



# Oregon

John A. Kitzhaber, M.D., Governor

**Department of Land Conservation and Development**

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

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



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

Date: 10/20/2014

Jurisdiction: Josephine County

Local file no.: 37-05-26- TL 300

DLCD file no.: 003-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 10/15/2014. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 55 days prior to the first evidentiary hearing.

### Appeal Procedures

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

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

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

### DLCD Contact

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



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

**FOR DLCD USE**  
File No.: 003-14 {19502}  
Received: 10/15/2014

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

Jurisdiction: Josephine County

Local file no.: 37-05-26, TL 300

Date of adoption: 06/24/2014

Date sent: 10/15/2014

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

Yes Date (use the date of last revision if a revised Form 1 was submitted): 05/21/2013

No

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

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

Local contact (name and title): James Black

Phone: 541-474-5418

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

Street address: 700 NW Dimmick Street, Suite C

City: Grants Pass

Zip: 97526

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

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

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

None

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

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

- Change from Forest to Residential 158 acres. A goal exception was <sup>NOT</sup> required for this change.
- Change from change. to acres. A goal exception was required for this
- Change from change. to acres. A goal exception was required for this
- Change from to acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): 37-05-26, TL 300

The subject property is ~~entirely~~ <sup>NOT</sup> within an urban growth boundary

The subject property is ~~partially~~ <sup>NOT</sup> within an urban growth boundary



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

**ORDINANCE NO. 2014-001**

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 37-05-26, TL 300. THE PROPERTY OWNER IS SHANNON MCMAHON.

WHEREAS, the Josephine County Board of Commissioners held public hearing on September 11, 2013 to consider the request as described above; and

WHEREAS, the Josephine County Rural Planning Commission previously held a public hearing on July 15, 2013, 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 26, Tax Lot 300.

**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 37-05-26, Tax Lot 300.

**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.

///

///

///

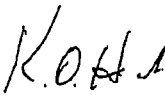
**SECTION 4: EFFECTIVE DATE**

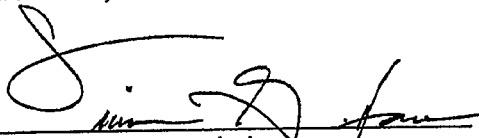
The first reading of this Ordinance by the Board of County Commissioners occurred this 12<sup>th</sup> day of March, 2014.

The second reading and adoption of this Ordinance by the Board of County Commissioners occurred on this 26<sup>th</sup> day of March, 2014, 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**

  
Cheryl Walker, Chair

  
K.O. Heck, Vice Chair

  
Simon Hare, Commissioner

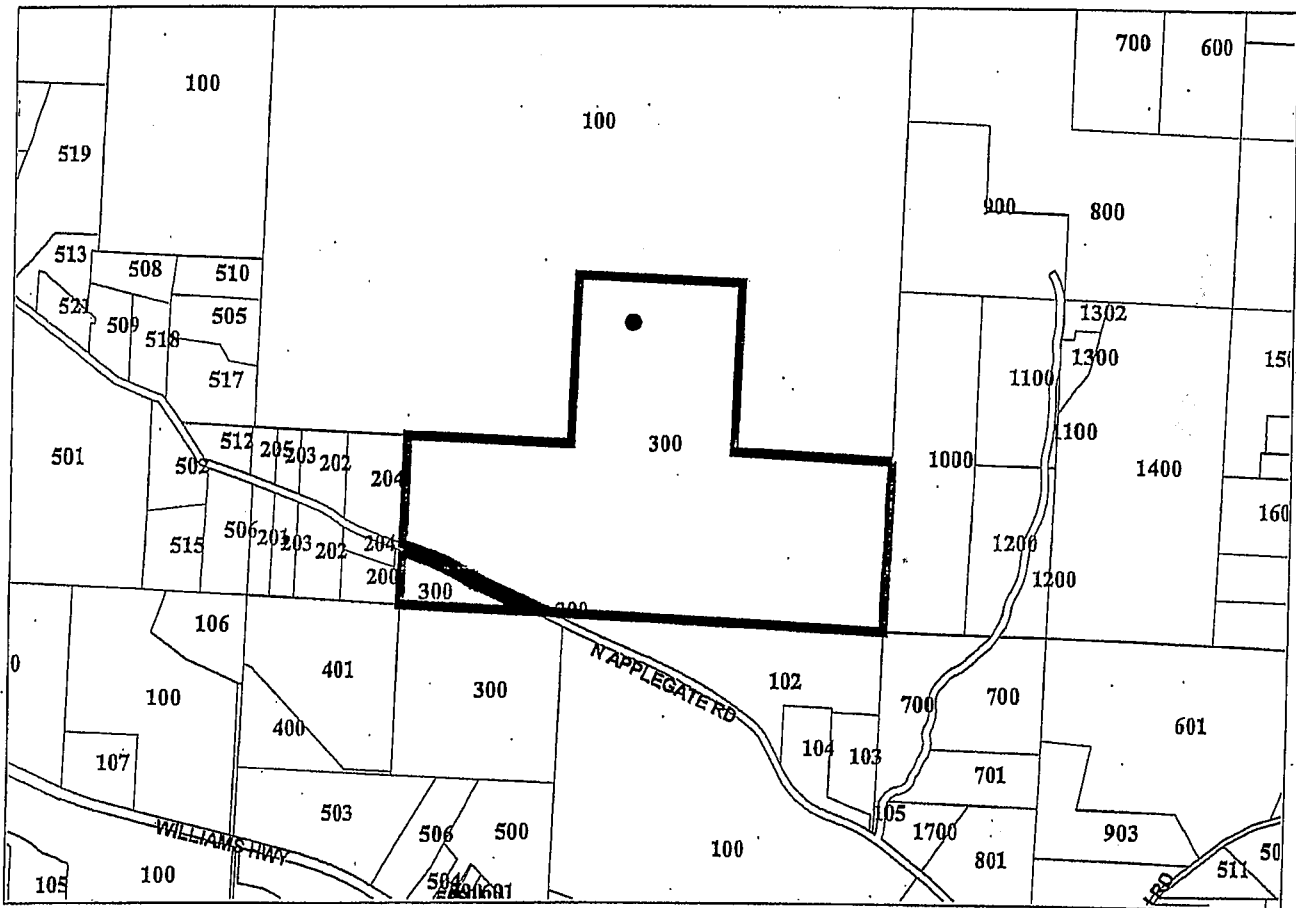
**ATTEST:**

  
Recording Secretary

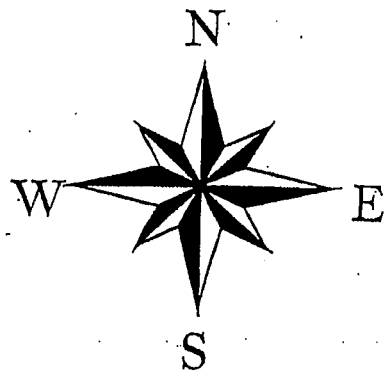
**APPROVED AS TO FORM:**

  
Steven E. Rich, Legal Counsel

# COMPREHENSIVE PLAN ZONE CHANGE



● **SUBJECT PROPERTY**  
**11390 N APPLGATER ROAD**



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 Shannon McMahan }  
 Owner }  
 Applicant Shannon McMahan }  
 Representative Bob Hart }  
 \_\_\_\_\_ }

FINDINGS OF FACT  
and  
DECISION

The request is for a Comprehensive Plan Amendment from Forest to Residential and a Zone Change from Woodlot Resource to Rural Residential (RR-5). The property is located at 11390 North Applegate Road, more precisely identified as Assessor's Map T37, R5, Section 26, Tax Lot 300. The request for a decision was submitted by the owner Shannon McMahan.

This request came before the Josephine County Board of Commissioners on September 11, 2013. The Board received no objection to the jurisdiction of the Board to hear the matter. No Board member declared a conflict of interest nor any ex parte contact and all Board members decided to hear the matter. The public hearing was opened. An oral decision was rendered on September 11, 2013.

**I. CRITERIA FOR DECISION:**

**Josephine County Rural Land Development Code**

**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 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,

---

<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.

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

---

<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.

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 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**

#### **660-006-0010 (Forestlands)**

#### **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

**660-012-0060 Plan and Land Use Regulation Amendments (Transportation)**

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP (Transportation System Plan). As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
  - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
  - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
  - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

**660-023-0250 (Goal 5 Resources)**

Applicability

- (1) This division replaces OAR 660, Division 16, except with regard to cultural resources, and certain PAPAs (Post Acknowledgement Plan Amendments) and periodic review work tasks ~~described in sections (2) and (4) of this rule. Local governments shall follow the procedures and requirements of this division or OAR 660, Division 16, whichever is applicable, in the adoption or amendment of all plans or land use regulations pertaining to Goal 5 resources. The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.~~
- (2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.

- (3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:
- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;
  - (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or
  - (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

## II. EVIDENCE AND FACTS:

The following evidence and testimony was submitted at the public hearing:

- A. Oral testimony was given by James Black, Planner III, Josephine County Planning Department, who discussed the salient aspects of the application noting the following: the written staff report, minutes and recommendation of the Planning Commission to approve the request and the information submitted to address the relevant criteria. Mr. Black testified that the staff was concerned about the slope of the property and the ability of the land to meet proposed carrying capacity and fire concerns. Mr. Black advised the Board that they could approve the application as submitted, deny the application, or approve with conditions (require a 20-acre minimum lot size). The Planning Commission felt the property was suitable for 5 acre minimum Rural Residential zoning and approved the application by unanimous vote.
- B. The oral testimony of Dick Converse, Interim Josephine County Planning Director, briefly explained the Internal Rate of Return forest evaluation system that applies in Josephine County. Mr. Converse also noted that although the staff recommendation was for denial as submitted, the Planning Commission weighed the facts, evidence and testimony regarding the application and recommended that the request be approved.
- C. The oral and written testimony of Bob Hart, Planning Consultant representing the applicant provided the following information concerning the applicable criteria: The property is located adjacent to an existing exception area and was originally zoned SR-5 which was a residential designation. The property was rezoned during the final adoption of the Comprehensive Plan as a result of a state enforcement order mandating the elimination of residential lands that exceeded the needs for the projected population. Mr. Hart's testimony is the land is non-resource based on evidence in the record that shows more than 50% of the parcel has soils that are not classified as class I-IV agricultural soils, the land is not other farm land that can be managed for farm use nor is the land necessary for the other lands to be managed for resource use. There is no need for access to adjoining forest lands to the north, the BLM lands to the north have poor quality soils and are not being harvested. The requested change would not impede or raise the cost of resource operations on adjacent or nearby resource lands because development will not be close to abutting property lines that would require management plans

to be modified. The soils on the site are rated in the Josephine County IRR system regarding forest land identification. The CIRR is calculated to be 3.36 which is less than the 3.50 standard that is necessary to be designated as forest land. The land is not other forest land under the requirements of local and state goals because the land is not necessary for other forest operations, not for maintenance of air, water or wildlife resources. The productivity for forest use in cubic foot per acre per year as shown in the NRCS Soil Survey is not accurate, nor the Department of Revenue Western Oregon Site Class maps. Mr. Hart testified that the property owner has been notified by the County Assessor that the forest assessment was being removed from the property. No other acceptable published data is available for this area. Direct measurement of forest productivity was conducted by Norm Foeller, a professional forester, that shows the average productivity for the entire site is 6.25 cubic feet per acre per year. The forester concluded that the property is not suitable for commercial forestry. The non-resource provisions of the Development Code are in accordance with state law and have been acknowledged as in compliance with required goals and the request meets all other applicable criteria as demonstrated by evidence in the record, submitted studies and documents. The parcel is consistent with the character of the area based on a thorough evaluation of surrounding lands, especially the development pattern along the uphill side of North Applegate Road and Highway 238. The property has adequate carrying capacity for the intended use. Existing wells on the property demonstrate water is available for the development. Septic system potential was evaluated by a certified soil scientist as required by the RLDC to conclude systems can be approved in accordance with the proposed development. A Traffic Impact Study was conducted to show that the existing transportation system has adequate capacity for the project. A geotechnical engineering report was included in the application to show that the erosion and grading needed for the project can be accomplished in a safe manner. Mr. Hart showed a comparison of the subject property to a developed area of similar slopes and soils that is developed with lots less than 5 acres and explained how with proper development that slopes and erosion can be mitigated to an acceptable level. Fire issues were discussed with the land shown to be located in a fire district and that a fire plan was submitted to show how development will be in conformance with Wildland Fire safety standards. Mr. Hart also referred to the RLDC provisions that allow a zone change to a higher density with a limitation that the development of the site will continue to be bound by the Deer Habitat density provisions that limit development of the property. 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. ~~Oral and written testimony of the William Galli, registered professional engineer speaking for the Galli Group, Geotechnical Engineers, provided remarks on the soils and topography of the site, suitability for the proposed development, a report addressing 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 its suitability to support the use, and fire plans to reduce the incidence and severity of wildland fire. Written materials submitted for the record include a possible development scheme, documentation on carrying capacity issues, suitability for an on-site road system, wildfire and emergency service safety plan, drainage and erosion control, adequacy of public facilities and land use patterns, and a report addressing the availability of water to serve the intended use. Evidence included Oregon Water Resources Department well logs and water quality test and analysis, geology maps of the area. The~~

analysis addressed projected water demand, type of water supply, basin water level analysis, aquifer recharge, groundwater impacts and contamination.

- E. Oral and written testimony of Norm Foeller, Professional Consulting Forester, was given stating that the property is not forest land. From his analysis he concluded 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 from the Oregon Department of Forestry expressed approval of his methods used in the forester's analysis. Mr. Foeller explained the standard site index charts that are used in the forest industry and that the measured cubic foot site class and site index from timber growing on the site is below the lowest described site index in the standard charts. Mr. Foeller concluded that the specific onsite measurement of productivity will provide an accurate evaluation of the forest potential of the property while the general productivity data in the NRCS Web Survey and Department of Revenue maps are not accurate because of specific local site conditions. Mr. Foeller's professional opinion is that the site is not suitable for commercial timber production.
- F. Written testimony of David Maurer, Certified ARC/PAC Soil Scientist, who testified regarding the soil conditions on the property and topography of the site. Mr. Maurer specifically testified regarding potential of the site to allow septic systems for dwellings. He concluded that through careful location and construction, septic systems could be located on the property despite the slope and soil conditions. Mr. Maurer utilized the development plan from the geotechnical engineer for the location of lots and access roads to determine proposed septic locations. He also conducted field tests for soil depth and soil type. He concluded that a combination of standards systems and sand filters would meet DEQ standards.
- G. Robert Kortt, Professional Traffic Engineer, testified with a written report that was reviewed by the Oregon Department of Transportation, Josephine County Public Works Department and Jackson County Roads Department. The conclusion of the report was that the existing road systems are adequate to support the proposed use. The report included traffic projections for the project as well as the affected area for the planning period as required by state administrative rules.
- H. The following persons spoke in support of the application but did not speak to specific criteria: Shannon McMahon, property owner; William McMahon; Regina Purtzer; Sheryl Roeloffs; Ester Smith, and, Thomas Purtzer.
- I. Written and oral testimony was received from Steve Rouse, Rogue Advocates, who opposed the application on the grounds of lack of deer winter range compliance, carrying capacity and slopes. Mr. Rouse added that the previously approved Wicks' application and McMahon application could not proceed without violating the deer winter range density requirements. He stated that neighbors' primary concern is fire danger because of dense vegetation and steep slopes. He also stated he believed that the applicant had not met the burden of proof for wells on the property. Mr. Rouse also agreed with concerns raised by the Josephine County Planning staff, DLCD staff, ODFW staff, Water Resources Department and the Josephine Soil and Conservation District. Mr. Rouse also spoke on the issue of conditions on rezoning and why the



County should not apply conditions. Mr. Rouse also testified that the proposed change would not be consistent with the character of the area.

- J. Written and oral testimony was received from Steve Neimela, Oregon Department of Fish and Wildlife, opposing the application because of deer habitat concerns. He said his agency recommends that the County develop a solution for problems where development of one project would impact property rights of other landowners regarding the ability to have a dwelling.
- K. Oral testimony was received from Eric Vestnys, opposed to the request, stating that the approval would change the wilderness reserve and permanently change wildlife habitats.
- L. Oral testimony was received from Robin Elliot, the Lower Applegate CAC, opposed to the application. She concurred with the Josephine County Planning Department staff report and recommended to deny the application because of slopes and carrying capacity.
- M. Oral and written testimony was received from Linda Ford, North Applegate Watershed Protection Association, opposing the request stating that the Association agreed with DLCD staff that the land is other forest required to be protected under goal 4. She stated that the land is needed for maintenance of soil, air, water, fish and wildlife resources. She believes the approval of 5 acre lots will not conserve deer winter range. The proposal would exceed deer habitat density regulations. The Association expressed concern that the project would also exceed carrying capacity based on potential erosion and fire hazards.
- N. Oral and written testimony was received from Jean Mount, Lower Applegate CAC, opposed to the application stating that the request is not consistent with Deer Habitat requirements by exceeding the density requirement. She further testified that the proposal does not meet the requirements of the Oregon Administrative Rules regarding Goal 5 requirements, the application does not adequately address the required carrying capacity, and the application fails to meet the requirements of the Transportation Planning Rule as the maximum density was not evaluated.
- O. Oral testimony was received from Dave Vestnys who testified that the 20-acre minimum lot size option is a good compromise and that 5 acre lots was excessive for the area.
- P. Written testimony was received from Nora Schwartz, Josephine County Public Works Department, stating that erosion and drainage mitigation is addressed and overall road system design is acceptable. There are no requirements from the Public Works Department.
- Q. Written testimony was received from Mike Kuntz, Jackson County Road Department, stating the Traffic Impact Analysis is acceptable.

- R. Written testimony was received from Dan Ethridge, Oregon Department of Fish and Wildlife. His testimony stated that the application meets the requirements of dwellings in the deer winter range as described in Josephine County's Rural Land Development Code.
- S. Written testimony was received from David Haight, Oregon Department of Fish and Wildlife, stating that there is a class 1 stream flowing through the property and requests that the applicant be advised that the Riparian Setback Ordinance must be complied with for all development.
- T. Written testimony was received from Stephen Wetmore, of Oregon Department of Forestry, stating that ODF concurs with the methods used for site productivity assessment for timber growth.
- U. Written testimony was received from Jen Woody, Oregon Water Resources Department, stating that although she finds the methods used to evaluate groundwater to serve the proposed development generally reasonable, she did not see enough site information to determine sufficient groundwater.
- V. Written testimony was received from Thomas Guevara, Oregon Department of Transportation, who found that the proposed change will not significantly affect state transportation facilities under the Transportation Planning Rule in the OAR or State Access Management Rule.
- W. Written testimony was received from Katherine Daniels, Department of Land Conservation and Development, opposed to the application based on an opinion that the land is forest land because of other forest values of maintaining soil, air, water, fish and wildlife resources. She was also concerned about the determination of forest productivity based on direct measurement of the trees on the property. Ms. Daniels also testified that the application would exceed the carrying capacity of the land because of the slope and severe development constrains of the soils as described in the NRCS soil survey. She also testified that the development would be inconsistent with the area character.
- X. Written testimony was received from the Soil and Water Conservation District of Josephine County opposing the application stating that the property is still viable forest land and that the decision should be based on the Josephine County Soil Survey created in 1983 by the Soil Conservation Service. In addition the District believes that the steep slopes are not suitable for residential use.
- Y. Oral testimony was received from Neil Burgess, Engineer, Josephine County Public Works Department, stating that as the engineer in the Department he reviewed the traffic analysis and that the report is satisfactory.
- Z. Written testimony was received from Martha Love stating that as a neighbor that she has no objection to the request.

- AA. Written testimony was received from Robert Hill stating that as a resident of the area, he does not object to the request.
- BB. Written testimony was received from Sandra Noble, stating that as an owner of a dairy in the area, she is not opposed to the request.
- CC. Oral testimony was given by Jeffery Anderson opposing the application expressing concern for water in the area that may be impacted by the development, fire issues that will be worse with the development, and septic issues that are marginal to support the project. Mr. Anderson also stated that the traffic in the area is a problem and the road is in terrible disrepair. He also was of the opinion that the proposal as submitted is not consistent with the character of the area as there are no other multi-home subdivisions in the area.
- DD. Oral testimony was given by Jack Swift, a member of the Land Development Advisory Committee, stating that he heard testimony from ODFW that there was not migratory deer in the area and therefore the area should not be designated as deer winter range.
- EE. Rebuttal written and oral testimony was received from Bob Hart who responded to all of the issues raised in the testimony opposing the application. The testimony included: water supplies, erosion and runoff, fire hazard, wind patterns, traffic impacts, applicable requirements of the County land development ordinances and Comprehensive Plan, applicability of Oregon Administrative Rules specifically OAR 660-006, 660-012 and 660-023, character of the area, non-resource determination and the conclusion that Goals 3 & 4 were not applicable, code provisions regarding septic information, forest productivity information, other forest lands and the fact the property is not necessary for resource use of adjoining or nearby lands, the relationship between the subject property and adjoining and nearby lands, uses by BLM of adjoining lands in their ownership, the difference between federal designation of commercial forest land and land protected by State Goal 4 that testimony was to the ability of the land to support commercial forest use on private land should be based on private usage and not on a federal program designation. Rebuttal testimony was also provided regarding the applicability of the IRR system to identify forest land and lands not protected by Goal 4, testimony regarding previous LUBA decisions regarding use of soil information, suitability of the land for the intended use. Testimony was given to respond to agency comments from various state agencies. Mr. Hart also noted that the application was for property that is not located in the Lower Applegate CAC area and therefore testimony from the group should be disregarded.
- 
- FF. Sur-rebuttal from Steve Rouse encouraged the Board of Commissioners to weigh the evidence and validity of the evidence submitted. He stated that the agency professionals all said to deny the application and that the Planning Commission recommendation should be voided.
- GG. Written minutes and the recommendation of the Josephine County Planning Commission were submitted for the record.

### III. FINDINGS OF FACT:

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

- A. The request was submitted to Josephine County to change the Comprehensive Plan from Forest to Residential and the Zone from Woodlot Resource to Rural Residential- 5. The hearing before the Board of Commissioners is a de novo hearing and is the initial hearing for the request. No official decision is allowed by the Planning Commission under the RLDC and the Planning Commission hearing is advisory only. The Planning Commission made a unanimous recommendation to approve the application.
- B. The property was originally zoned residential SR-5 and was changed to Woodlot Resource as part of the County's attempt to comply with a Department of Land Conservation and Development enforcement order. The request submitted is to change the Plan designation to Residential and the zone to Rural Residential 5 Acre. The basis of the request is a determination that the land is non-resource and not subject to Goals 3 and 4 thus an exception to state goals is not required.
- C. The property is 158.60 acres in size and is improved with two dwellings and accessory structures. The lot is bisected by North Applegate Road, isolating about 5 acres from the main portion of the ownership. The property is adjacent to residentially zoned parcels on the east and west. The land to the west was acknowledged as built and committed and non-resource on the east. The balance of the subject property is adjacent to forest and farm zoned parcels to the north and south across North Applegate Road. The Board further notes the property was receiving a forest assessment until County Assessor notified the owner that the forest assessment was being removed because of a lack of trees.
- D. The Board finds that the criteria for the request are as stated in the Findings of Fact. The objections to the request generally state that the request is not in conformance with local codes to identify forest land, State Goal 2 requirements, deer winter range density standards and OAR 660-006, 660-012 and 660-023 requirements. The Board addresses the objections below as part of the decision.
- 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 as well as state administrative rules and local development code requirements. The Board considered the evidence submitted and is convinced that the application is in compliance with all applicable statewide and county goals as well as Oregon Administrative Rules, and local code requirements. The application provided specific comment and basis for compliance for each state and county goal as well as Administrative Rules and local codes. The Board finds the application materials are credible and sufficient to conclude the application complies with the applicable criteria.~~

- F. An objection was raised that the request did not comply with Goal 2 as services were not considered adequate. The Goal states that the decision maker "should" consider levels of service but this is not mandatory. The objection stated that fire and police protection are not adequate. The Board finds that the property is located in a fire protection district that provides fire protection. Evidence was submitted that a fire station is located in close proximity to the site. The Board finds that there was no testimony that the resources of the fire district are inadequate to provide fire protection. A fire protection plan is a part of the application to show the project to be in compliance with local codes to mitigate wildfire hazards. The Board finds that such district protection and the mitigation plan is adequate to meet the applicable criterion. The level of police protection is established by the general fund, grants and by a vote of the citizens for funding acceptable levels of police protection. The Board finds that such decisions provide an adequate level of service considering the current state of the economy. The Board finds that the request complies with Goal 2.
- G. The Board finds that the subject property is not agricultural land or forest land subject to goals 3 and 4 because the land is in fact non resource in nature and should not be protected under Goals 3 and 4. No Goal Exceptions are required based on the Board's finding that the land is not resource land. The basis for the finding is the land is not farm or forest land as addressed below.
- H. The Board accepts the evidence and facts outlined in II C above and finds that the land is not forest land protected under Goal 4. The Board finds that the conclusion of the forester is reasonable. The Board finds that the evidence and testimony are substantial and convincing and concludes the land is not forest land protected under goal 4.
- I. The criteria also require that the property be evaluated to determine if the land is "other forest land that maintains soil, air, water and fish and wildlife." The application presents an analysis of these issues and was the subject of additional oral testimony. Testimony in the application was that County Comprehensive Plan inventories were reviewed and that no soil failures have been documented in this area. The engineer testified that the land is stable and that roads will easily be able to be constructed to serve the project. No testimony was given to show that air would be an issue. Testimony from the engineering geohydrologist states that there is adequate water to serve the project. The requirements of the local development code require that density limitations to protect critical deer habitat will be maintained even if the zone allows a higher density. Testimony from applicant and documents submitted show that the proposed development of the property will maintain the required density. Testimony from the Fish and Wildlife Department is contradictory with one staff member testifying that the project will impact deer habitat and one staff member testifying that the request meets the ordinance standards for density. Testimony from those in opposition states that the land should be classified as other forest land and the request denied. The statements made by those in opposition describe that erosion of the land because of slope that would fail to maintain soil stability. The Board finds that the testimony from the engineer that erosion and slope stability will be maintained with the development of the property is substantial and convincing. This testimony is further supported by the Josephine County Public Works testimony that the erosion and drainage mitigation is appropriately addressed. The Board finds the affirmative testimony substantial and finds that the request maintains soil stability. Testimony in opposition also was that the change would not maintain wildlife habitat. The Board finds that the submitted study by the applicant shows a development plan that meets the maximum

development that would meet the standards authorized by the deer habitat density limitation. The Board finds that the deer habitat density limitation must be observed, regardless of the zone. The Board notes that a letter from ODFW states that the project meets the density limitation of the code. Even with the conflicting testimony, the Board finds that the application will meet the code limitations and criteria. The Board also considered testimony in opposition that the land was other forest land. The Board considered the testimony of the applicant and found the applicant's testimony was more convincing. The Board finds that the property is not other forest land as the land does not maintain other forest characteristics based on the application materials and testimony. The Board chooses to accept the applicant's testimony and the ODFW testimony that the request meets the code requirements for density limits.

J. The Board finds that the property is non resource for farm purposes and is not protected by State and County Goals. The property has predominant (96%) soils that are rated as Class V or worse in the soil descriptions in the Josephine County Soil Survey and therefore is not farm land. In considering the practicality of the land for farm uses, the Board finds the Soil Survey for Josephine County shows the soil on the property is not suitable for other farm land. The Board heard testimony that irrigation is not available to the property in order to make the land more suitable for farm use. The Board finds that the average slope of the land precludes farm use. The Board finds that the site does not meet the definition of farm use that is found in the Oregon Revised Statutes Chapter 215.203(2). The meaning of farm use is ". . . the current employment of land for the primary purpose of obtaining a profit in money . . ." The Board concludes the site is not farmland under the requirements of State Goal 3 and County Goal 2 and therefore meets the criteria for a non-resource determination under the applicable criteria.

K. The Board finds that the land is not necessary to permit farm practices to continue or occur on adjacent or nearby resource zoned lands. The applicant has submitted a review of resource zoned lands that are adjacent or nearby. The study describes existing uses and circumstances and conditions that are to be evaluated as a special benefit. The farm area to the southeast of the subject property has been used for hay production. The subject property does not have the characteristics needed to be used in conjunction with this farm use. Based in the information provided, the Board does not find that there are any special benefits available on the subject property that would be required or necessary for adjoining or nearby lands to conduct farm practices.

L. The criteria require that the applicant show adequate carrying capacity to support the density and types of uses allowed. The parts of carrying capacity include suitability for septic capacity, ~~adequacy of domestic groundwater supply, suitability of soil and terrain to support on site roads, presence or absence of flood, fire or erosion hazards and the applicability of other special land use concerns.~~ The carrying capacity is addressed below:

1. Septic capacity - Septic system approvals from the Department of Environmental Quality for the existing dwellings showed that a septic system can function on the site. The Board also considered the written testimony from a certified soil scientist regarding the potential for approval of septic systems. The Board also considered the testimony from those in opposition, including DLCD, that raised the concern that alternative septic systems would not be adequate to support the proposed use and that the site was too steep for septic systems. The Board noted the soil scientist evaluated each proposed

parcel and concluded that a septic system can be located on each lot to meet DEQ requirements. The Board finds that the evidence shows that the land is suitable for septic capacity based on the testimony of the soil scientist that performed a physical inspection of the site.

2. Water adequacy - The Board finds that the evidence presented by the applicant in the form of well logs, water quality report and potential water availability report for the subject property as well as oral testimony from experts in their fields, demonstrates that the property has adequate water capacity for the intended use. The Board finds records from the applicant relate to wells on the subject property as specified by the code. The Board concludes the applicant has met the burden of proof for water supplies.
3. Off-site roads - The applicant submitted a Traffic Impact Analysis prepared by a traffic engineer. The Board finds that the report contains the required analysis of the density that is allowed and analysis of traffic projections in the planning period. Testimony in the record from the Oregon Department of Transportation, Jackson County Road Department, and Josephine County Public Works Department in response to evidence submitted by the applicant demonstrated that the project will not have a significant impact on transportation facilities and there is adequate capacity for the intended use. The opposing testimony described road conditions on North Applegate Road and concluded the roads are not adequate. This testimony was not convincing to show that there is not adequate capacity.
4. Suitability of soil and terrain to support on-site roads - The Board received testimony and evidence regarding slope, drainage and erosion. The geotechnical engineer described the extensive road system that currently exists on the subject property and a lack of erosion for the existing cuts. He also discussed the limited cut and fill operations that would be needed to construct a road system and building sites. The Board notes the objection from the Soil and Water Conservation District and neighboring land owners regarding possible erosion and steep slope problems. The Board chooses to rely on the engineering report that shows normal engineering practices and a proposed erosion and sediment control plan will support the proposed use. Based on testimony in the record from the licensed engineer, we find that the development of the property will be done using standard practices and improvements and will not result in future maintenance costs that are atypically high. The objections were not based on data from the site but on opinion that was not submitted by engineers licensed to practice in Oregon.
5. Natural hazards - The Board considered the testimony and exhibits that show the limited flood hazard on the property is not in the area of any development. Fire hazard is not greater than other developed parcels in the area. The property is located in a fire district and a Wildfire Plan was submitted describing compliance with code requirements. The Board finds that fire hazard is mitigated to an acceptable level by the existing fire protection that serves the area and the actions required during the development of the property by the Development Code. Erosion of soils on the property was addressed by the applicant's engineer and those in opposition to the request. A review of the engineering report, photographs of the subject property and surrounding slope areas were found to be convincing and substantial. The Board finds that the information submitted adequately addresses the criteria and the Board concludes the request meets the standards required by the Code
6. The evidence showing compliance with carrying capacity requirements was substantial and convincing notwithstanding the testimony of those in opposition that failed to provide any significant expert testimony contrary to the evidence provided by the

applicant. The Board considered the information provided by the opposition such that an interest in water issues has been established but notes that the testimony is not compelling. The statement from staff of the Water Resources Department did not contradict the testimony from the geohydrologist but was an opinion that using air tests was not adequate to evaluate water supplies on the site. The Board concludes that the information and facts submitted on behalf of the applicant is sufficient for a reasonable person to rely on the information and that the request meets the standards required to show adequate carrying capacity

- M. The Board finds that the applicant has submitted a detailed examination and maps of the subject property and the surrounding area that also include 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 considered the one mile area surrounding the site adequate for evaluation of resource uses considering the general lack of forest resource use in the area. The Board also considered zoning and development pattern along the two primary roads that run parallel to the Applegate River. The Board also finds the one mile study area together with the pattern along the roadways as 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 along a public road that was constructed to serve residential lots and dwellings. The Board finds that a significant number of parcels in the area are residentially developed and the subject property is adjacent to existing residential uses to the east and west. The Board inspected maps of zoning and aerial photography of the area and finds that residential uses exist along the uphill side of North Applegate Road and Williams Highway. The Board considered the testimony that the area is resource in character from those persons in opposition to the request. The Board noted that there is Federal land adjacent to the parcel to the north that is not being managed for commercial forest uses as demonstrated by a lack of access roads needed for resource management. The Board also finds that agricultural uses in the area are mainly located on the level alluvial soils adjacent to the Applegate River and the vineyards on low slope lands further to the east. The Board finds the subject property is not the same as the farm land in the area and is most like the residential lands along the foothills of the area. The Board concludes that the character of the area is of mixed uses with a primary use along North Applegate Road being rural residential zoning and development. The Board finds that the forest lands within the study area include some large blocks of lands along the periphery of the study area that skew the total acre evaluation. The Board finds that the proposed change is consistent with the established development pattern of the area.

- N. The Board has reviewed the application materials concerning 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 and that the density will not be exceeded by the proposed development. The Board finds that approval of RR-5 zoning does not require or guarantee achieving the maximum density of the RR-5 zoning. The Board finds that the carrying capacity of the land, topography of the property and the deer habitat would limit the density of the dwellings on the property. 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 state and local requirements regarding habitat areas to specifically include OAR 660-0023.



- O. The Board finds that the evidence in the whole written record in the form of reports, maps, photographs, documents and analysis together with testimony on behalf of the applicant shows compliance with the criteria for a Comprehensive Plan Amendment and Zone Change. The Board considered the evidence and testimony from those in opposition and find that the applicant's testimony and evidence addresses the criteria with credible and substantial evidence.
- P. The Board finds that no additional matters were raised with sufficient specificity by those in opposition to take those matters into consideration during decision making on the subject request.

#### IV. CONCLUSION:

The Board concludes that the subject property is non-resource land because it is neither forest land nor agricultural land as defined in state and local codes. The Board makes this conclusion based upon the above discussion of forest criteria and farm criteria. The Board concludes the land is non-resource land and should be designated as residential land as required in the Goals and Policies of the Josephine County Comprehensive Plan.

Based upon the above evidence, findings, and applicable criteria for decision, the Board of County Commissioners concludes the McMahon 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 11390 North Applegate Road complies with the requirements of Josephine County and State law pertaining to such matters. The change is based on a conclusion from the evidence and testimony submitted that the property is non-resource and that such a change does not require an exception to State Goals 3 and 4 and that the codes provide for the change to Rural Residential 5 Acre. The Board further concludes that there is adequate carrying capacity for the proposed change and that the request is limited by the density standards of the deer winter range overlay.

Commissioner Walker opposed the application based on concerns of density and the effects the zoning change has for future development in the area. She supported Staff's recommendation for denial.

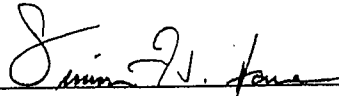
---

#### 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 Heck, and by a vote of 2-1 approves 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 11390 North Applegate Road, more precisely described as Assessors Map T37 R5 Section 26 Tax Lot 300.

Adopted this 30 day of December 2013, by the Josephine County Board of Commissioners.

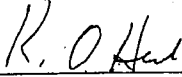
JOSEPHINE COUNTY  
BOARD OF COUNTY COMMISSIONERS



Simon G. Hare, Chair

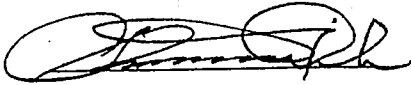
**Opposed**

Cherryl Walker, Vice-Chair



K.O. Heck, Commissioner

Approved as to form:



Steve Rich, Legal Counsel