

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

**Ordinance No. 2006-003**

AN ORDINANCE AMENDING THE GOALS AND POLICIES OF THE COMPREHENSIVE PLAN FOR JOSEPHINE COUNTY (ORD 81-11) TO AMEND GOAL 7 (NATURAL RESOURCES), TO MODIFY LANGUAGE RELATING TO POLICY 6 (WILDLIFE SITES), AND TO AMEND GOAL 11 (AMENDING THE COMPREHENSIVE PLAN) TO MODIFY LANGUAGE CONTAINED IN POLICY 3.E (NON-RESOURCE LAND CRITERIA); AND, TO AMEND THE RURAL LAND DEVELOPMENT CODE (ORD. 94-4) TO REPLACE AND MODIFY LANGUAGE CONTAINED IN ARTICLES 46.050.E (NON-RESOURCE LAND CRITERIA), 69.2 (DEER OVERLAY), AND 72.040.C (ROOKERY OR NEST SITES).

WHEREAS, Josephine County entered into a periodic review program agreement with the state of Oregon on January 10, 1995, which agreement covered nine work task groups involving various revisions to county land use plans, policies and implementing regulations; and

WHEREAS, Task Group #3 of the 1995 periodic review program requires the county to revise its policies and implementing regulations for deer winter range and other wildlife habitat regulations; and

WHEREAS, the county's periodic review work program has been amended a number of times since 1995; the last amendment being on April 10, 2000, which now lists the deer winter range and wildlife work as Task Group 2; and

WHEREAS, in accordance with the procedures of the Josephine County Comprehensive Plan (hereinafter called Plan) at Goal 11, Policy 1, and the Rural Land Development Code (hereinafter called Code) at Article 49, the Board of County Commissioners, as a part of Task 2 of the county's periodic review program with the state of Oregon, conducted public hearings regarding revisions to the county's statewide Goal 5 program for wildlife protection;

NOW, THEREFORE, based on the foregoing authority and procedures, the Board of County Commissioners for Josephine County, Oregon, hereby takes the following legislative action to amend the Plan and Code by deleting and replacing certain provisions within the county's Goals and Policies of the Comprehensive Plan and Rural Land Development Code as set forth herein.

**Section 1. Adoption**

**GOALS AND POLICIES OF THE COMPREHENSIVE PLAN**

I. Replace existing language in Goal 7 (Preserve Valuable Limited Resources), Policies 3 (Archeological Sites), 4 (Natural Areas), 5 (Historic Sites) and 6 (Wildlife Sites), at sub-policies A (Bird Habitat) and B (Deer Habitat) with the following new language:

3. **Archeological Sites.**

Prior to the land use development of archeological sites in Josephine County, the Board of County Commissioners shall encourage the identification and preservation of such sites. When an archeological site is identified by a qualified archaeologist, Josephine County will evaluate the site for significance and protection using the provisions and procedures of Article 93, *Archeological Resources*, of the Rural Land Development Code.

4. **Natural Areas.**

The Board of County Commissioners shall support the identification of significant natural areas and shall implement measures for evaluation and protection of sites as provided by federal or state rule or law.

5. **Historic Sites.**

Prior to the land use development of historic sites in Josephine County, the Board of County Commissioners shall encourage the identification and preservation of such sites. A Historic Review Committee shall be established to mitigate adverse impacts to primary historic sites by reviewing development proposals affecting such sites according to the provisions and procedures contained in Article 94, *Historic Buildings & Sites*, of the Rural Land Development Code.

6. **Wildlife Sites.**

A. BIRD HABITAT. The County shall encourage the identification and preservation of rookery or nest sites when the habitat has been documented as sensitive bird nesting, roosting or watering resource for osprey or great blue heron. Habitats documented on federal lands or within National Wild and Scenic River or Oregon State Scenic Waterway corridors shall be protected pursuant to federal and state requirements. Osprey and blue heron rookery sites located on private properties outside of the aforementioned scenic programs shall be inventoried and identified by the Oregon Department of Fish and Wildlife. All inventoried sites shall be protected by special setback restrictions as set forth in Article 72.040.C of the Rural Land Development Code.

B. DEER HABITAT. The County shall encourage the identification and preservation of critical deer habitat areas as follows:

[1] Critical deer habitat areas shall consist of lands below 2500' in elevation that have not already been committed to land uses that preclude management options for deer. These areas shall be identified in conjunction with the Oregon Department of Fish and Wildlife. The Josephine County Geographic Information Systems Program shall thereupon render and maintain the deer winter range habitat areas in digitized data sets that can be maintained and displayed using a geographic information system computer mapping program. The data sets thus created

are adopted into the county's comprehensive plan data base. The density of residential development within areas of critical deer habitat shall be restricted to achieve an overall density of one dwelling per 40 acres within any two square miles of land, as implemented by Article 69.2 of the Rural Land Development Code.

- [2] The Deer Winter Range Map may be amended as it applies to specific lots or parcels when the application demonstrates the land is not critical black-tailed deer winter range habitat because:
- [a] The land has not been used as winter habitat by significant black-tailed deer populations; and
  - [b] The land does not exhibit favorable black-tailed deer winter habitat characteristics, such as wedge leafed ceanothus, available overstory and water; or
  - [c] Even though the land exhibits favorable winter habitat described in (b) above, the land is isolated from migratory black-tailed deer herds due to legal and permanent development on the land and/or on surrounding lands (that is, "impacted" by development); and
  - [d] All of the foregoing circumstances are addressed by credible scientific and technical data, reports or other evidence from a credentialed expert in the field of big game habitat and management principles that demonstrates the land does not provide critical deer winter range habitat based upon consideration of factors (a), (b) and (c) as set forth above.
- [3] Josephine County shall consult with local officials from the Oregon Department of Fish and Wildlife regarding all proposals to amend the Deer Winter Range Map. The county shall provide local officials with a copy of all scientific and technical data, reports and other evidence specified in subsection 2(d) above. The department may submit its own scientific and technical data, reports and other evidence and may object to the proposed change. The county must consider this evidence and information in taking action on the map amendment application.
- [4] The Josephine County Geographic Information Systems Program shall render and maintain deer winter range areas in digitized data sets that can be maintained and displayed using a geographic information system computer program. The data sets thus created and maintained shall be adopted as a part of the Josephine County Comprehensive Plan.

II. Amend Goal 11, Policy 3(E), of the Josephine County Comprehensive Plan Goals and Policies (Non-Resource Land Criteria):

3. **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:

\* \* \* \*

- 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.

### RURAL LAND DEVELOPMENT CODE

- I. Amend Section 46.050 (*Non-Resource Land Criteria*) by deleting the language in subsection E and replacing it with the following new language:

#### **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:

\* \* \* \*

- 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.

- II. Amend Article 69.2 (*Deer Overlay*) by deleting the all of the existing language and replacing it with new language, as follows:

### **ARTICLE 69.2 - DEER OVERLAY**

#### **69.210 – PURPOSE**

The purpose of the Deer Overlay is to protect lands designated as critical deer winter range habitat from residential encroachment. During winter months deer living on high elevation ranges move to sensitive habitat areas below 2500' for cover, water and forage. It has been determined that the capacity of these lower ranges to support adequate levels of wintering deer decreases significantly when the density of residential dwellings exceeds one dwelling per 40 acres of winter range. The objective of the Deer Overlay is to identify lands located below 2500' that are not impacted by existing residential or other development. Areas of critical deer winter range shall be rendered into a digitized data set that can be maintained and displayed using a geographic information system. The areas thus identified and displayed shall be subject to the

density limitations specified in Section 69.220 and the map amendment criteria contained in Section 69.230.

### **69.220 – DENSITY LIMITATIONS**

In areas mapped as critical deer winter range, approvals for new dwellings shall include findings that show the proposed dwelling or dwellings will not cause the density of dwellings to exceed 32 dwellings per 2 square miles. The dwelling count shall not include dwellings that are located above 2500' elevation or in areas designated as impacted. The density calculation shall be achieved using one of the following methods:

- A. Fixed Study Area Test. A circle having an area of 2 square miles (diameter of 4,212.83 feet) shall be reasonably centered on the subject property. Existing authorized dwellings located on deer winter range lands within the circle shall be counted. The number of counted dwellings, in addition to the proposed dwelling or dwellings, shall not exceed a density of 1 dwelling per 40 acres when considering the amount of deer winter range land only.
- B. Expanded Study Area Test. A circle of any diameter shall be reasonably centered on the subject property until the circle encompasses 2 square miles of deer winter range lands. Existing authorized dwellings located on deer winter range lands within the circle shall be counted. The number of counted dwellings, to include the proposed dwelling or dwellings, shall not exceed 32.

### **69.230 – AMENDING THE DEER WINTER RANGE MAP**

- A. The Deer Winter Range Map may be amended as it applies to specific lots or parcels when the application demonstrates the land is not critical black-tailed deer winter range habitat because:
  - 1. The land has not been used as winter habitat by significant black-tailed deer populations; and
  - 2. The land does not exhibit favorable black-tailed deer winter habitat characteristics, such as wedge leafed ceanothus, available overstory and water; or
  - 3. Even though the land exhibits favorable winter habitat described in (b) above, the land is isolated from migratory black-tailed deer herds due to legal and permanent development on the land and/or on surrounding lands (that is, “impacted” by development); and
  - 4. All of the foregoing circumstances are addressed by credible scientific and technical data, reports or other evidence from an expert in the field of big game habitat and management principles that demonstrates the land does not provide critical deer winter range habitat based upon consideration of factors (a), (b) and (c) as set forth above.

C. Josephine County shall consult with local officials from the Oregon Department of Fish and Wildlife regarding all proposals to amend the Deer Winter Range Map. The county shall provide local officials with a copy of all scientific and technical data, reports and other evidence specified in subsection 2(d) above. The department may submit its own scientific and technical data, reports and other evidence and may object. The county must consider this evidence and information in taking action on the map amendment application.

III. Amend Article 72 (*Heights, Setbacks & Accessory Structures*) by deleting the existing subsection 72.040.C and replacing it with the following new subsection:

**ARTICLE 72 - HEIGHTS, SETBACKS & ACCESSORY STRUCTURES**

**72.040 - SPECIAL SETBACK REQUIREMENTS**

Special use and structure siting restrictions shall apply to development within the following protected areas:

\* \* \* \* \*

C. **Rookery or Nest Sites.** There shall be a structure setback of 300 feet from rookery or nest sites when the habitat has been documented on an inventory as a sensitive bird nesting, roosting or watering resource for osprey or great blue heron by the Oregon Department of Fish and Wildlife (ODFW), and the inventory has been furnished to Josephine County. A variance may be authorized to this setback requirement when adverse impacts to the rookery or nest site are resolved by an approved mitigation plan. The ODFW shall be given 30 day prior written notice of the proposed setback exception, to include a copy of the mitigation plan. The department may comment on the plan or object to the proposed development. The variance shall be processed using variance procedures as set forth in Article 44 (*Variances*), but shall be judged solely on whether the site continues to be a significant habitat site or whether the proposed plan adequately mitigates adverse impacts to the involved rookery or nest site.

**Section 3. Affirmation**

Except as specifically amended by the provisions of this ordinance, the Josephine County Comprehensive Plan (Ord. 81-11) and Rural Land Development Code (Ord. 94-4), as previously adopted or amended, are hereby affirmed.

**Section 4. Effective Date**

The first reading of this ordinance by the Board of County Commissioners occurred on the 22<sup>nd</sup> day of March, 2006.

The second reading and adoption of this ordinance by the Board of County Commissioners occurred on the 5<sup>th</sup> day of April, 2006, a date which is at least thirteen days from the first reading. This ordinance shall take effect ninety days after its adoption by the Board of County Commissioners.

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**JOSEPHINE COUNTY BOARD OF COMMISSIONERS**

Dwight F. Ellis  
Dwight F. Ellis, Chair

Jim Raffenburg  
Jim Raffenburg, Vice-Chair

Jim Riddle  
Jim Riddle, Commissioner

**ATTEST:**

Linda McElmurry  
Recording Secretary

**APPROVED AS TO FORM:**

Steven E. Rich  
Steven E. Rich, Legal Counsel