Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

November 6, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Josephine County Plan Amendment
DLCD File Number 001-06

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: November 21, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

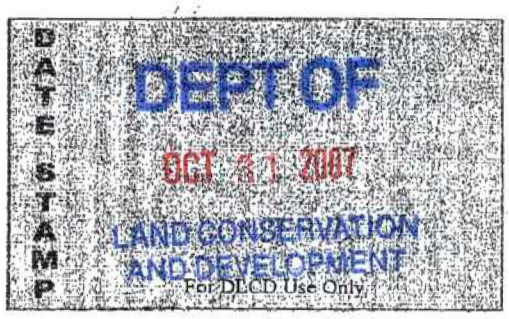
***NOTE:** **THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

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

<paa> ya/

FORM 2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **Josephine County** Local file number: **36-06-34, TL 2400**

Date of Adoption: **10/24/2007** Date Mailed: **10/31/2007**

Date original Notice of Proposed Amendment was mailed to DLCD: **1/25/2006**

- ☐ Comprehensive Plan Text Amendment
- ☐ Land Use Regulation Amendment
- ☐ New Land Use Regulation
- ☒ Comprehensive Plan Map Amendment
- ☒ Zoning Map Amendment
- ☐ Other: _____

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

Approval of a request for amending the Comprehensive Plan Map of Josephine County (Ordinance 81-11, as amended), from Forest to Residential and amending the Zoning Map of Josephine County (Ordinance 85-1, as amended), from Woodlot Resource to Rural Residential 5 acre minimum (RR-5).

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

Same

Plan Map Changed from: **Forest Resource** to: **Residential**

Zone Map Changed from: **Woodlot Resource** to: **Rural Residential 5 (RR-5)**

Location: **3601 Demaray Drive** Acres Involved: **33.04 acre**

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: **Goal 3 - Agricutural Lands & Goal 4 - Forest Lands**

Was and Exception Adopted? ☐ YES ☒ NO

DLCD File No.: _____

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Was and Exception Adopted? ☐ YES ☒ NO

DLCD File No.: 001-06(14968)

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

Forty-five (45) days prior to first evidentiary hearing?	☒ **Yes**	☐ **No**
If no, do the statewide planning goals apply?	☐ **Yes**	☐ **No**
If no, did Emergency Circumstances require immediate adoption?	☐ **Yes**	☐ **No**

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

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

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

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

ADOPTION SUBMITTAL REQUIREMENTS

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

1. Send this Form and **TWO (2) Copies** of the Adopted Amendment to:

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

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

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE BOARD OF COMMISSIONERS

OF JOSEPHINE COUNTY

Request for Comprehensive Plan Amendment and Zone Change from Woodlot Resource (Forest) to Rural Residential RR-5 (Residential Tax Lot 2400, T36S, R06, S 34 Owner/Applicant: Cathy A. Frykman	)	FINDINGS, CONCLUSION, AND DECISION

SECTION 1. INTRODUCTION

This matter is an application for Comprehensive Plan Amendment and Zone Change. The applicant seeks to change the zoning and comprehensive plan designation for the property from Woodlot Resource (Forest) to Rural Residential RR-5 (Residential). The application seeks to eventually develop the property with additional homesites, although no partition or subdivision application is part of this proceeding. On June 12, 2006, the Josephine County Rural Planning Commission by a vote of 6-2 recommended denial of the applications because the majority of the commission did not believe there was sufficient evidence in the record indicating that the property had adequate carrying capacity for development, as set forth by Rural Land Development Code (RLDC) section 11.030. After hearings on the matter on July 11, 2007, and July 25, 2007, the Board of Commissioners approves the applications.

SECTION 2. THE RECORD

The record here includes but is not limited to the Application for Comprehensive Plan Amendment and/or Zone Change and its accompanying exhibits, the July 11, 2007, Staff Report, the June 12, 2007, Staff Report, recorded minutes of all of the public hearings in the matter which occurred on June 12, 2006, July 11, 2007 and July 25 2007. The record further consists of all written materials submitted by the applicant and her representative, the materials from the various parties and witnesses participating in the public hearings as well as the notices preceding these hearings. There are no records which were offered but not admitted into the record.

SECTION 3. THE CRITERIA

The criteria relevant to approval of the applications is set forth in detail in the June 12, 2006, Staff Report at pages 5 through 17, and we incorporate that criteria by reference. The criteria are further set forth in detail in the applicant's Application for Comprehensive Plan Amendment and/or Zone Change.

SECTION 4. THE NATURE OF THE REQUEST

The nature of this request is set forth in the June 12, 2006, Staff Report at pages 1 through 4, and we adopt that. The property and surrounding area is further depicted in the exhibits to the June 12, 2006, Staff Report, and we rely on that as evidence in this proceeding too.

SECTION 5. OFFICIAL NOTICE

The Board takes official notice of the following:

a. The Josephine County Comprehensive Plan, including the Josephine County Rural Land Development Ordinance (RLDC), as amended, which has been acknowledged by the Land Conservation and Development Commission.

b. The records of Josephine County Planning Department concerning the publication and mailing of notices of the public hearings on the matter.

SECTION 6. SUBSTANTIVE FINDINGS

a. Non-resource determination. The principal question in this application is whether the property is suitable for forest and/or farm uses. The planning commission found that the property satisfied the non-resource criteria, as is discussed at pages 5 and 6 of the June 12, 2006, staff report. We adopt and incorporate by reference the findings and reasoning expressed by the planning commission in connection with its finding that the property is non-resource. We further agree with and therefore adopt the reasoning set forth at pages 5 and 6 of the July 12, 2006, staff report. We find the applicant's evidence, particularly the report from the soil scientist and the discussion in the application at pages 39-40, is credible, substantial and that the applicant has met the burden of proof in this regard. The property meets the non-resource land criteria of RLDC § 46.050. The property is clearly not suitable for farming practices. It is comprised of rolling hills to steep slopes and is densely vegetated with hardwoods. It is a reasonable inference that this kind of property is not useful for farming crops or grazing livestock. There was no evidence introduced of accepted farming practices to show that property like this is suitable for farming or other agriculture. We further find that the property will not negatively impact nearby farm and forest practices. We note that the record is clear that there are no significant farm or forest practices in the vicinity. As shown in aerial, zoning and other maps in record, the property is almost completely surrounded by residential development. There are some larger lots to east and southeast of the property (one of which was recently re-zoned to residential), but these are described as densely covered with hardwoods, oak and madrone, not merchantable timber. There is no evidence in the record to refute the clear indication that there are no adjacent or nearby lands that are managed for either farm or forest activities. There is substantial evidence in the record to indicate that the subject property is neither forestland nor farmland. Converting the property from its present zoning to residential zoning will not affect forest or farming practices because there appear to be none nearby. Accordingly, we find that the applicant has established that the property meets the non-resource land criteria.

b. Carrying Capacity. If the property meets the non-resource criteria, the applicant must still slow that show that the property has adequate carrying capacity to support the RR-5 zoning. The planning commission's recommended denial is based on its determination that the application failed to adequately address carrying capacity. For the following reasons, we do not follow the commission's recommendation. The principal concern in this matter involving carrying capacity is whether there is proof of adequate water for the proposed zoning. Under RLDC § 84.050, a rural residential subdivision like one that could be anticipated here would require a major pump test. The code would require the first three dwellings have 400 gallons of water per day per dwelling. We have reviewed this issue extensively and have considered all the evidence. We find that the applicant has provided substantial evidence that there is adequate water to support development. In particular, the applicant provided expert testimony from Bob Quinn, an experienced well-driller. From that testimony and the other well data in the record, we find that the applicant has provided substantial evidence that the property has adequate water. The three on-site wells which were tested together produce 8.5 gallons per minute, far more than the minimum required under the code. Those opposing the application provided nothing in the way of reliable, contrary evidence. They provided some evidence of off-site wells, but we believe the evidence provided by the applicant is more credible and reliable and therefore we rely on it.

c. Septic. We find that the property is suitable for septic disposal. The property has an existing septic approval from DEQ. The applicant retained a soil scientist, Dennis Hutchison, who concludes that the property is suitable for septic systems, notwithstanding the contrary information from the NRCS. We have no reason to question the credibility of this expert's opinion. Therefore, we rely on it to conclude that the applicant has proven adequate carrying capacity in this regard.

d. Access. The property has adequate access to a public road, but on-site road construction may be problematic because of slopes and soils. However, Mr. Hutchinson's soil study indicates that the slopes do not appear to be unstable and standard erosion control practices will overcome erosion hazards. Staff indicates that during its site visit that it appears that the slopes are conducive to driveway development. Accordingly, we believe that there is every likelihood that upon consideration of a subdivision application, the applicant will be able to meet approval conditions addressing this, including submitting an engineered erosion control plan for public roads and driveways. Before the planning commission, the applicant's engineer Rob Weigard discussed alternative access arrangements and gave his recommendation. We believe his opinion was credible and reliable. Fire hazard is also a concern regarding access. A fire safety plan per Article 76 of the development code will be required. This includes addressing issues such as access, water and assuring fuel loads are maintained. The property's

condition, including its slopes, soil characteristics and the fact that fuel loads are maintained, leads us to find that it is reasonably likely that the applicant will be able to meet the requirements of Article 76 in connection with a subdivision application. Accordingly, the applicant has met her burden of proof on this issue.

e. Consistency with Surrounding Area. The criteria requires that the zone change be consistent with the surrounding area. The application meets that criteria. The property here is almost completely surrounded by rural residential development. The average parcel size is less than 5 acres and the maps in the record show considerable residential development. We otherwise rely on the applicant's application describing in detail how the proposal is consistent with the area. We also rely on the reasoning at page 8 of the June 12, 2006, staff report.

f. Other Criteria and issues. We find that the application otherwise complies with all the remaining criteria of the development code (including, by reference, the applicable provisions of local and statewide goals and policies). The application seeks to update the comprehensive plan by recognizing that this property is not resource in character. It is not useful for resource activities and those kinds of activities would be inconsistent with the surrounding area. The record reflects that the property is otherwise suitable for residential development. It has access to public roads, internal roads and driveways appear feasible, it has adequate water for a limited number of homesites and the soils expert indicates that soils are such that septic disposal is possible and that erosion can be managed. Except as otherwise specifically discussed herein, we find that the application and supporting documents represent substantial evidence addressing all of the other pertinent criteria identified as being applicable. We adopt the discussion in the application as our own, except as specifically addressed in these findings.

During the proceedings, Mike Walker sought the opportunity to make comments directly into the record. These requests were denied on the basis of the fact that he was represented throughout these proceedings by Holger Sommer. Mr. Sommer's comments used up the time allotted to him and his clients. We interpret and apply our hearing rules to permit us to reasonably limit comments by individuals who are represented by others in the hearing process.

SECTION 7. CONCLUSION

We find that the site is not resource in character. We are therefore compelled to amend the county's the comprehensive plan from Forest to Residential designation for the subject property and to change the zoning Woodlot Resource to Rural Residential, RR-5.

SECTION 8. DECISION

Based on the above cited Findings and Conclusions, the Board of Commissioners declines to follow the recommendation of the planning commission, and approves all of the applications as discussed above.

DONE AND DATED this 24th day of October, 2007.

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Jim Raffenburg, Chair

Dave Toler, Vice Chair

Dwight F. Ellis, Commissioner

Josephine County, Oregon

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

PLANNING OFFICE

Michael Snider, Director

510 NW 4th Street / Grants Pass, OR 97526

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

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

October 31, 2007

NOTICE OF NON-LEGISLATIVE LAND USE DECISION

The Josephine County Board of Commissioners

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

DECISION INFORMATION

DECISION:	The Board of Commissioners approved a request for an Amendment to the Comprehensive Plan Map of Josephine County (Ordinance 81-11, as amended), from Forest to Residential and an Amendment to the Zoning Map of Josephine County (Ordinance 85-1, as amended), from Woodlot Resource (WR) to Rural Residential - 5 Acre minimum (RR-5) for property located at: 3601 Demaray Drive. Property Owner: Catherine A Frykman. Representative: Bob Hart, Land Use Consultant, 5126 W Evans Creek Road, Rogue River, Oregon.
DATE OF DECISION:	October 24, 2007
LEGAL DESCRIPTION:	36-06-34, TL 2400
LUBA INFORMATION:	LUBA may be contacted at: Land Use Board of Appeals, 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, telephone number 503/373-1265, or the internet, at http://luba.state.or.us/.

CERTIFICATE OF MAILING

I hereby certify that individual copies of the attached *Notice of Non-Legislative Land Use Decision*, issued on behalf of the Josephine County Board of County Commissioners and dated **October 24, 2007**, were deposited in the United States mail on **October 31, 2007**, addressed to the following persons or organizations:

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

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

Catherine A Frykman
PO Box 5257
Grants Pass OR 97528

Bob Hart
5126 W Evans Creek Road
Rogue River OR 97537

James Dole
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848 Bull Creek Road
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Hal Anthony
3995 Russell Road
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2000 Hugo Road
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Michael Walker
3388 B Merlin Road #195
Grants Pass OR 97526

Anne Ingalls
Sr. Department Specialist
Josephine County Planning