



# Oregon

John A. Kitzhaber, M.D., Governor

**Department of Land Conservation and Development**

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Salem, Oregon 97301-2540

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## **NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION**

Date: May 13, 2015  
Jurisdiction: Benton County  
Local file no.: LU-15-004  
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 05/05/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 35 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 001-15 {23608}

Received: 5/5/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: Benton County

Local file no.: **LU-15-004**

Date of adoption: April 21, 2015

Date sent: 5/5/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): March 31, 2015

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Not different from what was proposed.

Local contact (name and title): Linsey Godwin

Phone: 541-766-6394

E-mail: linsey.godwin@co.benton.or.us

Street address: 360 SW Avery Ave

City: Corvallis

Zip: 97333

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### **For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

None.

#### **For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

Change from Agriculture	to Forest	64.1 acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

None

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from EFU	to FC	Acres: 64.1
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: None      Acres added:      Acres removed:

Location of affected property (T, R, Sec., TL and address):

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List affected state or federal agencies, local governments and special districts: Monroe Fire Department, Benton County Public Works.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

See attached signed Ordinance 2015-0266.

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

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

**AFTER RECORDING RETURN TO**  
*Linsey Godwin*  
*Benton County Community Development*

**Ordinance No. 2015-0266 In the Matter of Amending the Benton County  
Comprehensive Plan Map and Zoning Map**

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BENTON COUNTY, OREGON **2015-530407**  
MI-MISCR  
Cnt=1 Stn=47 COUNTER2 **04/29/2015 10:09:57 AM**  
This is a no fee document **NO FEE**



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

James V. Morales - County Clerk



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

<b>In the Matter of Amending the Benton County Comprehensive Plan Map and Zoning Map.</b>	) ) )	<b>ORDINANCE  No. 2015-0266</b>
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**WHEREAS**, the applicant, Kenneth Faulk, submitted an application for a Comprehensive Plan Map Amendment and Zoning Map Amendment on January 13, 2015, to rezone an approximately 64.1-acre tract consisting of Township 15 South, Range 5 West, Section 4, Tax Lots 500, 501 and 502 and Township 15 South, Range 5 West, Section 5, Tax Lot 900; and

**WHEREAS**, the requested action will change the property’s designation on the Benton County Comprehensive Plan Map from Agriculture to Forest, and will change the property’s designation on the Benton County Zoning Map from Exclusive Farm Use to Forest Conservation; and

**WHEREAS**, the Benton County Planning Commission held a duly advertised public hearing on March 17, 2015, and voted to recommend that the Board of Commissioners approve the Zoning Map Amendment and Comprehensive Plan Map Amendment; and

**WHEREAS**, the Benton County Board of Commissioners held a duly advertised public hearing on April 7, 2015, to consider the request; and

**WHEREAS**, the Board of County Commissioners finds that the proposed Map Amendments comply with the criteria of Benton County Code 53.505 through 53.525; the Oregon Administrative Rule OAR 660-012-0060; and are consistent with the applicable policies and procedures of the Comprehensive Plan; and

**WHEREAS**, the Benton County Board of Commissioners has considered the staff report, the application materials, the testimony of witnesses, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the application for a Zoning Map Amendment and Comprehensive Plan Map Amendment, and conducted the First Reading of the proposed Ordinance on April 7, 2015; and

**WHEREAS**, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on April 21, 2015.

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

- PART I:**     Short Title. Amendments to the Zoning Map and Comprehensive Plan Map.
- PART II:**    Authority. The Board of County Commissioners of Benton County has authority to amend the Zoning Map and Comprehensive Plan Map pursuant to ORS Chapter 215 and the Benton County Charter.
- PART III.**    The Zone Change Application No. LU-15-004 is hereby approved, based on the Findings and Conclusions contained in the attached “Exhibit 3” and hereby adopted and incorporated herein.

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

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

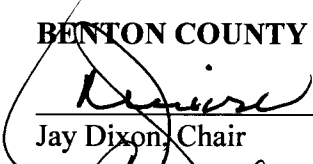
**PART VI.** The effective date for these amendments to the Benton County Comprehensive Plan Map and Zoning Map will be:

First Reading: April 7, 2015

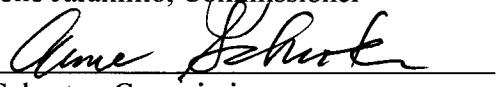
Second Reading: April 21, 2015

Effective Date: May 21, 2015


**BENTON COUNTY BOARD OF COMMISSIONERS**

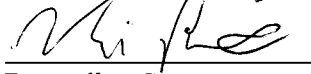
  
\_\_\_\_\_  
Jay Dixon, Chair

  
\_\_\_\_\_  
Annabelle Jaramillo, Commissioner

  
\_\_\_\_\_  
Anne Schuster, Commissioner

Approved as to Form:

  
\_\_\_\_\_  
Vance Croney, County Counsel

  
\_\_\_\_\_  
Recording Secretary

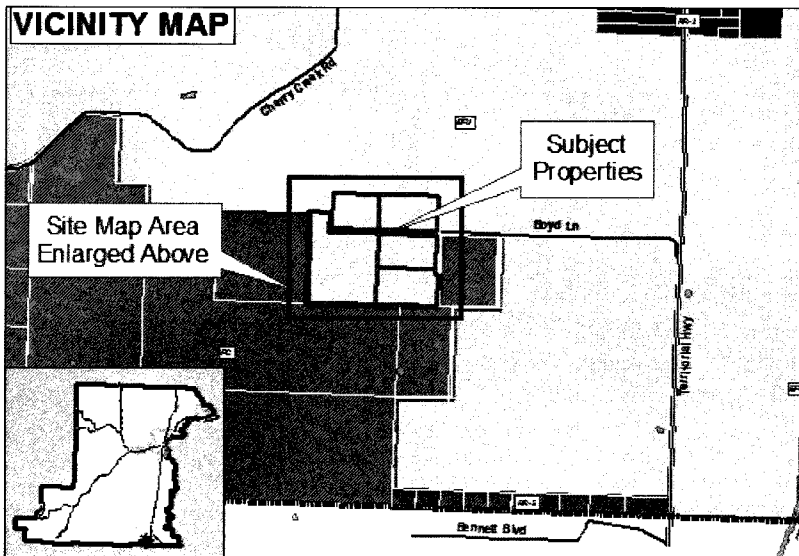
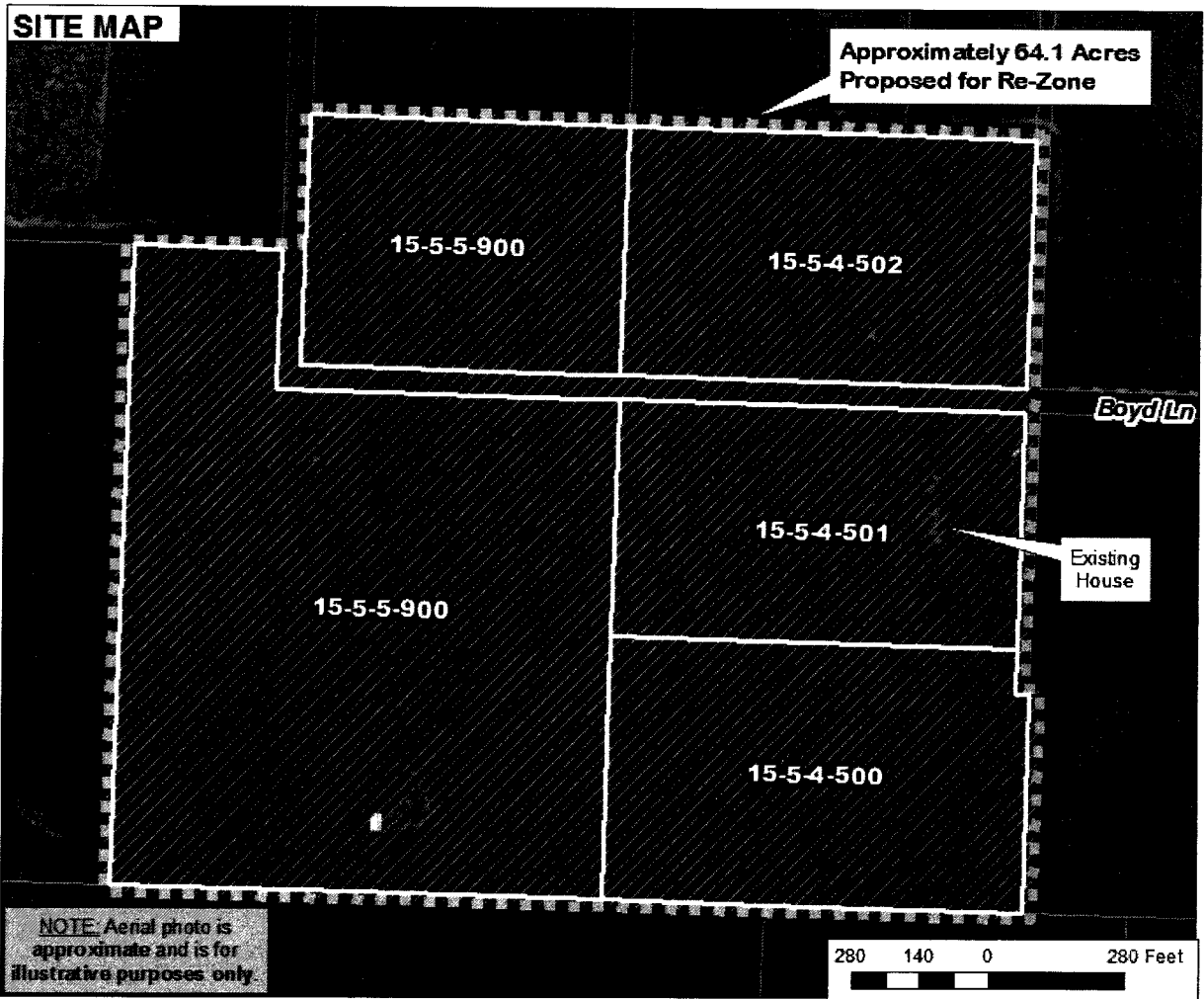
**Exhibit 1**

**Legal Description of Zone Change Area**  
**Faulk Zone Change; File No. LU-15-004**

The following described real property situated in Benton County, Oregon, Tracts Numbered 44, 45, 54, 55, 56 and 57, OACO Orchards, as platted and recorded in Book 3, Page 8, Benton County Plat Records, Benton County, Oregon.

Exhibit 2

Map of Zone Change Area  
Warren Zone Change; File No. LU-14-077



FILE NUMBER  
**LU-15-004**

APPLICATION TYPE  
**Zone Change:  
Exclusive Farm Use  
to Forest Conservation**

APPLICANT  
**Ken Faulk**





### Exhibit 3

#### Findings of Fact and Conclusions of Law Faulk Zone Change; File No. LU-15-004

#### A. GENERAL FINDINGS

The applicant proposes to re-zone an approximately 64.1 tract, from Exclusive Farm Use (EFU) to Forest Conservation (FC). This proposal includes a request to amend the Comprehensive Plan Map designation from Agriculture to Forest and to change the Zone designation from EFU to FC.

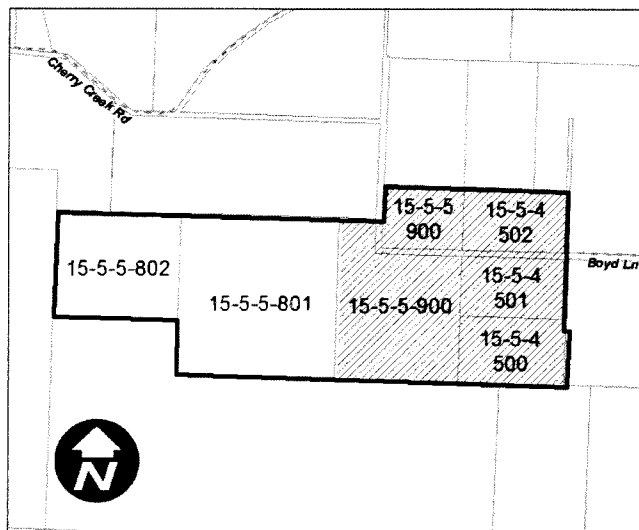
#### Applicant's Proposal

*This proposal is simply to match zoning to use, not only current use but also historical use. For at least one past generation, the property has been used as forestland and not farmland. Currently, all tax lots 500, 501, 502 and 900 are zoned Exclusive Farm Use. All four tax lots were clear-cut about 1993. I purchased the property in 1994 and have successfully replanted with Douglas fir. I am now commercially thinning this 21 year old stand. Tax lot[s] 500, 501, 502 and 900 are part of a larger [tract] with tax lot[s] 801 and 802 (see image next page). Tax lot[s] 801 and 802 are zoned Forest Conservation and my request is to add tax lots 500, 501, 502 and 900 to Forest Conservation (FC) zoning to Exclusive Farm Use (EFU) zoning. This would*

*appropriately make the entire parcel Forest Conservation zoning which matches the current use and planned future use. The entire [tract] is currently taxed as Small Tract Forestland (FTC) as per Oregon House Bill 2197. Also, the entire [tract] including the subject tax lot[s] 500, 501, 502 and 900 were inspected in 1996 by the Oregon Tree Farm System under the Direction of the American Forest Foundation and passed initial certification as a Certified Tree Farm (CTF) practicing sustainable management practices. Part of the certification process is development of a management plan, which is available if desired. In 2006, this tree farm was chosen as the Oregon Tree Farm of the Year. The NRCS Soil Survey of Benton County show these tax lots contain Bellpine-Jory Complex with 10-20% slope (BeD, Woodland Suitability group 2c4) soil type. The soil interpretation record lists grass and conifer plants as good suitability for this site. It is in fact well commercially stocked with Douglas fir as certified by Oregon Tree Farm Systems as detailed above.*

*I am requesting the Comprehensive Plan and Zoning Map amendments for EFU to FC as it is more appropriate for the property due to topography and use. The Land Use Board of Appeals (LUBA) has ruled that it is permissible to rezone property from a farm to a forest zone in post-acknowledgement plan amendment, if the County finds that the property is suitable for commercial forest use which this property had proven in the past. Also, a change from one*

**Faulk Tract**



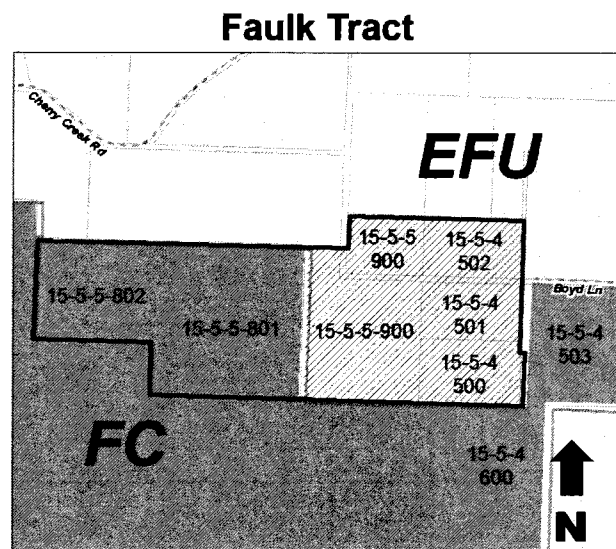
resource zone to another does not require an exception to the goal relevant to the prior zoning so in this case Goal 3 exception is not required to rezone the land from EFU to FC.

## General Information

Land uses directly adjacent to the subject tract are primarily managed resource lands containing Christmas tree production (Monroe Tree Farms) to the north and east, intensive timber production to the west, an unmanaged hardwood wood lot to the east and grape production (Benton-Lane Winery) to the southeast with some residential development. There are several dwellings within a half mile of the subject tract, including one within the subject tract and one on an adjacent property to the east. Heading farther north, approximately one mile, the City of Monroe includes neighborhoods, two schools, several churches, an extension of the Corvallis-Benton County Public Library, and the Monroe Rural Fire District office.

The subject tract is located west of Territorial Highway at the western end of the developed portion of Boyd Lane. It is primarily a north-facing hillside with some portions sloping to the west and east and forms the lower portion of an 820 foot tall hill whose peak is approximately 0.31 mile south of the subject tract's southern boundary. Elevations on the subject tract range at the highest from approximately 690 feet MSL (south) to 555 feet MSL (west) to 525 feet MSL (east) to 470 feet MSL (north).

The properties involved in this application were originally created by the OACO Orchards platted subdivision recorded in 1910 and consist of lots 44, 45, 54, 55, 56, and 57. Together these lots create an approximately 64.1 acre tract (shown hatched in image right). There are only four tax lots to help identify these six lots, which consist of: T15S, R5W, Section 4, Tax Lot 500, 501 and 502 and T15S, R5W, Section 5, Tax Lot 900. The platted right-of-way for Boyd Lane separates tax lot 502 and the northern portion of tax lot 900 from the remainder of the tract.

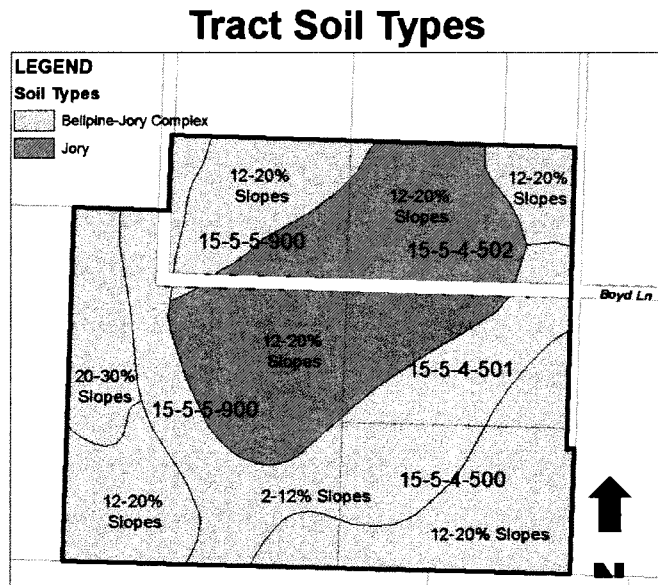


The subject tract received its first zoning designation in 1974 as Rural Residential 5-Acre Minimum (RR-5). The RR-5 zoning designation was changed to EFU in 1979 and remains in EFU. Adjacent properties to the south and west of the subject tract are zoned FC. Adjacent properties to the north of the tract are zoned EFU. Directly east of the tract is one property zoned EFU and one property zoned FC. The property east of the tract zoned FC (Tax Lot 503), along with an FC property southeast of the tract (Tax Lot 600), received approval for a zone change from EFU to FC per Planning File No. LU-04-081 in 2004. A dwelling was also recently approved on Tax Lot 503 per Planning File No. LU-08-037 and built per Building Permit No. B1100929. This dwelling was authorized using BCC 60.108(1), where one dwelling per 160 contiguous acres in one ownership in the FC zone can be approved.

Tax lot 501 within the subject tract also contains one dwelling, which was approved in 1981. The property owner at the time, Martyn Chase, originally applied for a farm related dwelling (Planning File No. S-81-73, Attachment D), however, according to a letter from the County

Counsel dated November 20, 1981, the dwelling was authorized based on a vested right.<sup>1</sup> At the time of dwelling approval, Mr. Chase owned the entire subject tract and Tax Lot 503. Notes in Mr. Chase’s dwelling application state that on his property “approx. 25 acres on NE is in Doug fir and Noble fir Christmas trees. The balance, approx. 60 acres, is in second growth fir timber.” A plot plan included with the dwelling application shows Christmas trees planted in the area that appears newly planted in the 1978 aerial photograph on Page 5 (this area appears clear of trees in the 1955 and 1967 aerial photographs). As a result of the dwelling approval, a manufactured dwelling was placed<sup>2</sup> on tax lot 501 along with a septic system<sup>3</sup> and well. This manufactured dwelling was replaced<sup>4</sup> by a new manufactured dwelling in 1997.

The soils on the property are approximately 27.5% Bellpine-Jory Complex 2%-12% slopes; approximately 33.2% Bellpine-Jory Complex 12%-20% slopes; approximately 6.4% Bellpine-Jory Complex 20%-30% slopes; and approximately 32.9% Jory silty clay loam, sediments 12%-20% slopes, (see image right). The predominating Bellpine-Jory Complex soils 2%-20% slopes, are Class IIIe agricultural soils and have timber productivity ratings between 172 and 178 cubic feet per acre per year. The Jory silty clay loam, sediments, soil is a Class IIIe soil as well and has a timber productivity rating of 178 cubic feet per acre per year. Only the Bellpine-Jory Complex soils 20%-30% slopes, are Class IVe, non-high value agricultural soils, but still maintain the timber productivity rating between 172 and 178 cubic feet per acre per year.



Soil Name	Slope Range	Agricultural Class	Forest Production	Acres
Bellpine-Jory Complex	2 to 12 Percent	IIIe, high value	172-178, class 1	17.6
Bellpine-Jory Complex	12 to 20 Percent	IIIe, high value	172-178, class 1	21.3
Bellpine-Jory Complex	20 to 30 Percent	IVe, non-high value	172-178, class 1	4.1
Jory, sediments	12 to 20 Percent	IIIe, high value	178, class 1	21.1

As described by the Applicant’s statement and as shown by the Benton County 1994 GIS Aerial Photograph (see image Page 5), the majority of the subject tract was clearcut in 1993-1994. Since the applicant purchased the property in 1994, he has intensively managed it for timber production by planting Douglas fir tree species and participating in the Oregon Tree Farm System since 1996.

<sup>1</sup> “On the basis of previous County permits issued on the presumption that the subject property would be developed with a residential unit and on the basis of the investment made in the development of the property pursuant to those permits, it is our determination that the right to place a mobile home on the property has been vested and a placement permit for a mobile home on the property may be issued.” Excerpt from letter.

<sup>2</sup> Building Permit No. 8211528.

<sup>3</sup> Septic Permit No. P20-79.

<sup>4</sup> Building Permit No. C9700595.

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

*Note: The proposed zone change maintains the Comprehensive Plan resource designation, and therefore, does not trigger a requirement for an exception to Statewide Planning Goal 3.*

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

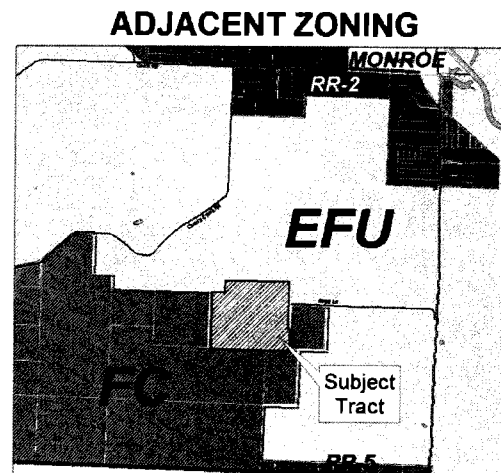
1) The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied. [BCC 53.505(1)]

**Applicant's Findings:** *Most of the slope of the land is to the east and north which precludes use of the property for grape production. Christmas tree production is possible but the topography makes it less than ideal. It would not be financially feasible to clear the land for grazing so the best use of this land is in the establishment of a commercial forest, which in fact does represent the past and present use of this land. I suspect that prior zoning existed because the land was not intensively managed and therefore neglected but never the less did grow into a mixed hardwood and conifer forest. Some grazing did exist in the past but is incompatible with intensive westside forest management so FC would represent the best use. The forest soils are class II for Douglas fir on a 50 year rotation which indicates a very good potential for commercial forest production.*

*The property in question is timberland, based on the factors discussed...above and site visits by a variety of timberland consultants who have all agreed that this property is indeed timberland. It is on the interface with agricultural land, which is found in lower elevations and flatter slopes. For these reasons we feel the more appropriate designation is FC.*

*The entire [tract] including the subject tax lots 500, 501, 502 and 900 were inspected in 1996 by the Oregon Tree Farm System under the direction of the American Forest Foundation and passed initial certification as a Certified Tree Farm practicing sustainable management practices. In 2006, this tree farm was chosen as the Oregon Tree Farm of the Year.*

**Findings:** As described in Section A (General Findings) above, the zoning of the subject tract was changed from RR-5 to EFU in 1979. Currently, the adjacent properties to the west, south and east of the subject property are zoned FC, while the adjacent properties to the north are zoned EFU (see image right). The time lapse aerial photographs on Page 5 show that since 1955 the majority of the tract has been planted in trees for forest management. This is confirmed by a plot plan and statement written by the previous property owner in 1981<sup>5</sup>, that the majority (over 70%) of the subject tract was in use for timber management. According to the applicant's statement and as shown by the Benton County 1994 GIS Aerial



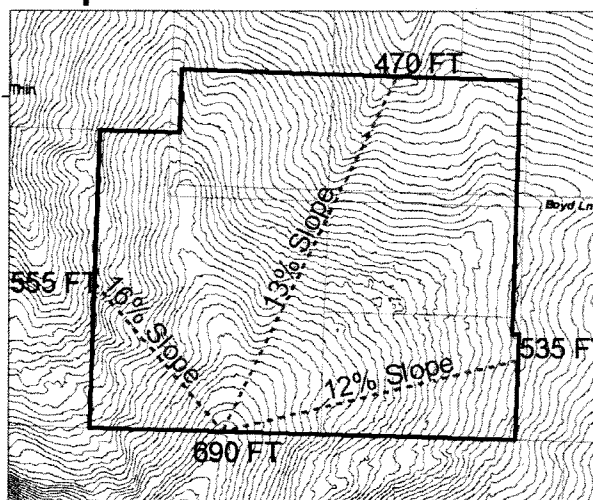
<sup>5</sup> Planning File No. S-81-73.

Photograph, the portion of the subject tract managed for timber was clear-cut in 1993-1994. Since the applicant's purchase of the property in 1994, he has intensively managed the entire subject tract for timber production by planting Douglas fir tree species in the clear-cut areas of the tract and thinning the portion of the tract previously stocked for Christmas tree sales. As stated by the applicant, the subject tract is certified under the Oregon Tree Farm System and was honored as the Oregon Tree Farm of the Year in 2006.

The soils on the subject tract are considered high-value agricultural soils, but are not Class I or II prime farmland.<sup>6</sup> In contrast, the soils on the subject tract are considered to be within the class 1 site class, which "can support the most trees and produce the most wood volume" for Douglas-fir commercial tree production according to the *Soil Survey of Benton County, Oregon issued January 2009*.<sup>7</sup> Furthermore, the slopes and aspect of the subject tract would make farm crop irrigation, cattle raising, and frequent tractor and farm equipment access difficult.

Staff's analysis shows slopes on the tract average approximately 14% (see image right), with pockets on the western portion of the tract being steeper than 25%. These slopes are also primarily north and east facing, which significantly reduces full sun exposure. Grape production is an agricultural activity that can sometimes be conducted on steeper slopes and is currently conducted on property to the southeast owned by Benton-Lane Winery. However, the subject tract contains primarily north and east-facing slopes and has steeper slopes than the land owned by Benton Lane LLC (15-5-04-601, 15-5-08-100, and 15-5-09-500 & 800). The existence of steep, primarily north and east-facing slopes prevents the property from being conducive to grape production.

### Slopes and 5-Foot Contour Lines



Forest uses are allowed as a permitted use in the EFU zone. Agricultural production is occurring on adjacent properties to the northwest, north and northeast with similar slopes, soils and aspect. Staff noted, during a site visit to the subject tract on March 6, 2015, that Monroe Tree Farm, LLC, which owns adjacent property to the north and east, has converted the majority of their Christmas tree crop to wheat or similar grain crops. Additionally, Christmas tree production is currently conducted on property to the northwest owned by Kay King.

**Analysis and Conclusion:** While forest uses are allowed in EFU zones, this criterion asks whether the proposed zone is more appropriate considering *existing uses on the property*. The subject tract is currently a timbered hillslope certified as a tree farm by the Oregon Tree Farm System. As is evidenced by the slopes, aspect, vegetation, projected timber productivity rate of

<sup>6</sup> See Section IV (General Findings).

<sup>7</sup> "A group of site indexes is called a site class. Classes have been established for most commercial tree species. Site classes 1, 2, 3, 4, and 5 generally are used. Site class 1 is the most productive, and site class 5 is the least productive. For Douglas-fir, class 1 (50-year base age) is more than 136, site class 2 is 116 to 135, site class 3 is 96 to 115, site class 4 is 75 to 95, and site class 5 is 55 to 74. Site class 1 soils can support the most trees and produce the most wood volume." *Soil Survey of Benton County, Oregon issued January 2009*, pages 393 to 394 and Table 7. *Forestland Productivity*.

the soils, and use of the tract, the subject tract is more suited to forestry than to farming. Additionally, based on the historic aerial photographs and a statement from a previous property owner in 1981, the majority of the subject tract has been in forest management since at least 1981 and likely the mid-1970s, indicating that the FC zoning designation may have been more appropriate even when the zoning was changed from RR-5 to EFU. Therefore, the Board concludes that the FC zoning designation is more appropriate than the current zone.

***The Board finds this criterion has been met.***

**2) The impact on adjacent properties will be minimal. [BCC 53.505(2)]**

**Applicant's Findings:** *Surrounding property is used for timber production to the south, north and [west]. Grass production to the north and east. There are three dwellings in the immediate vicinity and the town of Monroe is about one and [a] half miles north. Since timber production was the prior use, no conflicts with surrounding property uses will exist with a change in zoning to FC.*

**Findings:** The subject tract has been managed for timber production, a permitted use in the EFU Zone, exclusively since 1994 and predominantly since at least 1981. The applicant has not proposed any change in the current timber use on the tract in his application narrative. As described in Section A (General Findings), Tax Lots 503 and 600, owned by Ronald and Karen Gilson, were approved for a zone change from EFU to FC in 2004. A dwelling was then authorized on Tax Lot 503 using BCC 60.108(1), where one dwelling per 160 contiguous acres in one ownership in the FC zone can be approved. This dwelling is located approximately 450 feet southeast of the existing dwelling on the subject tract. The Gilsons have also been managing their property as a Certified Tree Farm and growing commercially stocked Douglas fir since they purchased their property in 1994.

There are already several existing dwellings in the vicinity, including both the Monroe Tree Farm property and the Benton-Lane Winery property. The dwelling on the subject tract established in 1981 has not had any measurable impact on adjacent properties. For example, the adjacent properties that were in resource production since prior to the establishment of the dwelling are still in resource production as shown by the aerial photographs on Page 5 and as confirmed by a site visit on March 9, 2015.

Under the current EFU zoning, additional dwellings on this tract are not likely to be approved, because a dwelling already exists on the tract. Likewise, if lots within the subject tract were sold, the size of the lots (15 acres or less) would make it unlikely for the individual lots to qualify for a dwelling based on the income standard (BCC 55.109 or 55.112).

Re-zoning the property to FC could result in one dwelling on the subject tract through BCC 60.108(1), which would be potentially approvable through the provision of one dwelling per 200 acres.<sup>8</sup> Or, if the lots within the subject tract are sold or transferred such that the lots are under separate ownership from all adjacent parcels or lots, it may be possible for one or more of those lots to qualify for a "Template Test" forest dwelling pursuant to BCC 60.108(2).

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<sup>8</sup> This provision requires 200 acres in one ownership that are not contiguous, but are in Benton County or adjacent counties and zoned for forest use.

A recent land use interpretation, Planning File No. LU-14-079, determined that “a Template Test dwelling could be approvable for Tax Lot 502 [within the subject tract] under the current zoning regulations if it were zoned FC and held in an ownership separate from all adjacent parcels and lots.” Based on a preliminary review of other lots within the subject tract, it appears that Tax Lot 500 and the part of Tax Lot 900 north of the Boyd Lane right-of-way could potentially also receive approval for Template Test dwellings under the same conditions as Tax Lot 502. There is the potential that additional dwellings on resource-zoned land could conflict with neighboring farm and forest uses beyond the minimum threshold.

**Analysis and Conclusion:** The applicant has not expressed an interest in selling portions of his property for residential development in the narrative for this zone change application. However, based on the request for an interpretation (LU-14-079) by the applicant for the approvability of a Template Test forest dwelling on Tax Lot 502, it appears there is interest in establishing at least one additional dwelling within the subject tract. During staff’s site visit on March 9, 2015, the applicant expressed a desire to reduce the size of the lot identified as Tax Lot 502 from 10 acres to 5 acres through a property line adjustment and then sell the 5 acre resultant parcel as a buildable lot using the Template Test criteria. Dwellings already exist on adjacent properties currently in resource use to the northeast, north, east, and southeast owned by Kay King, the Monroe Tree Farm, Ronald and Karen Gilson and the Benton-Lane Winery respectively.

Prior to the issuance of dwelling building permits in the FC zone all property owners are required to sign a covenant stating that they recognize that resource uses exist on neighboring properties and agree not to bring complaints against those uses. This covenant both informs the property owners of existing resource uses on adjacent lands and protects those adjacent uses from any negative impacts from the residential development. The dwelling siting standards of the FC zone would also require that the new dwellings be sited through a balancing of the 300-foot setback from neighboring resource land with the need to minimize impacts to resource use and wildlife habitat on the subject tract. Additionally, prior to the issuance of dwelling building permits, the property owner would be required to provide Boyd Lane road improvements and bring any driveways and Boyd Lane up to Monroe Fire Department access standards.

While approval of a dwelling pursuant to BCC 60.108(1) may be an option, the Benton County Assessor’s property database shows that if the proposed zone change is approved, Mr. Faulk would only own approximately 124 acres of land within the FC zone in Benton County, which would be an insufficient amount of acreage. It is unknown whether or not Mr. Faulk owns additional forest zoned land within the adjacent counties. Approval of a new dwelling pursuant to BCC 60.108(1) would require the applicant to sign two covenants: the first covenant would require that the parcels used to qualify for the dwelling not be sold separately and the second covenant would be to state that the applicant recognizes that resource uses exist on neighboring properties and agrees not to bring complaints against those uses.

Based on the discussion above, the result of the zone change in the short-term (possibly the next five years) will likely be one additional dwelling on Tax Lot 502. Impacts from this dwelling would be mitigated through the forest dwelling siting standards, the fire department road access standards, the signing of a covenant, and the contribution of road improvements for Boyd Lane. In the long-term, the zone change could result in the development of two more dwellings, one on Tax Lot 500 and one on the northern portion of Tax Lot 900 (*Note: These two dwelling rights have yet to be determined through a land use review process and are currently theoretical*).

These lots would first have to be sold by Mr. Faulk and also receive dwelling right land use approval. In event multiple dwellings are approved, there is the potential for more than minimal impacts; however, the above mitigating factors (setbacks and other siting standards; covenants) are likely to reduce those impacts. The Board concludes that the most likely scenario is that impacts will be minimal.

***The Board finds this criterion has been met.***

**3) Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area. [BCC 53.505(3)]**

**Applicant's Findings:** *It is not expected that a zone change from EFU to FC would result in any increase in demand for services.*

**Findings:** Changing the zoning to FC will not in and of itself result in an increased demand for public services. However, any addition of dwellings on the subject tract as a result of the zone change would require some increase in the level of public services, such as road construction, improvements and maintenance, and emergency services. Cable, phone, internet, electricity, natural gas, septic and water services would be the responsibility of the property owner(s).

Public rights-of-way providing access routes through the subject tract were originally established on the OACO Orchards subdivision plat in 1910. The plat identifies several rights-of-way reservations, including Public Road P55100 (undeveloped), Public Road P55101 (undeveloped), Public Road P55202 (undeveloped) and Boyd Lane (partially developed). BCC 99.405(1) requires that "every new dwelling...shall be sited on a parcel or lot which has a minimum of twenty-five (25) feet of frontage along an improved public road." On March 10, 2015, Andrew Monaco, Benton County Public Works, submitted a memorandum stating that "approval of the zone change and further land use action allowing for new dwellings will require a minimum of 25 feet of frontage along an improved public road. These roadways, [Boyd Lane, Public Road P55100, Public Road P55101, and Public Road P55202], do not meet current improved public or secondary road standards and as such further development will likely require road improvements. The applicant for a new dwelling shall construct all driveways and roadways to meet local fire district and county development standards." These requirements would be met through the building permit process and prior to the construction of any dwellings within the subject tract.

On March 2, 2015, Rick Smith, Monroe Fire Department, submitted comments via email stating that prior to the construction of any dwellings on the subject tract Boyd Lane would have to see major improvements to meet the fire departments' emergency access standards. One major issue is that there is currently only one way in and one way out of the subject tract. Also, the homes would be placed in a heavy timbered area that would increase the occurrences of wildland interface fires. The property owner applying for the new dwelling would be required to address all fire water and access requirements prior to building permit issuance.

If development of up to three new dwellings occurs on Boyd Lane without the road improvements discussed above, that would constitute an unmet, significant increase in demand for public services and would violate this criterion.



**Conclusion:** While the addition of dwellings to the subject tract as a result of the proposed zone change could result in a significant increase in the demand for public services, the majority of these demands would be addressed through road improvements required of the property owner. As described above, through the building permit process and prior to the construction of any dwellings within the subject tract, the County would require completion of minimum requirements for roadway access and emergency vehicles, as well as a share of improvements toward the full or secondary road standard. With the improvements to Boyd Lane and construction of driveways to fire access standards, emergency services personnel would be able to reach the dwelling in case of emergency. As a result, the Board finds that, provided the road improvements described above are required and implemented by the developer(s) of dwellings within the subject tract, any significant increase in the level of public services can be made available to the area.

*The Board finds this criterion has been met.*

4) **The proposed zone change is consistent with the policies of the Comprehensive Plan. [BCC 53.505(4)]**

***Natural Resources and Hazards, Policy #3:*** Where no conflicting uses for Benton County natural resource lands have been identified, such resource lands shall be managed to protect their character. Where conflicting uses have been identified, the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the Statewide Goals.

***Natural Resources and Hazards, Policy #22:*** Benton County shall protect areas for agricultural and forestry use which are primarily composed of agricultural and forestry soils, Capability Units I-IV, Site Classes 2-5, and are predominantly free of non-resource land use interferences and conflicts.

***Natural Resources and Hazards, Policy #23:*** Benton County shall use zoning, land division ordinances, and other measures and programs that will protect and strengthen the agriculture and forestry industries and minimize conflicts with more intense uses.

***Natural Resources and Hazards, Policy #25:*** Benton County shall encourage the efficient and proper management of its agricultural soils to maintain agricultural production; and protect remaining natural water, native brush and wooded areas to provide fish and wildlife habitat and to decrease wind and water erosion.

***Natural Resources and Hazards, Policy #26:*** Benton County shall promote the efficient and proper management of its woodland soils to ensure a supply of wood products; support adequate wildlife habitat; provide watershed areas, and provide lands for agricultural and recreation activities where appropriate.

***Natural Resources and Hazards, Policy #27:*** Benton County shall continue to use the USDA Soil Conservation Service (SCS) Soil Survey as a general guide for soil management and land planning purposes.

***Natural Resources and Hazards, Policy #34:*** Benton County shall work with appropriate agencies to support and encourage the improvement of the Forest Practices Act and its enforcement as applicable to erosion sedimentation control and reforestation, especially regarding woodlands along creeks and rivers on the valley terrace. Further, Benton County will urge the application of County policies and regulations to federal forest lands where they are more protective of the forest lands than existing federal policies and regulations.

***Natural Resources and Hazards, Policy #35:*** Benton County shall encourage immediate reforestation of cut-over timber lands and the forestation or reforestation of marginal agricultural lands to either conifer or hardwood stock.

***Rural Land Use, Policy #2:*** Agricultural lands as defined by Goal 3, which are not developed or committed to non-farm uses, shall be protected with Exclusive Farm Use (EFU) or Multi-Purpose Agriculture (MPA) zoning as described in ORS 215. The commercial standard stated in Goal 3 will be used to evaluate proposed divisions of land in the EFU Zone. Comprehensive Plan amendments from Agriculture to a non-resource designation shall require an Exception to Goal 3.

***Rural Land Use, Policy #6:*** Lands designated "Forest" on the Comprehensive Plan Map shall be conserved and maintained for forest uses.

- a. There are existing parcels of land in the Forest Conservation zone that are smaller than the 40 and 80 acre minimum lot sizes. Allowing a residence on these parcels in conformance with the provisions of the Forest Conservation zone meets the intent of the Forestry Plan designation and is compatible with Goal 4.
- b. Benton County must strive to protect the inherent right for its citizens to own and reside on legally created parcels of land. [Ord 25J]

***Rural Land Use, Policy #7:*** Comprehensive Plan amendments from "Agriculture" to a non-resource designation shall require an Exception to Goal 3.

***Rural Land Use, Policy #10:*** The improvement of private small woodlots shall be encouraged through local, state or federal programs which provide technical assistance to woodland owners.

**Applicant's Findings:** *The request is consistent with Benton County comprehensive plan policies, because the change to FC will more accurately reflect the past, present and future uses on the property. It is a comprehensive plan goal to improve and maintain private wood lots. By designating the land FC, it more likely will remain forestland into the future.*

**Findings in Support:** The subject tract is predominantly composed of Class III agricultural soils, according to the Soil Survey of Benton County (USDA Soil Conservation Service), which have a timber productivity rating of 172 to 178 cubic feet per acre per year of wood volume when fully stocked. The subject tract is currently planted for timber production and has been in timber production by the current property owner since 1994.

Compliance with the Comprehensive Plan and the statewide planning goals has been shown in the paragraphs above. A public need exists to accurately and appropriately zone land. Additionally, since the lots within the subject tract are smaller than the 80 acre minimum lot size

and are legally created parcels of land, Benton County must protect property owner's rights to live on their land. Per Rural Land Use, Policy #6, "Allowing a residence on these parcels in conformance with the provisions of the Forest Conservation zone meets the intent of the Forestry Plan designation and is compatible with Goal 4."

**Analysis and Conclusion:** The subject tract will retain the Comprehensive Plan resource designation after the proposed zone change. The land will continue to be protected for resource use consistent with the Statewide Planning Goals. Allowing dwellings on legally created parcels of land that are smaller than the minimum parcel size meets the Statewide Planning Goal 4 as stated in the policies of the Comprehensive Plan. The Board concludes the proposed zone change is consistent with applicable policies of the Comprehensive Plan.

*The Board finds this criterion has been met.*

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

1) **Map amendments may be considered when compliance with all elements of the Comprehensive Plan and with statewide land use planning goals can be shown and a public need exists for the proposed amendment. [Benton County Comprehensive Plan, Monitoring and Updating the Plan (5)]**

**Applicant's Findings:** *The subject property meets [the] Goal 4 definition of forestland because it has been productive and is currently productive of a commercial forest crop. Goal 4 is "to conserve forest land for forest use" and by rezoning to FC this more likely will persist into the future and fulfill this goal. As rezoning from EFU to FC requires no goal exceptions, the change is consistent with Statewide Planning Goals.*

**Findings:** Compliance with the Comprehensive Plan is addressed in Section B(4) above. Rezoning a property from EFU to FC does not require an exception to a Statewide Planning Goal. As described above, a public need exists to accurately and appropriately zone land.

**Conclusion:** The proposed zone change complies with all elements of the Comprehensive Plan and with statewide land use planning goals, and the requirement that a public need exists for the proposed amendment has been met.

*The Board finds this criterion has been met.*

**Conclusion:** The proposed zone change is consistent with Benton County Development Code criteria and Comprehensive Plan policies.

### D. FINDINGS APPLYING TRANSPORTATION PLANNING RULE

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

- (a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;
  - (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or
  - (d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.
- 2) A plan or land use regulation amendment significantly affects a transportation facility if it:
- (a) Changes the functional classification of an existing or planned transportation facility;
  - (b) Changes standards implementing a functional classification system;
  - (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
  - (d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.

**Findings:** The proposed zone change and Comprehensive Plan map amendment will not alter the land uses of the subject tract, with the exception that the property owner or future property owner(s) may qualify for one or more dwellings in the Forest Conservation zone. If such dwellings were approved, they would be accessed via Boyd Lane. This development would not result in a level of travel or access inconsistent with the functional classification of Boyd Lane, nor would such use reduce the performance standards of the facility below the minimum level identified in the County's transportation plan.

**Conclusion:** Based on the findings above, the Board finds that the proposed plan amendment would not significantly affect a transportation facility, and the requirements of subsection (1) do not apply.

*The Board finds this criterion has been met.*

## F. SUMMARY AND CONCLUSION

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

Development Code Zone Change Criteria: The proposed zoning is more appropriate than the current zoning, and impact on adjacent properties will be minimal.

⇒ The Board of Commissioners concludes that the proposal meets the Development Code criteria for zone change.

Criteria for Amending the Comprehensive Plan Map: Consistency with Comprehensive Plan policies and statewide goals has been demonstrated.

⇒ The Board of Commissioners concludes that these criteria have been met.

Compliance with Transportation Planning Rule: The proposed zoning will not alter the land uses of the subject tract. If any additional dwellings are built on lots within the subject tract in the future, this development would not result in a level of travel or access inconsistent with the functional classification of Boyd Lane, nor would such use reduce the performance standards of the facility below the minimum level identified in the County's transportation plan.

⇒ Based on the information submitted at this time, the Board of Commissioners concludes the proposed zone change complies with the provisions of the Transportation Planning Rule (OAR 660-012-0060).

**Overall Conclusion: The criteria for a Zoning Map amendment and a Comprehensive Plan Map amendment have been met. Therefore, the Board of Commissioners approves the request.**