



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

03/19/2013

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 001-10R

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, March 29, 2013

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

Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA/I



FORM **2**

DLCD

Notice of Adoption

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

In person electronic mailed

DEPT OF

MAR 13 2013

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

Jurisdiction: **JOSEPHINE COUNTY**

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

Date of Adoption: **3/6/2013**

Date Mailed: **3/8/2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 7/13/2010

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Remand Hearing regarding 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 subject property is identified in the Josephine County Assessor's records as Map 37-05-20, TL 2001. The property owners are Richard and Christine Whitaker.

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: **Ridgefield Road**

Acres Involved: **32**

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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

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

Department of Land and Conservation District (DLCD)

Local Contact: **David Wechner**

Phone: (541) 474-5421 Extension: 5428

Address: **700 NW Dimmick St Suite C**

Fax Number: 541-474-5422

City: **Grants Pass**

Zip: **97526-**

E-mail Address: **dwechner@co.josephine.or.us**

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**.



Josephine County, Oregon

PLANNING

700 NW Dimmick, Suite C / Grants Pass, OR 97526

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

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

DEPT OF

MAR 13 2013

LAND CONSERVATION
AND DEVELOPMENT

March 7, 2013

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

DLCD/Josh LeBombard

Re: Remand Hearing to the Board of Commissioners 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 subject property is identified in the Josephine County Assessor's records as Map 37-05-20, Tax Lot 2001. The property owners are Richard and Christine Whitaker.

Enclosed are the following for the above referenced matter:

1. Copy of the *DLCD Notice of Adoption* dated 3/7/13;
2. Copy of Ordinance 2013-001; and
3. Copy of *Notice of Decision and Findings of Fact* signed and dated 12/19/12.

Should you have questions, please contact our office.

Sincerely,

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

Encs.: *As referenced in letter*

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

ORDINANCE NO. 2013-001

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) AND REPEALING IN ITS ENTIRETY ORDINANCE 2011-002 SIGNED ON 04/20/2011 AND EFFECTIVE ON 07/19/2011. THE SUBJECT PROPERTY IS IDENTIFIED IN THE JOSEPHINE COUNTY ASSESSOR'S RECORDS AS: MAP 37-05-20, TL 2001. THE PROPERTY OWNERS ARE RICHARD AND CHRISTINE WHITAKER.

WHEREAS, the Josephine County Board of Commissioners held a public remand hearing on December 12, 2012 as directed by LUBA Order 2011-037 dated 07/26/12 to re-consider a specific issue relative to the request as described above; 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 in addressing the issue remanded, and that the Comprehensive Plan Map and Zone Map changes as requested comply with the requirements of Josephine County and State Law pertaining to such matters; and

WHEREAS, the Board of Commissioners, adopted written findings of fact with conditions on December 19, 2012 in support of its decision to approve the comprehensive plan and zone map changes described herein, and those findings are contained in the land use hearing record at the planning office;

NOW, THEREFORE, based on the foregoing, the Board of Commissioners for Josephine County, Oregon, hereby ordains as follows:

SECTION 1: COMPREHENSIVE PLAN MAP AMENDMENT

The Josephine County Comprehensive Plan Map is hereby amended from Forest to Residential for the property identified as Assessor's Map: Township 37, Range 05, Section 20, Tax Lot 2001.

SECTION 2: ZONE MAP AMENDMENT

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

SECTION 3: REPEAL OF ORDINANCE 2011-002

Ordinance 2011-002 as signed on 04/20/2011 and effective on 07/19/2011 is hereby repealed in its entirety.

SECTION 4: AFFIRMATION

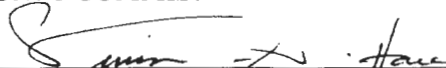
Except as otherwise provided herein, Josephine County Ordinances 81-11 and 85-1 are hereby affirmed as originally adopted and previously amended.

SECTION 5: EFFECTIVE DATE

The first reading of this Ordinance by the Board of County Commissioners occurred this 13th day of February, 2013.

The second reading and adoption of this Ordinance by the Board of County Commissioners occurred on this 6th day of March, 2013, 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

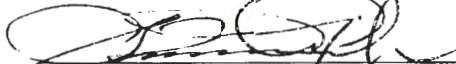

Cheryl Walker, Vice-Chair


K.O. Heck, Commissioner

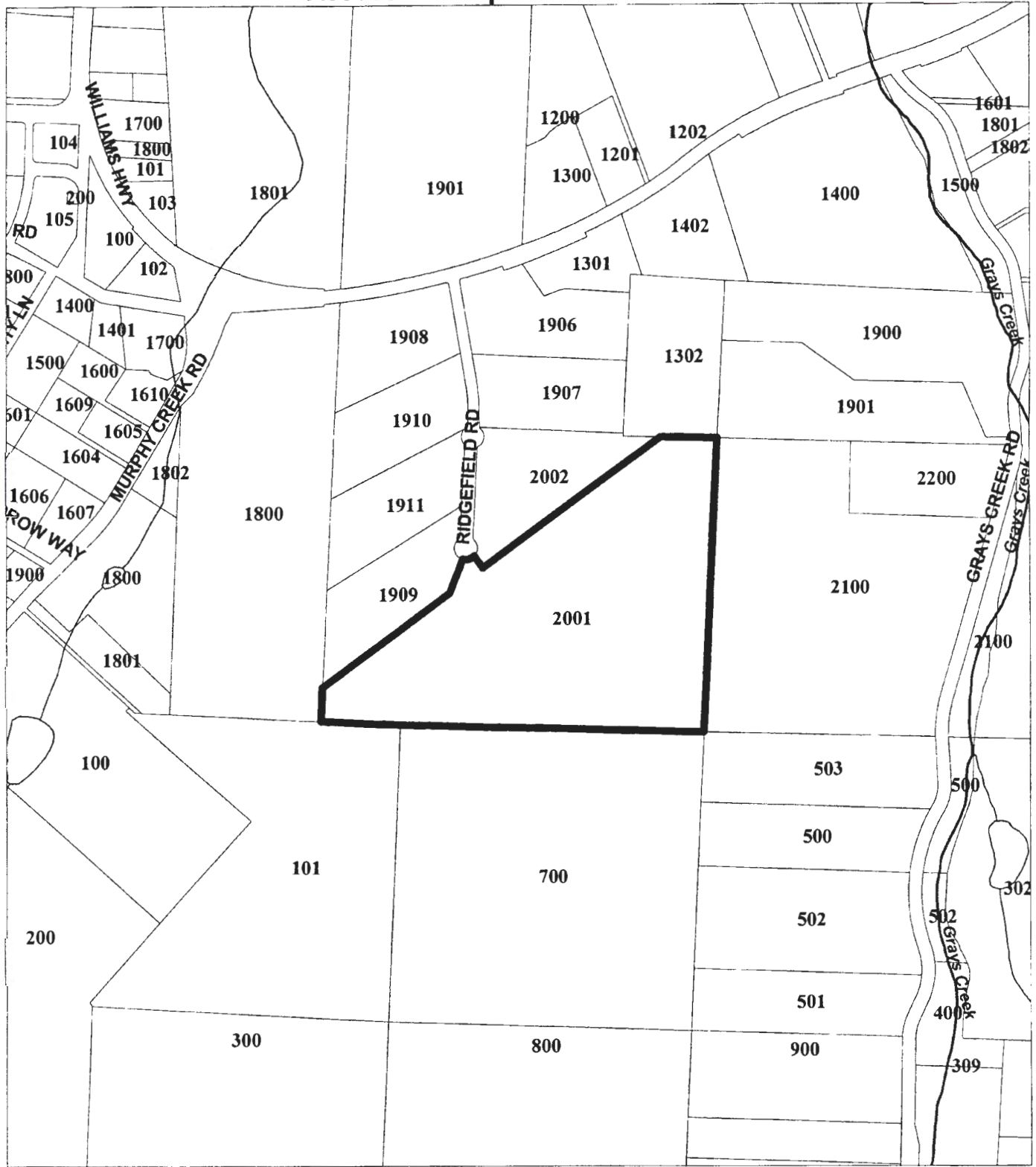
ATTEST:


Recording Secretary




APPROVED AS TO FORM:


Steven E. Rich, Legal Counsel

Assessor's Map 37-05-20 tl 2001



Legend

	Taxlots
Water (line)	
	Class 1
	Class 2

600 0 600 1200 Feet



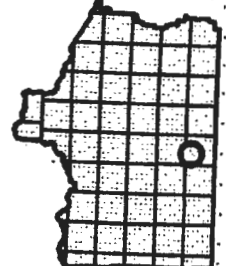
The information on this map is furnished for general interest purposes only. This information is provided without warranties of any kind, express or implied, and it should not be used to support any purchase or other investment. Neither Josephine County, Cave Junction, nor Grants Pass will accept responsibility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



Scale
1:7200



Locator Map





Josephine County, Oregon

PLANNING OFFICE

700 NW Dimmick Street, Suite C / Grants Pass, OR 97526
(541) 474-5421 / Fax (541) 474-5422
E-mail: planning@co.josephine.or.us

January 3, 2013

NOTICE OF LEGISLATIVE LAND USE DECISION

The Josephine County Board of Commissioners

Notice is hereby given that the Josephine County Board of Commissioners has rendered a remand land use decision regarding changes to the county's comprehensive plan or land use regulations as described below:

DECISION INFORMATION

- DECISION:** The Board of Commissioners granted, after review of the evidence submitted and the testimony received, the request to amend the Comprehensive Plan Map of Josephine County (Ordinance 81-11, as amended) from Forest to Residential and amend the Zoning Map of Josephine County (Ordinance 85-1, as amended) from Woodlot Resource (WR) to Rural Residential 5 Acre minimum (RR-5) for property identified in the Josephine County Assessor's records as Map 37-05-20, TL 2001. This decision specifically addresses the first assignment of error in LUBA's remand decision in *Rogue Advocates vs Josephine County (Whitaker) et al*, No. 2011-037. Property Owners: Richard and Christine Whitaker. Representative: Bob Hart, Land Use Consultant.
- DATE OF DECISION:** December 19, 2012
- LEGAL DESCRIPTION:** 37-05-20, TL 2001
- CONTACT PERSON:** The Board's Findings and Decision, together with supporting documents, are available for review at the Planning Office. The Planner handling the matter is James Black - (541) 474-5421, Ext. 5420, jblack@co.josephine.or.us
- LUBA INFORMATION:** This decision is appealable 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 the 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. 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 via the internet at <http://luba.state.or.us/>.

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

Norman Foeller
2610 Dellwood Avenue
Medford OR 97504

Jean Mount
3620 Helms Road
Grants Pass OR 97527

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Evelyn Heinrichs
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Grants Pass OR 97526

Sarah Vaile
Rogue Advocates
PO Box 443
Williams OR 97544

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

IN THE MATTER OF A REQUEST FOR A)
COMPREHENSIVE PLAN CHANGE FROM)
FOREST TO RESIDENTIAL AND A ZONE)
CHANGE FROM WOODLOT RESOURCE TO)
RURAL RESIDENTIAL - 5)
OWNERS: RICHARD AND CHRISTINE)
 WHITAKER)
REPRESENTATIVE: BOB HART)
_____)

**FINDINGS OF FACT
& DECISION**

Map 37-05-20, Tax Lot 2001

The request is for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential 5- Acre. The property is located at the southerly terminus of Ridgefield Road more precisely identified as Assessor's Map T37S, R5W, Section 20, Tax Lot 2001.

This request came before the Josephine County Board of Commissioners on December 12, 2012, at the request of the Applicant as a result of a remand by the Land Use Board of Appeals. The request was originally approved by Josephine County with findings of fact signed on April 6, 2011. The approval was appealed by Rogue Advocates and Michael L. Walker. Two assignments of error were argued before the Land Use Board of Appeals. The Land Use Board of Appeals sustained one assignment of error finding that the applicant had not met the requirements of OAR 660-006-0010 and the 2010 Land Use Planning Notes. The Hearing by the Josephine County Board of Commissioners, at the request of the property owners representative was to address the error remanded by LUBA.

The Board convened the hearing on December 12, 2012. There was no objection to the jurisdiction of the Board to hear the matter. Commissioner Haugen stated that he knew Bob Hart, the applicants' representative, for a number of years beginning when Mr. Hart was on the County staff and had worked with Mr. Hart on various land use issues over the years. Mr. Haugen stated that such relationship would not affect his decision. No Commissioner declared any conflict of interest and no one objected to the participation of any Commissioner.

I. CRITERIA FOR DECISION:

Oregon Administrative Rule 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."

Oregon Department of Forestry Technical Bulletin, Land Use Planning Notes, Number 3 April 1998, Updated for Clarity, April 2010 (LUPN).

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, aerial photographs of the subject property, original approval of the Board of County Commissioners, LUBA Final Order remanding the decision to the County on the single issue of compliance with the revised OAR 660-006-0010 and Oregon Department of Forestry Land Use Planning Notes Number 3 April 1998, Updated for clarity April 2010, and information submitted to address the relevant criteria.
- B. Written testimony of Rick Dryer from Oregon Department of Forestry stating that ODF concurs with the methods used to determine the site productivity for the property. He further stated the concurrence with methodology does not imply concurrence with the findings of the report.
- C. Written testimony of Vic Harris of Josephine County Forestry stating that it appears that the procedures and tools used to determine the land's site index and productivity have been done in accordance with the Oregon Department of Forestry Planning Notes.
- D. Oral and written testimony of Bob Hart, Planning Consultant representing the applicant who provided the following remarks concerning the applicable criteria; applicants written testimony shows compliance with new requirements, a completely new forest evaluation was completed by a professional forester and that no carryover from the original report was used in order to assure that the request meets the requirements of the revised OAR and Oregon Department of Forestry Land Use Planning Notes (LUPN). He explained the background of the reason for remand. He described the method for data collection. Mr. Hart explained the basis for determining the inaccuracies of the published data. Mr. Hart explained that the new requirements are to: 1) determine the average productivity of the land in cubic foot per acre per year; 2) select what data the County will rely on to determine if the land is forest land; and 3) state a conclusion that the land is either land protected by

Goal 4 or not suitable for commercial forest uses. He also explained how the forest report complies with the new OAR and Land Use Planning Notes. Mr. Hart discussed how the submitted materials meet the burden of proof to comply with the applicable criteria. He also addressed objections to the application to include required format for identification of forest land, inaccuracies of published data, new data provided and compliance with new rules.

- E. Oral and written testimony of Norm Foeller, Professional Consulting Forester, concluding the property is not forestland. From his analysis he states 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. Mr. Foeller explained the use of standard site index charts that are used in the forest industry. He described the measured site class and site index from timber growing on the site is below the lowest Culmination of Mean Annual Increment (CMAI) in the standard charts. Mr. Foeller also explained the initial statement that productivity was zero (0) because of the lack of data for productivity below a site index of 70. He further explained the addendum revises the average productivity of the site to be nine (9) cubic foot per acre per year using Oregon Department of Forestry conversion tables that include data below site index 70. Mr. Foeller's professional opinion is that the site was not suitable for commercial timber production. Mr. Foeller also advised the Board of an error in his report that the site index of 86 noted on page 4 is actually the Culmination of Mean Annual Increment of 86 cubic feet per acre per year (cuft/ac/yr).
- F. Written testimony of Dennis Hutchison, certified ARC/PAC Soil Classifier. This testimony was referenced by the applicants' representative and is found in the original record as item 7 pages 552-554. The report includes the soil conditions on the property and adverse impacts of ultramafic soils on tree growth and production.
- G. Written testimony of Richard and Christine Whitaker, property owner who testified that they had hired unbiased professionals for their presentation and that they had addressed all of the requirements for approval of the request.
- H. Oral and Written testimony from Jimmy MacLeod of Rogue Advocates opposed to the application who addressed the requirements of OAR 660-006-0010 and opined that the foresters report did not meet the requirements of the OAR to render forest productivity data in the required format. Additionally, that the application cannot demonstrate if the land is forest land without a cu.ft/ac/yr determination, or, determine if the land's productivity is within a range of 40 cuft/ac/yr to 80 cuft/ac/yr. Mr. MacLeod asks Josephine County to conduct forest evaluations in order to assure that the report is fair to the neighboring property owners and not give the applicant unfair advantage in hiring their own forester. Additional written and oral testimony was submitted to state that the information submitted by the applicant does not demonstrate that the published data is inaccurate. Mr. MacLeod states that the alternative methodology was not in conformance with the LUPN. He further states that the data in the report confirms the Department of Revenue (DOR) published data. He states that the report fails to follow proper guidelines in making productivity calculations. Objections also assert the report does not follow requirements for non-stockable areas.

- I. Oral testimony of William Mondale opposed to the application stating that the needs of the neighbors should be considered as well as productivity.
- J. Oral testimony of Steve Rouse who requested party status alleging the decision could affect his property. Mr. Rouse challenged the methods used in the report to conclude the average productivity. He stated the subject property had the potential to be productive forest land.
- K. Oral testimony of Jean Mount who opposed the application. She stated the information from the applicant is not conclusive and the applicant has not met the burden of proof. She alleged the property is forest land and should be protected.
- L. Oral testimony of Nina Horsley who opposed the proposal stating aerial photographs show the property as heavily wooded forest land. She contended that not all data were being considered in the determination of forest protection. She questioned the credibility of the applicants' professional forester's information because he was hired by the applicant.
- M. Written and oral testimony from Evelyn Heinrichs, opposed to the application on the grounds that the applicant has an unfair advantage by hiring experts for the forest report. She asks the Board of Commissioners to substantiate the data provided in the foresters report. Mrs. Heinrichs also is opposed stating that the requirements of OAR 660-006-0010 were not followed to convert productivity to cubic foot per acre per year. She questioned the accuracy and credibility of the Applicant's independent forester's information, and asked the Board to direct the County Forestry Department to examine the forest information.
- N. Oral testimony from Leta Neiderheiser opposing the request stating that Oregon laws protected them from developments as proposed. They are also of the opinion that the request does not maintain the character of the area. She stated a number of conifers grow on her property nearby.
- O. Written testimony from Joe Neiderheiser opposed to the request saying that the 18% area of the site having trees is inaccurate. He further states that the site has not been managed for forest use and that research shows that the soil and exposure of the property require thinning and maintenance in order to assure productivity.

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 currently zoned Woodlot Resource and has a Comprehensive Plan Designation of Forest. The Board finds that a request has been made to change the Plan designation and Zone based on the applicant's assertion that the land is generally not suitable for forest uses.
- B. The Board finds that the determination to be made in this request based on the OAR is whether the land is suitable for commercial forest uses. The Board finds that identification of forest land is to be made, in part, using mapping of average annual wood production capability by cubic foot per acre (cf/ac).

- C. The Board finds that the Oregon Administrative Rule requires the County to use the published data from NRCS, DOR, Forest Service Plant Association Guide and other published data approved by the State Forester in ascending order of the listed data unless the data is found to be unavailable or inaccurate.
- D. The USDA Natural Resource Conservation Service (NRCS) web survey shows the productivity of the land to be 86 cubic feet per acre per year at the Culmination of Mean Annual Increment (CMAI) for the entire property. Direct measurement of trees on the site shows productivity well below 86 cuft/ac/yr. In the determination the Board considered the published data from the NRCS Web survey and a professional forester's report using onsite measurement of productivity. The Board chooses to accept the foresters report as substantial evidence showing significantly lower productivity for the subject property. The Board has reviewed the application materials, objections in the record and testimony provided regarding the accuracy of this data and finds that the NRCS data is inaccurate and cannot be relied upon to determine the suitability of the property for forest uses. The Board finds that the information from the professional forester's report based on direct measurement of tree species to be convincing, relying on actual productivity to demonstrate that NRCS data is not accurate. The Board finds that the NRCS data is not accurate to rely upon to determine the suitability of the site for commercial forest uses.
- E. The Board finds that the Department of Revenue (DOR) western Oregon Site Class Map submitted into the record shows the property has an FG Forestland Rating. The Board finds that the map from DOR depicts 160 acre Quarter-quarter sections and does not provide detailed information for productivity limitations on sites smaller than 160 acres. The Board finds that the FG rating equates to a site class V. The Board finds that the V Site Class V rating equates to a 59 to 66 Site Index on the King productivity study that is required to be used by the Administrative Rule. This finding is based on the Board reviewing the DOR map for the subject area and relevant portions of the DOR Forestland Manual. Based on a comparison of the DOR data and the description of the site and results of direct measurement of average annual wood production, the Board finds that the DOR information is not accurate to describe the productivity of the subject property.
- F. The Board reviewed the Forest Service Plant Association Guide for Southwestern Oregon and finds no productivity data available.
- G. The Board reviewed the list of other approved data sources and finds that none of the sources apply to Josephine County. Additionally, the Board finds the property to have an Internal Rating of Return (IRR) calculation of 3.46; this calculation of site productivity is required by Section 46.050.B.1 of the Rural Land Development Code.
- H. The Board finds the OAR specifies that if the listed data sources are unavailable or inaccurate, then an alternate methodology of direct tree measurement is authorized and the approved method is described in the Oregon Department of Forestry Technical Bulletin Land Use Planning Notes Number 3 April 1998 Updated for Clarity April 2010 (LUPN).
- I. The Board reviewed and considered oral testimony and the written report from a professional forester, Norm Foeller, that described his methods and conclusions

regarding productivity of the site. The Board finds this evidence substantial and convincing in determining productivity of the property. The Board considered the initial conclusion that a portion of the site had zero productivity because the average productivity of the site was less than the lowest-listed cubic foot per acre per year entry in the Department of Forestry conversion table. The Board also considered the addendum submitted that shows a conversion to an average of nine (9) cubic foot per acre per year productivity from additional Department of Forestry conversion tables that use the required King site data. The Board considered the objections from those opposed to the application and find that the objectors have no professional forester background. The Board finds that the LUPN provides that a professional forester should be used to take tree measurements and prepare a report. The Board chooses to accept the testimony of the forester as credible and substantial and more convincing than those objecting to the report and conclusions. The Board also considered communication from both the Oregon Department of Forestry and Josephine County Forestry Department that concur that the methodology meets the requirements of the LUPN.

- J. The Board finds that the description of the conditions on the site is such that the property is large enough to contain changes in productivity and that a map and separate calculations were made to provide a weighted average of productivity across the site. The Board finds that the cubic foot per acre per year average of productivity for the entire property is nine (9) cuft/ac/yr as shown in the forester's report addendum.
- K. The Board finds that the published data to be inaccurate or unavailable and chooses to use the data submitted by the applicant in determining if the subject property is suitable for commercial timber uses. The Board makes this determination based on the testimony provided by the professional forester and believes that the methods used in his report meet the standards of the LUPN. This conclusion is also based on testimony from the Oregon Department of Forestry and Josephine County Forestry Department that concur with the method used by the forester. The Board also considered the professional soil scientist/soil classifier testimony in the record that described the site conditions that reduce the suitability of the site to grow timber species.
- L. The Board finds that there is no state standard to establish what is forestland based on productivity of the site as measured in cuft/ac/yr. The Board also considered testimony that generally concludes that productivity of less than 20 cuft/ac/yr is not commercial forestland. The Board finds nine (9) cuft/ac/yr average productivity for the site would not be conducive to commercial forest uses as concluded by the forester. The Board also finds that the testimony from the forester and soil scientist that the site is not suitable for commercial timber uses to be substantial and credible. Testimony included lack of adequate rainfall, hot growing seasons and serpentine chemical qualities of the soil as a basis to conclude the land is not productive forest land. Additional testimony from the applicants' consultant described the sole access to the subject property is through a residential neighborhood, small size of the parcel for timber harvest and lack of connecting access to other forested areas would render this parcel as unsuitable for timber management.
- M. The Board finds that from inspection of aerial photographs of the site and testimony presented, a lack of any historical timber harvest of the property and lack of any

significant or substantial merchantable tree growth on the property except for the limited areas discussed in the hearing. The Board finds the property lacks characteristics, including suitable soils, to be considered as timber land protected under State Goal 4.

IV. CONCLUSION:

Based upon the above evidence, findings, and applicable criteria for decision, the Board of County Commissioners concluded the Whitaker request for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential 5 for property located at the southerly terminus of Ridgefield Road complies with the requirements of Josephine County and State law pertaining to such matters. The change is based on a conclusion from the evidence and testimony submitted that the property is not forestland and that such a change does not require an exception to State 4 and that the applicant has met the burden of proof to show compliance with OAR 660-006-0010 and the 2010 Land Use Planning Notes issued by the Oregon Department of Forestry.


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 Haugen, seconded by Commissioner Reedy, and by a vote of 3-0 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 the southerly terminus of Ridgefield Road more precisely described as Assessors Map T37 R5 Section 20 Tax Lot 2001. This decision reaffirms and is supplemental to the original approval dated April 6, 2011 and maintains the original conditions that read as follows:

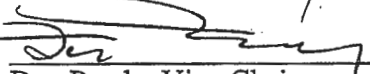
1. Per Section 46.050C.6. RLDC, the property owner shall execute and record a Conflict Preference Covenant, which recognizes the rights of adjacent and nearby resource land owners to conduct normal farm practices and forest operations. The covenant shall provide that all land use conflicts between non-resource uses on TL 2001 and adjacent or nearby resource operations will be resolved in favor of accepted farm and forest practices and operations. The document shall be approved by the Planning Department in conformance with requirements of the development code.
2. A deed restriction shall be recorded on a form to be approved by the Planning Director to require all structures to be placed at a minimum of 100 feet from adjoining or nearby resource zoned property upon final approval of the request.
3. A condition shall be added to any approval of a land division of the subject property to require that Ridgefield Road be improved to Limited Residential standard if 10 or less lots are served; or improved to Rural Residential standard if number of lots to be served exceeds 10.

Adopted this 19 day of December, 2012 by the Josephine County Board of Commissioners.

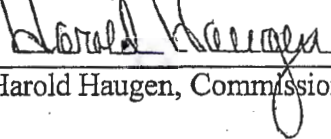
JOSEPHINE COUNTY
BOARD OF COUNTY COMMISSIONERS



Simon Hare, Chair Date



Don Reedy, Vice Chair Date



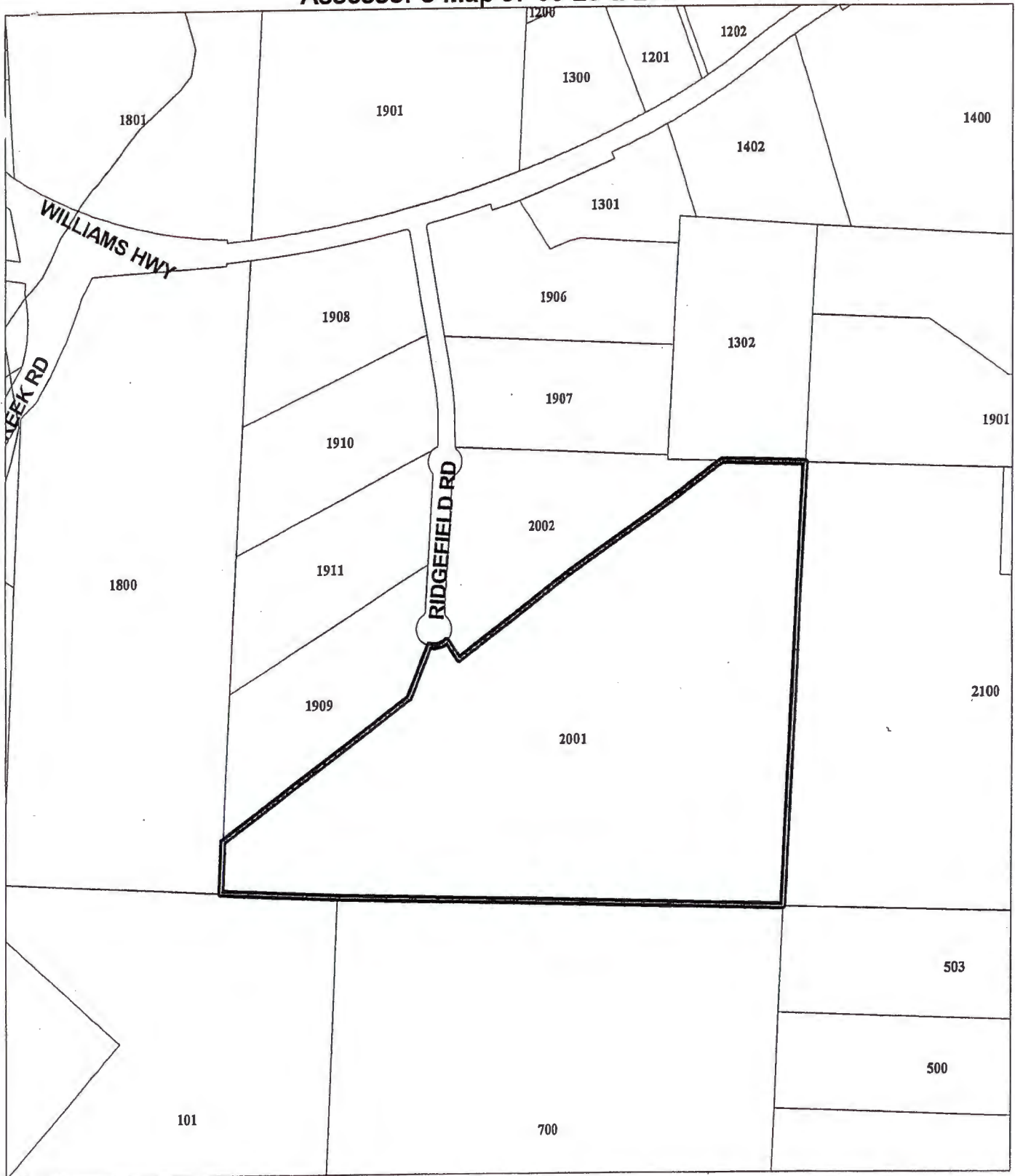
Harold Haugen, Commissioner Date

Approved as to form:







Steve Rich, Legal Counsel

Assessor's Map 37-05-20 tl 2001



Legend

	Taxlots
	Water (line)
	Class 1
	Class 2



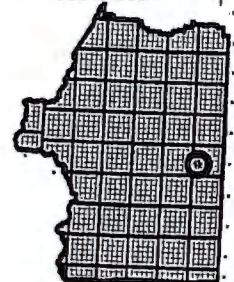
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Scale
1:4800



Locator Map



CERTIFICATE OF MAILING

I hereby certify that individual copies of the attached *Notice of Legislative Land Use Decision* issued on behalf of the Josephine County Board of Commissioners and dated **January 3, 2013** were deposited in the United States mail on the 3rd day of January, 2013 addressed to the following persons or organizations:

DLCD/Josh LeBombard
via email

Plan Amendment Specialist/DLCD
635 Capitol Street NE, Suite 150
Salem OR 97301-2450

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

Board of Commissioners

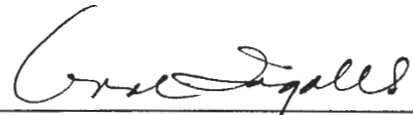
Richard/Christine Whitaker
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Attached Mailing List



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Josephine County Planning



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Salem OR 97301-2540

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MAR 13 2013

LAND CONSERVATION
AND DEVELOPMENT