



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

02/10/2012

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 001-11

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: Thursday, February 23, 2012

This amendment was submitted to DLCD for review 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 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: James Black, Josephine County  
Jon Jinings, DLCD Community Services Specialist

Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA



FORM **2**

**DLCD**

# Notice of Adoption

In person  electronic  mailed

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**DEPT OF**

**FEB 06 2012**

**LAND CONSERVATION  
AND DEVELOPMENT**

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

Jurisdiction: **JOSEPHINE COUNTY**

Local file number: **37-05-35, TL 102**

Date of Adoption: **2/1/2012**

Date Mailed: **2/2/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: **5/20/2011**

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".

Approval for a 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). The application indicates the property is non-forest land under internal rate of return (IRR) value, soil investigation/Order 1 soil survey, and forest productivity analysis.

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

Plan Map Changed from: **FOREST**

to: **RESIDENTIAL**

Zone Map Changed from: **WOODLOT RESOURCE**

to: **RURAL RESIDENTIAL 5 ACRE**

Location: **11750 N APPLGATE ROAD**

Acres Involved: **30**

Specify Density: Previous: **80 acre min**

New: **5 acre min**

Applicable statewide planning goals:

**1**  **2**  **3**  **4**  **5**  **6**  **7**  **8**  **9**  **10**  **11**  **12**  **13**  **14**  **15**  **16**  **17**  **18**  **19**

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. 001-11 (18816) [16930]

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**DLCD file No.** \_\_\_\_\_

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

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Local Contact: **James Black**

Phone: (541) 474-5421 Extension: 5418

Address: 700 NW Dimmick St Suite C

Fax Number: 541-474-5422

City: Grants Pass

Zip: 97526-

E-mail Address: [jblack@co.josephine.or.us](mailto:jblack@co.josephine.or.us)

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## ADOPTION SUBMITTAL REQUIREMENTS

**This Form 2 must be received by DLCD no later than 5 working 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 the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

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

**ORDINANCE NO. 2012-001**

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 37-05-35, TL 102. THE PROPERTY OWNERS ARE GLENN AND PENNI WICKS.

WHEREAS, the Josephine County Board of Commissioners held public hearings on July 27, 2011 and August 17, 2011 to consider the request as described above; and

WHEREAS, the Josephine County Rural Planning Commission previously held a public hearing on June 20, 2011, 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;

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 35, Tax Lot 102.

**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 37-05-35, Tax Lot 102.

**SECTION 3: AFFIRMATION**

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

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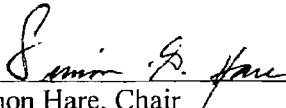
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**SECTION 4: EFFECTIVE DATE**

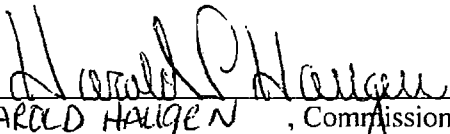
The first reading of this Ordinance by the Board of County Commissioners occurred this 18<sup>th</sup> day of January, 2012.

The second reading and adoption of this Ordinance by the Board of County Commissioners occurred on this 1<sup>st</sup> day of FEBRUARY, 2012, at least 13 days from the first reading. This Ordinance shall take effect ninety days from the date of this second reading

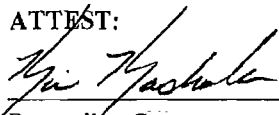
**JOSEPHINE COUNTY BOARD OF  
COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Simon Hare, Chair


  
\_\_\_\_\_  
Don Reedy, Vice Chair

  
\_\_\_\_\_  
HAROLD HALGEN, Commissioner

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
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	Glenn and Penni Wicks	}	FINDINGS OF FACT
Owners		}	
		}	
		}	
		}	
	<u>Representative Bob Hart Consulting LLC</u>	}	

The request is for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential - 5 acres (RR-5). The property is located at 11750 North Applegate Road and more precisely identified as Assessor's Map T37, R5, Section 35, Tax Lot 102. The request for a decision was submitted by Bob Hart Consulting LLC as the representative for the owners Glenn and Penni Wicks.

This request came before the Josephine County Board of Commissioners on July 27, 2011 and was continued to August 17, 2011. At the conclusion of the July 27, 2011 meeting, the Board of Commissioners allowed for written submittals from opponents to be included in the record to be submitted until 5:00 P.M. on August 3, 2011 and allowed written submittals from the applicant in response to the objections until August 10, 2011. The applicant and opponents were permitted to summarize rebuttal statements and provide final closing oral arguments on August 17, 2011.

There being no objection to the authority of the Board of Commissioners to hear the matter, and no one declaring conflicts of interest, the public hearing was opened.

**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,<sup>1</sup> zoning, existing or authorized land uses and structures, public facilities and services, and natural or man-made features.<sup>2</sup>
  - b. The detailed review shall include a written statement explaining the rationale used to include or exclude areas from study, and be supported by 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

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<sup>1</sup> 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.

<sup>2</sup> 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.



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.<sup>3</sup>
- 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:
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

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<sup>3</sup> 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.

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.”

660-023-0000

**Purpose and Intent**

This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This division explains how local governments apply Goal 5 when conducting periodic review and when amending acknowledged comprehensive plans and land use regulations.

660-023-0030

**Inventory Process**

- (1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:
  - (a) Collect information about Goal 5 resource sites;
  - (b) Determine the adequacy of the information;
  - (c) Determine the significance of resource sites; and
  - (d) Adopt a list of significant resource sites.

- (2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:
  - (a) Notify state and federal resource management agencies and request current resource information; and
  - (b) Consider other information submitted in the local process.
  
- (3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:
  - (a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.
  - (b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.
  - (c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

- (4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:
  - (a) The quality, quantity, and location information;
  - (b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and
  - (c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.
- (5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.
- (6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.
- (7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:
  - (a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and
  - (b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

## 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 relevant criteria.
- B. Oral and written testimony of David Wechner, Josephine County Planning Director who discussed technical points of applicable criteria.
- C. Oral and written testimony of Bob Hart, Planning Consultant representing the applicant who provided the following remarks concerning the applicable criteria: (1) The property was originally zoned SR-5 which was a residential designation. The property was re-zoned during the final adoption of Comprehensive Plan as a result of a state enforcement order. (2) The property is non-resource based on evidence in the record that shows more than 50% of the parcel has soils are not classified as class I-IV agricultural soils. (3) That the land is not other farm land that can be managed for farm use nor is the land necessary for 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. (4) 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 (Section 46.050.B. *RLDC*). (5) The land is not other forest land under the requirements of local and state goals. The productivity for forest use is less than 20 cubic foot per acre per year based on measurement of the site tree species in accordance with OAR 660-006. (6) The site after full development is below the maximum density allowed in critical deer habitat (Section 69.220, *RLDC*). (7) 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. (8) 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. (9) As per assessor records, 19.30 acres of the property is receiving a residential assessment and 11 acres is receiving special assessment for forest 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.

- D. 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 evaluation to support the proposed density, erosion and sediment control during development of the property and it's suitability to support the use, fire plans to reduce the incidence and severity of wildland fire. Written materials submitted for the record include a possible development scheme and evaluation of the project, showing the site is suitable for the intended use at the density requested based on such factors as carrying capacity or the land to support the intended use, wildfire and emergency service safety plan, drainage and erosion control, adequacy of public facilities and land use patterns.
  
- E. Written testimony of David Russell, Professional Consulting Forester of Chiloquin Ridge Forestry Consulting, 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. Russell provided a rationale for the forest productivity, 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. His results from evaluating tree growth were that the land was producing less than 20 cubic feet per acre per year. Mr. Russell 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. Mr. Russell's professional opinion was that the site was not suitable for commercial timber production.
  
- F. 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, it is the conclusion of Mr. Hutchison that the soils are the same type of soils as shown in the Josephine County Soil Survey but the actual percentages and soils polygons are not as shown in the small scale maps of the survey but are as shown on the submitted maps that were based on the actual soils

conditions on the site. 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. Written testimony from Steve Rouse, Jeff Anderson and David and Ellen Vestnys in opposition to the application. They believe the application does not adequately address the criteria of the Rural Land Development Code Sections 46.040 C(2),(3),(4); Section 46.040(D)(1). Their position is that carrying capacity has not been shown to support the intended use, that the engineer's statements were not detailed enough to show compliance with the code and slopes are too steep for the use. They expect that fire hazards would be excessive for the intended use, and the proposal is inconsistent with the existing land use pattern. Also included in their testimony, was a copy of a letter from the Department of Land Conservation and Development (DLCD) sent in response to a different Comprehensive Plan Amendment application in the Illinois Valley. In general terms, the DLCD letter encourages the county to "revisit its non-resource planning program." DLCD recommends a density of at least 20 acres instead of 5 acres for a non-resource finding to be consistent with Goal 14. The letter also discussed a topic of retained resource values in non resource determinations. Mr. Rouse also provided oral testimony regarding the impact of Measure 37/49 claims on density.
  
- H. Written and oral testimony from Andrew Narris of Rogue Advocates claiming to be an aggrieved party. He expressed the application was not in conformance with OAR 660-023 regarding deer habitat. His position was that proper procedures were not followed to provide inventory information and follow additional Goal 5 protection requirements.
  
- I. Oral testimony from Dave Vestnys opposed to the application. His position was that the request would add more traffic, increase the chance of fire, reduce water availability and that the existing zoning should be protected.
  
- J. Written testimony was submitted from Ellen and David Vestnys; they are opposed to the application. They assert the zone change would change the character of the area, increase fire danger, has a high erosion potential due to steep slopes, and that the deer habitat would be compromised.

- K. Rebuttal testimony from the applicants representative Bob Hart regarding deer habitat included information provided to the county by the Oregon Department of Fish and Wildlife regarding recent deer studies to identify resident and migratory deer populations in the county, elevation changes during winter habitat concerns. Also provided in the record was a report from the county Land Development Advisory Committee and a recommendation from the Southern Oregon Resource Alliance regarding deer habitat.
- L. Oral rebuttal testimony from Steve Rouse stating that the rebuttal evidence was not adequate to meet the criteria in addressing State Goal 5 (Natural Resources) by not being specific enough to apply to the subject property.

### 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. The request submitted is to change the Plan designation to Residential and the zone to Rural Residential 5 Acre, based on a determination of non-resource land. The Board notes that if a non resource determination is made, the property can be re-zoned to Rural Residential 5 (RR-5) per Section 46.050.F of the Rural Land Development Code which is acknowledged by the State as being compliant with state land use goals. The Board finds there is no evidence submitted to re-zone 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. Therefore the Board finds that based on the options in the Development Code, the most appropriate zone is Rural Residential 5 Acre (RR-5) zoning district.
- B. The Board finds that based on testimony in the record that urban services such as sewer systems, municipal water system, storm drainage system are not necessary nor required to develop the property as proposed. The proposed change of zone does not authorize commercial, industrial, or other high intensity uses. Therefore the Board finds that the requested change is not an urban use under goal 14 and that this Goal does not apply.

- C. The Board received testimony that describes the property as 30.3 acres in size and improved with a manufactured dwelling. The property is irregular in shape. The site is primarily covered with grasses, manzanita, buckbrush, oak and madrone. The site has limited clusters of merchantable trees of Douglas Fir and Ponderosa Pine. There is no evidence that the land has been harvested for timber. The owners completed a fire fuel reduction program under SB 360 to reduce fire hazards on the property. The topography of the site is that the property has a level area adjacent to the county road, raises to the north to an irrigation ditch and then slope varies generally between 15 and 25% with some limited areas of increasing steepness that exceeds 40% slope. A draw is located in the center of the site and provides a low slope that opens onto a flatter area in the north east corner of the property.
- D. 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 suitable for residential development specifically with regard to fire hazards, topography and carrying capacity of the land. The objections also state that the proposal is not compatible with the existing land use pattern of the area, and the application is not in conformance with OAR 660-023 requirements for deer habitat protection. The Board addresses the objections below.
- E. 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 3, 4, and 5 will be covered in more detail further in the findings.
- F. The Board finds that the application is for a determination that the subject property is not subject to goals 3 and 4 because it is in fact non resource in nature supported by information provided regarding soils and forest production; therefore, does not warrant protection under Goals 3 and 4. No Goal Exceptions are required with a determination that the land is non resource.
- G. The criteria requires the applicant to 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 is based on well log and water quality reports for a well on the subject property together with well information for the surrounding area from the Oregon Water Resources Department. The Board does not find that the well information is outdated as suggested by those in opposition. No testimony was given to address why a well log should be considered out of date. The Board finds that the presence of an on-site water source is sufficient to conclude that there is carrying capacity sufficient for the intended use. The position that additional wells on the subject property "may deplete water resources for neighboring properties" is not based on any evidence in the record and is a supposition from persons that have not established any expertise in the field of water supplies. The code requires that the applicant demonstrate that water is available from the subject property. Records from the applicant relate to a well on the subject property as specified by the code. The Board considered testimony from neighboring property owners that expressed concern regarding water supplies and finds that the testimony is not convincing. The Board chooses to rely on the well data supplied by the applicant to conclude that the subject property meets the carrying capacity requirements of the Development Code.

The Board finds that the statement from the certified soil classifier that the subject property has potential for on-site septic systems together with a septic permit for the existing dwelling is convincing proof to establish that the site has the carrying capacity for septic systems. The evidence is considered as substantial and credible and the Board accepts the information.

Evidence in the record from the Oregon Department of Transportation and the Josephine County Public Works Department and the Jackson County Roads Department in response to the request 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 Board received testimony and evidence regarding drainage and erosion in the form of an evaluation of the suitability of the site for the intended development of 5 acre lots for single family residences. The report is from an engineering firm that has demonstrated expertise in the field as a geological engineers and civil engineers. The Board finds the evidence is substantial and credible for the evaluation of the proposed change. The conclusion of those in opposition that the site is extremely steep ground and not suitable for development is not credible. Testimony is that the site averages between 15 and 25% slope. The local code provides that dwellings may not be located on slopes that exceed 40%. We find that the site is generally suitable for development and meets the standards and criteria for the requested change. 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, the Board finds 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 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 concludes the request meets the standards required to show adequate carrying capacity

- H. 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 mile area surrounding the site adequate for evaluation of resource uses considering the general mixed 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 adjacent to a public road that was constructed to serve residential lots and dwellings and that access is not primarily used for access to resource operations.

The Board finds that the subject property is adjacent to a mix of uses to include residential, forest, agriculture and government ownership. The Board concludes that the character of the area is of mixed uses with a significant use being rural residential zoning and single family residential 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 substantially higher than the number of resource lots. The area of residential lots is approximately 28% of the total land area. The Board finds the presence of residential lots is common in this area along the primary road system as is the proposed development. The Board finds that by inspection of the official maps that there are improved residentially zoned areas within the one mile study area offered by the applicant. The Board finds there are substantially more residential areas within 2 miles of the subject property. The Board finds that the statements in opposition that there are no residentially zoned areas within two miles of the subject property are not factual. The Board finds that the proposed change is consistent with the established development pattern of the area.

- I. The Board finds that the property is not resource land 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 Order 1 soil survey conducted by a certified soil classifier. 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 as defined in State Goal 3 and County Goal 2 (Preserve & Maintain Agricultural Lands) and therefore meets the criteria for a non-resource determination under the applicable criteria.

- J. The Board concludes the subject property is unsuitable for farm use under subsection 46.050.A.2 of the RLDC. 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 factors that overcome the limitations of soils. The record shows:
1. Based upon the order one Soil Survey, a majority of 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;
  4. 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;
  5. 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, as farm uses generally fall into the land between the roadway and the Applegate River. The land is in an area that is mixed residential and forest lands. 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;

6. 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;
7. 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 for farming.
8. 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"

- K. 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
- L. 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 south of North Applegate Road. Extension of irrigation water to the subject property is not available. The irrigation facility that traverses the property has all water committed to other lands with no additional water available to serve the subject property. 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.
- M. The Board 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 Dennis Hutchison an ARC/PAC certified soil classifier (cert.#15230) 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 relies upon the field work evidence to determine the soils on the subject property and their capability. There has been no testimony presented that reduces the quality of the information in the report, and the Board relies upon the information.

- N. The Board considered the information submitted by the soil scientist (Hutchison) and finds that the evidence is based on accepted methods in the field for identification of soils series. Therefore the Board finds that for the purpose of identifying the soils on the property, the Board relies upon the detailed soil report. A Cumulative Internal Rate of Return (CIRR) 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 for the site is 3.30 which is less than 3.50 standard that is used to determine the division between resource and non-resource soils. The Board finds that a majority of 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.
- O. The Board finds that the information contained in the testimony from the applicant shows that the property is not other forest land (Section 46.050.D, *RLDC*). The subject property is not necessary for continued or future use or adjacent or nearby resource properties. 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 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.
- P. The Board also considered the forest productivity report prepared by consulting forester David Russell. The Board has reviewed the credentials of Mr. Russell and finds him to be an expert in the field of forestry. 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 Mr. Russell who made a direct

measurement of forest productivity and found that the site is estimated to yield 14 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 (less than 20 cu/ft/acre) 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 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 Oregon Department of Forestry 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 2 (Conserve & Develop Forest Lands). 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.

- Q. The Board has considered all of the information submitted from experts in forestry and soils and concludes that the property is non resource and not protected under state land use Goal 4.
  
- R. The Board has reviewed the application materials that evaluated development with critical deer habitat. The Board finds that the required evaluation of dwellings within a two square mile area of critical habitat was done in accordance with ordinance standards of the code and that the density will not be exceeded by the development of the property in the RR-5 zoning district. The Board finds that there are 19 dwellings within the study area and that a maximum of five additional dwellings could be added with this request. With a maximum of 24 dwellings, the request meets the standard that limits dwellings to 32. The Board finds that the request does not require an amendment to the Deer Habitat Map and that no habitat map amendment is a part of this request. The Board finds the request is consistent with local density requirements regarding habitat areas.
  
- S. The Board considered the study done by the Department of Fish and Wildlife regarding the deer herds in Josephine County. The study considered deer that are located throughout Josephine County and are representative of the deer conditions for Critical Deer Winter Range. The Board finds that the requirements for inventory of Deer have been met with the current ODFW inventory. The Board finds that the subject property is located within an area previously designated critical deer habitat and is not a new potential Goal 5 site. The Board finds that critical deer winter range is intended to provide area for migrating deer and deer that normally locate at high

elevations to have critical range for food, water, shelter, and reproduction during harsh winter conditions. Data regarding deer habitat was collected by ODFW from 2005 through 2009 which the board finds to be credible and supplements the original information for critical deer winter range in Josephine County.

- T. The Board finds that the identification of forest lands on the subject property was accomplished consistent 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 method 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 the 3.30 CIRR rating of the parcel, and 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 both local and state standards. 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. 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 timber production 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 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 in the near vicinity to existing residentially zoned lands and that there is a pattern of residential development within clusters on the north side of North Applegate Road. 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 fire hazard.

- V. The Board finds 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.
- W. The Board finds that based on information contained in elements of the Comprehensive Plan, studies submitted and testimony offered that the request meets the standards and criteria for a change in the Comprehensive Plan and Zoning designation. 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 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 state land use Goal 6 requirements.
- X. The Board finds that natural hazards and disasters have been addressed through statements from the project engineer that mitigate and minimize development hazards to an acceptable level that is consistent with other development in the county. A wildfire mitigation plan has been submitted that satisfies the County's requirements of the *RLDC* under state 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, Josephine and Jackson County Road

Departments shows that there is adequate capacity in the area for current and future traffic facility needs, and thus, is in compliance with state land use 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, and letters 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 letter from the Department of Land Conservation and Development and finds that the letter is in response to another application in a different part of the county and that statements do not directly address the subject property. The Board further finds that statement from DLCD is appropriate for consideration during broader County land policy decisions when the County might consider a new 20 acre zoning district. The Board chooses not to include the elements of the DLCD letter in this decision.

#### **IV. CONCLUSION:**

Based upon the above evidence, findings, and applicable criteria for decision, the Board of County Commissioners concluded the Wicks request for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential 5 for property located northerly of North Applegate Road and westerly of Kubli 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 land use Goals 3 and 4 and that the codes provide for the change to Rural Residential 5 Acre.

V. DECISION:

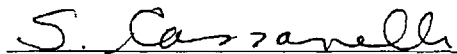
Therefore, based on the staff report, evidence submitted into the record and testimony of witnesses, the Josephine County Board of Commissioners, upon a motion by Commissioner Hare, seconded by Commissioner Cassanelli, and by a vote of 2-0 approved the request for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential 5 Acre for property located at 11750 North Applegate Road more precisely described as Assessors Map T37 R5 Section 35 Tax Lot 102.

VI. CONDITIONS:

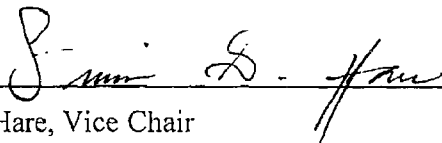
1. Per Section 46.050.C.6, RLDC, the property owner shall execute and record a Conflict Preference Covenant, which recognizes the rights of adjacent and nearby resource land owners to conduct normal farm practices and forest operations. The covenant shall provide that all land use conflicts between non-resource uses on TL 102 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.

These Findings & Decision are done and dated this 9 day of November 2011.

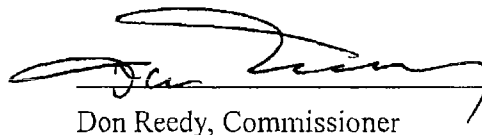
JOSEPHINE COUNTY  
BOARD OF COUNTY COMMISSIONERS

  
\_\_\_\_\_

Sandi Cassanelli, Chair

  
\_\_\_\_\_

Simon Hare, Vice Chair

  
\_\_\_\_\_

Don Reedy, Commissioner



# Josephine County, Oregon

## 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](mailto:planning@co.josephine.or.us)

February 2, 2012

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

DLCD/Josh LeBombard

**Re:** Wicks CP/ZC  
Legal: 37-05-35, TL 102  
Owner: Glenn and Penni Wicks



Plan Amendment Specialist and Josh:

Enclosed are the following for the above referenced matter:

1. Copy of the *DLCD Notice of Adoption* dated 02/02/12;
2. Copy of Ordinance 2012-001; and
3. Copy of *Findings of Fact* signed and dated 11/9/11.

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](mailto:aingalls@co.josephine.or.us)

Encs.: *As referenced in letter*

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



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

DEPT OF

FEB 06 2012

LAND CONSERVATION  
AND DEVELOPMENT