

Hannah Elliott



From: Katie McDonald
Sent: Wednesday, November 5, 2025 4:40 PM
To: Hannah Elliott
Subject: Fw: Settle Corrections
Attachments: Settle Corrected Memo One 11 05 25.docx; Settle Corrected Memo Two 11 05 25.docx

From: Craig & Cathy Kilpatrick <ckrimrock@yahoo.com>
Sent: Wednesday, November 5, 2025 1:38 PM
To: Katie McDonald <Katie.McDonald@crookcountyor.gov>
Subject: Settle Corrections

Katie,

I am sorry for this inconvenience, we have attached corrected documents for the Settle appeal, both of them. Apparently, I sent an uncorrected version, citations in particular, for the appeal. Please substitute the attached, and again, I am sorry for the inconvenience.

Craig K

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Nonfarm Dwelling – Planning Staff (Settle / TL 5300, EFU-1) (Corrected Citations)

What's being decided:

Authorize one nonfarm dwelling on a 10-acre EFU-1 parcel created in 1968 (pre-SB 100). The parcel is near Juniper Acres (EFU-JA overlay).

Snapshot: Facts that matter

- Soils: 100% Class 7 (Ayres series) – shallow duripan, no irrigation rights → poor agricultural productivity.
- Context: Remote, dry rangeland with scattered nonfarm dwellings; no adjacent commercial farming.
- Wildlife: In General Winter Deer Range; density standard ≤ 1 home / 80 acres is met by cumulative impact analysis.

The 3 legal checks (plain-English)

1. Land is generally unsuitable for farming

Oregon law requires that the home go on land that's not workable for crops/livestock.

Here: Class 7 soils + no irrigation + terrain = unsuitable.

Authority: ORS 215.284(2)(b); OAR 660-033-0130(4)(c)(B); CCC 18.16.040(2); *Wetherell v. Douglas County*.

2. No significant new cost or change to nearby farm practices

The home can't make farming harder or pricier next door.

Here: No nearby commercial farms; rangeland uses only; existing setbacks/buffers apply → no significant impact.

Authority: ORS 215.284(2)(a),; CCC 18.16.040(1); OAR 660-133-30(4)(c)(A).

3. Doesn't destabilize the area's farm pattern (cumulative look)

County must look at EFU lands characterized by farm uses and ask if "one more" would tip the balance.

Here: Study found 6 dwellings / 1,559 EFU acres ($\approx 32\%$ of allowable), still predominantly open rangeland → no material alteration.

Authority: OAR 660-033-0130(4)(c)(C); CCC 18.16.040(3); *Sweeten v. Clackamas County*, *Blosser v. Yamhill County*, *Lichvar v. Jackson County*.

Why Juniper Acres (EFU-JA) homes are not counted in the EFU stability math

- What EFU-JA is: A pre-1973 subdivision managed by a separate designation to contain legacy residential lots.
- County rule purpose: CCC 18.112.005 allows limited residential use in Juniper Acres that EFU wouldn't—it's a committed residential area, non-resource, not working ag land.
- Stability math counts EFU farm areas, not exception/committed non-resource neighborhoods; including EFU-JA would distort the farm pattern analysis.
- Deference to local interpretation: ORS 197.829(1); *Clark v. Jackson County*

See also discussion of committed lands and local deference in Oregon State Bar Legal Publications, Land Use (2010).

Wildlife density (quick read)

- Study area EFU acres: $\sim 1,559$
- Allowable dwellings: 19 (at 1/80-acre standard)
- Existing + vested + proposed: 6 → well under the cap → complies with Crook County Comprehensive Plan Wildlife Policy 2.

Suggested staff script (30 seconds)

“Staff finds the parcel is on poor Class 7 soils with no irrigation and is generally unsuitable for farming. The proposed dwelling will not force a significant change or increase in costs to nearby farm practices. The cumulative impact analysis of EFU lands shows the area remains predominantly agricultural in character. Juniper Acres (EFU-JA) is a committed residential, non-resource area and is not counted in EFU stability calculations. The application did a cumulative impact analysis and complies with ORS 215.284(2), OAR 660-033-0130(4)(c), CCC 18.16.040, and Crook County Comprehensive Plan Wildlife Policy 2. Staff recommends approval.”

Citations (for staff reference)

- Statutes/Rules: ORS 197.829; ORS 215.284;; OAR 660-033-0130(4)
- County Code: CCC 18.16.040); CCC 18.112.005
- Crook County Comprehensive Plan: Wildlife Policy 2
- *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006).
Interprets ORS 215.284(2)(a) regarding suitability of land for farming and emphasizes the need to consider cumulative impacts and actual land conditions.
- *Clark v. Jackson County*, 313 Or 508 (1992).
Addresses deference to local government interpretations affirming that LUBA must defer unless the interpretation is inconsistent with the regulation’s language or purpose.
- *Sweeten v. Clackamas County*, 17 Or LUBA 1234 (1989)
Discusses cumulative impact analysis under ORS 215.284(1)(b) for EFU land, focusing on how multiple dwellings may affect the stability of the farm use area.
- *Blosser v. Yamhill County*, 18 Or LUBA 253 (1989)
Examines EFU density and the cumulative effects of nonfarm dwellings on farm use stability.
- *Lichvar v. Jackson County*, 49 Or LUBA 68 (2005)
Clarifies that committed residential overlays do not automatically justify new nonfarm dwellings; counties must still evaluate their impact on EFU land stability.
- Oregon State Bar Legal Publications, *Land Use* (2010).
- Record: Full application & cumulative impact analysis exhibits (EFU-JA excluded from EFU counts)

Nonfarm Dwelling – Planning Staff (Settle / TL 5300, EFU-1) (Corrected Citations)

Wildlife – Clarification of Wildlife Policy 2 and Study Area Application

Purpose

This document provides further background and interpretation of Crook County Comprehensive Plan Wildlife Policy 2 and its implementation under CCC 18.16.040(7) as applied to a non-farm dwelling proposal on EFU-1 land near the EFU-JA (Juniper Acres) subdivision. It clarifies the historical development of Wildlife Policy 2, the legal status of deer range mapping, and how the County distinguishes between applications within and near pre-Senate Bill 100 subdivisions such as Riverside Ranch and Juniper Acres within EFU zones.

Comprehensive Plan History and Acknowledgment

Crook County adopted its first unacknowledged Comprehensive Plan in 1978. Following the adoption of Senate Bill 100 which created the statewide land-use system and the 19 Statewide Planning Goals, including Goal 3 (Agricultural Lands) and Goal 5 (Natural Resources) counties were required to revise or replace their early plans and obtain acknowledgment from the Oregon Department of Land Conservation and Development (DLCD). Crook County completed that process and its Comprehensive Plan was formally acknowledged in 1979 with subsequent amendments including the current 2003 acknowledged version (as further amended by ordinances).

As part of acknowledgment of Goal 5 in 1982, the County coordinated with the Oregon Department of Fish and Wildlife (ODFW) to identify big-game habitat areas. ODFW supplied mapping for both Crucial (also known as Critical) and General Deer Winter Range. When the County adopted its acknowledged plan, only the Crucial Winter Range map—was adopted by ordinance. The General Deer Winter Range layer was *not* adopted by ordinance and was retained only as informational background to guide review of development proposals under Wildlife Policy 2. Later, during subsequent plan updates, Wildlife Policy 2 was carried forward through the implementing Crook County Code.¹ Thus, the County's acknowledged Goal 5 program continues to implement Wildlife Policy 2 not through a static General Deer Winter Range mapped overlay, but through a density-based analysis and case-by-case study-area evaluation as provided in CCC 18.16.040(7).²

Wildlife Policy 2 appears in the Comprehensive Plan's Natural Resources Element and provides:

"Density within a Crucial Wintering Area for deer shall not be greater than one residence per 160 acres and for the General Winter Range not more than one residence per 80 acres."

¹ The Fish and Wildlife Areas Habitats section in the Comprehensive Plan specifically failed to mention the EFU-JA zone. **"Program To Achieve The Goal.** In order to protect the big game habitat, the Comprehensive Plan policies must be carried over and enacted directly into the County Zoning Ordinance for the EFU-1, EFU-2, EFU-3, and F-1 zones" Crook County Comprehensive Plan Page 142. Although EFU-JA was enacted in September 2003 the County did not amend this section of the Crook County Comprehensive Plan to later include the EFU-JA zone.

² Note "General Winter Range" is not defined in the Crook County Code.

The stated purpose of the policy is “to maintain viable populations of big game and to protect their habitat from encroachment.”

Because the General Deer Winter Range layer map was never adopted as part of the acknowledged Comprehensive Plan or Goal 5 inventory, it cannot serve as a binding regulatory map. LUBA and Oregon courts have consistently held that only those maps, overlays, or inventories that are adopted by ordinance and acknowledged as part of the comprehensive plan have regulatory effect. Instead, the County lawfully applies Wildlife Policy 2 through its acknowledged implementation mechanism—the study-area procedure in CCC 18.16.040(5)—which evaluates a study area rather than solely relying on a non-adopted 40+ year old General Deer Winter Range map.

Juniper Acres (EFU-JA) – Historical and Land Use Context

Juniper Acres was platted in 1962 as a rural subdivision composed of 10-acre lots. Although still zoned Exclusive Farm Use – Juniper Acres (EFU-JA), the subdivision was recognized in the Crook County Code as a pre-Senate Bill 100 residential subdivision. The County applied EFU-JA zoning to maintain consistency with Goal 3 while acknowledging the subdivision’s established residential pattern.³ The EFU-JA zone prevents further partitioning or intensification but recognizes existing development.

The Juniper Acres subdivision’s pattern of smaller lots, scattered dwellings, and private roads demonstrates that it is a committed residential area rather than an agricultural or wildlife resource area. For this reason, including EFU-JA in a Wildlife Policy 2 study area for a non-farm dwelling *outside* the Juniper Acres subdivision would not further the policy’s intent. Its density pattern predates plan acknowledgment and does not contribute to additional habitat encroachment, particularly as no new non-farm dwellings are permitted within EFU-JA.

Riverside Ranch – Comparison and Application of Wildlife Policy 2

Riverside Ranch provides a parallel case. It is a pre-SB 100 subdivision zoned EFU-1 and composed of various sized lots platted before Comprehensive Plan acknowledgment. The County retained EFU-1 zoning to comply with Goal 3 while recognizing that the area is committed to rural residential use. Because Riverside Ranch is zoned EFU-1, Wildlife Policy 2 applies to any new non-farm dwelling within the subdivision. Applicants must demonstrate compliance with the one-per-80-acre density standard using the study-area method under CCC 18.16.040(7). The study area would include surrounding subdivision parcels to assess overall density and confirm no additional encroachment occurs because the application is for land already *within* the subdivision. There would not be a reasonable justification to exclude the subdivision parcels from the study area for an application within the subdivision.

Applications Adjacent to Riverside Ranch or EFU-JA

When a non-farm dwelling is proposed *outside* but near a committed pre-Senate Bill 100 subdivision such as Riverside Ranch (EFU-1) or Juniper Acres (EFU-JA), Wildlife Policy 2 also applies. However, under CCC 18.16.040(7), the applicant may propose—and the County may approve—a modified study area that excludes committed subdivision lands if inclusion would distort the density calculation for uncommitted EFU lands. In other words, the purpose of Wildlife Policy 2 is to prevent new encroachment into deer winter range, not to re-regulate long-established subdivisions such as EFU-JA. Therefore, excluding EFU-JA from the study area when evaluating a non-farm dwelling on nearby EFU-1 land is consistent with the policy’s intent. This approach ensures that the Wildlife Policy 2 analysis for EFU-1 focuses on an

³ As a pre-Senate Bill 100 subdivision a Goal 3 exception was not required for Juniper Acres. Had the County chose to rezone it to a rural-residential zone then an exception would have been needed but that is not the case here.

uncommitted study area, in accordance with Crook County's acknowledged Comprehensive Plan and relevant case law.

Conclusion

Crook County's Comprehensive Plan and code provide the flexibility necessary to apply Wildlife Policy 2 in a manner that fulfills its purpose (and Goal 5) while respecting acknowledged land use patterns. Juniper Acres (EFU-JA) and Riverside Ranch are both pre-SB 100 subdivisions recognized by the County as committed residential areas. For dwellings within such subdivisions, Wildlife Policy 2 applies and must be demonstrated through a study-area analysis under CCC 18.16.040(7)⁴. For dwellings near those areas, committed subdivision residential lands may be excluded from the study area if inclusion would misrepresent density or habitat conditions. This interpretation is consistent with Crook County's acknowledged Comprehensive Plan, and the discretionary provisions of CCC 18.16.040(-7), ensuring compliance with Goal 5 and the continued protection of deer winter range.

⁴ We recognize that the EFU-JA does not allow further non-farm dwellings, but in principle this would apply to other pre-Senate Bill 100 subdivisions that remained in EFU zones that have implemented Wildlife Policy 2 directly into the County Code.