



Jackson County Oregon

Development Services
10 South Oakdale Avenue, Room 100, Medford, OR 97501-2902

NOTICE OF TENTATIVE DECISION ON APPLICATION FOR A LAND USE PERMIT (FILE NO. ZON2012-01398)

Dear Jackson County Property Owner:

On January 31, 2013 Jackson County Development Services approved with conditions an application for a land use permit on the following described property: **Township 38 South, Range 3 East, Section (2), Tax Lot 300** located at 18283 Dead Indian Memorial Road, Ashland, OR. The Department's decision (File No. ZON2012-01398) tentatively approves the following on the above-described property:

A request to construct a 2.0 acre-ft reservoir along the northern boundary of the above described property.

The following approval criteria were applied in rendering this decision: Section 1.5.1, 4.3.3, 4.3.4 and 4.3.5(B) of the 2004 Jackson County Land Development Ordinance. You have the right to appeal this tentative Departmental decision. If appealed, the County's final decision will be made by the hearings body following a public hearing on the matter.

If you wish to appeal this decision, your written request, *in conformance with and pursuant to Land Development Ordinance Section 2.7.5(D)(2)(c)*, must be received by the Department at the address listed below no later than February 12, 2013 @ 4 pm, and you must pay an appeal fee of \$250.00. If you prevail at the appeal hearing or upon a subsequent appeal, the initial hearing fee will be refunded to you.

This notice is dated January 31, 2013. The application, staff report, applicable criteria for decision and associated materials are available for inspection at the Department. Copies can be obtained at reasonable cost if requested. Additional information is available by contacting **Zac Moody** (Phone: 541-774-6944) at the Department, or at this address:

Development Services
Jackson County Courthouse
10 South Oakdale Avenue, Rm. 100
Medford Oregon 97501-2902

Jackson County residents outside the Medford toll free area can call 1-800-452-5021 and enter the following 4-digit extension: 6944.

Attachments: Zoning Map
Tentative Plan Map
Condition of Approval (Pages 4-5)

cc: Owners/Applicants
Assessment Drafting

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Development Services

ZONING

APPLICANT:

KAPP

38-3E-(02) TL 300

ZON2012-01398

- Applegate, Rogue, Bear Creek
- Rivers and Major Streams
- Named Streams
- Minor Streams
- Intermittent Streams
- Underground Streams
- Canals
- Canals - Tunnels / Siphons
- BLM SOMA
- Protected Nest Site
- Nest Site Number by ODFW
- Forest Service SOHA
- Great Blue Heron
- Osprey
- Bald Eagle Number by ODFW
- Golden Eagle
- Pileated Woodpecker/Pine Marten
- Siskiyou Mountain Salamander Site
- Jenny Creek Sucker Site
- County Zoning - Outline
- All Lakes & Ponds



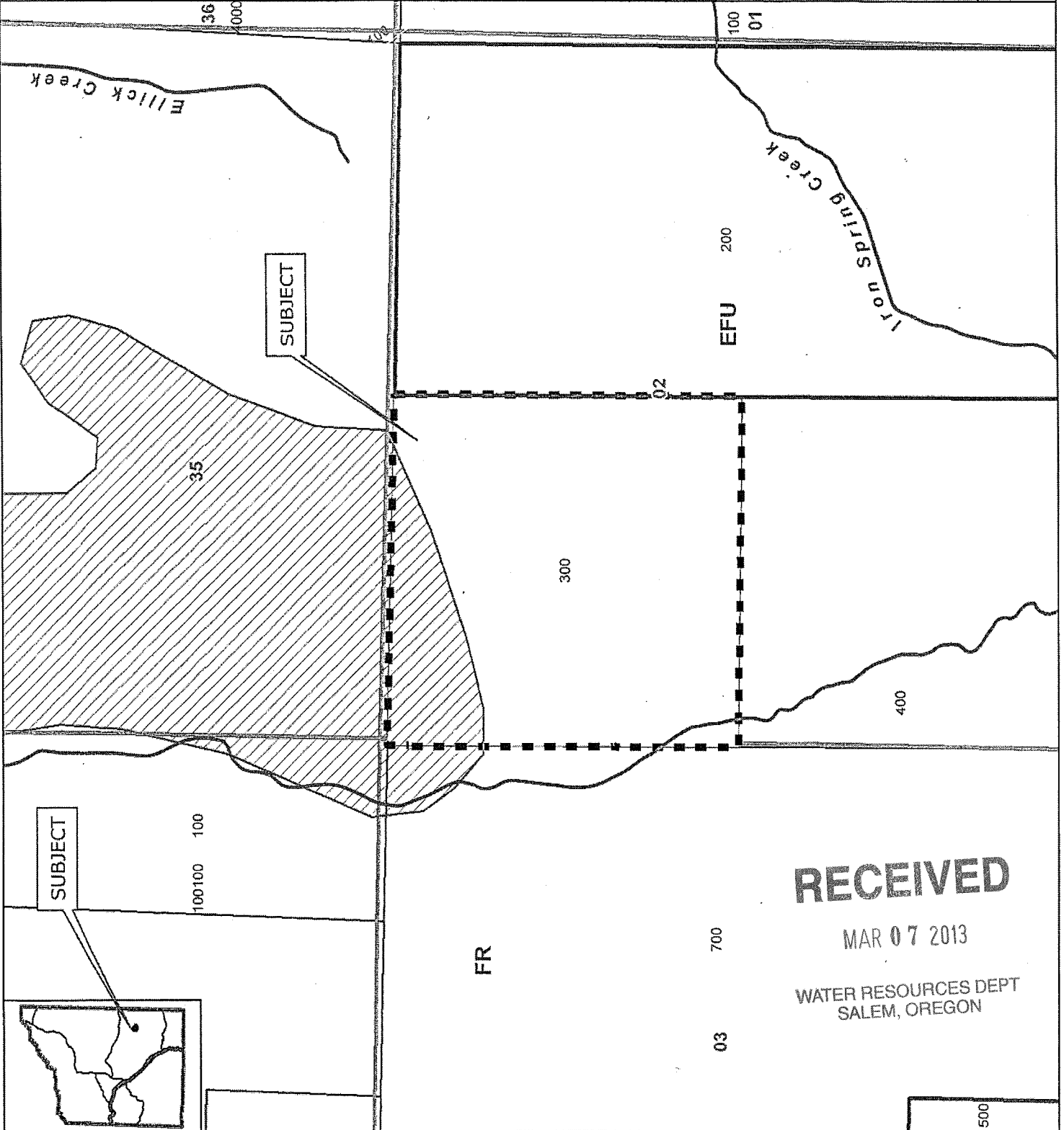
0 425 850

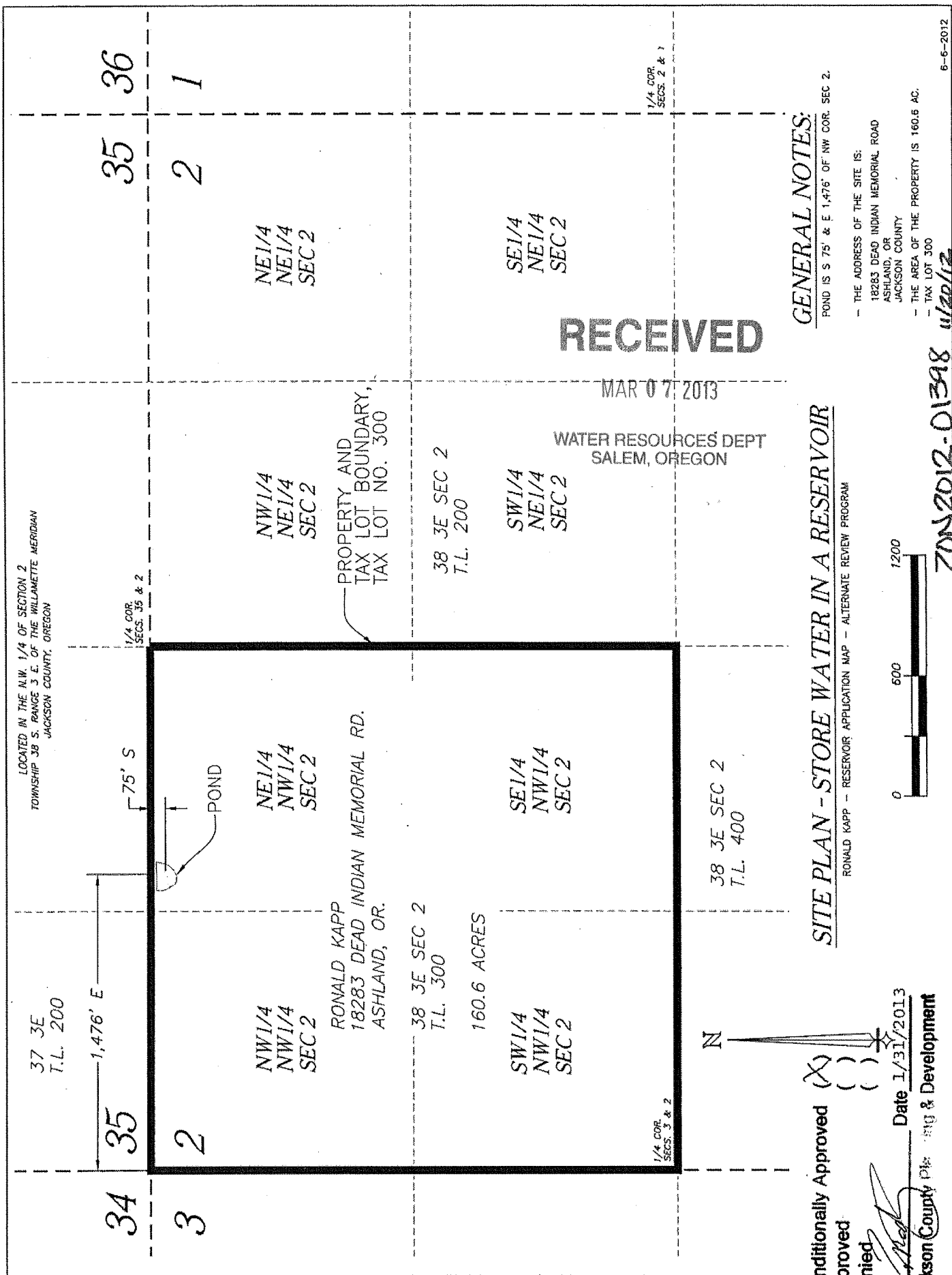
Feet

1 inch = 1,000 feet

This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied.

File Date: 11/21/2012, Planning Maps, Yreka, CA





GENERAL NOTES:

- THE ADDRESS OF THE SITE IS:
18283 DEAD INDIAN MEMORIAL ROAD
ASHLAND, OR
JACKSON COUNTY
- THE AREA OF THE PROPERTY IS 160.6 AC.
- TAX LOT 300

SITE PLAN - STORE WATER IN A RESERVOIR

RONALD KAPP - RESERVOIR APPLICATION MAP - ALTERNATE REVIEW PROGRAM

Conditionally Approved

Approved

Denied

By: *[Signature]* Date 1/31/2013
Jackson County Planning & Development

ZON 2012-01398 11/20/12

SUBMITTED BY APPLICANT



**JACKSON COUNTY
DEVELOPMENT SERVICES**

TYPE 2 LAND USE DECISION

Departmental Administrative Review

**DEVELOPMENT
SERVICES**

**Zac Moody
Planner III**

10 South Oakdale Ave.
Medford, OR 97501
Phone: (541) 774-8944
Fax: (541) 774-6791
moodyzw@jacksoncounty.org

OWNER: Ronald Kapp
PO Box 97
Ashland, OR 97520

FILE: ZON2012-01398

AGENT: Michael Thornton
PO Box 476
Jacksonville, OR 97530

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MAP DESCRIPTION:

TWP: 38 **RANGE:** 3E **SECTION:** (2) **TAX LOT:** 300

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LOCATION: The property is located at 18283 Dead Indian Memorial Road, Ashland, Oregon.

NATURE OF APPLICATION: The applicant requests to construct a 2.0 acre-ft reservoir near the northern boundary of the above stated parcel.

STAFF DECISION: Approval, with conditions

I. BACKGROUND INFORMATION

- A. Lot Size:** 160.6 acres
- B. Zoning:** Forest Resource (FR)
- C. Fire Protection:** Oregon Department of Forestry
- D. Access:** Access id derived from frontage on Dead Indian Memorial Road, a County maintained road.
- E. Areas of Special Concern:** None
- F. Overlays:** The subject parcel is located in Wildfire Hazard Overlay.
- G. Previous Land Use Actions:** ZON2012-00930, LUC for water rights from Oregon Water Resources (OWR).
- H. Current Land Use:** Developed with large tract forest dwelling.
- I. Lawful Lot Creation:** Tax Lot 300 was created by deed in 1945, Vol. 264, Pg. 463 and the configuration has not changed.

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II. **APPLICABLE CRITERIA**

To approve this application, the County must determine that it is in conformance with Sections 1.5.1, 4.3.3, 4.3.4 and 4.3.5(B) of the Jackson County Land Development Ordinance (LDO).

III. **FINDINGS OF CONFORMANCE WITH THE LAND DEVELOPMENT ORDINANCE**

1) **1.5.1 Conflict with Other Laws, Ordinances, Regulations, or Permits**

This Ordinance is not intended to abrogate any other law, ordinance, regulation, or permit requirement. Where conditions, standards, or requirements imposed by any provision of this Ordinance are more restrictive than comparable standards imposed by any other law, ordinance, or regulation, the provisions of this Ordinance will govern. Wherever the provisions of any other statute, ordinance, or regulation impose other standards which are more restrictive than those set forth in this Ordinance, then the provisions of such statute, ordinance, or regulation will govern.

FINDING/CONCLUSION: The proposed reservoir appears to be located within an area identified by the Department of State Lands (DSL) as a wetland. Prior to the issuance of permits the applicant shall provide to Development Services evidence that DSL has authorized removal and/or fill onsite or that DSL approval is not required.

- 2) **Section 4.3.3** sets forth uses allowed subject to Type 1, 2, 3, and 4 review procedures in a Forest District.

FINDING/CONCLUSION: Table 4.3-1 lists reservoirs and water impoundments as a Type 2 permit subject to 4.3.5 (B) and OAR 660-006-0025 (4)(m) and (5). Pursuant to ORS Chapter 197 notice of the decision and opportunity for hearing is provided through the Type 2 land use permit process.

3) **3.1.3 Type 2 Land Use Permits**

Type 2 uses are subject to administrative review. These decisions are discretionary and therefore require a notice of decision and opportunity for hearing.

- A) **Procedures**
Applications for a Type 2 Land Use Permit will follow the applicable review procedure set forth in Section 2.7 as identified in Table 2.7-1.

- B) **Approval Criteria**
A site development plan may be required pursuant to Section 3.2.4. If a site development plan is required, it shall comply with Section 3.2 and all other applicable provisions of this Ordinance.

FINDING/CONCLUSION: Section 3.2 applies to multi-family, commercial, industrial or quasi-public uses. Table 4.3-1 categorizes reservoirs and water impoundments as a utility within a resource zone, therefore a site development plan review is not required. A plot plan and a cross section of the development have been included with the application. Section 3.2 does not apply.

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4) 4.3.4 General Review Criteria for Type 2-4 Permits

The use shall be approved only when the following findings can be made:

- A) *The use will not force a significant change in, or significantly increase the cost of, accepted farming or forest on agricultural or forest lands; and*

FINDING/CONCLUSION: The proposal is consistent with the provisions of this section. The applicant is proposing a reservoir to aid in forest management practices. The reservoir will hold two (2) acre-feet of water or 85,410 cubic feet and have a dam constructed with an impervious clay core for highest water retention and to prevent seepage.

The parcel to the north is zoned Forest Resource (FR), and is vacant of any development and in the ownership of an International Wildlife Group which is not likely to engage in any commercial forest harvesting operations. Current and historical aerial photos also indicate that there have not been any intensive farm or forest operations recently and is not receiving special assessment, an indicator that there is little if any commercial farming or forest operations occurring.

The parcel to the east is zoned EFU and is approximately 320 acres, developed with a 1972 two story dwelling. The proposed reservoir is located over ½ mile from the neighboring dwelling and over 1,100 feet from the property line. The lack of resource use on the property to the east and the spatial separation from the proposed reservoir are adequate to demonstrate the proposed use will not force a significant change to any passive agricultural activities that may be occurring.

The parcel to the south contains multiple structures and is currently used as a youth camp. The parcel is not being used for commercial farm or forest operations nor is it receiving special assessment. Comments from this property owner indicate they are in favor of the application, siting that the placement of the reservoir is useful for wildfire protection. Due to the residential nature of the parcel, lack of commercial farm or forest use occurring and the spatial separation from the reservoir, no significant change or increase in costs of farm and forest practice is expected to occur.

The parcel to the west is in Federal ownership and has its closest property line approximately 1,300 feet from the proposed reservoir. Considering the distance between the reservoir and the adjacent property line to the west, any forest management practices that take place will not be impacted, therefore no significant change or increase in costs of farm or forest practices are not expected to occur.

- B) *The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks of fire suppression personnel. Further, it must be demonstrated that the use will comply with the fires safety requirements in Section 8.7.*

FINDING/CONCLUSION: The proposed reservoir is not by definition considered a structure and therefore Section 8.7 of the LDO is not applicable.

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A written statement must be recorded in the public records with the deed or written contract, or its equivalent must be obtained from the land owner, which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and rules.

FINDING/CONCLUSION: The proposal is consistent with the provisions of this section with the condition of approval, prior to the issuance of building permits a restrictive covenant which acknowledges and accepts farm and forest activities on adjacent lands shall be recorded. The metes and bounds description (can be found on the deed or contract) for the subject property must be attached to the covenant. The covenant must be signed in the presence of a notary public and taken to the County Clerk's Office for recording. After the covenant has been recorded, a copy must be returned to Planning Services.

5) **Section 4.3.5: Physical Alterations to Land Auxiliary to Forest Practices**

For purposes of this Section, "auxiliary" means a use or alteration of land that provides help or is directly associated with the conduct of a particular forest site. Alterations include, but are not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.

FINDING/CONCLUSION: The proposal is consistent with the provisions of this section. The request is to alter an existing pond. The proposed reservoir has been engineered to include an impervious clay core dam, a spillway with appropriate erosion control and a maximum pool depth of 15'. Prior to the issuance of permits, the applicant shall provide Development Services with a copy of the approved water rights application for an alternate reservoir from Oregon Water Resources, consistent with the approved plot plan permitting the collection of water on the subject parcel.

IV. **CONCLUSION**

The proposal has been found to be consistent with the Jackson County Comprehensive Plan and Land Development Ordinance (LDO) because the criteria of Sections 1.5.1, 4.3.3, 4.3.4 and 4.3.5(B) of the LDO have been met, or can be met with conditions.

V. **DECISION**

File ZON2012-01398, an application for a Type 2 land use decision to allow the construction of a 2.0 acre-ft reservoir on property described as Township 38 South, Range 3E, Section (02), Tax Lot 300, is hereby conditionally approved. The approval is subject to the following conditions:

- 1) **Prior to Issuance of Permits**, the applicant shall provide Development Services with a copy of the approved water rights application for an alternate reservoir from Oregon Water Resources, consistent with the approved plot plan permitting the collection of water on the subject parcel.
- 2) **Prior to Issuance of Permits**, the applicant shall provide to Development Services evidence that the Department of State Lands (DSL) has authorized removal and/or fill onsite or that DSL approval is not required.

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- 3) **Prior to Issuance of Building Permits,** a restrictive covenant which acknowledges and accepts farm and forest activities on adjacent lands shall be recorded. The metes and bounds description (can be found on the deed or contract) for the subject property must be attached to the covenant. The covenant must be signed in the presence of a notary public and taken to the County Clerk's Office for recording. After the covenant has been recorded, a copy must be returned to Planning Services.
- 4) **Expiration:** Pursuant to Section 4.1.3 this approval is valid for two (2) years from the date of the final decision and will expire unless development has been initiated. This approval may be extended for an additional period not to exceed one year upon request.

This decision is limited to the County's review of applicable zoning rules and land use law, as outlined in the Jackson County Comprehensive Plan, the Jackson County Land Development Ordinance, and the Oregon Administrative Rules and Oregon Revised Statutes relating to land use. Other County, State and Federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating development.

Notice of this decision is being sent to property owners in the vicinity of this property. They or the property owner have the right to appeal the decision within 12 days of the date this decision is mailed. This decision will be final on the 13th day, provided an appeal hearing has not been requested.

JACKSON COUNTY PLANNING DIVISION



By: Zac Moody
Planner III

Date: January 31, 2013

Cc: Agent, Property Owner, File

Kerry Kavanagh

From: Mike Thornton <mike@thorntondaley.com>
Sent: Thursday, March 07, 2013 5:37 PM
To: 'Kerry Kavanagh'
Subject: RE: Reservoir Application - R87840 Ronald Kapp
Attachments: county decision.pdf

Kerry,
Please find attached the County's decision of approval. Please let me know if you need anything else for me.

Thanks,

Mike

Michael Thornton, P.E.
President
Thornton Engineering, Inc.
P.O. Box 476
260 N. Third Street
Jacksonville, Oregon 97530
p: (541) 899-1489
f: (541) 899-3419
e: mike@thorntondaley.com

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From: Kerry Kavanagh [<mailto:kerry.l.kavanagh@state.or.us>]
Sent: Thursday, March 07, 2013 2:33 PM
To: Mike Thornton
Cc: KAVANAGH Kerry L
Subject: RE: Reservoir Application - R87840 Ronald Kapp

Hi Mike,

Have you secured land use approval from Jackson County for this application?

Please let me know your progress.

Thanks!

Kerry

Kerry Kavanagh
Water Rights Caseworker
(503) 986-0816

Oregon Water Resources Dept
725 Summer St NE, Suite A
Salem, OR 97301-1266
front desk (503) 986-0900

fax (503) 986-0901

<http://oregon.gov/OWRD>

Messages to and from this e-mail address may be available to the public under Oregon law.

From: Mike Thornton [<mailto:mikethornton@qwestoffice.net>]

Sent: Tuesday, October 16, 2012 11:23 AM

To: kerry.l.kavanagh@state.or.us

Cc: 'Ronald Kapp'

Subject: Reservoir Application - R87840

Kerry,

Thank you for taking the time to talk with me on the phone yesterday. Based on our discussion, I will pursue a land use approval from Jackson County for the proposed reservoir. After I have submitted the application to the County, I will inform you regarding the expected timing for the County's review process. I appreciate you working with me so I will not need to withdraw or re-submit our application to the WRD.

Thanks,

Mike

Michael Thornton, P.E.

President

Thornton Engineering, Inc.

P.O. Box 476

260 N. Third Street

Jacksonville, Oregon 97530

p: (541) 899-1489

f: (541) 899-3419

e: mikethornton@qwestoffice.net

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