

**General Discussion: September 5, 2017**

**9:00 a.m. – BCC Conference Room**

Commissioners Simon G. Hare, Lily N. Morgan and Daniel E. DeYoung; Wendy Watkins, Recorder

Chair Simon G. Hare called the meeting to order at 9:00 a.m. Due to guests present, agenda items were taken out of order.

**1. Review of Board's Weekly Calendar**

Item was tabled until next week.

**2. Marijuana Regulations**

The Board discussed **Proposed Text Amendments to Josephine County, Oregon, Rural Land Development Code (RLDC) to Address Growing OLCC Regulated Marijuana on Rural Residential Lands (Exhibit 2)** with the Board and noted the changes. *Staff was directed to place the item on Thursday's County Administrative Workshop.*

**3. Federal Forest Working Group**

Commissioner Hare mentioned a letter Jackson County sent to the Board expressing their concerns related to the ongoing work of the **Federal Forest Working Group (FFWG) (Exhibit 1)**. Commissioner Hare advised he will get a copy to the Board.

**4. Female Transitional Housing at 4<sup>th</sup> and C Streets**

Commissioner DeYoung mentioned Community Corrections would like to use the yellow house on 4<sup>th</sup> and C Street and mentioned according to Facility Services there needs to be a new refrigerator and stove but the building has been maintained. Commissioner Hare advised Nate Gaoiran, Community Corrections Director, should bring a proposal to the Board regarding how long will they use the building, how many people will it serve, and what sort of resources will they need to bring this building up to code.

**5. Other** (ORS 192.640(1) ". . . notice shall include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects".)

Commissioner Morgan spoke about the press release she sent out yesterday regarding the evacuation and options for shelter for people and animals (**Exhibit 3**).

The meeting adjourned at 10:41 a.m.

**EXHIBITS:**

**Exhibit 1 – Federal Forest Working Group (FFWG)**

**Exhibit 2 - Proposed Text Amendments to Josephine County, Oregon, Rural Land Development Code (RLDC) to Address Growing OLCC Regulated Marijuana on Rural Residential Lands**

**Exhibit 3 – September 4, 2017 Press Release**



# JACKSON COUNTY

Oregon

Exhibit 1  
General  
9/5/17  
Board of Commissioners

Rick Dyer (541) 774-6118  
Bob Strosser (541) 774-6119  
Colleen Roberts (541) 774-6117  
Fax: (541) 774-6705

10 South Oakdale, Room 214  
Medford, Oregon 97501

August 31, 2017

Via email to [dalke@pdx.edu](mailto:dalke@pdx.edu) and [Jason.Miner@oregon.gov](mailto:Jason.Miner@oregon.gov)

Dear Mr. Dalke and Mr. Miner:

Jackson County has significant concerns related to the ongoing work of the Federal Forest Working Group (FFWG) and the Board of Forestry's 2009 report on "Achieving Oregon's Vision for Federal Forestlands." The process of the Federal Forest Working Group lacks integrity as it does not include consideration or make mention of all of the applicable statutes, nor does the Working Group include all of the interested entities with a stake in how Federal forestlands in Oregon should be managed. For example:

- 1) The 2009 report does not mention the requirement of a Sustained Yield Harvest for lands subject to the O&C Act of 1937 as required in that Act.
- 2) The 2009 report and the Working Group lacks acknowledgement of the mandate of Coordination with local governments for planning activities on almost all Federal forestlands as set forth in 43 U.S.C. § 1712, 42 U.S.C. § 4331, and other statutes.
- 3) The goal in the 2009 report of effective and lawful management of our Federal lands through collaborative partnerships, relationships, or consensus approach to problem-solving (p. 17) is simply not working, as is evidenced by the immense smoky air we are breathing, affecting a myriad of legal challenges, including but not limited to, the Clean Water Act, the Clean Air Act, and Riparian areas that have been completely destroyed.

The Working Group, through its current configuration, appears to be an attempt to satisfy the obligations of Federal agencies to coordinate their planning activities. However, those Federal agencies have an obligation to coordinate those activities with Jackson County, itself, when appropriate and the Working Group does not satisfy that obligation.

Any future FFWG reports should be in compliance, and take into consideration, all of the applicable laws and interested parties. Jackson County is not a member of the Association of Oregon Counties and its inclusion in the Working Group does not represent our concerns as to the management of Federal forestlands.

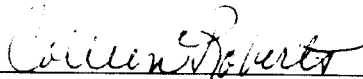
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As such, we strongly request that a representative of Jackson County be invited to be a member of the Working Group so that the interests and concerns of the local governments most impacted by Federal forestlands within their jurisdictions are heard.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Colleen Roberts, Chair

  
\_\_\_\_\_  
Rick Dyer, Vice-Chair

  
\_\_\_\_\_  
Bob Strosser, Commissioner

cc: Members of Federal Forest Working Group, Association of Oregon and California Counties Board Members, County Commissioners of Oregon, Association of Oregon Counties, Bureau of Land Management, Oregon Department of Energy, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Department of Forestry, Oregon Forest Resources Institute Oregon Watershed Enhancement Board, U.S. Forest Service, U.S. Fish and Wildlife Services, American Forest Resource Council, Ochoco Lumber Company, Oregon Business Council, Oregon Forest Industries Council, Oregon Restaurant and Lodging Association

CR:jb

## PROPOSED TEXT AMENDMENTS TO JOSEPHINE COUNTY, OREGON, RURAL LAND DEVELOPMENT CODE (RLDC) TO ADDRESS GROWING OLCC REGULATED MARIJUANA ON RURAL RESIDENTIAL LANDS

*Changes identified below were accepted by the Rural Plan Commission on August 31, 2017. The RPC added the language in red. Schmelzer's additional suggestions are in blue.*

Contact: Julie A. Schmelzer, Director of Community Development  
[jschmelzer@co.josephine.or.us](mailto:jschmelzer@co.josephine.or.us) or ph. (541) 474-5428

The following are submitted to the Board of County Commissioners for discussion at a meeting on September 5, 2017.

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**DEFINITIONS.** *Four necessary terms need defining (see below). In addition, currently the code reads that if you are growing a crop to be used for processing, it is not allowed in Rural Residential (RR). However, 'commercial agricultural enterprises' currently include the term 'farm market'. It is recommend that, since many Rural Residential landowners do sell to farm markets, the words 'and established farm markets' be deleted thereby allowing a RR farmer to produce for a farm market. Also, by deleting this language, growing crops to sell to a farm market, regardless of zone, would be an allowed use. Lastly, under the term 'legal marijuana production site', by requiring the license holder to be the owner of the property, the county can attempt to address the concerns that 'out of towners', or those not vested in the community, are not growing on RR lands.*

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### 11.030 - TERMS DEFINED

**AGRICULTURAL ENTERPRISE, COMMERCIAL.** A farm operation that contributes in a substantial way to the area's existing agricultural economy, and which helps maintain agricultural processors ~~and established farm markets~~.

(Note: The RPC questioned how 'substantial' is defined. The RLDC defines 'substantial damage', 'substantial development', 'substantial improvement', and 'substantial interference'. Two of these explain 'substantial' to be more than 50%. If desired, we can define 'substantial way' here as well. However, based on the other definitions mentioned, from a planning perspective, it would be inferred to mean 'more than 50%.')

**ANNUAL COMPLIANCE INSPECTION CERTIFICATE.** A certificate issued annually by the Community Development Department verifying a marijuana production site is in compliance with all codes administered by the department. The certificate can only be issued upon application and finding the property to be in compliance.

**LEGAL MARIJUANA PRODUCTION SITE.** A lot or parcel with an OLCC regulated marijuana grow crop on site that meets the standards within this code. ~~Said lot or parcel must be owned by the party holding~~

the OLCC license. (Note: The intent is for this latter sentence is to only apply to RR so it is recommended it be moved to the RR Criteria for Farm Use, Section 61.050.)

OLCC. The Oregon Liquor Control Commission.

PRODUCTION YEAR. The calendar year a marijuana crop is grown on a lot or parcel.

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***'GRANDFATHERING'. Grandfathering is really called a 'lawful nonconforming use', and is regulated under Article 13 (the RLDC already regulates lawful nonconforming uses). Basically, the below would 'grandfather' a medical marijuana grow if the landowner was registered with OMMP after the date medical marijuana became legal in Oregon, but prior to the adoption of these amendments, and provided the property was in compliance with the codes administered by the Community Development Department at time the amendments become effective.***

***In addition, an OLCC regulated grow would be 'grandfathered' if a landowner secured a LUCS from OLCC prior to the adoption of these amendments, or applied for a LUCS prior to the adoption of these amendments and said LUCS is being processed by OLCC, and provided the property was in compliance with the codes administered by the Community Development Department at time the amendments become effective.***

***To determine if 'grandfathered' the applicant would need to file for a 'Determination of Non-Conforming Use' (already in the RLDC). Annually thereafter, the applicant would have to apply for an annual compliance inspection certificate (to verify they remain in compliance). If the property falls into non-compliance, the grow/production site loses its 'grandfathered' status and is deemed 'unlawful'.***

***Compliance should be of minimal concern to the LUCS holder in that the back of his LUCS clearly informed him permits were required. And, for those that the county was aware of that failed to follow code, the Code Enforcement Administrator sent/is sending them a letter alerting them there were a violation(s) on their property.***

***Growers should be prepared for meeting grandfathering requirements in that the county was discussing grandfathering since at least October 2016, when the first proposal was publicly presented. In addition, OMMP also discussed grandfathering and encouraged growers to apply for a letter verifying grandfathered status—of which only 11 medical growers took advantage of (as of June 2017).***

***Some have questioned 'why even grandfather'? The code defines 'taking', and to protect the county, some mechanism needs to be in place to protect those from 'interference with distinct investment-backed expectations'. On the other hand, it could be argued the neighbor, who does not grow, is experiencing a 'taking' due to 'substantially disturbs the owner's use and enjoyment of the property'.***

***From a legal standpoint, you process applications in accord with the rules in place at time of application. Therefore, for those that have applied for permits, they are due 'grandfathering'.***

***Lastly, please note the requirement, "Although permits run with the land, OLCC licenses do not; therefore, when the property is transferred to a different owner, the production site will lose its lawful nonconforming status". We are not singling out marijuana. This is common with home type businesses. Section 92.010 states, "A Home Occupation does not 'run with the land' and may not be assumed by a new owner or resident".***

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### **13.050 - ALTERATION OF A NON-CONFORMING USE OR STRUCTURE**

D. For the purpose of verifying the nature and extent of a lawful nonconforming use, the applicant may not be required to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of the application. As for determining whether a medical marijuana production site is a lawful nonconforming use, the site would have had to been legally established after Oregon Ballot Measure 67 in 1998, and be in compliance with the codes administered by the Community Development Department at the time of adoption of this amendment, as verified by a Determination of Non-conforming Use annual-compliance inspection certificate. To determine if an OLCC regulated marijuana production site is a lawful nonconforming use a landowner must have secured a LUCS from OLCC prior to the adoption of these amendments, or applied for a LUCS prior to the adoption of these amendments and said LUCS is being actively processed by OLCC with the intent to issue a license, and provided the property was in compliance with the codes administered by the Community Development Department and the time of adoption of this amendment as verified by a Determination of Non-conforming Use annual-compliance inspection certificate. Although permits run with the land, OLCC licenses do not; therefore, when the property is transferred to a different owner, the production site will lose its lawful nonconforming status.

E. For the purposes of verifying the nature and extent of a lawful nonconforming structure, the structure would have had to exist in its current state and use prior to Josephine County adopting zoning (1973) and prior to the adoption of a Building Safety program (1974).

### **13.060 - DETERMINATION OF A NON-CONFORMING USE**

D. Failure for a lawful nonconforming marijuana production site to obtain submit a completed application for a Determination of Nonconforming Use within six months of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.

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***AGRICULTURE. The intent of the Rural Residential district is 'residential'. Currently, the county does not regulate marijuana plants in RR. However, they do regulate accessory buildings. Simply, if no home on site, there should be no accessory buildings, regardless of what is inside of them. Per the July 19, 2017 Board Order, staff was directed to develop proposed rules that would address growing marijuana in the RR zones, whether inside a building or not.***

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### **61.020 - PERMITTED USES**

A. Accessory buildings, including private garage or carport, ~~guest house~~, greenhouse, stable, barn, pen, coop, or other similar buildings normally required in connection with a use specified in Section 61.020 and subject to the provisions of Sections 61.050, 61.060 and 72.060, provided a single family dwelling is on the lot or parcel.

B. Agriculture, farming and farm use as defined in Section 11.030, subject to the standards provided in Sections 61.050, 61.060, and also subject to the further limitations that all products must be produced on the property and commercial feed lots are prohibited. Commercial Agricultural Enterprises are not allowed.

#### **61.050 - CRITERIA FOR FARM USE**

Farm uses in the Rural Residential Zone shall meet the following provisions:

E. OLCC regulated marijuana production is only allowed if the land owner has secured a license from OLCC and an Annual Compliance Inspection Certificate from the Community Development Department verifying the property is in compliance with the Rural Land Development Code and the codes administered by the Building Safety Division. Failure to secure an Annual Compliance Inspection Certificate by July 1 of the production year shall deem the property to be in non-compliance. If the production site does not meet the requirements of this code, but was a legal production site prior to the adoption of this section of the code, it shall be treated as a lawful nonconforming use subject to Sections 13.020, 13.040, 13.050 and 13.060. Failure for a lawful nonconforming marijuana production site to ~~obtain~~ submit a completed application for a Determination of Nonconforming Use within six months of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.

F. The lot or parcel with a marijuana production site shall be owned by the party being regulated by the OLCC. (Note: Was proposed in the definition section and moved here.)

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***LOT SIZE AND SETBACKS. New marijuana grows (those not determined to be a lawful nonconforming use) are allowed in RR provided the canopy of the marijuana plant is setback at least 300 feet from all property lines (this includes greenhouses which house marijuana). A 300' setback from all lot lines is required because 300' is the minimum lot size required in an RR5 zone, and by having a 300' setback the county is requiring a hypothetical one lot separation between neighbors and grows. These proposals are for new OLCC regulated marijuana production sites.***

***The RPC felt a 300' setback was too restrictive, and added language to allow indoor micro-tiers to be on a lot which is at least 2.5 acres in size, and has a 150' setback from property lines. Those recommendations are in red. Please note the Chair kept referring to Micro-tier I as being 2500 sq. ft.; however, when indoors, it is limited to 625 sq. ft. (per OLCC).***

***Lastly, assuming the new lighting standards are adopted, it should be clear that RR lands are also subject to the lighting standards.***

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## 61.060 - PROPERTY DEVELOPMENT STANDARDS

### B. Property Development Standards

1. Minimum lot size - RR-5: 5 Acres

RR-2.5: 2.5 Acres

RR-1: 1 Acre

OLCC regulated marijuana production site that is an indoor Micro-tier I grow:  
2.5 acres

2. Minimum lot width - RR-5: 300'

RR-2.5: 250'

RR-1: 150'

3. Minimum setbacks from property lines – Front (30') Side (10') Rear (25')

OLCC regulated indoor Micro-tier I grow site, as measured from the structure  
that houses the grow: Front, Side, and Rear (150').

All other OLCC regulated marijuana production sites, as measured from the  
canopy of the plant: Front, Side, and Rear (300')

13. Lighting – See Article 77

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***FIRE SAFETY. Often times grows are provided power by a generator. Or, power is provided by running multiple extension cords. Both scenarios provide for a fire safety concern, violate National and State codes, not to mention the possible back feed of electricity that can endanger the lives of crews working on power lines. The following reiterates existing codes.***

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## ARTICLE 76 - WILDFIRE AND EMERGENCY SAFETY STANDARDS

### 76.010 – PURPOSE

The purpose of this Article is to establish minimum wildfire and safety mitigation standards for some development, and the replacement, substantial improvement or relocation of structures. This Article is intended to reduce threats to human life and safety, to structures and to wild lands, and to improve access in emergencies.

It is also the intent of this Article to achieve the greatest possible application of wildfire and emergency safety standards by covering new dwellings where authorized as permitted uses. In order to achieve this objective, this Article shall provide for reduced review and approval



procedures for new, replacement of, substantially improved and relocated dwellings in Other Zones, as specified in Sections 76.020.D and 76.100.A of this Article.

#### **76.020.E. -- OTHER REQUIREMENTS**

E. Other Requirements. The proposed utility serving a lot or parcel, including but not limited to, generators, solar, wind and hydroelectric, shall comply with the National Electrical Code and Oregon State Law. Permits and inspections are required for all systems. Any and all installations contrary to the Code such as, exposed NM cable, extension cords, splices and improper grounding and bonding, are direct violations of the Oregon Safety Law, ORS 479.520, and the National Electrical Code. All systems are required to be approved by the Building Safety Division prior to use. Nothing in this Article is intended to waive or diminish any other development standard, regulation or other provision required in this code or elsewhere.

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***WATER TRUCKS. Access: Public roads are equipped for heavy water trucks, but private roads and easements are not. The trucks damage the roads and many times the residents are left paying to have the road repaired.***

***There is also a concern about the trucks delivering soil, and the damage they are causing to the roads. Since the soil deliveries are seasonal, and not on a routine, like the water trucks (2-3 times a week), there originally was no proposal to regulate the delivery of dirt. However, a close reading of the below restricts the grow from having access; therefore, all facets of the operation would be restricted from accessing private road.***

***Since the RR zone is intended for residential, it makes sense to limit the need for heavy trucks driving through residential areas on a reoccurring basis. There have been several complaints about trucks driving fast or over the line, and, people afraid to walk on their rural roads.***

***Water: In addition, the county has received numerous complaints from vintners, environmentalists, and neighbors over the lack of water since the larger marijuana grow sites developed in the county. According to DSL, these complaints are generally not valid. However, keep in mind the 'purpose' section of the RR zone states, "development shall not exceed the carrying capacity of the land to support...consumptive groundwater withdrawal...". Per the State of Oregon, 'carrying capacity' means, "Level of use which can be accommodated and continued without irreversible impairment of natural resources productivity, the ecosystem and the quality of air, land, and water resources."***

***As such, it is prudent to make sure there is adequate water for all land uses, and we are not exceeding the lands carrying capacity. Since the intent of the RR zone is residential, smaller grows, requiring minimal water, are preferential over large grows that need an abundance of water hauled on site. Limiting water deliveries upholds the 'rural agriculture' intent of the zone, and helps avoid industrialization of the RR zone.***

***When the RPC discussed the proposed water amendment, they requested it have 'more work' before presented to the Board. Staff's revisions are in blue.***

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**ARTICLE 81 - ACCESS STANDARDS**

**81.010 – PURPOSE**

The purpose of these standards is to ensure safe ingress and egress to and from properties; to minimize street congestion and traffic hazards, to protect the future operation of transportation facilities, to provide safe and convenient access to businesses, public services, and places of public assembly; and to make vehicular circulation more compatible with surrounding land uses.

**81.020 - ACCESS STANDARDS**

C. No OLCC regulated marijuana production site located in a Rural Residential zone shall be accessed off of a private road or easement unless the producer owns all the land abutting said private road or easement. Note: At the RPC meeting it was questioned if this should include 'restricted residential' roads (serve 5 or fewer homes). Staff questions whether it should also apply to 'limited residential' roads (restricted due to cul-de-sac or slope).

**ARTICLE 84 - WATER STANDARDS**

**84.010 – PURPOSE**

The purpose of this Article is to require prior testing and approval of development in order to reasonably assure an adequate and safe water supply for all citizens of Josephine County. A related purpose is to determine the availability, impact, and water quality for the users of ground water in Josephine County.

**84.020 – APPLICATION**

K. No OLCC regulated marijuana production site on Rural Residential zoned land shall use water trucked onto the site. A water right must exist prior to marijuana being grown on the lot or parcel.

P.1 of GIS 06082016 Inventory of LUCS

Size of RR Parcel

16.94

12.69

22.77

5.58

6.13

17.02

5.78

9.14

10.22

2.46

6.42

Range

2.46 to 22.77

Average

10.5 acres

Note: Peter Gendron reported at the August 28, 2017 RPC hearing the state created the micro-tier program specifically for RR zones (although I have not found any proof they were created to be zone specific). To allow an outdoor Micro-tier I @ 2500 sq. ft., with 300 foot setbacks, in RR, you'd need a 650' x 650' square, or, 9.7 acres. Micro-tier II @ 5000 sq. ft. would require 10.3 acres.

Zip Code	OLCC Licenses	Producer Licenses	RR Prod.	RR On-site	RR JoCo	RR Jackson	RR Other Oregon	RR Out of State
<b>Cave Junction</b>	22	22	9	3	2	1	3	0
<b>Grants Pass</b>	48	46	14	10	3	1	1	0
<b>Kerby</b>	3	2	1	0	0	0	0	1
<b>Merlin</b>	6	4	1	1	0	0	0	0
<b>O'Brien</b>	2	2	0	0	0	0	0	0
<b>Selma</b>	5	1	1	1	0	0	0	0
<b>Wilderville*</b>	4	4(2)=3	4(3)	2	2(1)	0	0	0
<b>Williams*</b>	14	13(2)=11	5(4)	3	0	2(1)	0	0
<b>Wolf Creek</b>	6	6	0	0	0	0	0	0
<b>TOTAL</b>	110	100(98)	35(33)	20	7(6)	4(3)	4	1

\*In these two communities one property holds two licenses  
Assumption is made P.O. Box in same zip is onsite operation

As of 9/1/2017

Total LUCS submitted on RR:

2015 (Dec)—22 (total of all LUCS was 47)

2016—109 (total of all LUCS was 250)

2017 (thru August) — 74 (total of all LUCS was 195)

Prior to Order July 19,2017: 59 RR in 2017

From Order until RPC Hearing August 28, 2017: 10 RR

RPC Hearing until Board Meeting September 5, 2017 (last data updated 8/31/17): 5 RR



# Josephine County, Oregon

Board of Commissioners: Simon G. Hare, Lily N. Morgan, and Daniel E. DeYoung

Josephine County Courthouse  
500 NW 6<sup>th</sup> Street / Grants Pass, OR 97526  
(541) 474-5221 / FAX (541) 474-5105  
<http://www.co.josephine.or.us>

## NEWS RELEASE

To: News Media  
From: Lily Morgan, Vice-Chair, Board of County Commissioners  
Date: September 4, 2017

Under the recommendation of the Chetco Bar Fire Incident Commander with concurrence of the Josephine County Sheriff's Office and the Illinois Valley Fire District, a Level 3 "GO" evacuation order was issued for all residents on the Illinois River Road within the US Forest Service Boundaries, including the Oak Flat community. All residents in this area were contacted regarding the evacuation and options for shelter for people and animals.

Additionally, all Illinois Valley residents west of Highway 199 were issued a Level 1 "Be Ready" evacuation order. A Level 1 "Be Ready" evacuation order means that you should be aware of the danger that exists in your area, monitor emergency services websites and local media outlets for information. This is the time for preparation and precautionary movement of persons with special needs, mobile property and pets and livestock. If conditions worsen, emergency services personnel may contact you via an emergency notification system.

Josephine County Board of County Commissioners are working in coordination with Josephine County Fairgrounds, Public Health, Emergency Management, Sheriff's Office, Search & Rescue, the American Red Cross and several animal volunteer organizations to identify resources for safe evacuation of people, pets and livestock. **This is the time we need neighbors to help neighbors.** If you can help house or transport livestock or pets, please contact the Southern Oregon Emergency Aid by email at [soeaevacteam@gmail.com](mailto:soeaevacteam@gmail.com) or by phone at 541-226-1124. They can also be contacted on their Facebook page. Again, this is if you can provide the help.

If you need help finding resources for your pets or livestock, please email [jocoanimalevacuation@gmail.com](mailto:jocoanimalevacuation@gmail.com) or call 541-474-5390. We can connect you with a resource. This is if you need the help.

For information on the fire itself, the Chetco Bar Fire Information line is staffed 7 a.m. to 10 p.m. and can be reached at 541-469-1177.

Thank you to all the volunteers in our community reaching out to help each other. We could not do this without you!

# # #