



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

November 3, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Curry County Plan Amendment
DLCD File Number 002-08



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: November 14, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Dave Perry, DLCD Regional Representative
Dave Pratt, Curry County

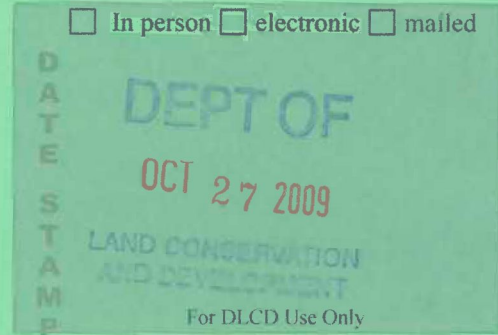
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FORM 2

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



Jurisdiction: **Curry County**

Local file number: **Z-0802**

Date of Adoption: **10/6/2008**

Date Mailed: **10/23/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 8/15/2008

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Zone change from Rural Residential Five acre minimum to Rural Residential Two acre minimum

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

Plan Map Changed from:

to:

Zone Map Changed from: **RR-5**

to: **RR-2**

Location: **Assessor Map 4013-36B tax lot 300/500**

Acres Involved: **14**

Specify Density: Previous: **2 lots possible**

New: **7 lots possible**

Applicable statewide planning goals:

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

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 002-08 (17045)

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

Local Contact: **Dave Pratt**

Phone: (541) 247-3228 Extension:

Address: **PO Box 746**

Fax Number: **541-247-4579**

City: **Gold Beach**

Zip: **97444-**

E-mail Address: **prattd@co.curry.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

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

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

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

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

**BEFORE THE BOARD OF COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON**

In the Matter of the Adoption)
of a Change to the Curry County)
Zoning Map Related to File No.) **ORDINANCE NO. 08-07**
Z-0802 for Applicants J. David)
and Karen M. Hunt)

The Board of Curry County Commissioners ordains as follows:

Section 1

This ordinance amends the Curry County Zoning Map of the subject property from Rural Residential Five (RR-5) to Rural Residential Two (RR-2).

Section 2

This ordinance is being adopted under authority of ORS chapters 197 and 215 and the Curry County Zoning Ordinance (CCZO) following published notice.

Section 3

This amendment to the Curry County Zoning Map applies only to the following land as described in the records of the Curry County Assessor:

Tax Lots 300 and 500 on Curry County Assessor Map 40-13-36B.

This property is shown on the attached map marked as Exhibit "I", which is incorporated by reference.

Section 4

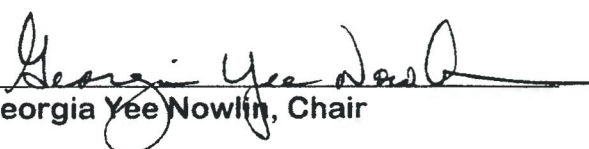
The Curry County Board of Commissioners approved this application for a zone change in accordance with Sections 2.060(3)(b) and 9.021 of the CCZO and by taking a Goal 2 exception to Goal 14 (Urbanization). The order approving this zone change with the attached Findings of Fact and Conclusions of Law is designated as Exhibit "II" and is hereby adopted as part of this ordinance.

Section 5

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

DATED this 6th day of October, 2008.

BOARD OF CURRY COUNTY COMMISSIONERS


Georgia Yee Nowlin, Chair

ABSTAIN
Lucie La Bonté, Vice Chair


Marlyn Schafer, Commissioner


Recording Secretary

First Reading: 10/6/08
Second Reading: _____
Effective Date: 10/6/08

(Pursuant to ORS Chapters 197 and 215)

Approved as to Form:

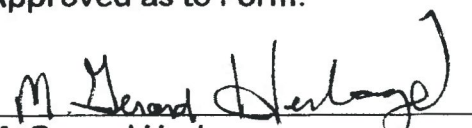

M. Gerard Herbage
Curry County Legal Counsel

Exhibit "I"

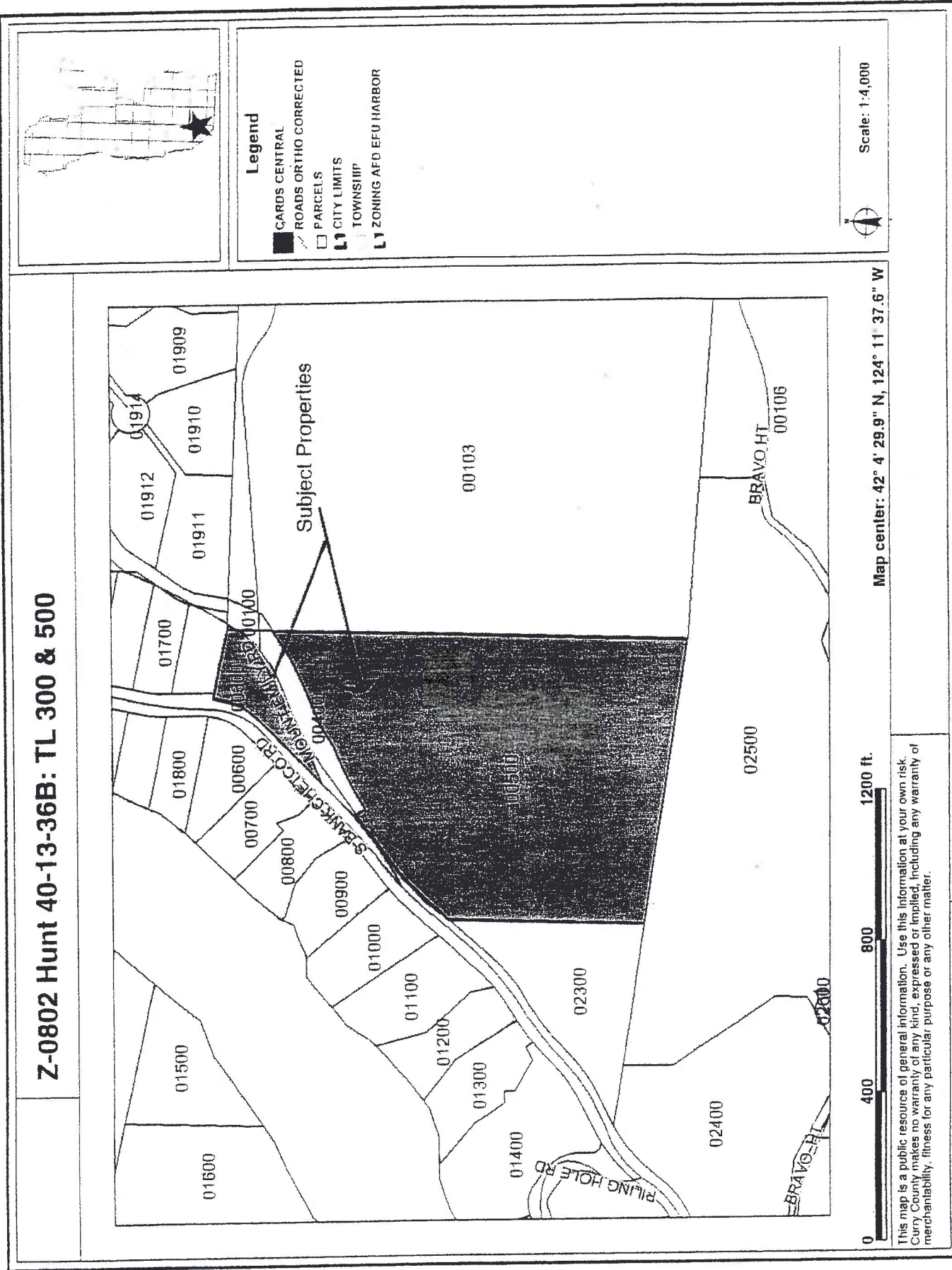


Exhibit "II"

BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of an Order)
Approving the Application) ORDER NO. 12940
of J. David and Karen M.)
Hunt in File No. Z-0802)

This matter came before the Board of Curry County Commissioners on the application of J. David Hunt and Karen M. Hunt in Application File No. Z-0802. The application seeks a zone change of the subject property from Rural Residential Five (RR-5) to Rural Residential Two (RR-2) and is based on a Goal 2 exception to Goal 14.

The subject property consists of approximately 14.96 acres and is located on the South Bank Chetco River Road approximately 5.1 miles from the South Bank Chetco River Road/ Highway 101 intersection approximately one mile northeast of the Brookings Urban Growth Boundary. The subject property is further described as Tax Lots 300 and 500 on Assessor Map No. 40-13-36B.

The Board of Curry County Commissioners, following appropriate notice as required by law, scheduled a hearing on the matter for Thursday, September 4, 2008, at 1:30 P.M. That hearing was continued until Tuesday, September 9, 2008, at 3:00 P.M. because of the absence of Commissioner Schafer, and the announcement by Commissioner La Bonté that she was biased in this matter and could not serve as a decision maker.

The Board reconvened on September 9th as scheduled. Commissioner Nowlin and Commissioner Schafer were present; Commissioner La Bonté, who earlier disqualified herself from hearing this matter, was absent. John Bischoff of Wildwood Planning Consultants, Brookings, Oregon, represented the applicants. Curry Public Services Director David Pratt reviewed the staff report and the decision criteria. He submitted to the Board the staff report, a letter from Oregon Shores

Conservation Coalition by Cameron La Follette dated September 3, 2008, and a letter from Sterling Gardner dated September 5, 2008, all of which were made a part of the record. The Board heard testimony both in favor of, and in opposition to, the application. The Board then closed the record of the hearing and began to deliberate towards a decision.

When the Board reviewed the evidence in this matter, it found that the applicants had met their burden of proof. The decision criteria and facts and analysis supporting the decision criteria are found in Attachment "A", which is a staff report addressed to the Curry County Board of Commissioners without attachments, which is incorporated by reference.

In reaching its decision, the Board considered the comments of Oregon Shores Conservation Coalition in its September 3, 2008, correspondence. These comments were largely echoed by Catherine Wiley in her testimony before the Board of Commissioners on September 9, 2008. The problem with the comments from Oregon Shores is that they are based on a fundamental misunderstanding on the application itself. In the third full paragraph Cameron La Follette wrote: "Approval of the requested RR-2 zoning would apparently allow for the partitioning of the subject property into seven parcels."

The application as outlined in the staff report provides a Proposed Development Plan wherein the subject property would eventually be partitioned into three parcels with a single family dwelling on each parcel. Currently there is one single family dwelling and shop building located near the center of the subject property, a foundation pad for a future manufactured home located in the northeasterly area, and a third building pad located near the easterly boundary. The Board interprets the CCZO to require that the conceptual plan be adhered to. As such, from this application, there will not be an opportunity for applicants to construct more than three homes and to have more than 3 parcels on the subject property.

The conceptual plan is significant because with a lot line adjustment of .04 of an acre the applicants could accomplish the same goal under current zoning as they are striving for here with RR-2 Zoning - the ability to have 3 parcels with one home on each parcel. The subject property is 14.96 acres in size and currently is zoned RR-5.

The plan of development by the applicants is actually rural in nature. It will not commit the subject property to an urban level of services, or to an urban density. The County's RR-2 zone is acknowledged. The appropriateness of the proposed zone change in this application must be measured against the county ordinance criteria

outlined in the ordinance. The Board finds that all of the criteria have been met for the reasons outlined in the staff report, and that a Goal 2 exception to Goal 14 is justified in this matter, also as stated in the staff report.

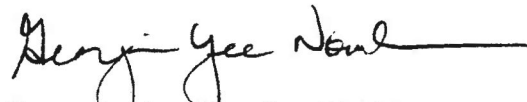
The Board also considered the comments made by Sterling Gardner in his September 5, 2008, letter, and found that they concerned an easement dispute between the applicant and Mr. Gardner which affected a water system. The comments made do not relate to the decision criteria before the Board on the proposed zone change. However, the concerns of Mr. Gardner would appear to be important ones to be taken up at the development stage.

NOW, THEREFORE, based upon the reasons reflected above, it is hereby ordered that Application File No. Z-0802 is approved subject to the following conditions of approval:

1. Provide a street address sign in contrasting letters;
2. Provide access to within 150' of all aspects of the ground floor of structure(s);
3. Provide access in compliance with Curry County road and driveway standards.

DATED this 6th day of October, 2008.

BOARD OF CURRY COUNTY COMMISSIONERS



Georgia Yee Nowlin, Chair

ABSTAIN

Lucie La Bonté, Vice Chair


Marlyn Schaffer, Commissioner

property consists of approximately 14.96 acres with one single family dwelling and shop building located near the center of the subject property with driveway access to Mt. Emily Road, a foundation pad for a future manufactured home located in the northeasterly area of the parcel with access through a second driveway to Mt. Emily Road; and a third building pad located near the easterly boundary which is accessed from a driveway extending from South Bank Chetco River Road.

Surrounding Land Use: Properties immediately adjacent to and south, west, and north of the subject property are within the Mt. Emily Junction Rural Exception area with a zoning designation of RR-5 while the property adjacent to and along the east property line has a zoning designation of FG (Forestry Grazing).

Topography: According to the applicants' agent (See Attachment B), the subject property "...contains areas of moderate slopes with small areas of steep slopes with large areas of benched flatter land." One driveway climbs moderately from Mt. Emily Road to a flat area where the existing house and shop building are located. Another flat area is located in the northerly portion of the subject property and is accessed from another driveway. Above and to the southeast of the existing house is a large flat area on two benches extending to the south east corner of the subject property. A third flat benched area is located near the center westerly side of the property that is accessed from a third driveway from South Bank Chetco River Road.

According to the County's GIS maps, the slopes on the subject property that range from 9 to 14 percent. The elevations range from a high of approximately 330 feet above sea level at the south east corner of the subject property to a low of 115 feet above sea level at the northwest corner.

III. Nature of the Request and Background

A formal application (Attachment B) was submitted for a change in the zoning designation of the subject property from a Rural Residential Five (RR-5) zone with a minimum lot size requirement of 5 acres to a Rural Residential Two (RR-2) zone with a minimum lot size of 2 acres for property identified as Curry County Tax Assessor's Map Number 40-13-36B; Tax Lots 300 and 500 and addressed as 99761 Mt. Emily Road.

IV. Findings of Fact: Conformance with the Curry County Comprehensive Plan, the Oregon Administrative Rules (OARs), and Curry County Zoning Ordinance (CCZO)

A. Applicable Decision Criteria

Curry County Comprehensive Plan
Section 14.7 Zoning of Rural Lands
Section 14.8 Plan Policies regarding Urbanization

Oregon Administrative Rules (OAR)

OAR Chapter 660, Division 4 Interpretation of Goal 2 Exception Process

OAR Chapter 660, Division 14 Application of the Statewide Planning Goals to Newly Incorporated City and to Urban Development on Rural Lands

Curry County Zoning Ordinance

Section 3.080 Rural Residential

Section 3.083 Lot Size and Dwelling Density

Article IX Amendments to the Zoning Ordinance

B. Compliance with the Curry County Comprehensive Plan

1. Curry County Comprehensive Plan Section 14.7 - ZONING OF RURAL LANDS describes the zoning designations for rural communities and rural exception areas. This section also describes the RR (Rural Residential) zoning designations as being applied to various rural land exception areas based upon the physical development, degree of parcelization, and other factors existing in areas.

FINDINGS: The subject property is within the Mt. Emily Junction rural exception area (No. RLE-46) and has a zoning designation of RR (Rural Residential) with minimum lot/parcel size of five (5) acres. At the time this rural exception area was adopted, the subject property was found to be "irrevocably committed" to rural residential use. A single family dwelling and associated rural residential facilities were sited on the subject property which occupy part of the land area. It was bordered on two sides by small parcels to the east and north, some of which are developed as residential homesites; was covered with underbrush and noncommercial species of trees which made it impracticable to use this parcel for pasture and similar to other agricultural lands in the area, and was too small to be used for commercial forest uses typical of other forest lands in the area.

The proposed change from RR-5 to RR-2 does not change the Rural Residential zoning designation of the subject property, but will change the minimum lot/parcel size requirement. The application request is consistent with the zoning of rural lands as described in the *Curry County Comprehensive Plan* under Section 14.7.

2. Curry County Comprehensive Plan Section 14.8 - PLAN POLICIES REGARDING URBANIZATION defines rural and urban uses (Policies No. 1 and 2) and the minimum lot/parcel size within a Rural Exception Area for property with a Rural Residential zoning designation (Policy No. 10).

FINDINGS: Urbanization Policy No. 1 defines "rural" uses as uses that are located outside of urban growth boundaries including non-urban uses such as agriculture, forestry, open space, sparse settlement, small farms or acreage homesites with no or hardly any public services. Urbanization Policy No. 2 defines "urban" uses as high intensity residential, commercial or industrial uses located inside urban growth boundaries or outside urban growth boundaries where an exception to Statewide Goal 14 has been justified. Urbanization Policy No. 10 established the minimum lot size of 10-, 5-, or 2- acres for parcels/lots in Rural Exception Areas that have the Rural Residential zoning designation. Curry County Zoning Ordinance Section 3.083 requires that changes in the minimum lot size designation in the RR zoning designation be approved only when it is found to be in compliance with the policies of the Curry County Comprehensive Plan related to urbanization and taking an exception to Statewide Goal 14 – Urbanization.

C. Compliance with the Oregon Administrative Rules 660-014-030 and (OAR) 660-004-040 (6)

1. The Oregon Administrative Rules Division 14 addresses the application of the statewide planning goals to newly incorporated cities and to urban development on rural lands. OAR 660-014-030 states:

(1) *A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.*

FINDINGS: As stated in the *Exception Statement* (Attachment C) for the Mt. Emily Junction Area (No. RLE-46), the subject property is "irrevocably committed to rural residential use..." It should be noted that the properties located adjacent to the eastern and northern property lines of the subject property are committed to an urban level of development pursuant to OAR 660-004-0040(7)(a), as are most (approximately 75.9 percent) of the properties within the rural exception area. It can be shown that the proposed zone change can satisfy the standards for taking an exception to Goal 14 under OAR 660-014-0030(2) as physically developed to urban levels. Therefore, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

(2) *A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends*

on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

FINDINGS: As indicated in the *Exception Statement* for Mt. Emily Junction, the subject property is irrevocably committed to rural residential use. The subject property is also committed to an urban level of development with community services (i.e., police protection; schools, electrical and telephone facilities, etc.) but not to urban densities which would require community water and sewer services. The statements under *Findings of Fact Item No. C (3)* (below) and the map of the Mt. Emily Junction Rural Area - RLE No. 46 (See Attachment C) support this fact.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

FINDINGS: This provision of the OAR does not apply. There are no commercial or industrial uses within or proposed for the Mt. Emily Junction Rural Exception Area.

(b) Location, number and density of residential dwellings;

FINDINGS: A conceptual development plan (Proposed Development Plan) was submitted as part of the application and as required under CCZO Section 3.083 (3) (See Attachment B, Exhibit 4). As indicated on the conceptual plan, the subject property is to eventually be partitioned into three (parcels) with a single family dwelling on each parcel. There currently is one single family dwelling and shop building located near the center of the subject property; a foundation pad for a future manufactured home located in the northeasterly area, and a third building pad located near the easterly boundary.

If approved, the minimum lot (parcel) size will be 2.0 acres and the density of residential dwellings will be one (1) single family dwelling per 4.99 acres or approximately one dwelling unit per five acres which would be allowed if the subject property exceeded 15.0 acres in size. The proposed change from RR-5 to RR-2 would provide flexibility in partitioning the subject property while retaining present density to take topography; the location of on-site springs and septic systems; and a road (Mt. Emily Road) which

bisects the northwest section of the subject property into consideration.

(c) *Location of urban levels of facilities and services; including at least public water and sewer facilities; and*

FINDINGS: There are no community water or sewer facilities available in the area. The community services that are provided to the subject property include police protection through the Curry County Sheriff; access to schools through the Brookings-Harbor School District 17C; electrical services through Coos-Curry Electric Co-op; and telephone services through Verizon. Each dwelling on the subject property will have its own septic disposal system. The applicants will be required under CCZO Section 3.083(9) to prove that there is a suitable source of water for each parcel prior to approval for the division of the subject property. The subject property is located outside of a rural fire protection district.

(d) *Parcel sizes and ownership patterns.*

FINDINGS: The subject property is located on the east side of the South Bank Chetco River Road and within the Mt. Emily Junction Rural Land Exception area. According to the *Soil Survey of Curry County* published by the National Cooperative Soil Survey (1994), the soil on the subject property has a Land Capability Class of VIe, and is irrevocably committed to rural residential uses. In addition to the soils not having the agricultural capability based on the land capability class, the terrain of the Mt. Emily Rural Exception area, which includes the subject property, is not suitable for agricultural uses such as improved pasture or crop farming and the land in the exception area is forested so that it is not suitable for pasture land and ranching. Therefore, in adopting the Mt. Emily Junction Rural Exception area, a Goal 2 exception was not proposed for Goal 3 (Agriculture) in 1989.

A Goal 2 exception for the Mt. Emily Junction Area was, however, taken to Goal 4 (Forestry) on the basis that the lands were physically developed to other uses; or (2) committed to other uses. The basis of this determination was that:

1. Fourteen (14) parcels, including the subject property, were physically developed with dwellings and associated structures to the extent that the land cannot be used for agricultural or forest uses typical of the surrounding area;
2. Twenty-eight (28) parcels included in the exception area

were irrevocably committed to small parcel sizes by previous partitions, the development of roads, utility lines, etc., which precluded the use of these lots for agricultural or forest uses typical of the surrounding area.

There are currently fifty-four (54) lots/parcels within the adjoining exception area that range in size from 0.25 of an acre to 15.64 acres. The following table illustrates the distribution of lot/parcel size within the Mt. Emily Junction Rural Land Exception Area and demonstrates that, although the subject property will continue to be committed to a rural residential level of use, the surrounding lots/parcels are committed to an urban level+ of development.

Lot/Parcel Size	Number of Lots/parcels	Percent
Less than 1.0 acre	15	27.8%
One (1) acre to 1.99 acres	26	48.1%
Two (2) to 4.99 acres	8	14.8%
Over 5 acres	5	9.3%
Total	54	100.0%

The average parcel size for property within the Mt. Emily Junction Rural Land Exception Area and having a zoning designation of RR-5 is approximately 2.05 acres. Out of the 54 lots/parcels that are located within the Mt. Emily Junction Rural Land Exception Area Junction Area Rural Exception Area, forty-nine (49) lots/parcels are less than 5 acres in size. The proposed change will be compatible with surrounding residential parcels/lots.

- (4) *A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.*

FINDINGS: As demonstrated under *Findings of Fact No. C(3)* above, the subject property is and has been irrevocably committed to a rural residential use at an urban level of development.

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- (5) *More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.*

FINDINGS/CONCLUSIONS: The findings of fact contained in this staff report demonstrate that subject property is irrevocably committed to rural residential use at an urban level of development as is characteristic of the Mt. Emily Junction rural exception area. The proposal will maintain a minimum 2.0-acre lot/parcel size and will allow the subject property to retain its rural characteristics.

2. The Oregon Administrative Rules Division 4 interprets the Statewide Goal Exception. OAR 660-004-040 (6) states:

After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014.

FINDINGS/CONCLUSIONS: The findings of fact contained in this staff report demonstrate that the subject property is irrevocably committed to rural residential use at an urban level of development as are the surrounding parcels to the south, west, and north which are also irrevocably committed to an urban level of development. Therefore, a Goal 14 exception is warranted. Therefore, this criterion has been met.

D. Compliance with the Curry County Zoning Ordinance (CCZO) Sections 3.080 and 3.083

1. The purpose of the Rural Residential (RR) zone is outlined in CCZO 3.080 and states:

The Rural Residential Zone is designed to allow for low density residential development outside urban growth boundaries and rural communities defined by the Comprehensive Plan.

FINDINGS: The request is to reduce the minimum lot/parcel size in a Rural Residential Zone from 5 to 2 acres to allow the division of the subject property into three parcels. The partitioning of the subject property will allow the subject property to retain its low density residential characteristics required for land outside of an urban growth boundary by requiring a minimum lot/parcel size of two (2) acres. The subject property is within a rural community as defined by the *Curry County Comprehensive Plan*. Therefore, the requested zone change is consistent

with the purpose of the RR zone.

2. The minimum lot/parcel size and dwelling density is addressed in CCZO Section 3.083 which states:

The RR zone has minimum lot sizes of 2, 5, and 10 acres which are applied according to policies in the comprehensive plan. Changes in minimum lot size designation from 10 to 5 acres shall only be approved by the Board when found to be in compliance with the policies related to the urbanization element of the Curry County Comprehensive Plan and upon a determination that all proposed lots are adequate for proper sewage disposal and have a suitable source of water for residential use.

Changes in minimum lot size in from 10 or 5 acres to 2 acres shall only be approved by the Board for land within a Rural Residential zoning designation if the proposed development on the subject property:

1. *Was within a Rural Exceptions area as of February 13, 1989; and*

FINDINGS: The subject property is within the Mt. Emily Junction Area Rural Land Exception No. 46 that was adopted as part of the *Curry County Comprehensive Plan* in 1989. This criterion is met.

2. *Is not currently within an Urban Growth Boundary; and*

FINDINGS: The subject property is outside of and located approximately one (1) mile from the Brookings Urban Growth Boundary. This criterion is met.

3. *Is found to be in compliance with the policies related to the urbanization element of the Curry County Comprehensive Plan; and*

FINDINGS: The relevant findings are found the application submittal (Attachment B) and under *Findings of Fact No. IV (B)* and *Findings of Fact No. IV (E)* of this staff report. This criterion has been met.

4. *Is not applied to areas presently zoned for rural use unless a Goal 14 an exception to Statewide Goal 14 (Urbanization) is approved by the County; and*

FINDINGS: The relevant findings are found in the applicant's submittal (Attachment B) and *Findings of Fact No. IV(C)* of this staff report. This criterion has been met.

5. *Demonstrates that:*
 - a. *Rural uses, density, and public facilities and services are compatible with and will not commit adjacent or nearby resource land to non-resource use; or*
 - b. *The plan and zoning designations limit the uses, density, public facilities and services, and activities to only those that are justified in the exception; and*

FINDINGS: The relevant findings are found in the applicants' submittal (Attachment B) and under *Findings of Fact No. IV(C)* of this staff report. This criterion has been met.

6. *Has a conceptual development plan showing the number of lots or parcels; the location of lot or parcel lines; and proposed road and access connections.*

FINDING: The applicant has submitted a conceptual plan (see Attachment 2, Exhibit 4). Therefore, this criterion has been met.

E. Compliance with the Curry County Zoning Ordinance and Standards for a Zone Change

Comprehensive CCZO Section 9.021 Standards for a Zone Change provides standards for the determination of zone changes and the response to the standards are as follows:

1. *Rezoning of the subject parcel will conform with the intent of all relevant policies of the Comprehensive Plan;*

FINDINGS: Curry County records indicate that the subject property is not located within in an area identified as possible geological hazard. Therefore, *Curry County Comprehensive Plan* Goal 7 (Natural Hazards) and *Natural Hazards Polices No. 1, 2, and 6* are satisfied.

The subject property is physically developed and served by on-site springs. County records indicated that there two existing septic disposal systems on site both of which were reviewed by the County Sanitarian in March/April 2008 and determined to be adequate and a third septic disposal system received site approval on April 8, 2008 (Attachment D). Therefore, *Curry County*

Comprehensive Plan Goal 11 (Public Facilities) and *Public Facilities Policies* No. 1, 4, 6, and 9; are met since Curry County recognizes rural services (*Policy No. 1*); the subject property has individual sewage disposal system, individual natural on-site springs for a water source, and is characterized by low density residential use (i.e., single family dwellings) (*Policy No. 4*); the zoning RR designation of the subject property addresses the service level which, in turn, determines the land use and minimum lot/parcel size (*Policy No. 6*); and the subject property is recognized as being in a rural service since no new community water or sewer service is being proposed (*Policy No. 9*).

Direct access to and from the subject property is gained from the South Bank Chetco River Road, which is designated as a major collector in the *Curry County Transportation System Plan*, and Mt. Emily Road. Therefore, Goal 12 (Transportation) is satisfied.

Curry County Comprehensive Plan Goal No. 14 has been addressed separately under *Findings of Fact Item No. IV (B) and (C)*.

2. *Rezoning of the subject property will conform with the intent of the zoning designation to which the subject property is proposed to be changed as defined in the purpose statement of the proposed zone;*

FINDINGS: The purpose of the Rural Residential (RR) zone is to allow low density residential development outside of urban growth boundaries and rural communities as defined by the Curry County Comprehensive Plan. The Rural Residential (RR) designation will be retained. The proposed zone change, if approved, will change the minimum size from five (5) to two (2) acres and still conform to the intent of the RR zoning designation which is to allow low density residential development outside an urban growth boundary.

3. *Rezoning of the subject property will not seriously interfere with the permitted uses on other nearby parcels;*

FINDINGS: The request to change the minimum size designation of the subject property will not interfere with the permitted uses on adjacent or nearby parcels.

4. *Rezoning of the subject property will not adversely impact the orderly provision of public services (water, sewer, police, fire, schools, etc.) in the area in which the property is located; and*

FINDINGS: The change in the zoning designation of the subject property will not adversely impact the orderly provision of public services currently being provided to surrounding properties by police (County Sheriff), schools, electrical, or telephone utilities. The subject property is outside of the Harbor Rural Fire Protection District.

There are no community water or sewer systems serving the Mt. Emily Rural Exception Area. As mentioned earlier, there are two existing septic disposal systems on site both of which were reviewed by the County Sanitarian in March/April 2008 and determined to be adequate and a third septic disposal system received site approval on April 8, 2008.

It should be noted that, before any division of land can be approved, the owner/developer of property must prove that the proposed development has a suitable source of water for each lot or parcel. Furthermore, the water source must meet certain standards which are listed under CCZO Section 3.083(9).

5. *Amendments to the comprehensive plan and zoning designation of the subject property which significantly affect a transportation facility (see #6, below) shall assure that allowed land uses are consistent with the function, capacity and level of service of the facility as identified in the Transportation System Plan (TSP). This shall be accomplished by one of the following:*

a. *Limiting allowed land uses to be consistent with the planned function of the transportation facility;*

Findings: South Bank Chetco River Road is designated as a Major Collector in the *Curry County Transportation Plan (TSP)*. The TSP designates collectors as roads that connect residential neighborhoods with smaller community centers and the arterial system. Property access is generally a higher priority for collectors than arterials and through traffic is served as a lower priority. Therefore, this standard has been met.

b. *Amending the Transportation System Plan to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,*

Findings: The existing road, South Bank Chetco River Road, has adequate capacity to support the proposed use. According to the *City of Brookings Transportation System Plan*, the South Bank Chetco River Road north of US Highway 101 has a capacity of 14,500 vehicles per day. According to Curry County Road Department the Year 2000 traffic counts for South Bank Chetco Rive Road are as follows:

Location	Year 2000 Traffic Volumes (ADT)
MP 0.36 (North of Payne Road)	1,900
MP 3.24 (Freeman Rock)	882
MP 5.98	80

The proposed use will generate approximately 20 new trips per day. The road facility is adequate to support the proposed development. Therefore, this standard is met.

- c. *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*

Findings: The subject property has direct access to and from the South Bank Chetco River Road. This road is designated as a major collector in the *Curry County Transportation System Plan*. Since the subject property is proposed to be developed at rural residential density, the limitation of allowed land uses; amending the Transportation System Plan; or altering land use designations, densities, or design requirements to reduce demand for automobile travel in this case is not warranted.

- 6. *A comprehensive plan or zoning designation amendment significantly affects the transportation facility if it:*

- a. *Changes the functional classification or existing transportation facility;*

Findings: The proposed change in the zoning designation will not require a change in the functional classification of the South Bank Chetco River Road.

- b. *Changes standards implementing functional classifications system;*

Findings: There will be no changes required in implementing the functional classification system as a result of the proposed zone change from RR-5 to RR-2. Therefore, this standard has been satisfied.

- c. *Allows types of levels of land use that would result in levels of travel that are inconsistent with the transportation facility; or*

Findings: The proposed change in the zoning designation will not affect the current functional classification of South Bank Chetco River Road nor will it result in changes in the level of travel or access. Therefore, this standard has been satisfied.

- d. *Would reduce the capacity ration and level of service of the facility below the minimum acceptable level in the TSP.*

Findings: The proposed development will not reduce the vehicle/capacity ratio and level of service below the minimum acceptable level of service. Therefore, this standard has been satisfied.

V. AGENCY COMMENTS

The following comments have been received from interested parties, agencies, and affected property owners:

1. **Letter from the Department of Land Conservation and Development (DLCD) dated August 11, 2008 (Attachment E).**

The letter from DLCD stated that, in addition to the County's general review standards for zoning amendments in CCZO Section 9.021, the "... County adopted standards in Section 3.083 of the Curry County Zoning Ordinance that address requirements in Oregon Administrative Rules (OAR) 660-04-040 (6) and OAR 660-14-030..." In addition, the following comments were submitted for consideration:

"The applicant's statement makes a good case for the proposed RR-2 zoning. About three-quarters of the Mount Emily exception area is comprised of parcels less than two acres in size. The applicant's submittal includes a proposed development plan that would partition the two existing home sites and create a third parcel to facilitate construction of a new single-family residence thereon. The evidence provided by the applicant indicates that the proposed RR-2 zoning is consistent with the pattern of land parcelization and development in the vicinity. The potential to create a few acreage home sites from this parent parcel, under the County's rural development standards, would not precipitate the need for urban facilities and services."

Response: Staff concurs with the DLCD comments. The standards and criteria under OAR 660-04-040 (6) and OAR 660-14-030 in addition to the provisions of CCZO Section 9.021 (Standards for a Zone Change) have been addressed.

2. **Comments from the Harbor Rural Fire Protection District, Chief John Brazil (Attachment F).**

The Harbor Rural Fire Protection District Chief stated that the "... Tax lot is not located within the Harbor RFP. Location is not in any structure protection district. As of this date, no fire contract is in force."

Response: The subject property is located approximately 4.5 miles northeast of the Harbor Rural Fire Protection District boundary. The applicants state in their application that "... Fire protection is by contact with the Harbor Rural Fire Protection District and U.S. Forest Service."

3. **Comments from Mr. Charles Chase, C.F.I., Deputy State Fire Marshall, dated August 20, 2008 (Attachment G).**

The comments that were received from the Deputy State Fire Marshal include the following:

- a. Provide address in contrasting letters
- b. Provide access to within 150' of all aspects of the ground floor of structure(s)
- c. Provide access in compliance with Curry County road and driveway standards
- d. On site water will not be required due to the remoteness of existing and proposed structures.

Response: Posting a readable street address sign; providing access within 150' all aspects of the ground floor; and meeting Curry County road standards shall be recommended conditions for approval if the request is granted.

VI. PUBLIC COMMENTS

No comments have been received from affected property owners as of the publication dated of this report. The Board of Commissioners should, however, consider any testimony received in writing prior to and at the public hearing in their decision as well as any oral testimony that may be presented at the public hearing.

VII. CONCLUSION

The Curry County Zoning Ordinance permits the change in minimum lot size from 5 acres to 2 acres within the Rural Residential zone when found to be in compliance with the Comprehensive Plan, the Curry County Zoning Code, and the appropriate provisions of the Oregon Administrative Rules. The *Exception Statement* for the Mt. Emily Junction Rural Exception Area (No.RLE-46) that was adopted as part of the *Curry County Comprehensive Plan* in 1989, states that the subject property is "...physically developed with dwellings and associated structures to the extent that the land cannot be used for agricultural or forest uses typical of the surrounding area." A Goal 14 exception is warranted base on the evidence contained within this staff and its attachments.

VIII. RECOMMENDATION

The Board of Commissioners may consider one of the following courses of action after considering the findings of fact and conclusions of the staff report and its attachments and the written and oral testimony submitted at the public hearing before the Board of

Commissioners:

- A. **APPROVE** the application request as submitted by J. David and Karen M. Hunt to change the zoning designation from Rural Residential Five (RR-5) with minimum lot/parcel size of 5 acres to Rural Residential Two (RR-2) with a 2-acre minimum for property identified as Curry County Assessors Map No. 40-13-36 B, Tax Lots 300 and 500 and located at 99761 Mt. Emily Road subject to meeting the following conditions of approval:
1. Provide a street address sign in contrasting letters;
 2. Provide access to within 150' of all aspects of the ground floor of structure(s)
 3. Provide access in compliance with Curry County road and driveway standards
- B. **DENY** the application request as submitted by J. David and Karen M. Hunt to change the zoning designation from Rural Residential Five (RR-5) with minimum lot/parcel size of 5 acres to Rural Residential Two (RR-2) with a 2-acre minimum for property identified as Curry County Assessors Map No. 40-13-36 B, Tax Lots 300 and 500 and located at 99761 Mt. Emily Road.

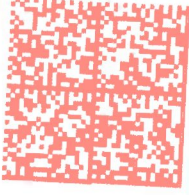
- Attachments:
- A. Location Map
 - B. Application and Applicants' Submittal for a Zone Change dated May 27, 2008
 - C. Rural Exception Area *Exception Statement* for Mount Emily Junction (RLE-46)
 - D. Septic Disposal System Reviews and Feasibility Studies for proposed Lots 1, 2, and 3
 - E. Letter from the Department of Land Conservation and Development (DLCD) dated August 11, 2008
 - F. Comments from the Harbor Rural Fire Protection District, Fire Chief John Brazil
 - G. Comments from Mr. Charles Chase, C.F.I., Deputy State Fire Marshall, dated August 20, 2008

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