becomes RLDC Section 46.050.G.

As the wording is identical, and as the ordinance is intended to implement the policy of the comprehensive plan, and as the applicants narrative, the County Staff report and the Board's original findings all reference RLDC Section 46.050, the Board concludes that this practice may continue in these findings, and therefore proceeds to address RLDC 46.050.B.2, implementing comprehensive plan Policy 3.B.2, as agreed by LUBA."

46.050 – NON-RESOURCE LAND CRITERIA.

B. The land within the lot or parcel is non-forest land because:

[2] If a determination cannot be made using the internal rate of return system as described in subsection B[1] above, the land is shown to be unsuitable for commercial forest land uses based upon a combination of proofs, to include (but not limited to) the site index or cubic foot calculations, the testimony of expert witnesses, information contained in scientific studies or reports from public and private sources, historic market data for the relevant timber economy, and any other substantive testimony or evidence regarding the commercial productivity of the subject land, which taken together demonstrate the land is not protected by Statewide Goal 4; and

The Board that notes that "information contained in scientific studies or reports from public...sources," "other substantive testimony or evidence regarding the commercial productivity of the subject land..." would include the Josephine County Soil Survey by the Natural Resource Conservation Service, USDA, formally Soil Conservation Service.

The applicant project narrative submitted for the Board's original *de novo* hearing (LUBA 2005-028, Record 542 and following and subsequent submittals. Record 126-132) list a number of the physical constraints of the 12-D Brockman soil taken from the Josephine County Soil Survey. Certain of these Soil Survey descriptions were included again by planning director Snyder in the county staff report. These constraints were summarized by the original Board findings as follows:

"The Board finds that the 12D – Brockman soil is described in the Soil Survey text on pages 31-33. The description reads as a litany of limitations, as is pointed out by the Applicant. (Record 2.A, p. 6):

- *Permeability of this Brockman soil is very low*
- *Available water capacity is approximately 4 to 8 inches*
- *Used mainly for irrigated hay and pasture...*

- *Limited mainly by the low fertility of the soil, steepness of slope, and the very slow permeability of the substratum*
- *Cobbles on the surface limit the use of most equipment.*
- *The ultramafic rock from which the soil developed is very high in content of magnesium and very low in calcium, which limits plant growth.*
- *The water table that develops during the rainy period in winter and spring generally limits this unit for deep rooted crops.*
- *In summer, irrigation is needed for maximum production of most crops*
- *Irrigation water needs to be applied carefully to prevent the development of a high water table*
- *Drainage may also be needed*
- *A seasonal high water table is perched above the clay pan... ” (Board Original Findings, Record pp. 47-48)*

The Board went on to find that the textual description of the 12D-Brockman soil in the Soil Survey text, pg. 33, stated that the map unit was incapability subclass VI e, Non-irrigated. (The property has no irrigation). The Board noted that under the section titled “Land Capability Classification” (Soil Survey, page pp. 110-111, emphasis added) the agricultural soil classifications were described:

- *“Class VI soils have severe limitations that make them generally unsuitable for cultivation.” (Board Original Findings, Record p. 48)*

The Board’s Findings went on to quote directly from the soil survey:

“Under the description of “Crops and Pasture” (Soil Survey, pp. 109-110, emphasis added) the following is stated:

- *Drainage is a concern on the fine textured and course textured soils. A high water table can restrict the choice of crops and the use of best management practices.*
- *“Soils in this area that have a high water table are the Banning, Brockman, Clausen, Copsey, Cove, Jerome, Jump Off and Wapato soils.*
- *“The contours of the natural landscape direct the flow of water and allow the water to concentrate in some areas and saturate the soils for varying lengths of time. Unless the soils are artificially drained, the root zone can become waterlogged for long periods so that the crop roots cannot get enough oxygen*

- *“Drainage can be improved in most soils by use of surface drainage systems.”*

The Board finds that the opponents offered no scientific data or expert testimony specific to the subject property or specifically addressing the significant 12D – Brockman soil limitations or specifically addressing how these limitations might be overcome to allow commercial forestry use of the 12D – Brockman soil.”

(Board Original Findings, Record p. 48)

The Board concluded then that the “weight of the evidence” showed that due to the “poor growth characteristics and significant limitations of the soil”, this could account for the absence of the 12D-Brockman soil from the Soil Survey Table 6, which only lists soils “suitable for production of commercial trees...”

The Board finds now that these soil characteristics represent significant physical constraints upon the subject property, constraints that could have considerable affect upon Forest Productivity.

The term “significant” is used here in the sense of RLDC 46.050.G, as follows:

“For the purpose of implementing the provisions of the foregoing rules, the term “significant” shall mean the proposed change is likely to have considerable influence or effect upon the matter being considered, or that the effects or impacts arising from the change will result in important or weighty consequences or risks. The term is intended to guide the review body in evaluating the effects certain land use activities may have on other land use activities or on other land use considerations made applicable by these policies or other state or local goals, rules or laws. The review body shall judge the use of the term significant based on what a reasonable person would consider significant given the facts and circumstances being considered.” (Emphasis added)

These soil survey descriptions of the characteristics of the 12D-Brockman soil indicate a combination of several significant physical constraints upon the soil type that soil is the predominant soil on the property (52%). The Board finds that these physical constraints may act to limit the forest productivity of 12D-Brockman soil.

If this is the case, the direct measurement of Forest Productivity by assessing tree growth on the subject property should confirm this finding. The Board now turns to the Forest Productivity Analysis, and additional evidence produced in the Remand hearing.

In his testimony, Planning Director Snider entered the “Forest Productivity Analysis” by certified Forester Norman Foeller into the record on behalf of the county. (Staff Report, Exhibit B) Mr. Snider showed photos of the site, and compared them to the soil survey photos of the 12-D Brockman soil type. Planning Director Snider outlined the soil characteristics as contained in the soil survey.

Mr. Snider then noted Mr. Foeller's qualification as an expert witness and called upon Mr. Foeller for his testimony. Mr. Foeller gave verbal testimony and answered questions put by the Board of County Commissioners. With the Board's permission, Mr. Foeller also answered the questions put by Planning Director Snyder.

Statewide Goal 4 and RLDC Section 46.050.B.2 implementing County Goal 11, Policy 3.B.2, require the applicant to show that the subject property is unsuitable for commercial forest uses in order to remove the property from the Forest Resource designation, but neither provision defines "commercial". The ordinary dictionary definition says something is "commercial" when it involves commerce, that is, an activity pursued for profit. In recent decisions, the Oregon Land Use Board of Appeals (LUBA) has wrestled with how to measure "commercial" forest land. Listed below are a few points that have been advanced most recently in Oregon Shores (LUBA No. 2005-087) and Wetherell (LUBA No. 2005-075).

- *No rule or statute defines a productivity threshold for land suitable for commercial forestry under Goal 4.*⁴
- *No rule or statute requires the county to evaluate timber productivity in terms of cf/ac/yr in determining whether land is forest land subject to Goal 4.*⁵
- *The cf/ac/yr standard used by the Oregon Department of Forestry is not the legal standard for the rezoning of private forest lands.*⁶
- *Some way of measuring productivity of the land is essential to decide whether land is suitable or unsuitable for commercial forest uses under Goal 4.*⁷
- *Rezoning decisions cannot be based solely on an economic analysis, that is, proof that forestry is unprofitable as demonstrated by a forecast of investment, expense and income over the rotation period of the forest.*⁸
- *Goal 4 and the Goal 4 rule strongly suggest that determination of suitability for commercial forestry must be based on published productivity data, or in the absence of such data, on an equivalent method of determining forest land suitability.*⁹
- *Rezoning decisions are not required to obtain approval from the Oregon Department of Forestry in order to use productivity data other than cf/c/yr.*¹⁰
- *Rezoning decisions cannot be based solely on historical use.*¹¹

⁴ These LUBA points taken from the following:
Oregon Shores Conservation Coalition v. Coos County, _____ Or LUBA _____ (#2005-087) October 26, 2005, p. 21, line 3

⁵ Ibid, p. 21, line 5.

⁶ Ibid, combining p. 19, line 2 and p. 21, line 5.

⁷ Ibid, p. 21, line 10.

⁸ Ibid, p. 23, line 22 to p. 24, line 11.

⁹ Wetherell v. Douglas County, _____ Or LUBA _____ (# 2005-075) September 30, 2005, p. 13.

¹⁰ Ibid, p. 13.

¹¹ Ibid, p. 14.

Foeller Forest Productivity Analysis

The Board now turns to the Foeller “Forest Productivity Analysis” (hereafter, the “Report”, see Staff Report, Exhibit B).

In his Report, Mr. Foeller stresses that a key measure of productivity is “Site Index”. The Site Index of the subject property can then be converted to other indices of forest productivity, such as “Site Class”, “Productivity Class”, as well as various measures of productivity such as “board feet”, “cubic feet”, or metric measures.

According to the Report and Foeller testimony, Site Index is calculated by first taking increment core samples and counting annual growth rings on larger trees, or by counting growth whorls of branches on smaller trees. This gives the tree’s age. The tree is then measured for height using an abney or clinometer, and measured for diameter at breast height. The resulting data is then referenced to industry-standard site curves, matrices or formulas to derive the Site Index. Other tables can then be used to convert the Site Index results to other productivity measures, such as cubic feet per rotation or year, board feet, or site class. What makes Site Index the “true measure” of productivity is that it makes findings based upon “actual” productivity on the property, not the expected or potential productivity. This is because the actual growth of the trees over decades accounts for the exact conditions present at the site, such as soil, drainage, rainfall, temperature, altitude, slope and aspect (which direction the land faces), and how all these conditions combine to produce the actual growth that is then measured and expressed as a “Site Index”

The Board finds that the Site Index is a true measure of tree productivity of a given site. Site Index correctly gathered at a specific location should describe what has actually happened on the subject property, and not what was projected to happen by application of a formula to a tree species and soil type.

Foeller reports that the subject property Site Index equals 46.3, as measured on the site by Foeller using industry-standard methodology.¹² The Staff Report includes a letter from Rick Dyer, Grants Pass Unit Forester for the Oregon Department of Forestry, stating that “Mr. Foeller’s work was done according to accepted practices within the forestry business and his conclusions are supported by the data presented.” (Staff Report, Exhibit B, p. 24)

The Board finds that the Site Index of the subject property is 46.3, that the methodology of Site Index calculation was checked and approved by a representative of ODF, and that the Site Index of 46.3 is an accurate measure of forest productivity on the subject property.

The Foeller Report states that:

¹² The Board notes that Mr. Foeller in verbal testimony misstated the Site Index of the subject property as 49.6. The Board finds this to be a verbal error, as Foeller’s written Report correctly calculates the Site Index as 46.3. (See Staff Report Exhibit B, List of Trees Sampled for Analysis, p. 20) The Board finds that it is the written Report that was reviewed by ODF, and therefore the Board has based these Findings upon the written Report.

"The forest productivity on this tax lot is below the parameters for commercial timber production potential ..." (Staff Report, Exhibit B, p. 16)

The Report further states that several Site Index tables are used to review forest productivity. One such source, referenced by the Josephine County Soil Survey is "The Yield of Douglas Fir in the Pacific Northwest" by McArdle, Mayer and Bruce (1961), (Staff Report, p. 18) known as "Technical Bulletin 201" (hereafter Bulletin 201). The Report states that *"this reference provides forest growth data from Site Index 80 to 210 and that Site Index 80 represents the low end of the commercial timber threshold. It is a 100 year site index ..."*

The Report includes another reference that is found in Oregon Department of Forestry handbooks, the "Site Index Curves for Douglas-Fir in the Pacific Northwest" by James King (July, 1966), Weyerhaeuser Forestry Paper 8 (hereafter "King"). This reference provides information for Site Index 50 to 220, and is a 50 year site index. Again, the lowest Site Index given is 50. (Staff Report, Exhibit B, p. 18)

Foeller states in the Report that neither of these two references is based on data collected as far south as Josephine County. A 1980 study, ORGANON – Oregon Growth Analysis and Projection, was based on data measured on commercial forest land in southern Oregon. However, *"None of the data plots were taken on lower elevation, marginal timber stands in Jackson and Josephine County. Site index curves that were derived from ORGANON range from 40 to 140..."* (Staff Report, Exhibit B, p. 19) The Foeller Report states further that *"Commercial timberland, that which can be expected to produce a positive rate of return on investment, begins at Site Index 80 and will produce at least 50 cubic feet per acre at the culmination of mean annual increment."* (Staff Report, Exhibit B, p. 19)

The Board finds that it is the professional forester's opinion that a site index of 80 is required for "commercial timberland", and that the subject property index is 43.6, about half of the minimum. The Board also finds that of the three references giving site index data commonly used in forest productivity analysis, two had no data from Josephine County, and the third had no data from lower elevation, marginal timber stands in Josephine County. The Board notes that two of the Site Index data bases do not include Southern Oregon, and the third data base does not include sampling from the lower elevations like the subject property. The Board notes that the subject property is at what is considered a "lower elevation". The Board surmises therefore that even the ORGANON values for Site Index may not accurately reflect low elevation marginal lands such as the subject property.

The Board finds that the subject property site index of 43.6 is well below the lowest site index of "Bulletin 201" of 80, is well below the lowest site index given in "King" of 55, and is at the lowest reference given in "ORGANON" of 40.

Opponent testimony includes a portion of a memo by Kevin R. Birch, Planning Coordinator, ODF, forwarded in a memo dated June 18, 2003, by Raul Woerner. (McKy/Anthony testimony for Remand Hearing 10/4/06, Appendix J, Miscellaneous Correspondence, p. 9.) This memo states that:

"Biologically, 20 cf/ac/yr is the point where stands change from being dominated by low value, non-commercial species like hardwoods or juniper to being capable of producing stands of commercially valuable species like pine."

The Report also shows the relationship between the 100 year site index and cf/ac/yr production in "Bulletin 201", extracted from the Forest Practices Field Guide (ODF). A site index of 50 shows zero cf/ac/yr. The subject property site index is 43.6, well below 50. The chart shows that 20 cf/ac/yr production starts at site index 60. (Staff Report, Exhibit B, p. 22, "Site Index/Class Comparison Table – Douglas Fir")

The Board concludes that the subject property forest productivity is less than 20 cf/ac/yr, and that according to ODF, the subject property would be where *"stands change from being dominated by low value, non-commercial species like hardwoods or juniper to being capable of producing stands of commercially valuable species like pine."*

The Report describes the existing vegetation on the subject property:

"Vegetation consists of an open stand of Douglas fir, ponderosa pine, and incense cedar that range in size from saplings to twenty inches in diameter. There are scattered oak trees, madrone, manzanita and poison oak. There are small natural openings interspersed with the mosaic of conifers, hardwoods and brush. ... The species composition and vegetative development is typical of low elevation dry sites in much of southern Oregon." (Staff Report, Exhibit B, p. 17)

The Board finds that the professional forester's description of the actual timber stand on the subject property matches the ODF description of what occurs in nature when the property site index is below that minimum of site index 60 required to reach 20 cf/ac/yr at mean annual increment.

The Board notes that photographs of the subject property by Planning Director Snider indicate the sparseness of commercial timber (Douglas fir and ponderosa pine) on the site, and the prevalence of non-commercial species. The Board notes that the photos shown by Planning Director Snider of Josephine County Soil Survey soil type 12-D – Brockman are very similar to the photos of the actual site conditions.

The Report goes on to state that

"In southwest Oregon, there are several limiting factors that limit the ability of the soil to nurture growth. Hot, dry weather deprives trees of moisture during the spring and early summer growing seasons. The lack of moisture during summer or prolonged drought prevents organic material from decomposing and recycling into essential nutrients. Periodic fires destroy developing organic layers and can change the chemical composition of the soil. Competing vegetation, especially shallow rooted species, can prevent the rare late spring or summer rains from penetrating to tree rooting depths. Southerly aspects are solar collectors that enhance evaporation and surface temperatures. All of these conditions are prevalent in southwest Oregon especially at

elevations below three thousand feet. As a result of these extreme factors conifers are frequently under stress and subject to insect and disease which result in mortality. At elevations above three thousand feet there is usually enough climatic relief to favor more viable conifer growth.” (Staff Report, Exhibit B, p. 20)

The Board finds that the properties of 12-D Brockman soil, found on this specific site, when combined with the generic physical constraints of Josephine County lands below three thousand feet elevation, could combine to lower forest productivity below commercial thresholds. The Board finds that both the site photographs and the calculated Site Index indicate that this is in fact the case.

The Report has a table of tree samples taken by Foeller, indicating that trees were sampled ranging in age from 20 years to 66 years (Staff Report, Exhibit B, p. 20). The Board notes that the subject property is below 1800 foot elevation (applicant's original Narrative, Record, 533) The Board finds that the site vegetation described by Foeller and site photos by Planning Director Snider confirm that this site, south facing and low elevation, with a sparse natural stand, appears to suffer from the conditions that can occur in Josephine County under 3,000 elevation (Staff Report, Exhibit B, p. 17).

Finally, the Board notes that the ordinary dictionary definition of “commercial” says that something is “commercial” when it involves commerce, that is, an activity pursued for profit. The Board notes that forest productivity measuring devices, such as “Site Index”, have been developed and been in use for nearly 100 years. These measures are used by commercial forestry operations large and small to determine present and future value of lands for growing timber at commercial volumes. The Board is aware that LUBA has determined the following:

“The point is that any economic analysis that depends on precise quantification of prices and costs that far in the future is inherently unreliable. We believe it to be inconsistent with Goal 4 to rely on such analyses to determine whether land is forest land protected by the Goal.” (Oregon Shores, LUBA No. 2005-087, p. 24, line 8.)

However, the Board finds that the professional expertise of a certified forester who has had years of experience determining the commercial value of timberland is one reasonable indicator among many of the forest productivity capacity of a given property. The Board has found Mr. Foeller to be such an experienced expert. (See above, and Resume, Staff Report, Exhibit C, p. 25-29) Mr. Foeller's Report Concludes with the following:

“The forest productivity on this tax lot is below the parameters for commercial timber production potential and will produce less than 20 cubic feet per acre per year at the culmination of mean annual increment. An investment in forest management will not produce a positive cash flow at the end of a commercial forest rotation. Having worked in timber and timberland procurement, I would not recommend this property for purchase as commercial timberland. The productivity is too low to expect a positive return on investment.” (Staff Report, Exhibit B, p. 24)

While not relying exclusively on this commercial measure of productivity, the Board finds that in this experienced forester's opinion, the subject property does not meet commercial timberland standards, i.e., "productivity is too low to expect a positive return on investment". The Board notes that commercial timber operations, large and small, account for a significant share of Oregon's economy, and that the forest products industry endeavors to operate at a profit. Further, the Board reasons that the various measures of productivity employed in private commercial forestry are valuable aids in determining whether specific properties will in fact be able to produce "a positive return on investment," and for determining what the value of forest parcels is for both sale and purchase of such parcels for the purpose of conducting commercial forestry production. And finally, for determining what intensity of management practice is called for, given the potential forest productivity of the parcel.

Therefore, while not depending exclusively upon Mr. Foeller's "return on investment" analysis (Staff Report, Exhibit B, Appendix 2, p.23) the Board notes that even with a Site Index of the subject property set at 80 (The actual Site Index is half that), there is still a net loss of \$3,800 per acre. The Board finds that the definition of what constitutes "commercial forestland" for each of Oregon's many climatic areas should be seriously addressed by the State legislature. In the meantime, the Board finds that the ability to provide a "positive return on investment", while not the sole criteria for determining "commercial forestland" within Goal 4, is nonetheless one of the criteria to be considered. The Board finds that in the opinion of an experienced expert, the subject property "is below the parameter for commercial timber production potential." (Staff Report, Exhibit B, p. 16) The Board finds further, that the Foeller report was found to have been done "according to accepted practices within the forestry business", and Mr. Foeller's conclusions were found to be "supported by the data presented" by a local representative of ODF "familiar with this area of Josephine County." (Staff Report, Exhibit B, p. 24)

The Board now turns to a summary of testimony identified above, both existing and new, that bear on the forest productivity of the subject property, in the context of RLDC 46.050.B.2, implementing JCCP Goal 11, Policy 3.B.2.

The Board finds the Josephine County Soil Survey description of the soils of the subject property contains significant physical constraints, including low permeability, limited depth of available water capacity, low fertility, steep slope, surface cobbles, the ultramafic rock from which the soil was developed being high content of magnesium and very low in calcium limiting plant growth, a rainy period water table limiting the potential for deep rooted crops, the need for irrigation in summer, a seasonal high water table perched above the clay pan, and the presence of a clay pan or some other impervious layer restricting the movement of water resulting in a high water table and limited rooting depth.

The Board finds that the "Site Index" of a property, measured using an industry standard methodology that met the standards of ODF, is a true measure of forest productivity for the site; that the subject property Site Index thus measured is 43.6; that the subject property site index of 43.6 is well below the lowest Site Index for commercial forestry listed by "Bulletin 201" of 80 and well below the lowest "King" site index rating of 55; that the expert witness, registered forester Foeller, states in his report that "commercial timber positive rate of return begins at the Site Index of 80 and will produce 50 cf/ac at culmination of mean annual increment"; that the

subject property Site Index of 43.6 translates to less than 20 cf/ac/yr, which is the point at which an ODF memo states that “the point where stands change from being dominated by low value, non-commercial species like hardwoods or juniper to being capable of producing stands of commercially valuable species like pine”; that photos of the subject property indicate the sparse nature of commercial timber (Douglas fir and ponderosa pine); that these photos match the photos of the soil type 12-D – Brockman in the *Josephine County Soil Survey*, and is matched by the ODF description of what occurs in nature when the site index is below site index 60; that these photos match the description of the subject property timber stand itemized in Mr. Foeller’s Report; that the subject property is below 1800 foot elevation; that the site vegetation as described by Foeller and the site photos presented by Planning Director Snider confirm that the site, south facing and of low elevation, suffers from the conditions that can occur in Josephine County under 3,000 feet, according to the Report; that “commercial forest uses” involve commerce that is an activity pursued for profit; that forest productivity measuring devices such as “Site Index” are used by commercial forest operations large and small to determine present and future value of lands for the purposes of growing timber at commercial volumes; that the opinion of certified forester Foeller who has had years of experience determining the value of timber land in these terms is one indicator among many of the forest productivity capacity of a given property; that such an expert’s opinion (Mr. Foeller’s) states that “productivity is too low to expect a positive return on investment”.

The Board notes that the accuracy of Mr. Foeller’s Report on the timber analysis of the subject property was not challenged by either the verbal or written testimony of the opponents.

The Board finds that it is reasonable to conclude, upon examination of all the information regarding the subject property, including the *Josephine County Soil Survey*, the geographic facts of the subject property (low elevation, south facing, steep slope) and registered forester Foeller’s Report of the subject property which measured the actual site conditions of forest growth and productivity using approved, industry standard methodology, and the Board does so conclude, that the subject property “is not suitable for forest uses based upon a combination of proofs” per RLDC 46.050.B.2, implementing the acknowledged Josephine County Comprehensive Plan, Goal 11 Policy 3.B.[2].

The Board notes that opponent written and verbal testimony focused on RLDC 46.050.B.2 consisted principally of stating that the production of 20 cf/ac/yr of timber on a site equated to “commercial forestland”, and the entering into the record of past LUBA cases and other written documentation thought to support this position. However, the Board finds that LUBA states in *Oregon Shores* that:

“Further, no rule or statute requires the county to evaluate timber productivity on terms of cf/ac/yr in determining whether land is forestland subject to Goal 4.” (LUBA 2005-087, p. 21)

The Board concludes that there is not a statutory requirement to evaluate timber productivity in terms of cf/ac/yr to determine whether land is forestland subject to Goal 4. The Board therefore finds that opponents’ claims to the contrary are not upheld in LUBA case law, and therefore are not relevant to this decision.

Nevertheless, the Board does note that opponents stress the importance of 20 cf/ac/yr as a minimum forest productivity standard, supported by ODF and DLCD correspondence brought into the record by opponents. The Board finds that the Foeller report, supported by ODF tables found in the Report, shows that the forest productivity of the subject property, at a Site Index of 43.6, is below 20 cf/ac/yr, and that the opponents' claims to the contrary are in error.

IV. RLDC 46.050B.3 and 46.050.C

Opponents argue that the county erred in limiting the Remand hearing to JCCP Goal 11 Policy 3.B.2, as Policy 3.B.2 ends with an "and", thereby including Policy 3.B.3. Policy 3.B.3 then references Policy 3.C. Opponents then contend that Policies 3.B.3 and 3.C must be addressed in the remand findings.

The Board notes that Applicant addressed these Policies in Applicant's original submittal (Record 542-554). Applicant stated, after addressing RLDC 46.050.B.1, that due to the fact that the county's IRR analysis had been appealed to LUBA several times, the applicant would address RLDC 46.050.B.2 and 46.050.B.3 through 46.050.G. (Record 542). Applicant made the arguments in the record.

The Board made findings based on this record, finding that with the development restrictions imposed by the county, the project requirements of the PUD CCR's (provided by Applicant), the analysis of the surrounding area and analysis of surrounding forest lands under active management, including interviews with BLM managers for nearby parcels, the Applicants signing the county's "Conflict Acknowledgement Statement for Forest Use" protecting commercial forest operations on adjoining properties, the inclusion in the PUD plans and CCR's of riparian set-asides for the intermittent stream and protection of downstream water flow into a neighbor's pond, provision of a Forest Management Plan providing preservation of wind breaks, impact buffering at the perimeter, provisions for protection of soil, air, watershed and vegetation amenities and final for wildfire fighting strategies with adjacent parcels, the county could agree with the Applicant's proposal. (Original Board Findings, pp. 48-53)

The Board noted further the following:

"The Board notes the opponents do not challenge these assertions or present contrary site-specific evidence, other than general statements indicating that, in their personal opinions, any residential development had a negatives impact on adjoining forest lands." (Original Board Findings, p. 49)

"The Board notes that no conflicting site-specific or area-specific evidence or testimony was presented by opponents". (Original Board Findings, p. 51)

"The Board notes that no forest operator within the review area appeared at the public hearings or contended in the record that map changes could significantly impede or increase the cost of specific practices or operations." (Original Board Findings, p. 51)

"The Board notes that no site-specific evidence of scientific testimony was received from opponents regarding the potential for damage of the county's natural resources by the PUD as proposed by Applicant." (Original Board Findings, p. 53)

The Board finds that Applicant's arguments were made regarding RLDC 46.050.B.3 through RLDC 46.050.G, that opponents did not present site-specific counter arguments or evidence, and that the county made findings accepting the Applicant arguments.

The Board finds that there was no challenge to the Board's Findings regarding RLDC 46.050.B.3 through RLDC 46.050.G by the opponents in LUBA 2005-028, the subject of this remand.

Therefore, the Board concludes Petitioners have had their opportunity to examine, counter and appeal Applicants arguments regarding RLDC 46.050.B.3 through 46.050.C, and failed to take this opportunity. The Board further finds that the remand decision is quite explicit in limiting the remand to JCCP Goal 11 Policy 3.B.2, and this language clearly recognizes, in view of the record before LUBA at the time, that no issue existed under Policy 3.B.3. Therefore, their issues could not be raised in the original appeal, or now in this remand. The Board concludes that only the "combination of proofs test" found in RLDC 46.050.B.2 is relevant to this remand.

V. Conclusions

Having properly received all evidence both pro and con, and having carefully reviewed and weighed this evidence against the criteria, the Board finds that the "combination of proofs test" of RLDC 46.050.B.2 has been met, and that the subject property is non-forest land per JCCP Goal 11, Policy 3.B.2.

Adopted this 13th day of December, 2006, by the Josephine County Board of Commissioners

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Dwight Ellis (Date) 12/13/06
Dwight Ellis, Chair

Abstained (Date) 12/13/06
Jim Raffenburg, Vice Chair

Jim Riddle (Date) 12/13/06
Jim Riddle, Commissioner



Josephine County, Oregon

Board of Commissioners: Jim Riddle, Dwight Ellis & Jim Raffenburg

PLANNING OFFICE

Michael Snider, Director

510 NW 4th Street / Grants Pass, OR 97526

(541) 474-5421 / FAX (541) 474-5422

E-MAIL - planning@co.josephine.or.us

January 11, 2005

Larry French
DLCD
635 Capitol St NE Ste 150
Salem Or 97301

Dear Mr. French:

Enclosed are findings, a decision notice & Certificate of Mailing for a comprehensive plan amendment, zone map change, and a deer winter range map change for 54.5 acres of property (see attached DLCD notice mailed 7/8/03).

If the Planning Department receives no appeals, it will proceed with processing an ordinance. A copy of the ordinance will be sent to you upon its adoption.

Please call me if you have any concerns.

Sincerely,

Carol Jordan
Josephine County Planning

/cj

encs

☞ OFFICE HOURS 8-12 & 1-3 (Mon & Fri) 8-12 (Tue, Wed & Thur) ☜

"Josephine County is an Affirmative Action/Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973"

Josephine County Board of Commissioners
Dwight F. Ellis - Chair • Jim Raffenburg - Vice Chair • Jim Riddle - Commissioner
Josephine County Courthouse, 500 N.W. 6th Street, Grants Pass, OR 97526
(541) 474-5221, Fax (541) 474-5105 <http://www.co.josephine.or.us>

WEEKLY BUSINESS SESSION
Agenda

August 9, 2006, 9:00 a.m.

(3rd Wednesday of Month is Evening Meeting.)

*Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, Oregon*



Pledge of Allegiance

1. **CONSENT CALENDAR:** *(All matters scheduled here are considered routine and will be adopted by a single motion unless a Commissioner requests a separate discussion and roll call vote.)*
 - a. Order No. 2006-132 In the Matter of Setting Election for Measure on Formation of a Library Special District to be known as the Josephine County Library District.
 - b. Order No. 2006-133 In the Matter of Formation of a Library Special District Organized Under ORS 357.216 to 357.286; Providing for Election on Formation.
 - c. In the Matter of Resolving Claims Under Measure 37, Oregon 2004 Election:
 - 1) Order No. 2006-134 NAME: Claude & Vivian Witcher, Trustees; ADDRESS: 160 & 200 South Pass Road; LEGAL: 35-06-34, Tax Lots 101 & 124.
 - 2) Order No. 2006-135 NAME: Rosella Nohre; ADDRESS: 3030 Camp Joy Road; LEGAL: 35-06-26-DO, Tax Lot 800.
 - 3) Order No. 2006-136 NAME: Edith M. Mendenhall; ADDRESS: 1191 W. Harbeck Road; LEGAL: 36-06-25-AD, Tax Lot 1200.
 - 4) Order No. 2006-137 NAME: Ruby M. Hoover, Trustee of the Hoover Revocable Trust; ADDRESS: 445 Sunshine Road; LEGAL: 38-05-26, Tax Lots 1303, 1304, & 1305.
 - 5) Order No. 2006-138 NAME: Wilmer Witmer; ADDRESS: 2891 E. Jones Creek Road; LEGAL: 36-05-02, Tax Lot 200.
 - 6) Order No. 2006-139 NAME: Eric A. and Claire Ann Olsen; ADDRESS: 460 Daily Lane; LEGAL: 36-07-26, Tax Lot 700.
 - d. Order No. 2006-140 In the Matter of the Transfer of County Real Property to the City of Grants Pass and Quitclaim Deed; 0.01 acres on GI Lane; Legal: 36-05-30-12, Tax Lot 590.
 - e. Order No. 2006-141 In the Matter of Refunding Taxes Paid on Real Property Over the Amount of \$10,000.
 - f. Resolution No. 2006-058 In the Matter of Authorizing the Issuance and Sale of Tax and Revenue Anticipation Notes in an Amount not to Exceed \$3,190,000.
 - g. Resolution No. 2006-059 In the Matter of Designating Common Ground Community Mediation Center as Grantee of Community Dispute Resolution Program Funds.
 - h. Findings of Fact Regarding Appeal of Planning Director's Approval of a Site Plan for Curves Commercial Use in Community Commercial Zoning District; Property Owners: Galen & Lisa Engel; Applicants: Galen & Lisa Engel; Representative: Bob Hart.
 - i. Amendment to Public Health Services Agreement for Mid Rogue Independent Physician Association, Inc. entered into on January 1, 2005; to amend cost per immunization.

- j. **Park Usage Agreement with A.B.A.T.E. of Oregon, Inc. for use of Wolf Creek Park for Southern Oregon Summer Run event August 18-20, 2006; Revenue to County \$1,500.**
 - k. **Non-Exclusive Road Easement with U.S. Department of the Interior Bureau of Land Management.**
2. **REQUESTS FROM CITIZENS:** *(Commissioners will hear the request and refer it to County staff or schedule it for future discussion.) The Board is available during the week to meet with citizens.*
3. **MATTERS FROM COMMISSIONERS:**
4. **REMAND HEARING: Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential – 5-acre minimum (RR-5) because the land is non-resource. REMAND ISSUE: Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. PARITES TO APPEAL: Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; PROPERTY OWNERS: David and Antoinette Sumner; REPRESENTATIVE: Alexander Forrester; LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300.**

The Board requests that comments be limited to the agenda item being discussed and that you follow the rules and procedures for meeting as described in Ordinance 92-27. ORDINANCE 92-27, SECTION 7

Meetings shall at all times be orderly and respectful. When permitted, each person shall be given three (3) minutes to speak or such other longer time as may be allowed by the presiding officer. No person shall be heard until he or she states their name and address for the record. The presiding officer may terminate the meeting when necessary or refuse to recognize anyone who:

- a. Is disorderly, abusive or disruptive;
- b. Takes part in or encourages audience demonstrations, such as applause, cheering, display of signs, shouting or other conduct disruptive of the meeting;
- c. Speaks without first receiving recognition from the presiding officer and stating his or her full name and residential address; or
- d. Presents irrelevant, immaterial or repetitious comments.

If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

"Josephine County is an affirmative Action / Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973."

Wednesday, August 09, 2006

WBS Land Use Hearing – Blackhorse Estates PUD, Sumner Remand – Wednesday, August 09, 2006 10:38 a.m.

Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Dwight F. Ellis, Chair; Jim Raffenburg, Vice-Chair, and Jim Riddle, Commissioner

County Employees: Grace Zilverberg & Michael Snider, Planning; Steve Rich, Legal Counsel; and Linda McElmurry, Recorder.
Members of the Media and Other Interested Persons.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order at 10:38 a.m. **Exhibit A, Staff Report – 30 pages** had been received prior to the hearing. Items discussed were as follows:

4. **REMAND HEARING: Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential – 5-acre minimum (RR-5) because the land is non-resource. REMAND ISSUE: Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. PARITES TO APPEAL: Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; PROPERTY OWNERS: David and Antoinette Sumner; REPRESENTATIVE: Alexander Forrester; LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300.**

Commissioner Ellis read the hearing notice and the Land Use Hearing Rules and asked if there were any objections to the Board of Commissioners hearing the case.

Holger Sommer, 2000 Hugo Road presented **Exhibit B, Mcky Representation- 1 page** and objected, stating that, although he was sent a notice, the applicant was not a party to the appeal. He stated the notice was wrong, in addition to that, he felt there could not be a hearing without an applicant because the County cannot argue for themselves.

Commissioner Ellis asked Michael Snider, Planning Director, for his input. Michael asked for a few minutes to review the issue. Commissioner Ellis called for a five-minute break.

Hal Anthony, 3995 Russell Road also objected to the jurisdiction on two counts. The first being that Mr. Sumner and Mr. Forrester were not parties at the LUBA hearing. Secondly, the Board has no right to hear this appeal.

After the break, **Michael Snider, Planning Director** said that Mr. Sommer was absolutely correct in that Mr. Sumner was not a legal party at LUBA. If you are not a party at LUBA, you cannot participate as a party in a remand hearing. He reviewed several subsections of the code with the Board outlining options that were available to them.

Steve Rich, Legal Counsel said that the applicant cannot be a party but they can participate as a witness. Commissioner Ellis asked what the best recourse would be. Steve Rich said the best avenue might be to redo the notice and initiate a motion and order. Commissioner Raffenburg asked what would happen if they did not initiate a motion and order. Steve replied that if we do not comply with LUBA nothing happens.

Commissioner Raffenburg asked Commissioner Ellis to read the next part of the hearing notice referring to any Commissioner who wanted to abstain from the hearing. When this was done, Commissioner Raffenburg asked to be excused because he was approached by the applicant at a recent meeting and asked about the hearing. While he did not reply to the applicant he still wanted to excuse himself from this hearing.

Commissioner Riddle asked that the decision regarding abstaining wait until it was decided if the Board was going to hear the matter.

Steve Rich agreed with Mike that the notice was not a substantive defect. He said that this body could hear the matter because this is the body to which it was remanded. No matter who hears the matter the applicant cannot be a party. Michael said that no matter what, he would represent the County; he would still treat evidence as we always do. Commissioner Raffenburg said he would like to discuss the matter at the Legal/Planning updates on Thursday.

Commissioner Ellis agreed saying he was not comfortable making a decision at this time. Michael Snider agreed suggesting that the hearing be continued for 30 days, so the Board could discuss the matter and make a decision. Commissioner Riddle thought it might be helpful for the Board to hear what Mr. Forrester and Mr. Sommer had to say.

Alex Forrester said it was beyond their comprehension why they could not be a party. They had consulted an attorney and he had said it would be no problem. He felt this was a typical tactic of a self-elected representative. They have followed the rules all along, if the Board requires them to do so, and they will re-apply. He asked that the Board go ahead with the hearing and make a decision; they are comfortable with or without the applicant being a party.

Holger Sommer said he was sorry about the problems but said the applicant caused them. They left it too late and kicked themselves out. He disagreed with Michael's interpretation of the code, saying that a witness participates in a hearing and the applicant cannot be a participant. As far as Michael representing the County, he is an employee of the Board so it would be a conflict of interest. He said the applicant should re-apply.

Steve Rich disagreed with Mr. Sommer about there being a conflict, pointing out that while a judge and a district attorney are both employees of the State of Oregon they still present and hear cases. He also stated that the County is always a party and there is not a legal conflict.

Hal Anthony asked to speak and was denied by Commissioner Ellis.

Commissioner Riddle made a motion to continue hearing to 9 a.m. on September 6, 2006 to allow time for the Board to meet with Legal and Planning to make their decision. The parties and the applicants can submit their arguments in writing to the Board by Wednesday, August 16th for consideration.

Steve Rich was concerned that this procedure was outside of the usual parameters since the hearing has not started and parties are being allowed to present arguments. *Commissioner Riddle clarified that the arguments presented would be only on the issue of the Board's jurisdiction of the case; Commissioner Raffenburg seconded the motion. Upon roll call vote, motion carried 3 -0, yes. Commissioner Riddle – yes, Commissioner Raffenburg – yes, and Commissioner Ellis – yes.*

Entered into record:

| Exhibit # | Exhibit Name |
|-----------|-----------------------------|
| A | Staff Report, 30 pages |
| B | McKy Representation, 1 page |

Land Use Minutes and exhibits are recorded separately. Original exhibits are returned to the Planning department. A copy is attached to original minutes and recorded.

Meeting was adjourned at 11:35 a.m.

Is/ Linda McElmurry, Recorder



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WEEKLY BUSINESS SESSION

Agenda

September 6, 2006, 9:00 a.m.

*Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, Oregon*



Pledge of Allegiance

1. **CONSENT CALENDAR:** *(All matters scheduled here are considered routine and will be adopted by a single motion unless a Commissioner requests a separate discussion and roll call vote.)*
 - a. **Order No. 2006-156 in the Matter of the College Dreams Program Scholarship Trust Fund; Establishing Treasurer's Trust Fund No. 961; Closing and Transferring Fund No. 727 (Rescinds Order No. 2004-061).**
 - b. **Order No. 2006-157 In the Matter of a Motion for Rehearing a Land Use Decision Remanded from Land Use Board of Appeals (LUBA No. 2005-028, November 17, 2005); Wayne McKy and Hal Anthony vs. Josephine County, Applicant: David and Antoinette Sumner; Property description: 36-05-05, TL 200 & 300.**
 - c. **Resolution No. 2006-061 In the Matter of an Appointment to the Josephine County Commission for Children and Families Advisory Board.**
 - d. **Resolution No. 2006-062 In the Matter of an Appointment and Re-Appointments to the Emergency Medical Services Board**
 - e. **Resolution No. 2006-063 In the Matter of the Local Public Safety Coordinating Council (LPSCC); Council Membership (Rescinds and Replaces Resolution No. 2004-005).**
 - f. **Assignment of Josephine County Airport Commercial Ground Lease dated May 17, 2006 with Dennis Sterling Becklin and Amber Lee Becklin in Favor of Bank of America, N.A.**
2. **REQUESTS FROM CITIZENS:** *(Commissioners will hear the request and refer it to County staff or schedule it for future discussion.) The Board is available during the week to meet with citizens.*
3. **MATTERS FROM COMMISSIONERS**
4. **REMAND HEARING:**
 - a. **Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential - 5-acre minimum (RR-5) because the land is non-resource. REMAND ISSUE: Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. PARTIES TO APPEAL: Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; PROPERTY OWNERS: David and Antoinette Sumner; REPRESENTATIVE: Alexander Forrester; LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300. (Continued from the August 9, 2006 Weekly Business Session)**

If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

"Josephine County is an affirmative Action / Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973."

WEEKLY BUSINESS SESSION September 6, 2006, 9:00 a.m.
Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Dwight F. Ellis, Chair; Jim Raffenburg, Vice-Chair; Jim Riddle, Commissioner.

County Employees: Dave Kellenbeck, Planning; Rosemary Padgett, CFO; Angel Osipovich, Recorder. Members of the Media and Other Interested Persons.

These are meeting minutes only. Only text enclosed in quotation marks reports a speaker's exact words.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order at 9:00 a.m. Items discussed were as follows:

1. **CONSENT CALENDAR:** Motion to Approve Consent Calendar items 1a - 1f: Motion by Commissioner Riddle, 2nd Commissioner Raffenburg. Upon a roll call vote motion carried 3-0 Yes. Ellis-Yes; Raffenburg-Yes and Riddle -Yes.
 - a. **Order No. 2006-156 In the Matter of the College Dreams Program Scholarship Trust Fund; Establishing Treasurer's Trust Fund No. 961; Closing and Transferring Fund No. 727 (Rescinds Order No. 2004-061).** Rosemary Padgett, CFO said that the County needed to be responsible for the grant funds that they receive and this was the formality of set up and transferring the money to an actual trust fund. *Original tendered for recording; cc: Legal, Airport.*
 - b. **Order No. 2006-157 In the Matter of a Motion for Rehearing a Land Use Decision Remanded from Land Use Board of Appeals (LUBA No. 2005-028, November 17, 2005); Wayne McKy and Hal Anthony vs. Josephine County, Applicant: David and Antoinette Sumner; Property description: 36-05-05, TL 200 & 300.** Dave Kellenbeck, Planning, explained this matter as being one that will allow the Board of Commissioner's to rehear the case, following the Weekly Business Session. *Original tendered for recording; cc: Legal, Planning.*
 - c. **Resolution No. 2006-061 In the Matter of an Appointment to the Josephine County Commission for Children and Families Advisory Board.** Commissioner Ellis read the Resolution and appointed Lari Peterson to fill the unexpired term of Arlene Warren. Said term to expire March 9, 2009. *Original tendered for recording; cc: Legal, BCC.*
 - d. **Resolution No. 2006-062 In the Matter of an Appointment and Re-Appointments to the Emergency Medical Services Board.** Commissioner Ellis read the Resolution and appointed Harry Rich to a 3 year term said term to expire September 6, 2009 and reappointed Sara Nicholson and Brian Pike to another 3 year term. Said terms to expire September 6, 2009. *Original tendered for recording; cc: Legal, BCC.*
 - e. **Resolution No. 2006-063 In the Matter of the Local Public Safety Coordinating Council (LPSCC); Council Membership (Rescinds and Replaces Resolution No. 2004-005).** Commissioner Ellis stated this was an update of membership with ORS to have a quorum. *Original tendered for recording; cc: Legal, BCC.*
 - f. **Assignment of Josephine County Airport Commercial Ground Lease dated May 17, 2006 with Dennis Sterling Becklin and Amber Lee Becklin in Favor of Bank of America, N.A.** Commissioner Ellis said this was a lease that would be carried by Bank of America for an extra hangar at the airport. *Original returned to Legal; cc: Airport.*

Citizen Comments on Consent Calendar Items:

Holger Sommer 2000 Hugo Road commented on Item B saying he didn't feel that the hearing could be heard today.

Hal Anthony 3995 Russell Road said he agrees with Mr. Sommer and that no one had been given proper notice and wanted to know why the County was involved in the first place.

Steve Rich, Legal Counsel, stated the hearing would be opened and closed, and also mentioned that this was a continuation and there was no such thing as an emergency order in this circumstance, and that the order did not create anything it simply moved the process along.

2. **REQUESTS FROM CITIZENS:** NONE

3. **MATTERS FROM COMMISSIONERS :** Commissioner Raffenburg wanted to recluse himself from the hearing.


4. REMAND HEARING:

- a. Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential – 5-acre minimum (RR-5) because the land is non-resource. REMAND ISSUE: Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. PARTIES TO APPEAL: Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; PROPERTY OWNERS: David and Antoinette Sumner; REPRESENTATIVE: Alexander Forrester; LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300.
(Continued from the August 9, 2006 Weekly Business Session)

LAND USE HEARINGS MINUTES:

Land Use Minutes and exhibits are recorded separately. Original exhibits are returned to the Planning department. A copy is attached to original minutes and recorded.

Weekly Business Session was adjourned at 9:15 a.m.


Angel Osipovich, Recorder

WBS Land Use Hearing –Sumner Remand Hearing (continued from 8/9/06) – September 6, 2006 9:00 a.m.

Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Commissioner Dwight F. Ellis, Chair and Commissioner Jim Riddle (Commissioner Raffenburg excused himself – conflict of interest)

County Employees: Dave Kellenbeck, Assistant Planning Director and Angel Osipovich, Recorder. Members of the Media and Other Interested Persons.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order at 9:20 a.m. Items discussed were as follows:

4. REMAND HEARING:

- a. **Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential – 5-acre minimum (RR-5) because the land is non-resource. REMAND ISSUE: Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. PARTIES TO APPEAL: Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; PROPERTY OWNERS: David and Antoinette Sumner; REPRESENTATIVE: Alexander Forrester; LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300. (Continued from the August 9, 2006 Weekly Business Session)**

Commissioner Ellis read the hearing notice and asked for Planning staff to give an update to the Board.

Dave Kellenbeck, Assistant Planning Director recommended that the Board continue this hearing again so that new notice could be sent. The opponents say they did not receive notice so it would be best if the matter were continued. Either the Board can set the date or Planning will, the date needs to be at least 20 days out to provide proper noticing.

Commissioner Ellis suggested three weeks from today, Dave said they could do that but that meant they would have to get the notice out today. Commissioner Riddle suggested letting Planning staff set the date or move it to four weeks out to let Planning have a little more preparation time. Commissioner Ellis suggested October 4 at 9 a.m.

Point of Order

Holger Sommer, 2000 Hugo Road said that the Board cannot continue a hearing that has not been opened. He also suggested that the hearing is illegal according to the RLCD because the notice incorrectly listed the parties to the appeal.

Steve Rich, County Counsel said the names could be stricken from the notice with no substantive affect. In his opinion, the hearing was opened on August 9, 2006.

Point of Order

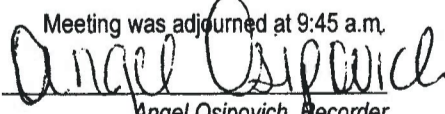
Hal Anthony, 3997 Russell Road disagreed that the hearing has begun. If it has, he suggested that the Chair was out of order in not allowing his five minute summary as a party to the hearing.

Commissioner Ellis stated he felt the hearing had opened on August 9 and asked for a motion to continue the hearing.

Commissioner Riddle made a motion to continue this hearing to October 4, 2006 at 9 am, seconded by Commissioner Ellis. Upon roll call vote, motion carried, 2 – 0 yes. Commissioner Riddle – yes and Commissioner Ellis – yes. Commissioner Raffenburg – absent.

No Exhibits Entered into record

Land Use Minutes and exhibits are recorded separately. Original exhibits are returned to the Planning department. A copy is attached to original minutes and recorded.

Meeting was adjourned at 9:45 a.m.

Angel Osipovich, Recorder

Josephine County Board of Commissioners
Dwight F. Ellis - Chair • Jim Raffenburg - Vice Chair • Jim Riddle - Commissioner
Josephine County Courthouse, 500 N.W. 6th Street, Grants Pass, OR 97526
(541) 474-5221, Fax (541) 474-5105 <http://www.co.josephine.or.us>

WEEKLY BUSINESS SESSION

Agenda

October 4th, 2006, 9:00 a.m.

(3rd Wednesday of Month is Evening Meeting.)

*Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, Oregon*



Pledge of Allegiance

1. **CONSENT CALENDAR:** *(All matters scheduled here are considered routine and will be adopted by a single motion unless a Commissioner requests a separate discussion and roll call vote.)*
 - a. Final Plat for "Too Far South Subdivision" off River Street in Cave Junction.
 - b. Resolution No. 2006-068 In the Matter of Collection and Enforcement of Day Use Fees at County Parks.
 - c. Resolution No. 2006-069 In the Matter of the Non-Union Employee Personnel Rules: Correcting the Salary Table (Amends Resolution No. 2006-054).
 - d. Resolution No. 2006-170 In the Matter of Appointments to the Josephine County Commission for Children and Families Advisory Board.
 - e. Resolution No. 2006-171 In the Matter of Appointment and Re-appointments to the Board of Property Tax Appeals (BOPTA).
 - f. Order No. 2006-168 In the Matter of Authorization of Execution of Lease Agreement with Southern Oregon Education Service District for Lease of County Property at 1017 and 1021 N.W. Highland St. (Gilbert Creek); and Lease Agreement; Revenue to County \$1 per year.
 - g. Order No. 2006-169 In the Matter of a Petition for Annexation to the Illinois Valley Rural Fire Protection District; PROPERTY OWNER: Shawn Elmer; ADDRESS: 310 Page Creek, Cave Junction, OR; LEGAL: 41-08-03-00, Tax Lot 105.
 - h. Order No. 2006-170 In the Matter of the Installation of Stop Signs on Frontier Lane, Hawk Drive, Wisteria Lane and Redding Way.
 - i. Order No. 2006-171 In the Matter of Acceptance of Real Property for Subdivision Road Access Purposes; and Acceptance of Warranty Deed; Scott and Laura Aaland, Ronald and Lisa Sipiora and Audrey Brooks. LEGAL: 40-08-02.00, Tax Lot 1500.
 2. **REQUESTS FROM CITIZENS:** *(Commissioners will hear the request and refer it to County staff or schedule it for future discussion.) The Board is available during the week to meet with citizens.*
 3. **MATTERS FROM COMMISSIONERS**
 4. **REMAND HEARING:** Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential - 5-acre minimum (RR-5) because the land is non-resource. **REMAND ISSUE:** Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. **PARTIES TO APPEAL:** Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; **PROPERTY OWNERS:** David and Antoinette Sumner; **REPRESENTATIVE:** Alexander Forrester; **LOCATION:** End of Scoville Road; **LEGAL:** 36-05-05, Tax Lots 200 and 300.
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If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

Josephine County is an affirmative Action / Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973.

WBS Land Use Hearing –Sumner Remand - October 4, 2006 9:30 a.m.

Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Commissioner Ellis, Chair and Commissioner Riddle (Commissioner Raffenburg recused himself from the hearing)
County Employees: Michael Snider, Planning; Angel Osipovich, Recorder. Members of the Media and Other Interested Persons.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order at 9:30 a.m. Items discussed were as follows:

AGENDA ITEM:

- 4. REMAND HEARING: Amend the Comprehensive Plan & Zone Map for the Property from Woodlot Resource (WR) to Rural Residential – 5-acre minimum (RR-5) because the land is non-resource. REMAND ISSUE: Determining that the subject property is non-resource because a majority of soils are not rated in the Internal Rate of Return (IRR) system. PARTIES TO APPEAL: Wayne McKy, Hal Anthony, David Sumner, Alexander Forrester; PROPERTY OWNERS: David and Antoinette Sumner; REPRESENTATIVE: Alexander Forrester; LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300.**

Commissioner Ellis read the procedures for Remand hearings and asked if there were objections to the Board hearing the matter.

Holger Sommer, 2000 Hugo Road presented **Exhibit A** listing his objections.

Commissioner Riddle asked if he was suggesting the matter never be heard or that there were technicalities. Holger replied that it should never be heard.

Steve Rich, County Counsel said the matter was sent from LUBA so that the issues could be heard. He felt there was an overabundance of concern regarding the parties. He advised that the Board could initiate a remand hearing and in fact a motion and order had been signed on September 6, 2006. This is a consolidated hearing of that motion and order and the continuation.

Holger Sommer argued that there was no motion and the hearing was continued. After further discussion **Steve Rich** suggested that the Board acknowledge his objection and move forward. **Commissioner Ellis** acknowledged the objection.

Hal Anthony, 3995 Russell Road agreed with Mr. Sommer saying there had been mistakes all along the way and he was sure this meeting would not withstand LUBA. 1. The order has no number and no signatures. 2. Forrester and Sumner were not parties 3. Commissioner Raffenburg recused himself because the applicant had asked him about the hearing yet he voted to continue the hearing 4. The hearing was started but it was not closed 5. Forrester was on the agenda on 8/9 and 9/6 and the latest notice is also wrong although the mailed notice was correct, there was incomplete notification.

Point of Order

Steve Rich, County Counsel said objections should be in regards to the Board hearing the case, not the process. Hal said it all comes back to the same thing. Commissioner Ellis said his objection would be entered into the record.

Commissioner Riddle asked Michael to explain who can participate in the hearing. Michael said that the three parties could participate, McKy, Anthony, and Josephine County. Mr. Sommer is here to represent Mr. McKy as his representative only. A representative can speak on the party's behalf as consultant.

Commissioner Riddle suggested that rather than spend time on a technicality that may or may not be an issue at LUBA that the Board proceed with the hearing and Let LUBA make the final decision. Commissioner Ellis agreed.

Hal Anthony thought that was inverse logic and continued by saying it was in the County's best interest is to drop the hearing saying it makes more sense and will save the taxpayers money. Steve Rich advised that this is argument not an objection. Hal stated that he is not impressed with what Mr. Rich thinks. Commissioner Ellis continued reading the rules.

Michael Snider, Planning Director gave a history of the application saying that the original decision had been appealed to LUBA. They agreed with the County on all but one point and that is what brought us here today. The Remand is based on 3b2 of the RLDC only. Mr. Sumner and Forester did not file a motion to intervene; the County is always a party to appeals so the County hired John Junkin out of Portland and Mr. Sumner paid his fee because it was of mutual interest. Two items parallel the application filed by Sumner for remand has been continued in a legal fashion and second Order 2006-157 ordering the Board to hear this matter. He submitted **Exhibit B – Order 2006-157** and **Exhibit C – Notice of Hearing**. The issue being heard is regarding non-resource land. I must meet specific detailed c criteria, the County used the Internal Rate of Return (IRR) system, and LUBA agreed in part but said the soils must be proven by another test besides the IRR. He then submitted **Exhibit D – RLDC 46.050. Foeller Credentials and a Letter from the US Forest Service regarding Mr. Foeller and the PowerPoint Presentation** with the Board. He then called Mr. Foeller as a witness.

Norm Foeller, 2610 Delwood Medford explained that he looked at the property in March, reviewing information before he went out such as aerial photos, site index, etc. The aerial photos showed by the canopy closure that the property does not have fully stocked stands. He took core samples and measured eleven trees and determined that according to the site index this is a Class 5. Commissioner Riddle asked if the subject property was well below what would have to be done to boost productivity. Mr. Foeller said there is nothing to be done. The land is serpentine and would be cost prohibitive to bring it up to a higher level. He explained Bulletin 201 and submitted **Exhibit E, 2 pages of the Bulletin 201 book** and how it is used to determine productivity. This area is too hot and dry for good production; these soils would perform at 20 cubic feet per acre per year.

Holger Sommer, 2000 Hugo Road presented **Exhibit F – Notice of Representation for Wayne McKy**. He asked if Oregon accepts California registration for Foresters. He asked if Douglas fir was not productive why not plant Ponderosa Pine. He said the minimum for BLM and ODF was 30 cubic feet per acre per year and requested that Bulletin 201 be part of the record. **Commissioner Riddle** asked that he stick to 3B2 the single remand issue. Michael confirmed that LUBA says 3b2, not 3B3, he was confident that the remand was on b2 only. Mr. Sommer was advised to stick to b2 only by Commissioner Ellis. **Mr. Sommer** said the McKy opinion of the remand is that it implies b3 and 3c. He contested new evidence with regards to b2. He objected that the report has not addressed b3 and c.

Hal Anthony, 3995 Russell Road said he also felt that 3b2; the one item remanded by LUBA because the IRR was not allowed opens a huge door to prove Goal 4. The new evidence will not meet the burden of proof, the Court's ruling on IRR is not based on soils, the criteria is 20 cubic feet per acre per year and Mr. Foeller acknowledged that it does have that. He submitted **Exhibit G – Anthony Opposition 333 pages** and asked to reserve the remaining 8 minutes of testimony for a possible witness.

Commissioner Riddle said LUBA sent back an opinion that they were not comfortable with the IRR and asked for a combination of proof test. Mr. Foeller is an expert; he took core samples saying the land is not commercially viable. He asked where the expert was to contradict that Foeller's testimony. Hal stated that LUBA is the expert and will determine that the burden of proof has not been met. He stated that he is just a citizen practicing land use issues and wants to ensure the rules apply to all to protect the forestland. He said the Foeller test is new evidence but the burden of proof is different and more extensive through Goal 4.

Commissioner Ellis asked Mr. Foeller about Oregon credentials and Mr. Foeller said no license is needed in Oregon just a degree which he received in 1968. He said he would copy his Bulletin 201, it was very rare and he wanted to stay with the book. Steve Rich said they only needed to copy the two pages he referenced from the book (which were later submitted as **Exhibit E**.) **Commissioner Ellis** asked Mr. Foeller in his expert opinion if the land could produce 20 cubic feet per acre per year and he said no, because the stands are not fully stocked. He also stated that you could not change the species without changing the yield.

Commissioner Riddle asked if the BLM or ODF had property like this would they sell the timber to which Mr. Foeller replied no. They sell the dense stands that would post around property like this because on a sale you have to regrow and they wouldn't take a chance on soil like this.

Michael Snider asked how the cubic feet per acre per year varied from the site index and Mr. Foeller explained. He pointed out to the Board that the letter from Oregon Department of Forestry says Mr. Foeller's method is an accepted way to determine productivity.

Commissioner Ellis called for a five minute break.

Commissioner Ellis asked Mr. Anthony if he would like to use his eight minutes and he said yes.

Hal Anthony 3995 Russell Road said the conversation keeps going back to productivity and in his opinion the land cannot be judged as sustainable forestland if no complete inventory has been done. He asked to give his last five minutes to Holger Sommer. Commissioner Ellis said that it was reserved for a witness; **Mr. Anthony** argued that Mr. Foeller had more time. Commissioner Ellis granted Holger four minutes.

Holger Sommer, 2000 Hugo road wanted to clarify why no expert was presented to contradict Mr. Foeller and that was because they do not need one. The expert confirmed that the property produces 20 cubic feet per acre per year which meets the standards.

Commissioner Ellis called Norm Foeller who said that the land would only produce 20 cubic feet per acre per year with full stocked stands.

Rebuttal

None

Surrebuttal

None

Summary

Michael Snider – None.

Hal Anthony - None.

Holger Sommer still feels that b2 should trigger b3 and 3c since they are not allowed to bring it up the Board was wrong. Technology goes on and makes complex calculations easier; Mr. Foeller's Bulletin 201 does not give a complete analysis. He takes great exception and was very prejudiced by not being able to cross-examine witnesses and felt the Board was out of line. They had no chance to make a case and was disappointed in the process. He is sure that LUBA will frown at the series of events.

Discussion and Action

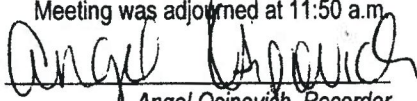
Commissioner Ellis closed the public portion of the hearing.

Commissioner Riddle made a motion to close the public testimony and continue the meeting until October 11, 2006 at 9:00 a.m. for a decision only that would allow the Board of Commissioners to review the evidence that was presented in written form and the Board reserves the right to ask questions at that time on the review of the written materials as presented this day. Seconded by Commissioner Ellis. Upon roll call vote, motion carried, 2 – 0 yes. Commissioner Riddle – yes and Commissioner Ellis – yes.

Entered into record:

- Exhibit A Holger Sommer's Objection 257 pages
- Exhibit B Order No. 2006-157 2 pages
- Exhibit C Notice of Hearing 1 page
- Exhibit D Exhibit D – RLDC 46.050. Foeller Credentials Letter from the USFS re: Mr. Foeller and a PowerPoint Presentation
- Exhibit E Bulletin 201 Book 2 copied pages
- Exhibit F Notice of Representation for Wayne McKy
- Exhibit G Hal Anthony's Objection 333 pages

Land Use Minutes and exhibits are recorded separately. Original exhibits are returned to the Planning department. A copy is attached to original minutes and recorded.

Meeting was adjourned at 11:50 a.m.

Angel Osipovich, Recorder

Josephine County Board of Commissioners
Dwight F. Ellis - Chair • Jim Raffenburg - Vice Chair • Jim Riddle - Commissioner
Josephine County Courthouse, 500 N.W. 6th Street, Grants Pass, OR 97526
(541) 474-5221, Fax (541) 474-5105 <http://www.co.josephine.or.us>

WEEKLY BUSINESS SESSION

Agenda

October 11, 2006, 9:00 a.m.

(3rd Wednesday of Month is Evening Meeting.)

*Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, Oregon*



Pledge of Allegiance

1. **LONGEVITY AWARDS: Josephine County Employees**
2. **PROCLAMATIONS: In the Matter of Proclaiming the Week of October 23rd through October 31 as Red Ribbon Week.**
3. **CONSENT CALENDAR:** *(All matters scheduled here are considered routine and will be adopted by a single motion unless a Commissioner requests a separate discussion and roll call vote.)*
 - a. **Tenth Amendment to 2005-2006 LPHA Financial Assistance Contract with Oregon Department of Human Services to Provide Basic Public Health Services, Contract No. 113240; Revenue to County \$3,085 for Year 05-06.**
4. **REQUESTS FROM CITIZENS:** *(Commissioners will hear the request and refer it to County staff or schedule it for future discussion.) The Board is available during the week to meet with citizens.*
5. **MATTERS FROM COMMISSIONERS**
6. **REMAND HEARING: Amend the Comprehensive Plan and Zone Map for property from Woodlot Resource (WR) to Rural Residential - 5 acre minimum (RR-5) because the land is non-resource. This hearing is initiated by Order No. 2006-157 of the Josephine County Board of Commissioners, dated September 6, 2006. REMAND ISSUE: determining that the subject property is non-resource land based upon a combination of proofs. PARTIES TO APPEAL: Wayne McKy, Hal Anthony and Josephine County. PROPERTY OWNERS: David and Antoinette Sumner. REPRESENTATIVE: Michael Snider, Josephine County Planning Director. LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300. (Continued from Weekly Business Session October 4, 2006.)**

The Board requests that comments be limited to the agenda item being discussed and that you follow the rules and procedures for meeting as described in Ordinance 92-27. ORDINANCE 92-27, SECTION 7

Meetings shall at all times be orderly and respectful. When permitted, each person shall be given three (3) minutes to speak or such other longer time as may be allowed by the presiding officer. No person shall be heard until he or she states their name and address for the record. The presiding officer may terminate the meeting when necessary or refuse to recognize anyone who:

- a. Is disorderly, abusive or disruptive;
- b. Takes part in or encourages audience demonstrations, such as applause, cheering, display of signs, shouting or other conduct disruptive of the meeting;
- c. Speaks without first receiving recognition from the presiding officer and stating his or her full name and residential address; or
- d. Presents irrelevant, immaterial or repetitious comments.

If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

"Josephine County is an affirmative Action / Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973."

Wednesday, October 11, 2006

WEEKLY BUSINESS SESSION October 11, 2006, 9:00 a.m.
Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Commissioner Ellis and Commissioner Riddle (Commissioner Raffenburg was on vacation)

County Employees: John Harelson, Treasurer; Rob Brandes, Public Works; Belle Shepard, Health; Angel Osipovich, Recorder. Members of the Media and Other Interested Persons.

These are meeting minutes only. Only text enclosed in quotation marks reports a speaker's exact words.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order 9:00 a.m. Items discussed were as follows:

1. LONGEVITY AWARDS: Josephine County Employees

Rob Brandes, Public Works presented awards to Frank Bosshardt, Jeff Wheaton and Fred Reichert for 20 years of service to Josephine County Public Works.

John Harelson, Treasurer presented Debbie Scaglione with her 10 year pin and thanked her for her hard work.

2. PROCLAMATIONS: In the Matter of Proclaiming the Week of October 23rd through October 31 as Red Ribbon Week.

Commissioner Ellis read the proclamation and presented it to Rick Jones both expressed thanks and gratitude for recognizing how important this issue was. Two (2) Originals, one original given to Rick Jones and one Original Tendered for Recording; cc Legal.

3. CONSENT CALENDAR: Motion to Approve Consent Calendar item 3a: Motion by Commissioner Riddle, 2nd Ellis. Upon a roll call vote motion carried 2-0 Yes. Ellis-Yes and Riddle-Yes.

a. Tenth Amendment to 2005-2006 LPHA Financial Assistance Contract with Oregon Department of Human Services to P Basic Public Health Services, Contract No. 113240; Revenue to County \$3,085 for Year 05-06.

Belle Shepard, Health, explained this was clean up from last year and what money was left over would be put towards the Breast and Cervical Cancer program. NOT FULLY EXECUTED. One original Contract received, returned to Health for full execution of documents.

4. REQUESTS FROM CITIZENS: NONE

5. MATTERS FROM COMMISSIONERS: NONE

6. REMAND HEARING: Amend the Comprehensive Plan and Zone Map for property from Woodlot Resource (WR) to Residential - 5 acre minimum (RR-5) because the land is non-resource. This hearing is initiated by Order No. 2006-157 Josephine County Board of Commissioners, dated September 6, 2006. REMAND ISSUE: determining that the subject property is non-resource land based upon a combination of proofs. PARTIES TO APPEAL: Wayne McKy, Hal Anthony and Josephine County. PROPERTY OWNERS: David and Antoinette Sumner. REPRESENTATIVE: Michael Snider, Josephine County Planning Department. LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300. (Continued from Weekly Business Session October 4, 2006)

LAND USE HEARINGS MINUTES:

Land Use Minutes and exhibits are recorded separately. Original exhibits are returned to the Planning department. A copy is attached to these minutes and recorded.

Weekly Business Session was adjourned at 9:20 .

/s/ Angel Osipovich, Recorder

Wednesday, October 11, 2006

WBS Land Use Hearing –Sumner Remand-October 11, 2006

Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Commissioner Ellis and Commissioner Riddle (Commissioner Raffenburg recused himself from this hearing)
County Employees: Michael Snider, Planning; Angel Osipovich, Recorder; Members of the Media and Other Interested Persons.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order at 9:30 a.m. Items discussed were as follows:

AGENDA ITEM:

5. **REMAND HEARING: Amend the Comprehensive Plan and Zone Map for property from Woodlot Resource (WR) to Rural Residential - 5 acre minimum (RR-5) because the land is non-resource. This hearing is initiated by Order No. 2006-157 of the Josephine County Board of Commissioners, dated September 6, 2006. REMAND ISSUE: determining that the subject property is non-resource land based upon a combination of proofs. PARTIES TO APPEAL: Wayne McKy, Hal Anthony and Josephine County. PROPERTY OWNERS: David and Antoinette Sumner. REPRESENTATIVE: Michael Snider, Josephine County Planning Director. LOCATION: End of Scoville Road; LEGAL: 36-05-05, Tax Lots 200 and 300. (Continued from Weekly Business Session October 4, 2006.)**

Commissioner Ellis said under the first assignment of error Land Use Bureau of Appeals (LUBA) ruled the County could not assume land is non resource because the majority of soils are unrated the Internal Rate of Return (IRR) system. This ruling is consistent with the earlier Meade remand. As a result the land has to be shown to be unsuitable for commercial forest uses based upon a compilation of proofs. An expert witness testified the site index was 46.3 when commercial timberland begins at site index 80 eleven trees had core samples taken. A registered professional forester has concluded that the forest productivity on this tax lot is below the parameter for commercial timber production even with a crop rotation the net return per acre would be a loss of \$3,809 at a site index of 80 or less total cost per acres would be over \$5,000 while revenue per acres would be just over \$1,500. I am convinced the subject property meets the combination of proofs tests.

Commissioner Riddle said he, too, feels that Mr. Foeller's oral and written testimony is correct and agrees with Commissioner Ellis' statement.

Commissioner Riddle made a motion to approve amending the Comprehensive Plan and Zone Map for property from Woodlot Resource (WR) to Rural Residential - 5 acre minimum (RR-5) because the land is non-resource and direct staff to present findings. Seconded by Commissioner Ellis. Upon roll call vote, motion carried, 2 – 0 yes. Commissioner Riddle – yes and Commissioner Ellis – yes.

Entered into record:

Exhibit # Exhibit Name
No Exhibits

Land Use Minutes and exhibits are recorded separately. Original exhibits are returned to the Planning department. A copy is attached to original minutes and recorded.

Meeting was adjourned at 9:40a.m.

/s/ Angel Osipovich, Recorder

Josephine County Board of Commissioners
Dwight F. Ellis - Chair • Jim Raffenburg - Vice Chair • Jim Riddle - Commissioner
Josephine County Courthouse, 500 N.W. 6th Street, Grants Pass, OR 97526
(541) 474-5221, Fax (541) 474-5105 <http://www.co.josephine.or.us>

WEEKLY BUSINESS SESSION

2nd AMENDED Agenda

December 13, 2006 9:00 a.m.

*Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, Oregon*



Pledge of Allegiance

1. **LONGEVITY AWARDS:** Josephine County Employees.
2. **PROCLAMATION:** In the Matter of Proclaiming a Day to "Eliminate Violence Against Women in Josephine County."
3. **LEGISLATIVE ACTIONS:** (*Ordinances and other business items on which the opportunity for public input is required by law or County policy.*) Roll call vote required.
 - a. First Reading of Ordinance No. 2006-004; An Ordinance Amending the Comprehensive Plan Map of Josephine County Ordinance 81-11 as amended), from Forest to Residential and amending the zoning map of Josephine County (Ordinance 85-1 as amended), from Woodlot Resource to Rural Residential (5 acre minimum), and also amending the Josephine County Deer Winter Range map to remove the subject property from an area designated as critical Deer Winter Habitat (ORD 85- 29). The subject property is identified in the Josephine County Assessor's records as Map, T36-R5, Section 5, Tax Lots 200 and 300. The property owners are David and Antoinette Sumner.
4. **CONSENT CALENDAR:** (*All matters scheduled here are considered routine and will be adopted by a single motion unless a Commissioner requests a separate discussion and roll call vote.*)
 - a. In the Matter of Resolving Claims Under Measure 37, Oregon 2004 Election:
 - 1) Order No. 2006-190 NAME: John C. and Susan M. Ward; ADDRESS: 2100 Dutcher Creek Road; LEGAL: 36-07-21, Tax Lot 600.
 - 2) Order No. 2006-191 NAME: Forrest and Elin Radley; ADDRESS: 575 Pavilian Drive; LEGAL: 36-06-11-C0, Tax Lot 500.
 - 3) Order No. 2006-192 NAME: Grants Pass School District No. 7; ADDRESS: Stringer Gap Road and Elk Lane; LEGAL: 37-06-03, Tax Lot 2100; 37-06-10, Tax Lot 100; 37-06-02, Tax Lot 100.
 - 4) Order No. 2006-193 NAME: Phyllis Davenport; ADDRESS: 3180 Lower River Road; LEGAL: 36-06-14-D0, Tax Lot 900.
 - b. Resolution No. 2006-079 In the Matter of Appointments to the Local Public Safety Coordinating Council (LPSCC).
 - c. Resolution No. 2006-080 In the Matter of an Appointment to the Emergency Medical Services (EMS) Board.
 - d. Resolution No. 2006-081 In the Matter of an Appointment to Local Alcohol and Drug Planning Committee (LADPC).
 - e. Findings of Fact and Decision Regarding a request before the Josephine County Board of Commissioners relative to an appeal of the Planning Director's November 8, 2006 approval of a replat to consolidate 24 existing lots to 3 lots. Property Owner: Jacoby Development LLC; Appellant: Jacoby Development LLC; Legal: T33, R06, S34-CD Tax Lot 1600.
 - f. In the Matter of a remand request for amendment of the Josephine County Comprehensive Plan Map from Forest to Residential and the Zone Map from Woodlot Resource (WR) to Rural Residential, 5 acre minimum (RR-5) because the land qualifies as non-resource land per Section 46.050.B.2 of the Josephine county Rural Land Development Code. Property Owner: David and Antoinette Sumner; Applicant: David Sumner; Legal: T36, R05, S05 Tax Lots 200 and 300.
5. **REQUESTS FROM CITIZENS:** (*Commissioners will hear the request and refer it to County staff or schedule it for future discussion.*) The Board is available during the week to meet with citizens.
6. **MATTERS FROM COMMISSIONERS**

If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

Josephine County is an affirmative Action / Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973.

Wednesday, December 13, 2006

WEEKLY BUSINESS SESSION December 13, 2006, 9:00 a.m.
Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Commissioner Ellis; Commissioner Raffenburg; Commissioner Riddle

County Employees: Ed Cramp, Public Works; Michael Snider, Planning; Angel Osipovich, Recorder. Members of the Media and Other Interested Persons.

These are meeting minutes only. Only text enclosed in quotation marks reports a speaker's exact words.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order 9:00 a.m. Items discussed were as follows:

1. LONGEVITY AWARDS: Josephine County Employees.

Ed Cramp, Public Works commended Jeffrey Goodman on his hard work and thanked him for all of his years of service.

2. PROCLAMATION: In the Matter of Proclaiming a Day to "Eliminate Violence Against Women in Josephine County."

Lisa Woodruff from Zonta accepted the Proclamation from Commissioner Ellis and thanked all of the Commissioners for their support.

Commissioner Ellis and Commissioner Raffenburg presented Commissioner Riddle with a plaque and two additional plaques from AOC thanking him for his hard work and his dedication to the County.

3. LEGISLATIVE ACTIONS:

a. First Reading of Ordinance No. 2006-004; An Ordinance Amending the Comprehensive Plan Map of Josephine County Ordinance 81-11 as amended), from Forest to Residential and amending the zoning map of Josephine County (Ordinance 85-1 as amended), from Woodlot Resource to Rural Residential (5 acre minimum), and also amending Josephine County Deer Winter Range map to remove the subject property from an area designated as critical Deer Winter Habitat (ORD 85- 29). The subject property is identified in the Josephine County Assessor's records as **Map, 1 Section 5, Tax Lots 200 and 300. The property owners are David and Antoinette Sumner.** *Motion to Approve the first of the ordinance: Motion by Commissioner Riddle, 2nd Ellis. Upon a roll call vote motion carried 2-0 Yes. Ellis-Yes; Riddle-YesRaffenburg-Abstained.*

Commissioner Ellis read the ordinance and Michael Snider mentioned there was a minor typographical error and for the record needed to be changed. Public Comment:

Holger Sommer 2000 Hugo Rd. raised issues with posting and said it had not been noticed properly and he felt this ordinance was done prematurely.

Mike Walker 681 Jess Way said he thought the sequence was off and the ordinance should not be signed first.

Steve Rich, County Counsel stated that order on the agenda was not an issue and Michael Snider said that a LUBA appeal did set aside the County's decision.

Alex Forrester said he appreciated that this decision was ready to be made and it had been a very long process.

Hal Anthony said he agreed with Holger Sommer's statements.

Commissioner Ellis closed the public comment portion and returned it back to the Board for deliberation and possible action

4. CONSENT CALENDAR: Motion to Approve Consent Calendar items 1a through 1d as read and discussed: Motion by Commissioner Raffenburg, 2nd Riddle. Upon a roll call vote motion carried 3-0 Yes. Ellis-Yes; Raffenburg-Yes; Riddle-Yes.

a. In the Matter of Resolving Claims Under Measure 37, Oregon 2004 Election:

1) Order No. 2006-190 NAME: John C. and Susan M. Ward; ADDRESS: 2100 Dutcher Creek Road; LEGAL: 36-07-2 Lot 600. 46 acres acquisition date of 1991 owners would like to divide.

2) Order No. 2006-191 NAME: Forrest and Elin Radley; ADDRESS: 575 Pavilian Drive; LEGAL: 36-06-11-C0, Tax Lot 500 acquisition date 40+ acres owners would like to divide property.

- 3) Order No. 2006-192 NAME: Grants Pass School District No. 7; ADDRESS: Stringer Gap Road and Elk Lane; LEGAL: 03, Tax Lot 2100; 37-06-10, Tax Lot 100; 37-06-02, Tax Lot 100. 445 acres acquisition date 1942
- 4) Order No. 2006-193 NAME: Phyllis Davenport; ADDRESS: 3180 Lower River Road; LEGAL: 36-06-14-D0, Tax Lot 1.46 acres acquisition date 1951 would like to divide property.
- b. Resolution No. 2006-079 In the Matter of Appointments to the Local Public Safety Coordinating Council (LPSCC) Commissioner Ellis read the resolution and appointed Abe Huntley, Janine Wilson, and Belle Shepard to the LPSCC Board. *Original tendered for recording; cc: Advisory Board*
- c. Resolution No. 2006-080 In the Matter of an Appointment to the Emergency Medical Services (EMS) Board. Commissioner Ellis read the resolution and appointed Gary Heigl to a 3 year term, said term to expire December 13, 2009. *Original tendered for recording; cc: Advisory Board.*
- d. Resolution No. 2006-081 In the Matter of an Appointment to Local Alcohol and Drug Planning Committee (LADPC) Commissioner Ellis read the resolution and appointed Abe Huntley to fill the unexpired term of Marie Hill; said term to expire June 2009. *Original tendered for recording; cc: Advisory Board.*
- e. Findings of Fact and Decision Regarding a request before the Josephine County Board of Commissioners relative to an appeal of the Planning Director's November 8, 2006 approval of a replat to consolidate 24 existing lots to 3 lots. Property Owner: Jacoby Development LLC; Appellant: Jacoby Development LLC; Legal: T33, R06, S34-CD Tax Lot 1600. *Motion to Approve Consent Calendar item e: Motion by Commissioner Raffenburg, 2nd Ellis. Upon a roll call vote motion carried 2-0 Yes. Riddle-Yes; Raffle-Yes; Raffenburg-abstained.* Michael Snider read the findings of fact of this case. *Original tendered for recording cc: Planning, Legal.*

Citizen Comment:

Holger Sommer 2000 Hugo Rd. said he wanted to clarify that the applicant did the findings of fact and not planning.

Hal Anthony said thank you to the Planning office for getting the findings done and before the Board.

- f. In the Matter of a remand request for amendment of the Josephine County Comprehensive Plan Map from Forest Residential and the Zone Map from Woodlot Resource (WR) to Rural Residential, 5 acre minimum (RR-5) because the land qualifies as non-resource land per Section 46.050.B.2 of the Josephine county Rural Land Development Code. Property Owner: David and Antoinette Sumner; Applicant: David Sumner; Legal: T36, R05, S05 Tax Lots 200 and 300. *Motion to Approve Consent Calendar item f: Motion by Commissioner Raffenburg, 2nd Ellis. Upon a roll call vote motion carried 2-0 Yes. Ellis- Yes; Raffle-Yes. Michael Snider read the findings of fact of this case. Original tendered for recording cc: Planning, Legal.*

5. REQUESTS FROM CITIZENS:

Mike Walker read and submitted Exhibit A, 11 pages regarding the Urban Growth Boundary.

Holger Sommer 2000 Hugo Rd. read and submitted Exhibit B, 1 page regarding the Urban Growth Boundary.

George Long read and submitted Exhibit C, 1 page regarding a CNN article written about the missing family in Merlin.

6. MATTERS FROM COMMISSIONERS

Commissioner Riddle said thank you to the public and his fellow commissioners.

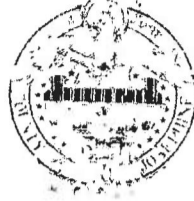
Commissioner Raffenburg thanked Commissioner Riddle and said how much he enjoyed working with him.

Commissioner Ellis agreed with Commissioner Raffenburg and said he had done an amazing job as Commissioner.

| Date | Exhibit # | Exhibit Name |
|----------|-----------|------------------------------------|
| 12/13/06 | A | Letter from Mike Walker , 11 pages |
| 12/13/06 | B | Letter from Holger Sommer, 1 page |
| 12/13/06 | C | Letter from George Long, 1 page |

Weekly Business Session was adjourned at 9:50

/s/ Angel Osipovich, Recorder



Josephine County Board of Commissioners
Dwight F. Ellis - Chair • Jim Raffenburg - Vice Chair • Jim Riddle - Commissioner
Josephine County Courthouse, 500 N.W. 6th Street, Grants Pass, OR 97526
(541) 474-5221, Fax (541) 474-5105 <http://www.co.josephine.or.us>

WEEKLY BUSINESS SESSION

Agenda

December 27 2006, 9:00 a.m.

(3rd Wednesday of Month is Evening Meeting.)

*Televised on Cable Channel 14 from the Anne G. Basker Auditorium
604 N.W. Sixth Street, Grants Pass, Oregon*



Pledge of Allegiance

1. **LEGISLATIVE ACTIONS:** *(Ordinances and other business items on which the opportunity for public input is required by law or County policy.) Roll call vote required*
 - a. **Second Reading of Ordinance No. 2006-004; An Ordinance Amending the Comprehensive Plan Map of Josephine County Ordinance 81-11 as amended), from Forest to Residential and amending the zoning map of Josephine County (Ordinance 85-1 as amended), from Woodlot Resource to Rural Residential (5 acre minimum), and also amending the Josephine County Deer Winter Range map to remove the subject property from an area designated as critical Deer Winter Habitat (ORD 85- 29). The subject property is identified in the Josephine County Assessor's records as Map, T36-R5, Section 5, Tax Lots 200 and 300. The property owners are David and Antoinette Sumner.**
2. **CONSENT CALENDAR:** *(All matters scheduled here are considered routine and will be adopted by a single motion unless a Commissioner requests a separate discussion and roll call vote.)*
 - a. **Final Plat for "G.I." Subdivision off of Grandview in Grants Pass.**
 - b. **Order No. 2006-194 In the Matter of Resolving a Claim under Measure 37, Oregon 2004 Election. NAME: Sarah Mae Truitt; ADDRESS: 5745 Prairie Lane; LEGAL: 36-06-32-B0, Tax Lot 900.**
 - c. **Order No. 2006-195 In the Matter of Naming a Financial Assistance Administrator for the 2005-2007 Intergovernmental Agreement for the Financing of Community Mental Health, Developmental Disability and Addiction Services Agreement No. 113003.**
3. **REQUESTS FROM CITIZENS:** *(Commissioners will hear the request and refer it to County staff or schedule it for future discussion.) The Board is available during the week to meet with citizens.*
4. **MATTERS FROM COMMISSIONERS**

The Board requests that comments be limited to the agenda item being discussed and that you follow the rules and procedures for meeting as described in Ordinance 92-27. ORDINANCE 92-27, SECTION 7

Meetings shall at all times be orderly and respectful. When permitted, each person shall be given three (3) minutes to speak or such other longer time as may be allowed by the presiding officer. No person shall be heard until he or she states their name and address for the record. The presiding officer may terminate the meeting when necessary or refuse to recognize anyone who:

- a. Is disorderly, abusive or disruptive;
- b. Takes part in or encourages audience demonstrations, such as applause, cheering, display of signs, shouting or other conduct disruptive of the meeting;
- c. Speaks without first receiving recognition from the presiding officer and stating his or her full name and residential address; or
- d. Presents irrelevant, immaterial or repetitious comments.

If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

"Josephine County is an affirmative Action / Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973."

Wednesday, December 27, 2006

WEEKLY BUSINESS SESSION December 27, 2006, 9:00 a.m.
 Televised on Cable Channel 14 from the Anne G. Basker Auditorium
 604 N.W. Sixth Street, Grants Pass, OR 97526

Present: Dwight F. Ellis, Chair; Jim Raffenburg, Vice-Chair; Commissioner Riddle

County Employees: Michael Snider, Planning; Angel Osipovich, Recorder. Members of the Media and Other Interested Persons.

These are meeting minutes only. Only text enclosed in quotation marks reports a speaker's exact words.

Pursuant to notice through the media and in conformance with the Public Meeting Law, Dwight F. Ellis, Chair called the meeting to order at 9:00 a.m. Items discussed were as follows:

1. LEGISLATIVE ACTIONS:

a. **Second Reading of Ordinance No. 2006-004; An Ordinance Amending the Comprehensive Plan Map of Josephine County Ordinance 81-11 as amended), from Forest to Residential and amending the zoning map of Josephine County (Ordinance 85-1 as amended), from Woodlot Resource to Rural Residential (5 acre minimum), and amending the Josephine County Deer Winter Range map to remove the subject property from an area designated as a Deer Winter Habitat (ORD 85- 29). The subject property is identified in the Josephine County Assessor's records as Map, T36-R5, Section 5, Tax Lots 200 and 300. The property owners are David and Antoinette Sumner. Commissioner made a motion to approve the consent calendar item 1a as read and discussed, seconded by Commissioner Ellis. Upon roll call motion carried, 2 – 0, yes. Commissioner Riddle – yes, Commissioner Raffenburg – Abstain Commissioner Ellis – yes.**

Commissioner Ellis read the ordinance, opened it up for public comment and returned back to the Board for deliberation and action.

Hal Anthony 3995 Russell Road read and submitted Exhibit A, Notice of Intent to Appeal.

2. CONSENT CALENDAR: Commissioner Raffenburg made a motion to approve the consent calendar items 1a-1c as read and discussed, seconded by Commissioner Riddle. Upon roll call vote, motion carried, 3 – 0, yes. Commissioner Riddle – yes, Commissioner Raffenburg – yes, and Commissioner Ellis – yes.

a. **Final Plat for "G.I." Subdivision off of Grandview in Grants Pass.** Commissioner Ellis said this was the final action to be taken and they would sign the plats today. *Original plats picked up by the developer from the BCC office to be recorded at the County Office.*

b. **Order No. 2006-194 In the Matter of Resolving a Claim under Measure 37, Oregon 2004 Election. NAME: Sarah Mae ADDRESS: 5745 Prairie Lane; LEGAL: 36-06-32-B0, Tax Lot 900.** Michael Snider, Planning explained that the owner property would like to divide into smaller parcels. *Original tendered for recording; cc: Planning.*

c. **Order No. 2006-195 In the Matter of Naming a Financial Assistance Administrator for the 2005-2007 Intergovernmental Agreement for the Financing of Community Mental Health, Developmental Disability and Addiction Services Agreement 113003.** Commissioner Ellis read the order naming Marie Hill as the Administrator. *Original tendered for recording, cc: Marie Hill*

Citizens Comments:

3. REQUESTS FROM CITIZENS:

Holger Sommer 2000 Hugo Rd. requested the Board take a look at Land Use enforcement rules.

Hal Anthony 3995 Russel Rd. encouraged citizen involvement in land use issues as well as policies.

4. MATTERS FROM COMMISSIONERS

Commissioner Raffenburg and Commissioner Ellis both thanked Commissioner Riddle for his hard work and dedication.

Weekly Business Session was adjourned at 9:16 .

/s/ Angel Osipovich, Recorder

**BEFORE THE BOARD OF COMMISSIONERS
FOR JOSEPHINE COUNTY, OREGON**

ORDINANCE NO. 2006-04

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN MAP OF JOSEPHINE COUNTY (ORDINANCE 81-11 AS AMENDED), FROM FOREST TO RESIDENTIAL AND AMENDING THE ZONING MAP OF JOSEPHINE COUNTY (ORDINANCE 85-1 AS AMENDED), FROM WOODLOT RESOURCE TO RURAL RESIDENTIAL (5 ACRE MINIMUM), AND ALSO AMENDING THE JOSEPHINE COUNTY DEER WINTER RANGE MAP TO REMOVE THE SUBJECT PROPERTY FROM AN AREA DESIGNATED AS CRITICAL DEER WINTER HABITAT (ORD 85-29). THE SUBJECT PROPERTY IS IDENTIFIED IN THE JOSEPHINE COUNTY ASSESSOR'S RECORDS AS MAP T36, R5 , SECTION 5, TAX LOTS 200 AND 300. THE PROPERTY OWNERS ARE DAVID AND ANTOINETTE SUMNER.

WHEREAS, the Planning Commission held a hearing in August of 2003 and made a recommended decision to the Board of Commissioners as required by the county's comprehensive plan; and

WHEREAS, the Board of Commissioners also held public hearings on February 18, 2004, and December 22, 2004, and thereupon approved the plan and map amendments as described above; and

WHEREAS, the Board's decision was appealed to the Oregon Land Use Board of Appeals (LUBA) by Wayne McKy and Hal Anthony, which resulted in a remand decision; and

WHEREAS, the Board further considered the applications during remand hearings on August 9, October 4 and October 11, 2006, to consider LUBA's remand decision, after which the Board approved the requested plan and map amendments;

NOW, THEREFORE, based on the foregoing, the Board of County Commissioners of Josephine County Oregon, does ordain as follows:

SECTION 1: Comprehensive Plan Map Amendment

The Josephine County Comprehensive Plan Map is hereby amended from Forest to Residential for the property identified as Assessor's Map: Township 36, Range 5, Section 5, Tax Lots 200 and 300.

SECTION 2: Zone Map Amendment

The Josephine County Zoning Map is hereby amended from Woodlot Resource to Rural Residential (5 Acre Minimum) for property identified as Assessor's Map: Township 36, Range 5, Section 5, Tax Lots 200 and 300.

SECTION 3. Deer Winter Range Map Amendment

The Josephine County Deer Winter Range Map is hereby amended to remove the subject property from an area designated for "critical deer winter range habitat" on the county's Deer Winter Range Habitat map, the property being described as Assessor's Map: Township 36, Range 6, Section 5, Tax Lots 200 and 300.

SECTION 4: Affirmation

Except as otherwise provided herein, Josephine County Ordinances 81-11 and 85-1 are hereby affirmed as originally adopted, and heretofore amended.

SECTION 5: Effective Date

First reading by the Board of County Commissioners this 13th day of December, 2006.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this 27th day of December, 2006. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COMMISSIONERS



Dwight F. Ellis, Chair



Jim Raffenburg, Vice Chair



Jim Riddle, Commissioner

ATTEST:



Recording Secretary

APPROVED AS TO FORM:



Steven R. Rich, County Counsel

DLCD NOTICE OF PROPOSED AMENDMENT

This form must be received by DLCD at least 45 days prior to the evidentiary hearing per ORS 197.610, OAR Chapter 660 - Division 18 and Senate Bill 543 and effective on June 30, 1999.
(See reverse side for submittal requirements)

Jurisdiction: JOSEPHINE Local File No.: 30-5-5, TL 2004 320
(If no number, use none)
Date of First Evidentiary Hearing: 5/25/03 Date of Final Hearing: 10/8/03
(Must be filled in) (Must be filled in)
Date this proposal was sent or mailed: 7/8/03
(Date mailed or sent to DLCD)

Has this proposal previously been submitted 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: _____
(Please Specify Type of Action)

Briefly summarize the proposal. Do not use technical terms. Do not write "See Attached."

This proposal is to amend the Comprehensive Plan designation from Forest Resource to Residential and to change the Zone Map designation from Woodlot Resource to Rural Residential 5 Acres for 54.5 acres of property.

Plan Map Changed from: FOREST RESOURCE to RESIDENTIAL

Zone Map Changed from: WOODLOT RESOURCE to RURAL RESIDENTIAL - 5 ACRES

Location: END OF SCOVILLE LANE, GRANTS PASS Acres Involved: 54.5

Specified Change in Density: Current: WOODLOT RESOURCE 30 ACRE MINIMUM Proposed: RURAL RESIDENTIAL 5 ACRE MINIMUM

Applicable Statewide Planning Goals: #4 FOREST LANDS, #4 URBANIZATION

Is an Exception Proposed? Yes: ___ No:

Affected State or Federal Agencies, Local Governments or Special Districts: OREGON DEPT. OF FISH + WILDLIFE

Local Contact: JAN BAZZALA Area Code + Phone Number: 541.474.5721, EXT 5418

Address: JOSEPHINE CO PLANNING

City: 510 NW 4th ST Zip Code + 4: _____
GRANTS PASS OR 97526

DLCD No.: _____

COPY

FORM 2

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

(See reverse side for submittal requirements)

Jurisdiction: JOSEPHINE Local File No.: 36-05-05, TL 200 & 300 (If no number, use none)

Date of Adoption: (Must be filled in) Date Mailed: (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 7/8/03

- Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
Land Use Regulation Amendment
Zoning Map Amendment
New Land Use Regulation
Other: Deer Winter Range Map Amendment

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached." The Board of Commissioners approved a request for a Comprehensive Plan & Zone Map Change from Woodlot Resource to Rural Residential 5-Acre Minimum, a Comprehensive Plan Amendment to the Impact Area of the Deer Winter Range Map & the Blackhorse Estates PUD tentative plan for 54.5 acres of property.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A." SAME Includes Deer Winter Range Map Amendment

Plan Map Changed from: Forest Resource to Residential
Zone Map Changed from: Woodlot Resource to Rural Residential - 5 Acre
Location: 2635 Scoville Road Acres Involved: 54.5
Specify Density: Previous: New:
Applicable Statewide Planning Goals: #4 Forest Lands #14 Urbanization
Was an Exception Adopted? Yes: No: [check]

DLCD File No.:

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: ODFW

Local Contact: Dave Hollerbeck Area Code + Phone Number: (541) 474-5421 x3604

Address: _____

City: _____ Zip Code+4: _____

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.