



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

04/28/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Josephine County Plan Amendment
DLCD File Number 001-10

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: Friday, May 13, 2011

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 Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Michael Snider, Josephine County
Jon Jinings, DLCD Community Services Specialist

Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA/l



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE
STAMP

LAND CONSERVATION
AND DEVELOPMENT

APR 25 2011

DEPT OF

For Office Use Only

Jurisdiction: JOSEPHINE COUNTY

Local file number: 37-05-20, TL 2001

Date of Adoption: 04/20/2011

Date Mailed: 04/21/11

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 07/13/2010

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".

- (1) Approval of a request to amend the Comprehensive Plan Map of Josephine County (Ordinance 81-11, as amended), from Forest to Residential; and (2) amend the Zoning Map of Josephine County (Ordinance 85-1, as amended), from Woodlot Resource (WR) to Rural Residential 5 Acre minimum (RR-5)

Does the Adoption differ from proposal? Please select one

The proposed amendment was based on a finding under the local IRR system with detailed soil data of the subject property. The adopted amendment makes a finding of non-forest using both IRR system and cubic foot per acre rule (OAR 660-006).

Plan Map Changed from: Forest Resource

to: Residential

Zone Map Changed from: WR

to: RR-5

Location: Ridgefield Road

Acres Involved: 32.84

Specify Density: Previous: n/a

New: n/a

Applicable statewide planning goals:

| | | | | | | | | | | | | | | | | | | |
|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

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. 001-10 (18411) [16619]

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

Local Contact: James Black

Phone: (541) 474-5421 Extension: 5418

Address: 700 NW Dimmick St Ste C

Fax Number: (541) 474-5422

City: Grants Pass

Zip: 97526

E-mail Address: jblack@co.josephine.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

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

ORDINANCE NO. 2011-002

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 (WR) TO RURAL RESIDENTIAL 5 ACRE MINIMUM (RR-5). THE SUBJECT PROPERTY IS IDENTIFIED IN THE JOSEPHINE COUNTY ASSESSOR'S RECORDS AS: MAP 37-05-20, TL 2001. THE PROPERTY OWNERS ARE RICHARD AND CHRISTINE WHITAKER.

WHEREAS, the Josephine County Board of Commissioners held public hearings on December 15, 2010, February 9, 2011, and February 28, 2011 to consider the request as described above; and

WHEREAS, the Josephine County Rural Planning Commission previously held public hearings on August 23, 2010, October 4, 2010, and October 25, 2010, and recommended a decision of approval to the Board of Commissioners as required by the county's comprehensive plan; and

WHEREAS, the Board of Commissioners received testimony and evidence from the planning staff, the applicant and other land use participants, both for and against the request, and concluded that the applicants met their burden of proof, and that the Comprehensive Plan Map and Zone Map changes as requested comply with the requirements of Josephine County and State Law pertaining to such matters; and

WHEREAS, the Board of Commissioners, concurrent with this Ordinance, adopts written findings of fact in support of its decision to approve the comprehensive plan and zone map changes described herein, and those findings are contained in the land use hearing record at the planning office;

NOW, THEREFORE, based on the foregoing, the Board of Commissioners for Josephine County, Oregon, hereby ordains 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 37, Range 05, Section 20, Tax Lot 2001.

SECTION 2: ZONE MAP AMENDMENT

The Josephine County Zoning Map is hereby amended from Woodlot Resource (WR) to Rural Residential 5 Acre minimum (RR-5) for the property identified as Assessor's Map: Map 37-05-20, Tax Lot 2001.

SECTION 3: AFFIRMATION

Except as otherwise provided herein, Josephine County Ordinances 81-11 and 85-1 are here-

by affirmed as originally adopted and previously amended.

SECTION 4: EFFECTIVE DATE

The first reading of this Ordinance by the Board of County Commissioners occurred this 17th day of April, 2011.

The second reading and adoption of this Ordinance by the Board of County Commissioners occurred on this 20th day of April, 2011, at least 13 days from the first reading. This Ordinance shall take effect ninety days from the date of this second reading

**JOSEPHINE COUNTY BOARD OF
COUNTY COMMISSIONERS**

S. Cassanelli
Sandi Cassanelli, Chair

Simon Hare
Simon Hare, Vice Chair

Dwight F. Ellis
Dwight F. Ellis, Commissioner

ATTEST:

Jeni Wharton
Recording Secretary

APPROVED AS TO FORM:

Steven E. Rich
Steven E. Rich, Legal Counsel

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

| | | | |
|-----------|--------------------------------|---|-------------------------|
| Regarding | Comprehensive Plan Change | } | |
| | from Forest to Residential | } | |
| | and a Zone Change from | } | |
| | Woodlot Resource to | } | |
| | Rural Residential-5 | } | |
| Property | Richard and Christine Whitaker | } | FINDINGS OF FACT |
| Owner | | } | |
| | | } | |
| Applicant | Sheri Waltman | } | |
| | | } | |
| | <u>Representative Bob Hart</u> | } | |

The request is for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential 5- Acre. The property is 32.84 acres in size located at the southerly terminus of Ridgefield Road more precisely identified as Assessor's Map T37, R5, Section 20, Tax Lot 2001. The request for a decision was submitted by Sheri Waltman as the applicant for the owners Richard and Christine Whitaker.

This request came before the Josephine County Board of Commissioners on December 15, 2010, and was continued to February 9, 2011. At the conclusion of the February 9, 2011 meeting the Board of Commissioners closed the meeting and allowed for written submittals to the record to be submitted until 5:00 P.M. on February 17, 2011 at which time the record would be closed to new information. The applicant was permitted to submit a final closing argument to be submitted by February 24, 2011. The Board continued the hearing for decision only to February 28, 2011.

The Board received an objection from an adjacent property owners prior to the initial hearing objecting to the County hearing the request stating that the legal description on his deed was in error and included the property that is subject of the request. The Board ruled that the issue of the legal description was not under the Boards jurisdiction and that the owner would need to seek an alternative solution to solve the legal description question. The Board stated that the request would be based on the facts and evidence submitted to determine if the requested change met the criteria. No commissioner declared a conflict of interest and the public hearing was opened. At the initial hearing Commissioners Cassanelli and Ellis were in attendance. Newly elected Commissioner Hare did not participate in the initial hearing. Upon taking office, he reviewed the entire record in order to participate in the decision. Prior to the opening of the final hearing, an objection was raised that there was not 24 hour notice published prior to the hearing. The Board ruled that the hearing had been continued to a time and date certain and that additional public notice was not required. An oral decision was rendered on February 28, 2011.

I. CRITERIA FOR DECISION:

46.040 - PLAN AMENDMENT REVIEW CRITERIA

- A. Amendments to a plan and zone map shall demonstrate compliance with all applicable statewide and county goals and policies.
- B. Requests involving changes for lands from a resource designation to a non-resource designation shall either comply with statewide exception criteria contained in Oregon Revised Statutes 197.732, and as implemented in Oregon Administrative Rules, Chapter 660, Division 4, or demonstrate the land is non-resource pursuant to the criteria contained in Section 46.050 below.
- C. Requests involving changes to the plan and/or zone maps shall demonstrate the land has adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations. The adequacy of carrying capacity, at a minimum, shall be evaluated using the criteria listed below. The criteria are to be considered together to determine whether the geography of the land is suited to support the kind of development associated with the proposed designations. With the exception of criterion [1] below, the application of any one criterion is not intended to be determinative of carrying capacity alone, unless the review body finds the importance of a specific benefit or detriment associated with the criterion overrides the consideration of other criteria. Nevertheless, in order to determine the adequacy of carrying capacity, the analysis must consider and address all of the listed criteria in relationship to one another. Sites may be altered to achieve adequate carrying capacity, but as alterations become more extensive, technical or difficult to perform or maintain, the greater the burden of proof shall be on the applicant to demonstrate compliance with the following criteria:
 - 1. The proposed density and types of uses can be supported by the facility, service and other applicable development standards contained in this code or contained in other applicable federal, state and local rules and regulations governing such densities and types of uses.
 - 2. Other physical characteristics of the land and surrounding area make the land suitable for the proposed density and types of uses, to include consideration of existing or potential hazards (flood, wildfire, erosion), the degree of slopes, the presence of wetlands, geologic formations, mineral deposits and any other similar natural or man-made conditions or circumstances;
 - 3. The land in its natural state accommodates the proposed uses and densities, or special alterations or mitigation plans can make the land achieve the carrying capacity described under items [1] and [2] above;
 - 4. Development pursuant to the proposed uses or densities will not significantly increase the risk from hazards to the residents of the development, the area or the general public;
 - 5. Features of the development will not result in future maintenance costs to the public for the infrastructure needed to serve the development and the area that are

atypically higher than expenses for other developments in the same plan and zone designations (examples of infrastructure include streets, bridges, storm drain facilities, erosion and sediment control facilities, and other similar public infrastructure facilities); and

6. Special circumstances exist at or near the site that justify increased risks, expensive or complex mitigation plans, or higher infrastructure costs to the public from the development. This criterion can be used to consider specific community needs that have arisen within the area since the existing zoning was implemented at the site. Examples of circumstances which might support the application of this criterion are changes in demographics; the location or discovery of unique natural resources; changes in infrastructure that are intended to support and encourage the kinds of development associated with the request; the development of rural communities; and any other circumstance that establishes a special need or benefit to the community that justifies increased risks and costs. This criterion shall not be used to modify the requirements of criterion [1] above.

D. The density and types of uses authorized by the proposed plan and zoning designations are appropriate based on the requirements of subsection [1] or [2] below:

1. The change in designations at the location is consistent with the character of the surrounding area. Consistency shall be demonstrated by a detailed review of the relationship between the area covered by the proposed change in designations and the surrounding area, subject to the following rules.
 - a. The detailed review shall describe the similarities or dissimilarities between the area of proposed change and the surrounding area based upon parcel size and ownership patterns,¹ zoning, existing or authorized land uses and structures, public facilities and services, and natural or man-made features.²
 - b. The detailed review shall include a written statement explaining the rationale used to include or exclude areas from study, and be supported by

¹ Evidence regarding changes in parcel size and ownership patterns shall, at a minimum, consider the circumstances of the parcelization and ownership patterns lawfully existing within the area of study. Review of parcelization patterns shall not only include the number and size of the parcels, but the relationship of the parcels to the total acreage within the study area, together with the potential for additional parcelization pursuant to existing zoning. In order for parcels to be counted in a parcelization analysis, the parcels must be authorized lots or parcels as defined by §11.030 of this code.

² Natural or man-made features may include watercourses, wetlands, watersheds, ridges, valleys, roads, rights-of-way, easements, political or service boundaries and other similar features. The study must identify and explain how these features operate to join or disjoin the area being changed from surrounding lands.

zoning maps, aerial photographs, contour maps, and any other public or private records, statistics or other documents necessary or helpful to establish the character of the area and show how the change will be consistent.

2. Demonstrate how the introduction of inconsistent density or uses into an area is justified. This demonstration may be based upon changes in the area resulting from rezonings, new residential, commercial, industrial or resource development, the introduction or improvement of public facilities and services, changes in demographics, changes in plan inventories, and other similar circumstances. The application shall show how the proposed change in designations, in the context of the foregoing circumstances, implements applicable state and/or county goals and policies. The more the change introduces inconsistent densities and uses into an area, the greater the burden on the applicant to justify the basis for the change.

- E. Requests involving changes to the plan and/or zone maps within established exception areas shall demonstrate the change complies with the criteria contained in Oregon Administrative Rule 660-004-0018 governing plan and zone changes within exception areas.

46.050 - NON-RESOURCE LAND CRITERIA.

Authorized lots or parcels (but not portions thereof) which have been zoned Woodlot Resource or Farm Resource may be designated as non-resource when the application demonstrates compliance with the following criteria and rules:

- A. The land within the lot or parcel is non-farm land because:
1. The predominant (greater than 50%) soil or soils are rated Class V or above in the *Soil Survey of Josephine County*, as adopted or amended in the plan data base (soils having both an irrigated and non-irrigated class ratings will be rated based on whether irrigation rights are or are not perfected at the time the application is filed); and
 2. The land is otherwise unsuitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices; and
 3. The land is not required to buffer urban growth areas from commercial agricultural operations; and
 4. The land is not necessary to permit farm practices or forest operations to continue or occur on adjacent or nearby resource zoned lands, subject to the rules and procedures as set forth in subsection C below.

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

1. It is not included within the following definition of forest land:

A lot or parcel is considered forest land when the predominant (more than 50%) soil or soils on the parcel have an internal rate of return of 3.50 or higher (if a single forest-rated soil is present), or composite internal rate of return of 3.50 or higher (if multiple forest-rated soils are present).

For the purpose of this criterion, any evaluation of the internal rates of return for forest soils shall be made pursuant to the document entitled, *Using The Internal Rate Of Return To Rate Forest Soils For Applications In Land Use Planning (1985)*, by Lawrence F. Brown, as amended; or

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 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
3. The land is not necessary to permit farm practices or forest operations to continue or occur on adjacent or nearby resource zoned lands, subject to the rules and procedures as set forth in subsection C below.³

C. Land is necessary to permit farm practices or forest operations on adjacent or nearby lands when the land within the lot or parcel provides a special land use benefit, the continuance of which is necessary for the adjacent or nearby practice or operation to continue or occur. The following rules shall apply when evaluating this criterion:

³ Only lands zoned in the Woodlot Resource zone may qualify as non-forest lands (see paragraph 3 above). Lands zoned in the Forest Commercial zone are not eligible for this option. The basis for this distinction lies in the county's ability to ascertain the commercial viability of forest lands based upon the Internal Rate of Return (IRR) system, as it has been applied within the acknowledged plan. The IRR system, in conjunction with the county's further ability to ascertain other locational factors, demonstrates that Woodlot Resource zoned lands have qualified commercial forest value and are generally situated in proximity to other non-commercial forest or non-resource lands. The county is able to make this finding based upon the GIS mapping and analysis contained in the report, *Locational Factors Affecting Woodlot Resource Lands*, by Michael Snider (March 22, 1999). This publication is made a part of the comprehensive plan by this reference.

1. Land use benefits shall include access, water supplies, wind breaks, impact buffering, the minimization of land use conflicts, the preservation and protection of soil, air, water, watershed, and vegetation amenities; and the retention of normally accepted wildfire fighting strategies for adjacent or nearby commercial forest uses.
2. A land use benefit shall be considered necessary for normal farm practices and forest operations when loss of the benefit will interfere with accepted farm practices or forest operations by significantly impeding or significantly increasing the cost of the practices or operations.
3. The application shall include a review of the relationship between the lot or parcel under consideration and surrounding farm practices and forest operations. The review shall list and describe existing or potential farm practices and forest operations on adjacent or nearby lands, as well as the general geography and potential land uses on the subject property, and then provide an analysis of how the uses permitted by the proposed non-resource designations may or may not significantly impede or significantly increase the cost of accepted farm practices or forest operations. The review may be based upon data or information from some or all of the following sources: private organizations (commercial timber producers, forestry consultants, woodlot associations, etc.) public agencies that collect and interpret farm practice or forest operation data, such as county offices (Departments of Planning, Assessor and Forestry) state agencies (Departments of Forestry, Agriculture, Revenue and the Oregon State Extension Service), federal agencies (Department of Agriculture/Forest Service, the Bureau of Land Management, the Natural Resources Conservation Service and the Farm Service Agency), and other similar public entities.
4. In the event a farm or forest operator within the review area contends in the record that the map changes could significantly impede or increase the cost of specific practices or operations, and this contention is based upon records, data and other information in the operator's possession, but unavailable to participants in the hearing from public sources, the review body is authorized to require the operator to submit the supporting records, data and other information into the record for examination by the review body and other participants.
5. A lot or parcel shall not be considered necessary to permit farm practices or forest operations on adjacent or nearby lands if the necessary benefit can be preserved through the imposition of special restrictions or conditions on the use of the subject property which reasonably assure continuation of the benefit.
6. As a condition upon the approval of all plan and map changes from resource to non-resource designations, the property owner shall be required to execute and record in the county deed records a *Conflict Preference Covenant*, which recognizes the rights of adjacent and nearby resource land owners to conduct normal farm practices and forest operations. The covenant shall provide that all

land use conflicts between non-resource uses on the subject property and adjacent or nearby resource operations will be resolved in favor of accepted farm and forest practices and operations.

- D. The land is not other forested lands that maintain soil, air, water and fish and wildlife resources.
- E. If the land is designated as critical deer winter range habitat on the official 1985 Deer Winter Range map, as adopted or amended, then the land shall continue to be subject to the density restriction required by Article 69.2 (*Deer Overlay*) even though the new underlying zone may permit a higher density.
- F. When a request for a plan map amendment qualifies because the land is non-resource pursuant to the criteria contained in this policy, the zoning may be changed to one of the following zones only: Limited Development, Serpentine or Rural Residential with a minimum parcel size of 5 acres or larger. All such applications must also demonstrate compliance with the map amendment procedures and criteria as set forth in Policies 1 and 2.
- G. For the purposes 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 effect 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.

NOTE: The Code Sections cited above are the same as the requirements in Goal 11 Policy 5 of the Comprehensive Plan Goals and Policies.

Oregon Administrative Rules 660-006

660-006-0010

Identifying Forest Land

- (1) Governing bodies shall identify “forest lands” as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands, lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken, and lands inside urban growth boundaries are not required to be planned and zoned as forest lands. Lands suitable for commercial forest uses shall be identified using a mapping of average annual wood production capability by cubic foot per acre (cf/ac) as reported by the USDA Natural Resources Conservation Service.
- (2) Where NRCS data are not available or are shown to be inaccurate, other site productivity

data may be used to identify forest land, in the following order of priority:

- (a) Oregon Department of Revenue western Oregon site class maps;
 - (b) USDA Forest Service plant association guides; or
 - (c) Other information determined by the State Forester to be of comparable quality.
- (3) Where data of comparable quality under subsections (2)(a)-(c) are not available or are shown to be inaccurate, an alternative method for determining productivity may be used as described in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes, Number 3 April 1998, Updated for Clarity April 2010."

II. EVIDENCE AND FACTS

The Board of Commissioners considered the following evidence and testimony:

- A. Oral testimony of James Black, Josephine County Planning Department, who discussed the salient aspects of the application noting the following; the written staff report, minutes and recommendation of the Planning Commission to approve the request and the information submitted to address the relevant criteria.
- B. Oral and written testimony of Michael Snider, Josephine County Planning Director regarding carrying capacity issues, objections to soil information, Goal 2 requirements, map amendments, and the IRR system.
- C. Oral and written testimony of Bob Hart, Planning Consultant representing the applicant who provided the following remarks concerning the applicable criteria; The property is located adjacent to an existing exception area and was originally zoned SR-5 which was a residential designation. The property was rezoned during the final adoption of Comprehensive Plan as a result of a state enforcement order mandated to eliminate residential lands that exceeded the needs for projected population. The property is non-resource based on evidence in the record that shown more than 50% of the parcel has soils that are not classified as class I-IV agricultural soils, That the land is not other farm land that can be managed for farm use nor is the land necessary for the other lands to be managed for resource use. The requested change would not impede or raise the cost of resource operations on adjacent or nearby resource lands. The soils on the site are rated in the Josephine County IRR system regarding forest land identification. The CIRR is calculated to be less than 3.50 meeting the criterion for non-resource land. The land is not other forest land under the requirements of local and state goals. The productivity for forest use in cubic foot per acre per year measurement of the site is less than 20. The site after full development is below the maximum density

allowed in critical deer habitat. The parcel is consistent with the character of the area based on a thorough evaluation of surrounding lands. The property has adequate carrying capacity for the intended use. The property is not suitable for resource zoning based on additional factors as required to be addressed by the Rural Land Development Code. The non-resource provisions of the Development Code are in accordance with state law and have been acknowledged as in compliance with required goals and the request meets all other applicable criteria as demonstrated by evidence in the record, submitted studies and documents. The property is receiving a residential assessment and is not special assessed for forest nor farm uses. Mr. Hart also referenced the substantial written reports and documentation that address all applicable criteria prepared by experts in their fields that have been submitted to the Planning Office and contain a full analysis of the criteria and evidence submitted in order to conclude the application meets the criteria to determine that the requested change should be approved. Mr. Hart requested personal party status because of his interest in the land use system and its affect on land use consulting.

- D. Oral and written testimony of the William Galli, registered professional engineer speaking for the Galli Group, Geotechnical Engineers and Hydrologists. Mr. Galli provided remarks on the soils and topography of the site, suitability for the proposed development, water quantity and quality to support the proposal and that the water quantity and quality of surrounding properties would not be affected, septic evaluations to support the proposed density, erosion and sediment control during development of the property and its suitability to support the use, fire plans to reduce the incidence and severity of wildland fire. Written materials submitted for the record a possible development scheme, documentation on carrying capacity issues, wildfire and emergency service safety plan, drainage and erosion control, adequacy of public facilities and land use patterns. Galli Group Consulting Engineers and Hydrologist also provided a report addressing the availability of water to serve the intended use. Evidence included Oregon Water Resources Department well logs and water quality test and analysis, geology maps of the area. The analysis addressed projected water demand, type of water supply, basin water level analysis, aquifer recharge, groundwater impacts and contamination.
- E. Oral and written testimony of Norm Foeller, Professional Consulting Forester, stating that the property is not forest land. From his analysis he concludes that a majority of the property cannot support the growing and harvesting of trees for commercial forest harvests. His analysis is based on direct measurement of forest species on the site measured in cubic feet per acre per year. A letter of approval of his methods was provided showing concurrence from the Oregon Department of Forestry. Mr. Foeller explained the standard site index charts that are used in the forest industry and that the measured cubic foot site class and site index from timber growing on the site is below the lowest described site index in the standard charts. Mr. Foeller also stated that there was no evidence that the property had

ever been harvested of wood based on a lack of stumps throughout the site. He did note that there were limited numbers of stumps that appear to be of trees that had died from disease or insect infestation. Mr. Foeller's professional opinion was that the site was not suitable for commercial timber production.

- F. Oral and written testimony of Dennis Hutchison, Certified ARC/PAC Soil Classifier, who testified regarding the soil conditions on the property, topography of the site, lack of suitability to support resource management, the similarities and differences between the soil types described in the Josephine County Soil Survey and the soils found on the site. Based on the site conditions and the additional evidence regarding average rainfall, it is the conclusion of Mr. Hutchison that the soils are Manita soils and not the Vannoy soils as mapped in the Soil Survey. Mr. Hutchison explained that the two soils are very similar and can be located in the same vicinity. He also explained that the numerous test pits on the property provide much greater detail than would be available in the soil survey. Mr. Hutchison also explained the methods and techniques used to evaluate the site using soil test pits, septic test pits road cut banks, surface rock fragments, vegetation breaks and soil color. Based on this detailed information he refined the Josephine County Soil Survey to that shown on the exhibit map entered into the record.
- G. Oral testimony of Richard Whitaker, property owner who testified that when he bought the property it was zoned for one acre minimum lot size and he was trying to satisfy everyone with the application and that the Planning Commission said that they had proved their case
- H. Oral testimony of Christine Whitaker, property owner, who stated that the state and county criteria had changed over time and that the soil information was different than expected so that the development would now meet the criteria.
- I. Oral testimony of Rycke Brown, a professional gardener who testified that the information from the soil scientist was credible to her.
- J. Oral testimony Jim Frick as Chair of Southern Oregon Resource Alliance who supported the application that the requested change is a reasonable fit for the area and would increase the tax base. He also was of the opinion that the property was not resource land.
- K. Oral testimony of Trenor Scott who supported the application based on the evidence and testimony provided.

- L. Oral testimony of Connie Roach, Josephine County Assessor who supporting the proposal stating that for assessment purposes the site did not appear to meet the criteria for marketable timber used for assessment purposes.
- M. Written testimony of Jack Swift, of Southern Oregon Resource Alliance. Mr. Swift requested party status. The testimony questioned the legitimacy of the rezoning of the property done by the County as part of the enforcement order and which is a burden on the community. He also requested the county remove opposition testimony regarding the impacts on BLM lands as hearsay and that if there was a concern that BLM would have submitted arguments on their own behalf. He also objects to the inclusion of testimony from the opposition regarding timber value as the testimony is not from experts in the field.
- N. Written and oral testimony from Evelyn and Bob Heinrichs, opposed to the application on the grounds of water quality and quantity, accuracy of soils investigation, long term impacts on water supplies. They also expressed concerns of the ability of the land to support the intended use, specifically water supplies. She was also concerned regarding increased fire danger, run off from the site, groundwater pollution from new septic systems, character of the neighborhood and elimination of trees that form a wind barrier.
- O. Written and oral testimony from Joe and Leta Neiderheiser opposing the request stating that Oregon laws protected them from developments as proposed. They are also of the opinion that the request does not maintain the character of the area.
- P. Oral testimony from Larry Ford, opposed to the request, stating that the extreme slope makes the property too steep to develop and he expressed concern regarding erosion and water supplies.
- Q. Oral testimony from Jon Ainsworth stating his concern for water quality and quantity, and drainage protection.
- R. Oral and written testimony from Hal Anthony who requested party status. Mr. Anthony is opposed to the request, stating that the application violated state Goal 2 without a plan amendment for changes to the soils mapping. He is also opposed based on the legislative history of the IRR system of evaluating forest lands that the application was a change in new policies and inventory. He opined that a new application to amend the data would require that the entire IRR be updated to include current market value for timber.

- S. Oral and written testimony of Wayne McKy, opposed to the application. His testimony was submitted as an individual and as a member of the Hugo Neighborhood Association. In his opinion the property is viable forest land and the application does not meet the requirements for a change in soil description, the test for non-resource under code requirements has not been met, the application does not meet OAR requirements and the application do not meet the requirements to show it is not other forest land.
- T. Oral and written testimony from Sarah Vaile of Rogue Advocates, opposed to the request, who testified that the procedure for changing the soil is not in compliance with applicable laws (Goal 2) and that new soil information cannot be used without a change to the Comprehensive Plan. She also testified that the IRR system was not appropriate for determining that land is non-resource because the IRR system is using "severely obsolete data."
- U. Oral testimony of Steve Rouse opposed to the application stating that the property was forest land that was not managed but and had additional value. He was of the opinion that the property could be managed for firewood.
- V. Written testimony from Mike Walker submitting testimony on behalf of himself, Hugo Neighborhood Association, Rogue Advocates and Goal One Coalition. Mr. Walker requested party status. He is opposed to the application stating that it is in violation of Goal 2 because an application for amendment to the county soil database was not submitted in order to use the soil report submitted that changes the soils. He further opined the request is not in conformance with county development code section 46.050 B and that the standards have not been applied correctly, The application is not in conformance with OAR 660-006 for the identification of forest land, the application does not meet the test to show the property is not other forest land, and the forest report is not in conformance with the required standards. He opines that the applicant has not met the burden of proof.
- W. Written testimony from Jean Mount who requested party status. She is opposed to the request stating that the request does not meet the standards for Deer habitat and that the proposal amends the deer winter range map.
- X. Written testimony from The Department of Land Conservation and Development, opposed to the application based on an opinion that the use of additional soils information is a separate change to the Comprehensive Plan and the application is not in conformance with recently adopted changes to OAR 660-006 for the identification of forest land, specifically the data that is used and consistency with the revised requirements

- Y. Written testimony from the Soil and Water Conservation District of Josephine County opposed to the application in that in the opinion of the District Board, the property was still viable forest land and that the decision should be based on the Josephine County Soil Survey created in 1983 by the Soil Conservation Service. In addition the District opined that the steep slopes were not suitable for residential use.

- Z. Written testimony opposed to the request signed by property owners along Ridgefield Road that expressed concern about drainage and runoff, water supplies, increased fire danger. The signers of the testimony include Bob & Robert Kent, Jesse & Jeanne Calvert, Dennis & Lisa DeCasa, Jon & Jeanne Ainsworth, Jon & Cyndi Ogden,

- AA. Rebuttal written and oral testimony from Bob Hart and Bill Galli, who responded to all of the issues raised in the testimony opposing the application. The testimony included; water supplies, erosion and runoff, fire hazard, wind patterns, traffic impacts, applicable requirements of the County land development ordinances and Comprehensive Plan, applicability of Oregon Administrative Rules specifically OAR 660-006, character of the area, non-resource determination and the conclusion that Goals 3 & 4 were not applicable, code provisions regarding soils information, forest productivity information, other forest lands and the fact the property is not necessary for resource use of adjoining or nearby lands, the relationship between the subject property and adjoining and nearby lands, uses by BLM of adjoining lands in their ownership, the difference between federal designation of commercial forest land and land protected by State Goal 4 that testimony was to the ability of the land to support commercial forest use on private land should be based on private usage and not on a federal program designation. Rebuttal testimony was also provided regarding the applicability of the IRR system to identify forest land and lands not protected by Goal 4, testimony regarding previous LUBA decisions regarding use of soil information, suitability of the land for the intended use.

III. FINDINGS OF FACT:

The Board of Commissioners made the following Findings to support and provide a basis for the decision:

- A. The property is zoned Woodlot Resource and has a Comprehensive Plan Designation of Forest. The property was originally zoned residential SR-5 and was changed at the direction of the Department of Land Conservation and Development under enforcement order. The request submitted is to change the

Plan designation to Residential and the zone to Rural Residential 5 Acre. The basis of the request is a determination of non-resource land. The Board notes that if a non resource determination is made, the property can be rezoned Serpentine, or Limited Development or Rural Residential 5 (RR-5). These options are established in the acknowledged code. The Board finds that there has not been any evidence submitted to rezone the property as Serpentine based on soils that are serpentine in nature. The Board has reviewed the engineering reports and listened to the testimony in opposition and finds that the engineering reports demonstrate that the property is suitable for RR-5 development and that the land is not so extreme that Limited Development zoning is necessary.

- B. The property is 32.84 acres in size and has not been improved with structures. The property is irregular in shape. The vegetation has limited merchantable trees and is primarily covered with grasses, manzanita, oak and madrone. There is no evidence that the land has been harvested for timber. The topography of the site is that the property slopes upwards to the south with an increasing steepness that exceeds 40% slope. The property is adjacent to a residential zone that was acknowledged as built and committed to uses other than resource use and has more than 50% of its common lot line adjacent to the residentially zoned lands. The balance of the property is adjacent to forest and farm zoned parcels. The Board further notes that the property is receiving a residential assessment and is not receiving a special farm nor forest assessment.
- C. The Board finds that the criteria for the request are as stated in the Findings of Fact. It is noted that objections have been made to the application. The objections generally state that the request is not in conformance with local codes, State Goal 2 requirements and OAR 660-006 requirements. The Board addresses the objections below.
- D. The Board has reviewed the application materials, objections in the record and testimony provided regarding compliance with applicable statewide and county goals and policies and local ordinances. The Board considered the evidence submitted and is convinced that the application is in compliance with all applicable statewide and county goals and local implementing codes. The application provided specific comment and basis for compliance for each state and county goal and code section. The Board finds the application materials are credible and sufficient to conclude that application complies with the applicable criteria. State Goals 2, 3 and 4 will be covered in more detail further in the findings.
- E. The Board finds that the application requests a determination that the subject property is not subject to goals 3 and 4. If the land is in fact non-resource in

nature, it is not protected under Goals 3 and 4. No Goal Exceptions are required with a determination that the land is non-resource.

- F. The criteria require that the applicant show adequate carrying capacity to support the density and types of uses allowed. The Board finds that the evidence presented by the applicant in the form of well logs, water quality report and septic evaluation for the subject property as well as written and oral testimony from experts in their fields, demonstrates that the property has the carrying capacity for the intended use. The evidence regarding water supplies was gathered and presented by a civil engineering firm with a staff hydrologist. The evidence is considered as substantial and credible and the Board accepts the information. The Board considered testimony from neighboring property owners that expressed concern. The Board finds that the well information from those in opposition applies to wells that are not on the subject property. The code requires that the applicant demonstrate that water is available from the subject property. Records from the applicant relate to wells on the subject property as specified by the code. The rebuttal testimony regarding well construction, depth and soil layers convinced the Board that there is adequate water quantity on the subject property to support the intended use and that water quality would not be compromised by the development of the property. Septic system approvals from the Department of Environmental Quality for proposed lots demonstrate adequate septic suitability. Evidence in the record from the Oregon Department of Transportation and the Josephine County Public Works Department in response to evidence submitted by the applicant demonstrates that the project will not have a significant impact on transportation facilities and there is adequate capacity for the intended use. The opposing testimony regarding traffic congestion on Williams Highway was not convincing to show that there is not adequate capacity and the Board bases its decision on the facts in the Josephine County Transportation System Plan and conclusions from ODOT and Public Works regarding traffic capacity. The Board received testimony and evidence regarding drainage and erosion. The Board notes the objection from the Soil and Water Conservation District and neighboring land owners regarding possible erosion and steep slope problems. The Board chooses to rely on the engineering report that shows normal engineering practices and a proposed erosion and sediment control plan to demonstrate that the land will support the proposed use. Based on testimony in the record from the engineer, we find that the development of the property will be done using standard practices and improvements and will not result in future maintenance costs that are atypically high. The objections were not based on data from the site but on opinion that was not submitted by professional engineers licensed to practice in Oregon. The evidence showing compliance with carrying capacity requirements was substantial and convincing notwithstanding the testimony of those in opposition that have not provided any significant expert testimony contrary to the evidence provided by the applicant. The Board considered the information provided by the opposition such that an interest in water issues has been established but that the testimony is not from an expert witness in the field of

hydrology and water information and demands. The Board concludes the request meets the standards required to show adequate carrying capacity

- G. The Board finds that the applicant has submitted a detailed examination and maps of the subject property and the surrounding area that also includes aerial photographs, database listing of property characteristics and land uses, ownership patterns, zoning, authorized uses and physical features. There is a written analysis of lands within one mile of the subject property and descriptions and analysis of resource lands that are adjacent or nearby the subject property. The Board considers the 1/4 mile area surrounding the site adequate for evaluation of resource uses considering the general lack of resource use in the area. The Board also finds that the one mile radius study area is sufficient to show the character of the area. The Board considered the testimony from those opposed to the request that the character of the area would be changed. The Board finds that the site is located at the end of a public road that was constructed to serve residential lots and dwellings and that access is not used for access to resource operations. The Board finds that a majority of the subject property is adjacent to existing residential uses. The Board considered the topography of the area and finds that there is a significant up slope at the south side of the subject property that acts to separate the residential use at lower elevation from the resource lands to the south that are in large blocks. The Board finds that the high school to the southwest is a significant development in the area and that the institutional use is a major use in the area. The Board also finds that the commercial and industrial uses within the study area are a major factor in the established development pattern of the area. The Board concludes that the character of the area is of mixed uses with a primary use being rural residential zoning and development. The Board finds that the forest lands within the study area include some large blocks of lands along the periphery of the study area that skew the total acre evaluation. The Board finds that the actual number of lots in residential use is more than four times the number or resource lots. The subject property is located adjacent to residential uses for more than 50% of the common lot lines and the access that would be extended to serve the subject property is a county road that has its primary purpose to serve residential development. The Board finds that the proposed change is consistent with the established development pattern of the area.
- H. The Board finds that the property is non resource for farm purposes and is not protected by State and County Goals. The property has predominant (more than 50%) soils that are rated as class V or higher in the soil descriptions in the Josephine County Soil Survey and therefore is not farm land. The Board finds that both the original Vannoy and revised Manita soils are described in the Josephine County Soil Survey and have the same class VI agricultural soil rating. The Board finds that the information from the soil scientist does not change the farm characteristics as shown in the Soil Survey. In considering the practicality of the use of the land for farm use, the Board finds that the Soil Survey for Josephine County, in the description of soils that are found to be on the subject property, and

supplemental information submitted by the applicant into the record show the land not suitable as other farm land. The Board considered the additional testimony regarding precipitation and finds that considering the additional factors of slope and soil taxonomy, there is not adequate annual precipitation to support typical commercial farm uses in the area. Testimony was that irrigation that was not available to the property to make the land suitable for farm use. The Board further finds that without adequate irrigation that technological and energy inputs would not render the site suitable for farm use. Accepted farm practices in the area include animal husbandry, irrigated hay and pasture and non irrigated hay and pasture on level parcels that are rated as class IV or better and are considered as prime soils. None of these customary farm practices can be applied to the subject property and the Board finds that the site does not meet the definition of farm use that is found in the Oregon Revised Statutes Chapter 215.203(2). The meaning of farm use is “. . . the current employment of land for the primary purpose of obtaining a profit in money . . .” The Board concludes the site is not farmland under the requirements of State Goal 3 and County Goal 2 and therefore meets the criteria for a non-resource determination under the applicable criteria.

- I. The Board concludes the subject property is unsuitable for farm use under subsection 46.050.A.2. This subsection is designed to consider a combination of factors to see if there are special circumstances that offset or overcome the limitations described in the *Soil Survey*. These factors are intended to be considered together and not individually. Based on the evidence in this record, as it relates to the subject property, the Board finds that there are no overcoming favorable factors. The record shows:
 1. Based upon the on Soil Survey, the land is made up of soils that are Class VI agricultural soils;
 2. Based upon data contained in the *Soil Survey* and from the testimony submitted, the land receives inadequate amounts of rainfall to make it suitable for raising crops, and if additional rainfall were available, the soils would not support farm uses because of the ultramafic soil influence that would adversely impact plant growth ;
 3. Based upon data from the *Josephine County Soil Survey* and testimony in the record that the land lacks adequate water for grass cultivation and the slopes on the property make the land unsuitable for grazing;
 4. Based upon evidence submitted in the hearing, the existing land use pattern shows the subject property is not located in an area devoted to farm use, but is adjacent to significant areas of residential uses and that

the character of the subject property is in keeping with the character of the surrounding area based on evidence submitted by the applicant in the form of an area study;

5. Based upon evidence from the *Soil Survey* and applicant's testimony, the conditions on the site would not benefit from special technology and energy inputs to the extent that the property could be put to a viable agricultural use;
6. Based upon evidence from the *Soil Survey* and testimony from the applicant, conditions on the site do not benefit from accepted farm practices that would offset the foregoing limitations;
7. There was not testimony submitted to demonstrate that the subject property is needed for adjacent or nearby farm parcels to carry out farm uses. The adjoining farm parcel to the west is improved with a non-farm dwelling and no farm uses occur on that parcel. Parcels to the north that are zoned and used for farm use have intervening residential lands and are further separated from the subject property by a state highway.

Based on the above, the Board concludes that the site is not "other farm land".

- J. The Board finds that the subject property does not serve as a buffer to any urban growth area as the closest urban area is approximately 4 ½ miles to the north.
- K. The Board finds that the land is not necessary to permit farm practices to continue or occur on adjacent or nearby resource zoned lands. The applicant has submitted a review of resource zoned lands that are adjacent or nearby. The study describes existing uses and circumstances and conditions that are to be evaluated as a special benefit. There are no existing farm uses adjacent to the subject property. The resource lands do not have irrigation available except for those lands north of Williams Highway. Extension of irrigation water to the subject property is not practical. The irrigated resource lands are almost 1/4 mile from the subject property and there is existing residentially zoned and developed properties between the subject property and the existing farm land. The Board finds no evidence submitted to demonstrate a relationship between subject property and the farm lands. Based in the information provided, we do not find that there are any special benefits available on the subject property that would be required or necessary for adjoining or nearby lands to conduct farm practices.

- L. The Board finds that testimony addressed the use of the Josephine County Soil Survey for the identification of soils on the site. The Board finds that the Josephine County Soil Survey was adopted as an exhibit for the Josephine County Comprehensive Plan and that the Survey was used for the general identification of land use. The Board further finds that the provisions of the Development Code allow the use of site specific data that is provided by a certified soil classifier in the determination of characteristics used to identify non-resource lands. In accordance with code provisions, information has been provided by an ARC/PAC certified soil classifier in the form of a report based on direct field observations that were done at an Order 1 level of detail. The Board has reviewed the Hutchison report and testimony regarding his background, education and experience and finds that Mr. Hutchison is an expert in the field of soil classification and taxonomy. His report and field work provides substantial and credible evidence to determine the soils on the subject property and their capability. The Board considered the level of detail in the report and additional oral testimony to include but not limited to slope, precipitation amounts, depth of soil, soil color and parent materials. There has been no testimony that questions or reduces the quality of the information in the report and the Board relies upon the information. There was testimony provided regarding average precipitation amounts. The Board chooses to accept the precipitation records provided by Mr. Hutchison who procured his information from Oregon State University records. The Board finds that the precipitation records submitted by the neighboring property owner does not provide sufficient time to show long term records that can be relied upon for determining land classification. The Board finds that the information in the soil report is for the purpose of providing information regarding a specific parcel and is more detailed than would be required for general community planning purposes. The Board has reviewed the text and maps in the Josephine County Soil Survey and concludes that the document is general in nature, and cannot provide detailed information that is necessary to fully evaluate soils in small areas such as individual taxlots. Therefore the Board finds that the soil report is consistent with the soil survey and is not a contradiction that changes the intended purpose of the Soil Survey. The Board finds that the soil report provides supplemental information not available from other sources in the adopted Comprehensive Plan. The Board finds that the use of the soils report is authorized by local codes in Section 46.030. C. 5. a. The Board considers the request to be a minor revision of the Comprehensive Plan that does not have impacts beyond the immediate area. State Goal 2 provides that minor revisions can be based on special studies and are limited in scope. The Board does not agree with the testimony submitted in opposition to the request that there would be impacts beyond the immediate area. The soil report does not impact or change Vannoy soils beyond the property boundaries. There is no specific requirement to amend the Soil Survey of Josephine County as no new soil is being added to the survey information. The Board considers the soil report submitted by the soil scientist to be a special study that is limited to the subject property and has no impact beyond the immediate area. Therefore the Board finds that the use of a soils report to provide additional site specific information to be a refinement

of the available information and that an additional amendment to the Comprehensive Plan is not required. The Board considered the objections to the use of the revised soil type as being a violation of Goal 2 and rejects the arguments. The Board finds that the LUBA cases that were referenced to show non compliance do not apply in this instance. Portions of the objections are based on a position that the soil report must be officially entered as an amendment to the basic Comprehensive Plan and that the report is in direct conflict with the adopted Plan. The Board finds that the soils report is consistent with the adopted Plan by providing additional information that is not available in the adopted plan. The Board does not find a basis to require an additional amendment. The Board also finds that remanded appeals from LUBA specific to Josephine County, were based on a misapplication of the IRR system for soils that were not rated for forest productivity. In this case all soils are rated. The Board does find that cases before LUBA have had soils reports used as a basis to refine the soils mapped on properties and those cases have been affirmed. The Comprehensive Plan designation was amended in other applications based in part on soils reports that were more detailed than the Soil Survey and thus a precedence has been established. The Board concludes that the request is consistent with the requirements of State Goal 2 and provisions in the local codes to evaluate the subject request.

- M. The Board considered the information submitted by the soil scientist and finds that the evidence is based on accepted methods in the field. Therefore the Board finds that for the purpose of identifying the soils on the property, the Board relies upon the detailed soil report to conclude the soils on the property are Manita 53E and Vannoy 78F as shown on the detail map supplied by the soil scientist. The Board finds that the ultramafic soil parent material results in significantly lower forest productivity than the Vannoy soil and the Manita soil. The Board finds that the soil originally shown as Vannoy 77E is actually Manita 53E based on facts that the soil is deeper and has a higher clay content than the Vannoy soil. A Cumulative Internal Rate of Return has been calculated by the applicant's Planning Consultant consistent with the soils in the soil report and the IRR System for Josephine County. The CIRR is less than 3.50. The Board finds that the soils on the property have an IRR rating and concludes that the information submitted by the applicant shows that the property meets the standards as non resource for forest identification purposes. The Board rejects the position that the new CIRR should not be used to determine if the land is non-resource.
- N. The Board finds that the information contained in the original and rebuttal testimony shows that the property is not other forest land. The subject property is not necessary for continued or future use or adjacent or nearby resource properties. The rebuttal testimony also addresses the permitted uses on the subject property and concludes that the uses would not adversely impact resources uses in the area. The Board agrees with this conclusion. The facts relied upon by the Board include evidence that subject property does not provide access to other

resource lands in the area, water sources for management of resource uses, wind breaks to protect existing or future management, the land is not used for buffering or minimization of land use conflicts, preservation of soil, air, watershed, vegetation amenities or wild fire strategies. These conclusions are based on the testimony and reports of the land use planner, engineer, consulting forester and soil scientist that addressed each of the required criterion. The Board further finds that the testimony from the applicant that summarizes direct contact with BLM and responses to discussions regarding the relationship of BLM forest practices to the subject property is more convincing than the maps and general statements from the forest plan documents offered by the opponents. The Board finds that the code requires that a farm or forest operator must provide testimony to show there is an impediment or increase of cost and that no such testimony has been forthcoming. The Board specifically discounts any testimony from opponents regarding the relationship of the subject site and BLM land in the area. The Board finds that in order for the BLM land interaction to be significant adverse impacts, that testimony directly from BLM regarding management of the specific lands would be required and that the general statements regarding all of the BLM forest plan do not raise issues with sufficient specificity for the issue to be addressed in this request. The testimony from the applicant addresses the criterion that to be other forest land that there needs to be a finding that the subject property provides a special benefit that is required to maintain the forest or farm operations on adjacent or nearby resource lands as a part of a determination as other forest land. The Board finds that no special benefit exists. The Board further finds that the imposition of conditions to require all structures to be set back 100 feet from the common property line would prevent possible land use conflicts in order to provide a fuel break to minimize fire danger and would likely prevent trespass to remove high fire fuels in order to maintain an adequate fuel break. The Board does not find that the setback requirement is "necessary" but is desirable. The Board further finds that the standard condition to require a Conflict Preference Covenant will implement the covenant requirement from the State of Oregon intended to mitigate land use conflicts. The Board concludes the property is not other forest land that must remain in a forest zone.

- O. The Board also considered the forest productivity report prepared by consulting forester Norm Foeller. The Board finds that the property owner suspected that standard forest productivity would be inaccurate based on observation of the existing vegetation and lack of evidence of any forest species harvest. In accordance with the provision of the Oregon Administrative Rule 660-006, the property owner retained the services of a professional forester who made a direct measurement of forest productivity and found that the site yields less than 20 cubic feet per acre per year. The Board finds that the conclusion of the forester that the forest productivity on the taxlot is below the parameters for commercial timber production potential to be substantial and credible. The Board also notes that the forest report was submitted to the Oregon Department of Forestry and that a letter of approval of the methodology for the report was submitted into the

record. The Board also reviewed objections to the forest report. The Board finds that it is the authority of the County to determine the data source that it will use in making the decision as set forth in the Land Use Planning Notes Number 3 -April 2010. The data was gathered using the Douglas Fir trees data as required as a primary tree specie. The opponents state that the number of trees tested were not sufficient in that 25 trees were not tested. The Board notes that the Land Use Planning Notes state that a sufficient number of trees generally consist of 25 dominant and co-dominant tree if possible (emphasis added). The Notes further state that a professional forester should determine whether or not adequate number of trees exist. The Notes also provide that if 25 tree clumps are not available, a smaller clump may be used. The Board finds that there is flexibility allowed in the methods used to examine the productivity of the site and that The Board concludes from the report and the concurrence of the ODF that a proper productivity examination was conducted and that the results meet the requirements of the OAR and the Land Use Planning Notes. The Board finds that the use of the IRR method and the forest productivity study are consistent to show that the property does not exhibit the characteristics to be commercial forest lands. The Board concludes that the subject property is not forest land protected under State Goal 4 and County Goal 3. The Board finds that the request meets the criteria to determine that the property is non-resource based on rules of law and evidence provided to the Board.

- P. In the unlikely event that the revised Oregon Administrative Rules on forest lands render the IRR system unusable, the Board finds that Section 46.050B2 of RLDC provides that a combination of proofs based on testimony of expert witnesses and other sources may be used to determine that the property is not forest land protected by Statewide Goal 4. The Board has considered all of the information submitted from experts in engineering, forestry and soils and concludes that the property is non resource and not protected under goal 4.
- Q. The Board finds that 92% of the subject property is located within critical deer habitat (Deer Winter Range). Per Article 69.2 (as amended by County Ordinance #2006-003 via 2006 period review work), the land will continue to be subject to the density restrictions required by said ordinance even though the new underlying zone may permit higher density. Thus, if the proposed Residential zone stays within the density limits of Deer Winter Range the application is in compliance with these revisions of Josephine County's Comprehensive Plan acknowledged as consistent with Goal 5 by the State of Oregon. As such, the Board finds the application contains an "expanded study area test" which indicates 17 existing dwellings within 2 square miles of habitat area around subject property. The proposed density of the property is 6 additional dwellings per PUD design plan in the record. The Board finds total dwelling count equals 23, below the 32 maximum allowed under Section 69.220.B, RLDC as amended under Ordinance #2006-003. The Board finds the zone change/plan amendment

request is consistent with state and local requirements regarding deer habitat areas.

- R. Objections have been made to the use of the Internal Rate of Return System for identifying forest land in Josephine County. These objections are based on two attacks. The first attack is that the IRR system cannot be used because the change in soils is an amendment to the County soil database that has not properly reviewed as an amendment to the Comprehensive Plan and therefore the IRR System cannot be used with inconsistent facts. The objectors are of the opinion that this soil information is a violation of State Goal 2 without an additional amendment application. The Board, as stated above in Item L, concludes that the requested change is consistent with the requirements of State Goal 2. The Board is of the understanding that changes to the Comprehensive Plan must be made in conformance to an approved method to evaluate changes. The Board finds that the requested change is in conformance with the requirements for approval in the Comprehensive Plan Goals and Policies and Rural Land Development Code. The use of supplemental information for the identification of forest land was adopted as part of the Comprehensive Plan and additional information was submitted in conformance with standards in the implementing ordinances. The new calculation of the CIRR is consistent with the method to evaluate non forest land. The Board has reviewed the materials submitted by the applicant and the Board finds that the evidence and reports submitted are consistent with the adopted method of making changes in the Comprehensive Plan. The Board finds that the development code allows detailed information to be used to identify soils and areas to refine existing soils in IRR system to evaluate forest lands. The Board finds because new soils that are not listed in the IRR System will not be added, the request is authorized in the code.
- S. The second attack on the IRR System is that it cannot be relied upon because it is unreliable and out of date. The Board finds that this attack is the same attack submitted in Sommer v Josephine County LUBA No. 2004-131 04/05/2005. The petitioners called for a reevaluation of the validity and assumptions and data supporting the IRR System. LUBA held that this is a collateral attack on the acknowledged Comprehensive Plan and cannot be challenged during a quasi judicial Plan Amendment based on the acknowledged provision unless the provision itself was being changed. In this case the Board finds that the IRR System is fully acknowledged and is not being changed. The Board concludes that the IRR System does not need to be revised based on the submitted statements of those in opposition to the request. The Board finds that the issue of adequacy was reviewed in periodic review and not found to violate state goals. The Board finds that the letters dated 1995 from State Forestry and DLCDC were available during periodic review and that no action or task was identified to modify the IRR System. The Board rejects this attack.

T. The Board finds that the forest rating of soils on the subject property was accomplished consistently with the adopted forest rating system in Josephine County and with the requirements of OAR 660-006. The Board takes note that the rating system used in Josephine County has been locally adopted and reviewed by state agencies and considered with regard to state goals and was acknowledged as meeting state goals. The Board finds that the system for forestry evaluation applied to the subject property is appropriate and in compliance with applicable local and state regulations. The Board finds that the requirements of OAR 660-006 prescribe methods necessary to identify forest lands but does not establish a standard for productivity that establishes a bright line to distinguish between forest land and non forest land. The Board finds that notwithstanding the 3.46 CIRR rating of the parcel, that the expert testimony and evidence presented is sufficient and credible to the extent that the Board concludes that the land is non-resource under the combination of proofs criterial of the applicable code section as well as below the standard of 3.50 CIRR that is a minimum rating for forest lands. Therefore the Board determines that the property is non-resource for forestry purposes. The Board finds that the determination of non-resource is in compliance with relevant sections of the Comprehensive Plan. The Board takes judicial notice of the documents, studies, testimony and legislative intent for the Internal Rate of Return System to identify forest lands in Josephine County as they apply to the subject property. The Board also considered the background documents on the adoption of the IRR rating system as well as the objections submitted to the adequacy of the system. Based on acknowledged provisions in the comprehensive plan, evidence submitted and testimony before the Board, it finds that the subject property is not forest land. The Board also finds that the forest report evaluating the subject property was prepared by a professional forester, that the report shows the soils evaluated using cubic feet per acre for production of Douglas Fir and the forest report was reviewed and approved by the Oregon Department of Forestry. The Board finds that the soils report meets the requirements of OAR 660-006 for identification of forest lands

U. The Board finds that the proposed change is consistent with the current development pattern in the area and that public services and facilities are adequate for the intended use based on the standards of the Comprehensive Plan and the testimony in the record. This finding is based on the testimony of the applicant and those in favor of the request, studies of the area submitted by the applicants representative and a maps and aerial photography in evidence of the subject site and the surrounding vicinity. The Board considered the testimony of those in opposition but found that the property is adjacent to existing residentially zoned lands and that there is a pattern of residential development adjacent to the subject property and lands between the subject property and the farm operations to the north side of Williams Highway. The Board chooses to accept the testimony of the applicant as there were no facts presented that contradict the application. The opposition testimony was based on opinion that the facts in evidence were not adequate to base a decision. There was opposition opinion regarding character but

there was no analysis submitted other than a concern about increased traffic and crime.

- V. The Board finds that the evidence in the whole written record in the form of reports, maps, photographs, documents and analysis together with testimony on behalf of the applicant shows compliance with the criteria for a Comprehensive Plan Amendment and Zone Change. The Board considered the evidence and testimony from those in opposition and find that the applicant's testimony and evidence most compelling and addresses the criteria with credible and substantial evidence. The testimony from opposition was regarding carrying capacity, character of the area and process requirements. Little in the way of facts was presented other than well information on lots in the area. Rebuttal testimony from the project engineer addressed well log evaluation, geology of the area and lack of interaction between wells based on well depth and material from with the water is withdrawn.

- W. The Board finds that based on information contained in elements of the Comprehensive Plan, studies submitted and testimony offered that the quality of air, water and land resources will be maintained by the approval of this request. The property is not located in a documented water quality problem area. Testing has shown that the water supply to be safe as evidenced by a water lab testing report. Testimony was received that shows that the quality of air and land resources will not be adversely affected by the approval of this request. The Board finds that testimony from the applicant as well as information in the staff report demonstrates compliance with Goal 6 requirements. The Board concludes that Goal 6 has been adequately addressed by the testimony provided.

- X. The Board finds that natural hazards and disasters have been addressed through engineering plans that mitigate and minimize development hazards to an acceptable level that is consistent with other development in the county. An erosion and drainage plan and wildfire mitigation plan has been submitted and reviewed by staff and the Board. The Board finds the application meets the requirements of Goal 7

- Y. The Board finds that the matrix in the Comprehensive Plan provides a basis for determining if adequate rural levels of facilities and services are available. Testimony offered in the staff report, reports from county departments and the applicant show that the levels of services and facilities are appropriate for the proposed use. The Board finds that no increased risks, expensive or complex mitigation plans, nor higher infrastructure costs will result from this request based upon the testimony given and objections raised during the hearings process. All issues have been fully discussed with opportunity to address any concerns regarding these issues. Reports from the project engineer show that atypically high costs will not be required as a result of this project.

- Z. The Board finds that there will not be any significant adverse traffic impact as a result of the approval of this project. A review of the Transportation System Plan was completed to evaluate existing and potential future conditions. Communication with the Oregon Department of Transportation shows that there is adequate capacity in the area for current and future traffic facility needs. The Board finds that the application to is in compliance with Goal 12.
- AA. The Board finds that no additional matters were raised by those in opposition so that their concerns were not taken into consideration during decision making on the subject request.
- BB. The Board finds that the opposition to the request stating that the site is suitable for farm or forest use is not based on facts presented into evidence that the Board finds reliable. The Board considered testimony, letters and documents in the record at the request of opponents. The Board has examined the information submitted by the applicant to include the background documentation in the applicant's submitted request and finds that the studies for character of the area, impacts on the subject property, analysis of surrounding property, addressing all state and county goals. The Board finds testimony presented to address all the applicable criteria required by the Oregon Administrative Rules and local Comprehensive Plan are adequate and reliable enough to base a decision on these facts.
- CC. The Board considered the requests for Party status and recognizes Mike Walker filing objections as an individual and as a member of the following Hugo Neighborhood Association & Historical Society, Rogue Advocates, Goal One Coalition Advisory Board; Jean Mount filing objection as Board Member Lower Applegate Citizens Advisory Committee, Board Member Rogue Advocates; Wayne McKy objecting as Chair Hugo Neighborhood Association & Historical Society; Hal Anthony objecting as an individual, Rogue Advocates Director, Three Pines Neighborhood Association; Jack Swift of Southern Oregon Resource Alliance and Bob Hart as an individual. The Board finds that the above mentioned persons claim to be aggrieved under state regulations and recognized all as parties. Others also recognized for party status include surrounding property owners that received notice and testified orally or in writing at the hearing. The Board also recognizes the Department of Land Conservation and Development, Oregon Department of Transportation and the Oregon Department of Fish and Wildlife. The Board did not receive a request for Party status from the Soil and Water Conservation District of Josephine County and makes no determination in that regard.

IV. CONCLUSION:

Based upon the above evidence, findings, and applicable criteria for decision, the Board of County Commissioners concluded the Whitaker request for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential 5 for property located at the southerly terminus of Ridgefield Road complies with the requirements of Josephine County and State law pertaining to such matters. The change is based on a conclusion from the evidence and testimony submitted that the property is non-resource and that such a change does not require an exception to State Goals 3 and 4 and that the codes provide for the change to Rural Residential 5 Acre.

V. DECISION:

Therefore, based on the staff report, evidence submitted into the record and testimony of witnesses, the Josephine County Board of Commissioners, upon a motion by Commissioner Ellis, seconded by Commissioner Hare, and by a vote of 3-0 approved the request to: Amend the Comprehensive Plan Map of Josephine County (Ordinance 81-11, as amended) from Forest to Residential and amend the zoning map of Josephine County (Ordinance 85-1, as amended) from Woodlot Resource (WR) to Rural Residential 5 acre minimum (RR-5) for the property described as Assessor's Map #37-05-20 Tax Lot 2001 owned by Richard and Christine Whitaker subject to the following conditions:

1. Per Section 46.050.C.6, RLDC, the property owner shall execute and record a Conflict Preference Covenant, which recognizes the rights of adjacent and nearby resource land owners to conduct normal farm practices and forest operations. The covenant shall provide that all land use conflicts between non-resource uses on TL 2001 and adjacent or nearby resource operations will be resolved in favor of accepted farm and forest practices and operations. The document shall be approved by the Planning Department in conformance with requirements of the development code.

2. A deed restriction shall be recorded on a form to be approved by the Planning Director to require all structures to be placed at a minimum of 100 feet from adjoining or nearby resource zoned property upon final approval of the request.

3. A condition shall be added to any approval of a land division of the subject property to require that Ridgefield Road be improved to Limited Residential standard if 10 or less lots are served; or improved to Rural Residential standard if number of lots to be served exceeds 10.

///

///

///

These Findings & Decision are done and dated this 6th day of April, 2011.

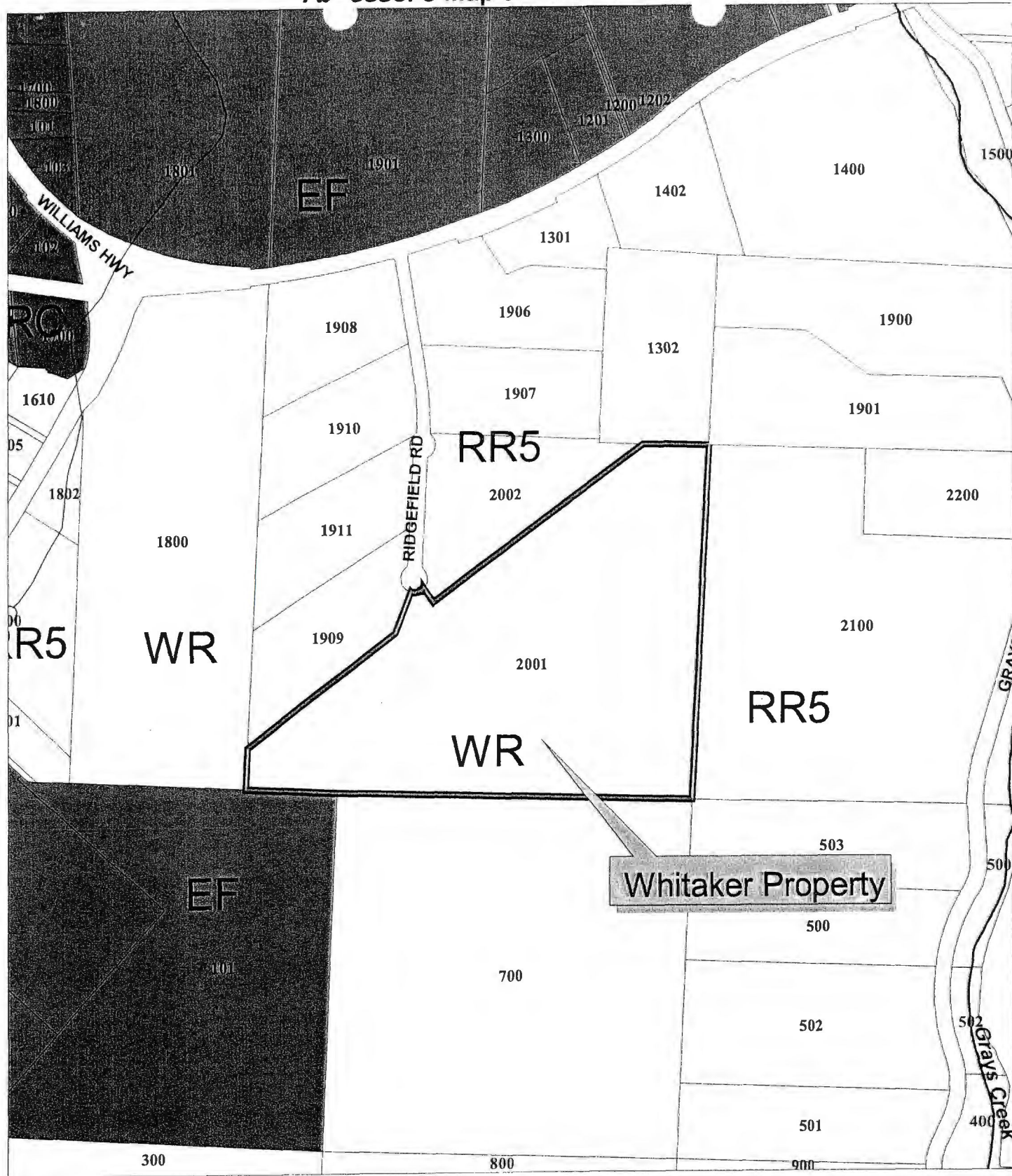
JOSEPHINE COUNTY
BOARD OF COUNTY COMMISSIONERS

S. Cassanelli
Sandi Cassanelli, Chair

Simon H. Hare
Simon Hare, Vice Chair

Dwight Ellis
Dwight Ellis, Commissioner

Assessor's Map 37-05-20 tl 2001



Legend

| | |
|------|------------------------------|
| | Texts |
| | Water (line) |
| | Class 1 |
| | Class 2 |
| Zone | |
| | EF-Exclusive Farm |
| | WR-Woodlot Resource |
| | RI-Rural Industrial |
| | RC-Rural Commercial |
| | RR1-Rural Residential 1 Acre |
| | RR5-Rural Residential 5 Acre |



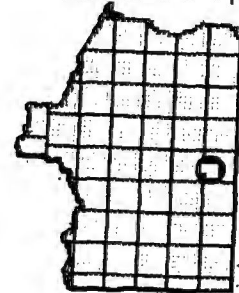
The information on this map is furnished for general interest purposes only. This information is provided without warranties of any kind, express or implied, and it should not be used to support any purchase or other investment. Neither Josephine County, Cave Junction, nor Grants Pass will accept responsibility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



Scale
1:6000



Locator Map



CERTIFICATE OF MAILING

I hereby certify that individual copies of the attached *Notice of Legislative Land Use Decision*, issued on behalf of the Josephine County Board of County Commissioners and dated **April 8, 2011**, were deposited in the United States mail on **April 8, 2011**, addressed to the following persons or organizations:

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

Ed Moore/DLCD
(via e-mail)

Planning Department
700 NW Dimmick Street Suite C
Grants Pass, OR 97526

Attached mailing list



Anne Ingalls
Sr. Department Specialist
Josephine County Planning



Josephine County, Oregon

Board of Commissioners: Sandi Cassanelli • Simon Hare • Dwight F Ellis

PLANNING OFFICE

700 NW Dimmick, Suite C / Grants Pass OR 97526

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

E-mail: planning@co.josephine.or.us

April 21, 2011

Plan Amendment Specialist/DLCD
Angela Houck
635 Capitol Street NE Suite 150
Salem OR 97301-2540

DLCD/Ed Moore
via e-mail

Re: Whitaker/Waltman CP/ZC
Legal: 37-05-20, TL 2001
Owner: Richard and Christine Whitaker

Dear Ms. Daniels and Mr. Moore:

Enclosed are the following for the above referenced matter:

1. One (1) complete paper copy of the *DLCD Notice of Adoption* dated 04/21/2011 with all pertinent documents; and
2. One (1) electronic digital CD of all documents and map of the adopted amendment.

Should you have questions, please do not hesitate to contact our office.

Sincerely,

Anne Ingalls
Sr. Department Specialist
Josephine County Planning Office
700 NW Dimmick, Suite C
Grants Pass OR 97526
541/474-5423
aingalls@co.josephine.or.us

Encs.: As referenced in letter

Josephine County Planning
100 NW Dimmick Street
Site C
Santitas Pass, OR 97526



DEPT OF

APR 25 2011

LAND CONSERVATION
AND DEVELOPMENT

DLCD/Text Amendment Specialist
635 Capitol Street NE Ste. 150
Salem OR 97301-2540

ANGELA HOUCK