




MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date:	November 30, 2022		
Department:	Public Works	Agenda Planning Date:	Nov. 17, 2022
		Time required:	None
<input type="checkbox"/> Audio/Visual aids	None		
Contact:	Lindsey King	Phone:	503-566-4162

Department Head Signature:	
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TITLE

Receive notice of Hearings Officer's decision recommending approval for Zone Change/Comprehensive Plan Change (ZC/CP) Case 22-002/Jason Feusner and schedule a public hearing.

Issue, Description & Background

The Marion County Hearings Officer issued a decision on August 11, 2022, recommending approval of ZC/CP 22-002. As part of the land use process the Marion County Board of Commissioners must receive the recommendation and hold a public hearing on the matter and issue a decision. The proposed hearing date is December 14, 2022.

Financial Impacts:

None

Impacts to Department & External Agencies

None

Options for Consideration:

1. Receive recommendation and schedule a public hearing for December 14, 2022.
2. Receive recommendation and schedule a public hearing for an alternate date.

Recommendation:

Staff recommends that the board receive notice of the hearings officer's decision and schedule the public hearing for December 14, 2022.

List of attachments:

Hearings Officer's recommendation

Presenter:

Austin Barnes

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Lindsey King - lking@co.marion.or.us
Brandon Reich - Breich@co.marion.or.us
Austin Barnes - ABarnes@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. CP/ZC 22-002
)
Jason J. Feusner) **COMPREHENSIVE PLAN**
(Representative Wallace W. Lien)) **DESIGNATION AND ZONE CHANGE**

RECOMMENDATION

1. Nature of the Application

This matter comes before the Marion County Hearing Officer on the Application of Wallace W. Lien on behalf of Jason J. Feusner request to change the comprehensive plan designation from Rural Residential to Rural Residential with an exception to Goal 14 and to change the zone from AR-10 (Acreage Residential) to AR-2 (Acreage Residential), on a 5.07 acre parcel located at 16207 Abiqua Rd. NE, Silverton. (T6S, R1E, Section 19D, Tax Lot 800). The property is within the Sensitive Groundwater Overlay zone.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP), Rural Residential Policy, Rural Services Policy, Statewide Planning Goal 14, Marion County Rural Zone Code, particularly Chapter 17.123 (Zone Change Procedures), Chapter 17.128 (Acreage Residential Zone), Chapter 17.172 (Subdivision and Partition Requirements), and the Oregon Administrative Rules (660 Division 4 - Goal Exception Process).

III. Public Hearing

A public hearing was held on this application on March 31, 2022. At the hearing, the Planning Division file was made a part of the record. The following persons appeared at the hearing and provided testimony or argument on the application:

- | | |
|---------------------|----------------------------|
| 1. Austin Barnes | Planning Division |
| 2. Wallace W. Lien | Applicant's Representative |
| 3. Jason J. Feusner | Applicant |

No objections were made to notice jurisdiction, conflict of interest or evidence at hearing.

IV. Executive Summary

The Applicant requests to change the comprehensive plan designation from Rural Residential to Rural Residential with an exception to Goal 14 and to change the zone from AR-10 (Acreage Residential) to AR-2 (Acreage Residential), on a 5.07 acre parcel located at 16207 Abiqua Rd. NE, Silverton. The Applicant has met the criteria and the Marion County Board of Commissioners determined in Ordinance No. 1215 and again in Ordinance 1426 that the subject area is a highly developed rural area that commits the subject property to rural residential use. The Hearings Officer recommends that the Application be APPROVED.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The Application of Jason J. Feusner, represented by Wallace W. Lien requests to change the comprehensive plan designation from Rural Residential to Rural Residential with an exception to Goal 14 and to change the zone from AR-10 (Acreage Residential) to AR-2 (Acreage Residential), on a 5.07 acre parcel located at 16207 Abiqua Rd. NE, Silverton. (T6S, R1E, Section 19D, Tax Lot 800). The property is within the Sensitive Groundwater Overlay zone.
2. The property records submitted by Applicant show Jason J. Feusner as the owner of the subject property. The property is located on the north side of Abiqua Road in the 16,100 block. The property contains a dwelling and three accessory buildings. The property and the parcel immediately to the west were subject to a previous land use action when the comprehensive plan was changed from Primary Agriculture to Rural Residential and the zoning from Exclusive Farm Use (EFU) to Acreage Residential - 10 Acre Minimum (AR-10) in ZC/CP Case 04-009. The property is a legal parcel for land use purposes.
3. Surrounding properties to the north and south are zoned EFU. Properties to the east and west are zoned AR-2. All surrounding parcels are developed with home sites.
4. The Marion County Planning Division requested comments from various governmental agencies and received the following comments:

Marion County Building Department commented that permits will be required for future development on property.

At the time of this staff report all other contacted agencies contacted either failed to respond or stated no objection to the proposal.

5. The subject property is designated Rural Residential in the Marion County Comprehensive Plan because of the proposed increased in density, a Goal 14 Exception is required which then necessitates an amendment to the Marion County Comprehensive

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Plan. No other Exception is required as all the resource Goals were excepted from in Ordinance No. 1215 when the property was designated for Rural Residential use.

VI. Additional Findings of Fact and Conclusions of Law

1. This is a recommendation to the Marion County Board of Commissioners (BOC). The BOC is the final decision-making authority.
2. Applicant has the burden of proving by a preponderance of the substantial evidence in the record as a whole that applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.”

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, Applicant have not met their burden and the application must be denied. If the evidence for every criterion is in Applicant's favor, then the burden of proof is met and the application must be approved.

GOAL EXCEPTIONS

3. A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal; the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because other relevant factors make uses allowed by the applicable goal impractical or reasons-standards are met. Goal exceptions are governed by Statewide Planning Goal 2. Goal 2 is implemented through Oregon Administrative Rule (OAR) 660-004. Under OAR 660-004-0028(1), a local government may adopt an exception to a goal when the land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impractical. According to OAR 660-004-0028(2), whether land is irrevocably committed depends on the relationship between the proposed exception area and the lands adjacent to it. The findings for a committed exception must address the following:

- (1) *A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;*

- (a) *A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).*
 - (b) *For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.*
 - (c) *An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.*
- (2) *Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*
- (a) *The characteristics of the exception area;*
 - (b) *The characteristics of the adjacent lands;*
 - (c) *The relationship between the exception area and the lands adjacent to it; and*
 - (d) *The other relevant factors set forth in OAR 660-004-0028(6).*
- (3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*
- (a) *Farm use as defined in ORS 215.203;*
 - (b) *Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
 - (c) *Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*
- (4) *A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule*

and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.*
- (6) Findings of fact for a committed exception shall address the following factors:*
 - (a) Existing adjacent uses;*
 - (b) Existing public facilities and services (water and sewer lines, etc.);*
 - (c) Parcel size and ownership patterns of the exception area and adjacent lands:*
 - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.*
 - (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;*

- (d) *Neighborhood and regional characteristics;*
 - (e) *Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*
 - (f) *Physical development according to OAR 660-004-0025; and*
 - (g) *Other relevant factors.*
- (7) *The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.*
4. A Goal 14 exception is required to change the zoning on the subject property to a minimum parcel size less than AR-10. Under OAR 660-004-005(1), an exception to a statewide planning goal is a comprehensive plan provision. The Goal 14 exception requires an MCCP amendment. OAR 660-004-0040(8)(i)(B) also requires the minimum lot size adopted to be consistent with OAR 660-004-0018.
 5. Applicant seeks an irrevocably committed Goal 14 exception to allow a R-2 zoning on the subject property under OAR 660-004-0010(1)(d)(D). an exception to goal 14 must follow the requirements of OAR 660-014-0030 (irrevocably committed) or OAR 660-014-0040 (reasons exception). Because Applicant requests an irrevocably committed exception to goal 14 to allow urban levels of development on rural land OAR 660-014-0030 applies. See OAR 660-004-018(3). The Applicant must demonstrate that it is impractical to allow any rural uses in the exception area.
 6. A Goal 14 exception is sought to partition off the undeveloped land, so that a home can be built on it and on the grounds that the location and configuration of the property along with surrounding rural residential development on small sized lots have limited agricultural use of the property and made commercial agricultural use of the property impractical. The property currently contains one home and is not specially assessed for farm use and is not in agricultural production.
 7. The Applicant presents findings that establish the inability of the property to be farmed due to the location of the parcel and because the property is surrounded by non-farm uses. This conclusion is supported by the study area, the characteristics of the adjacent lands and the subject parcels relationship to it. The 2-acre area that would be built upon is bordered on three sides by single family homes and on one side by a roadway.

Maneuvering and attempting to farm in this tight space, with respect to the road conditions in the area is not practicable. The findings in Ordinances No. 1215 and 1426 approved an irrevocably committed exception for the neighboring property to the west.

8. The findings in Marion County Board of Commissioner's Administrative Ordinance 1426 (December 9, 2020) were for a nearly identical contiguous parcel, with the exact same set of facts and that are applicable to this Application are as follows:

The subject property has been proven by an abundance of evidence to be irrevocably committed to urban levels of development as manifested by the adopted AR-2 zoning to be applied. The subject property has already been found to be excepted from the resource goals when the Rural Residential plan designation was applied in Ordinance 1215. The findings and conclusions from that Ordinance are equally applicable here and are adopted in full as follows:

- 1. The rezone area is unsuitable for the production of farm crops and livestock based on a combination of small and irregularly shaped parcel size and the level of property improvements.*
- 2. The rezone area has not been farmed at all for over 30 years because there is not enough land in a large enough contiguous block to sustain any commercial level of agriculture on the individual lots.*
- 3. The subject rezone area is not suitable for farming because most of it was partitioned into small parcels prior to the implementation of Statewide Land Use Planning and Exclusive Farm Use zoning.*
- 4. The subject rezone area is unsuitable for the production of farm crops and livestock because surrounding uses are also principally directed to non-resource uses. The only exception to this, is the adjacent land to north - Tax Lot 1000 in T6S, R1E, Sec. 19A.*
- 5. The rezone area is compatible with adjacent land dedicated for farm use because that adjacent land has low impact farming operations that involve the production of grass seed.*
- 6. The rezone area is compatible with a series of small lots on the south that range in size from 1.00 acre up to 9 acres. There are seven (7) non-resource parcels on the south that are 1 acre in size, and are built with single family dwellings.*
- 7. The rezone area is compatible with larger farm units to the north because the orientation of the subject property is to Abiqua Road, more rectangular- running north, south; and the larger farm units in the area, are oriented to the Cascade Highway which separates the larger farm units to the north from the Abiqua exception area, and the subject property.*

8. The rezone area does not directly border any active farm areas on the east, west, or south, which makes it more compatible with surrounding uses.

9. The rezone area is compatible with the farming operations that lie beyond the adjacent lots because the location of the proposed dwellings will be on the south end of the properties near Abiqua Road, a significant buffer of other rural properties, roads, and houses physically segregates the rezone area from those farming areas to the north and southeast.

10. The rezone area is compatible with farming operations in the area because the record lacks any evidence from any grass seed farmers or livestock operators that their farming costs or practices are impacted as a result of activities in the rezone area.

11. The subject rezone area is compatible with surrounding farm uses because no evidence was submitted into the record that indicated that the farm units produced impacts such as noise, dust, odor, glare, vibration, long hours of operation, or spray.

12. The subject rezone area is compatible with surrounding farm use because no evidence was submitted that there are any historical records of incompatibility resulting from activities that occur in the rezone area.

13. The subject rezone area is suitable for the intended AR-10 zoning because adequate public facilities and services are already in place to serve the intended zone and parcels.

14. This zoning action requires an Exception to Statewide Goal 3. (Not Applicable Here)

15. This zoning action seeks an Exception to Goal 3 on the basis that the rezone area is irrevocably committed to uses not otherwise permitted in the zone (OAR 660-004). (Not Applicable Here)

16. The rezone area is irrevocably committed to non-resource uses because of the characteristics of the exception area. These characteristics include: small parcel size, and irregularly shaped parcel, septic drainfields, driveways, fences, and an absence of any commercial farm activities.

17. The rezone area was irrevocably committed to non-resource use at the time EFU zoning was applied to the area in the 1970's. The former zoning of FR-5 (Farm Recreational) placed emphasis on residential use because dwellings were permitted outright.

18. The rezone area has no history of any agriculture use during any of the time period that it has been zoned for Exclusive Farm Use.

19. *The rezone area has no agricultural uses at the present time, which supports the premise that it is irrevocably committed to non-resource uses.*
20. *The rezone area is irrevocably committed to non-resource use because of the characteristics of adjacent lands. Most notably, the majority of adjacent lands are also in non-resource use.*
21. *The rezone area is irrevocably committed to non-resource use because adjacent lands, with the exception of the grass seed fields to the north, make no substantial contribution to the commercial agricultural enterprise of the area.*
22. *The rezone area is irrevocably committed to non-resource use because most adjacent lands are too small and too developed to be utilized for commercial agricultural activities.*
23. *The rezone area is irrevocably committed to non-resource use because the historical use of adjacent ownerships is for non-resource-related uses.*
24. *The rezone area is also irrevocably committed to non-resource use because of the relationship of the rezone area to the lands adjacent to it.*
25. *The rezone area is irrevocably committed to non-resource use because there is no definitive relationship of the rezone area to the farm uses that are adjacent.*
26. *The rezone area does not provide any access to the adjacent farm parcel to the north.*
27. *The rezone area does not provide staging or shipping areas for adjacent or other farm parcels in the area.*
28. *The rezone area does not have utilities or utility easements that are necessary for conducting farming practices or activities on adjacent lands.*
29. *The rezone area does not have people who work on or otherwise provide material support for adjoining farming operations.*
30. *The rezone area does not have water rights or grazing rights that would provide material support for adjacent farming activities.*
31. *The rezone area does not contain any processors or cottage industry uses that materially contribute to farm uses on adjacent parcels.*
32. *The rezone area does not contain any laboratories, test plots, buffers, or other uses that contribute to the commercial agricultural economy on adjacent parcels.*

33. *The rezone area does not contain any areas that could be leased or otherwise integrated into existing adjoining farm uses.*
34. *The rezone area is not connected by ownership or use to any surrounding properties.*
35. *The rezone area can also be deemed irrevocably committed to non-resource use based on other relevant factors.*
36. *The rezone area is buffered by small non-farm parcels to the west, east and south as well as by Abiqua Road (south only).*
37. *The rezone area consists of a group of small parcels attached to other small non-farm parcels rather than an isolated group of parcels totally surrounded by farming areas, which is more characteristic of areas that are irrevocably committed.*
38. *The rezone area and surrounding parcels were already established at the time that statewide planning goals were implemented.*
39. *The parcels adjacent to the rezone area to the west and south were not created in accordance with statewide planning goals but pre-existed modern zoning.*
40. *The subject rezone area cannot practicably be farmed because of small parcelization and property improvements. A commercial level of farm use is not required; only a finding that the area cannot practicably be farmed.*
41. *The subject rezone area cannot practicably be farmed for agricultural uses - the property is small, irregularly shaped, is not drained, has no water rights, is surrounded on the east, west and south by rural residential parcels with single family dwellings.*
42. *The subject rezone area has had more than 30 years of non-use for any farming activity. A positive finding can be made that 30 years of non-use is a strong indicator that farm use, for the purpose of making a profit in money, is not practicable at the proposed exception site.*
43. *The proposed exception area has not been assessed for farm use for 30 years, which supports the premise that the exception area is irrevocably committed to non-resource use.*
44. *The proposed rezone area is impracticable for farm use because useful portions of the rezone area could not be reasonably joined to farming areas on adjacent and nearby parcels.*
45. *The subject rezone area cannot be practicably utilized for forest use for same reasons it cannot be used for farming: small lot sizes, improvements, and lack of complementary forest uses in the area.*

9. The Applicant has submitted evidence that farm use, propagation of a forest product and forest operations are not practicable on the site.

Review of historical air photos show that the land has not been farmed since at least the year 2000, and potentially further back to 1994. The photographs during the 2000's show land that is bare and covered sparsely with grass (dead and living) and what appear to be small, scattered bushes or weeds. The parcel is bordered by parcels zoned AR-2 in all directions except north, where the land is zoned EFU and in farm production.

The Applicant submitted a detailed analysis of the exception area, identifying owners, land size, zoning, development patterns, dwellings, homesite approvals, average and median parcel size, farm uses and the farm tax deferral status of all the parcels.

The submission and detailed information about the study area (which includes 47 parcels) support the findings stated herein. 87% of the exception area has single family dwellings built, while only 15% of the parcels are in farm deferral. The Study Area supports and justifies the change in plan designation from AR-10 to AR-2.

The Applicant's detailed analysis supports the determination that the area is irrevocably committed to a development pattern that would allow for a new 2-acre parcel and is in line with the surrounding development. The level of development identified in the submission shows that the exception area will not allow development at urban levels on parcels smaller than 2 acres.

The average parcel size in the study area is 2.99 acres and the median is 2.39 acres. The subject parcel is surrounded by small parcels in separate ownerships that are developed with single family homes and are not in farm use. The only contiguous farm operations lie to the north and south of the subject parcel and these are buffered by single family residences in all directions. The neighborhood is characterized by mostly acreage-residential zoned parcels, which fall between 1.5 and 5 acres in general. There are also EFU parcels in the neighborhood with most of them being around 1.5 acres in size and developed with single family dwellings. The Applicant's submission evidences the parcel sizes and uses within the Study Area. This Study Area is best characterized as rural residential as its main use is providing homesites with farmland bordering the far edges.

The subject property and for this matter, the proposed homesite, is further buffered from farm uses by Abiqua Rd NE to the south and by the existing residential homes to the north, east and west. Residential homes already abut the existing farmland to the north and south and this has not impeded farm operations. The placement of one home, interior to the existing single-family homes, will not have an adverse effect on the existing farm operations. It is likely that the farm operations would not even be able to see or hear this house once built. A tall stand of trees block the new homesite from the adjacent dwellings which then provide a further buffer. The Applicant has also submitted maps, tables and calculations to support their findings.

10. OAR 660-004-0040(8)(i)(B) permits zoning with as low as a two-acre minimum parcel size to be applied to property designated as rural residential after October 4, 2000, if an exception to Goal 14 is taken. The minimum lot size adopted by the county must also be consistent with OAR 660-004-0018.
11. OAR 660-004-0010(1)(d)(D) establishes that an exception to Goal 14 must follow the applicable requirements in OAR 660-014-0030 or 660-014-0040, in conjunction with the requirements in OAR 660-004. OAR 660-014-0030 applies to rural lands irrevocably committed to urban level of development and the criteria in OAR 660-004-0028 also apply. 660-014-0040 applies to the establishment of new urban development on undeveloped rural lands, and is essentially a "reasons" exception, and the criteria in OAR 660-004-0020 and -0022 also apply.
12. In 2000, the Department of Land Conservation and Development (DLCD) made rules in response to a 1986 Oregon Supreme Court Decision, *Curry County*, regarding which rural residential land is considered to be rural. DLCD determined that, in order to maintain the rural residential land as rural, and not urban, after October 4, 2000, zoning regulations applying to rural residential land existing at that time had to require a minimum parcel size of two acres, OAR 660-004-0040(8)(c) and (d). Zoning applied to land redesigned rural residential after October 4, 2000 had to require a minimum parcel size of ten acres in order to maintain the land as rural and not urban or take an exception to Goal 14, OAR 660-004-0040(8)(i).

Parcels smaller than two acres were determined to be urban. Parcels between 2 and 10 acres could either based on surrounding development. Since the average parcel size of the adjacent Acreage Residential land is greater than 2 acres, it appears it could be classified as either based on the surrounding development. An exception to Goal 14 must demonstrate how the land is irrevocably committed to an urban level of development. This is shown through the small and irregular parcel size in the study area and the inability to farm the parcel. The Applicant makes findings that through the existing pattern of development it is impractical to farm and farming the parcel would have more severe impacts on neighbors than allowing for a second single family dwelling to be built. These include but are not limited to, dust, pesticides, gas fumes and noise in close proximity to neighbors. This also includes the need to drive farm equipment regularly on residential roads to even be able to access the site. This would pose traffic safety issues among others at the subject property if it were to be farmed. The Applicant states that "There are no urban services in this area There are no city or special districts in this area. All utilities are rural in nature. Water is provided by domestic water wells, not by hook up to a community system. Sanitation is provided by septic systems, not by connection to a community sewer system." These findings show how the study area is rural in nature and does not need urban services such as sewer and water, but the level of development based on parcel size and development trends appear to be urban. The rule states that the Applicant need not show that every use is impossible, but that they are impactable. The Applicant has met the burden of proof showing that allowed farming uses are impracticable in the subject parcel. The addition of one more parcel to the study area will

not create a need for urban services. Additionally, the use will stay the same on the new parcel if approved.

Based on these findings and the lot size, adjacent lands are still considered to be urban based on DLCD's rules, but this does not require an urban level of infrastructure for the area. The subject property complies with the exception process for Goal 14 to demonstrate that the subject property is irrevocably committed to a level of development and parcel sizing that allow the re-zoning to AR-2, and for one house to be placed on the new parcel if partitioned.

13. OAR 660-014-0040: The Applicant make arguments related to this rule but need not be addressed if the Applicant are applying for an irrevocably committed exception.
14. OAR 660-004-0020 and -0022: The Applicant did not address this rule, but need not address it if the Applicant are applying for an irrevocably committed exception.
15. OAR 660-004-0018: This rule must be applied to ensure that rural land does not require urban levels of services. The proposed zoning must retain the land as rural in all other aspects aside from the minimum parcel size to ensure that the requirements of this rule are satisfied. It is clear that developing land with a minimum parcel size of two acres would maintain the land as rural, would not commit adjacent lands to uses not allowed by the goal, and would be compatible with adjacent and nearby resource uses. No evidence has been submitted that this would impair farming practices in the area. The farms to the north and south have been operating with homes nearby for years, and the addition of this one home will not alter their ability to farm.

STATEWIDE PLANNING GOALS

16. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. The Applicant addresses the goals, and appears to meet each goal to the extent that the goal is applicable:

Goal 1: Citizen Involvement - This Goal is primarily aimed at the original creation and the updating of the comprehensive plan. It calls for citizen participation in the planning process. Since this is a quasi-judicial application there will public hearings in which the public will be notified and given the opportunity to be heard on this proposal. Compliance with this Goal is met.

Goal 2: Land Use Planning - This Goal sets out the basic processes by which land use decisions are made, and must include findings and conclusions that are based on substantial evidence. The process adopted by Marion County to review this application adequately addresses that due process requirements are met in the decision-making process. In addition, Goal 2 sets forth the process and authorization for taking exceptions to any Goals that cannot, or should not, be applied to a particular parcel. The Goal 2 Exception process was previously used to exempt the subject property from the application of Goal 3 and is being used here to exempt the subject property from the application of Goal 14. Compliance with this Goal is met.

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Goal 3: Agricultural Lands - An exception was previously taken in Ordinance 1215. Compliance with this Goal is met.

Goal 4: Forest Lands - The subject parcel is entirely classified as Holcomb silt loam soil, with a site classification of III. The soil has not been placed in a woodland suitability group according to the county's soil survey. There are no forestry uses on the subject property, nor in the surrounding area. The soil type is such that the land is not considered to be forest lands, and therefore not subject to protection by this Goal. Compliance with this Goal is met.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources - There are no identified Open Spaces, Historic Area or Natural Resources located on or near the subject property. This Goal is not applicable.

Goal 6: Air, Water and Land Resources Quality - Future development will be subject to sensitive groundwater overlay zone requirements as well as septic permitting and stormwater detention regulations. A hydrology study with water budget was submitted to Planning and peer reviewed. The peer reviewer found SGO requirements were met. Exhibit F. No significant particulate discharges are anticipated. Septic construction has been determined to be feasible as evidenced in Exhibit H. Compliance with this Goal is met.

Goal 7: Areas Subject to Natural Disasters and Hazards - There are no identified Natural Disaster or Hazard areas located on or near the subject property. This Goal is not applicable.

Goal 8: Recreational Needs - This Goal is designed to encourage and implement parks and other facilities for recreation. There are no parks or other recreation areas involved in this proposal. This is a small parcel, designated for rural residential use. The one additional homesite that will be possible by approval of this application will have no negative impact on parks, and will not trigger a need for more park land or rural recreational facilities. This Goal also deals with siting of destination resorts, which is not applicable here. Compliance with this Goal is met.

Goal 9: Economy of the State - This Goal calls for the diversification and improvement of the general economy of the state, and encourages planned uses that will implement these policies. In this case there is a 5.07 acre parcel with one house. The site is large enough to adequately and safely accommodate an additional homesite. By converting idle land to a productive homesite adds to the economy by putting contractors and suppliers to work during construction, and adds to the local tax base. In addition, once the homesite is constructed, its occupants will buy goods and services locally which will further the economy. Compliance with this Goal is met.

Goal 10: Housing - This Goal seeks to ensure there is an adequate supply of housing of various sorts and types. There is a burgeoning need for rural residential parcels with small acreage. Bare lots of this type are in high demand, and turn over quickly where there is the opportunity to build a single family house. This area is a classic example of how valued and viable small parcel rural residential living can be. Parcels in the 2-3 acre range, with single family homes dominate the neighborhood landscape. Taking 2 acres of idle land and converting it to a needed rural residential parcel with the ability to build a home on it is exactly the aim of Goal 10. Compliance with this Goal is met.

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Goal 11: Public Facilities and Services - Goal 11 calls for planning in such a manner as to make for the most efficient use of public facilities, and not to place an undue burden on any sector. Here, the new parcel will be served by a well and septic system, so no public water or sewer systems will be needed. In the future, upon partition, the new parcel will use the existing driveway access point onto Abiqua Road, which driveway is already approved by the County as to type and location. Abiqua Road has sufficient capacity to handle one more house which is anticipated to generate no more than 8-10 average daily traffic trips. One more home will have no adverse impact on law enforcement, fire coverage or the school system. Compliance with this Goal is met.

Goal 12: Transportation - This Goal aims to provide a safe and convenient and economic transportation system. As noted above, Abiqua Road has sufficient capacity to handle one more single family home. The access point to the road already exists in an approved location. There will be no significant impact on any transportation facility due to the addition of one more home in this location. In addition, the Transportation Planning Rule (TPR) now provides for a safe harbor for new developments that generate less than 400 trips per day. Since there are estimated to be no more than 10 trips per day generated here, the safe harbor rules provide for automatic compliance with the TPR. Compliance with this Goal is met.

Goal 13: Energy - According to this Goal, new land uses must be managed and controlled to provide maximum conservation of energy. The new home that will be constructed here will have its building plans approved by the county, and it will include as much energy efficient materials and equipment as possible. Compliance with this Goal is met.

Goal 14: Urbanization - This Goal is excepted as explained above.

Goal 15: Willamette Greenway - This Goal does not apply as the subject property is not located within the Willamette Greenway.

Goal 16: Estuarine Resources - This Goal does not apply as the subject property is not located within any Estuarine Resource area.

Goal 17: Coastal Shorelines - This Goal does not apply as the subject property is not located within any Coastal Shoreline areas.

Goal 18: Beaches and Dunes - This Goal does not apply as the subject property is not located within any Beach or Dune areas.

Goal 19: Ocean Resources - This Goal does not apply as the subject property is not located within any identified Ocean Resources.

COMPREHENSIVE PLAN AMENDMENT

11. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.

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12. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of one parcel of land and the proposal can therefore be considered under the quasi-judicial amendment process.
13. The proposal must be consistent with applicable policies for Rural Residential developed contained in the comprehensive plan. These policies include:
 8. *Since there is a limited amount of area designated Rural Residential efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than 2 acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10 acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.*
 9. *When approving rural subdivisions and partitioning's each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel.*
 10. *All residential uses in rural areas shall have water supply and distribution systems and sewage disposal systems which meet prescribed standards for health and sanitation.*
14. For compliance with Marion County Comprehensive Plan Goals and Policies, the findings made by Marion County in Ordinance 1215 (2005): These findings are as follows:
 1. *The proposed rezone area is consistent with Rural Residential Policy 7 because it is committed to residential use and not to resource uses. A positive finding can be made that land available for rural residential use, is indeed (sic), and committed to residential use.*
 2. *The proposed rezone area is further consistent with Rural Residential Policy 7 because it is close to major employment centers including Woodburn, Salem, Wilsonville and Portland.*
 3. *The proposed rezone is consistent with Rural Residential Policy 8, which requires efficient use of areas that are already committed to rural residential use.*

4. *The proposed rezone area conforms to the recent state minimum parcel size of two acres because all of the parcels in the exception area, though more than two acres, are pre-existing lots of record. [Note the parcels that would be allowed here will be 2 and 3 acres in size, larger than the required 2 acre minimum.]*
5. *The proposed rezone is consistent with Rural Residential Policy 9 inasmuch as there is adequate domestic water and sewage disposal capability.*
6. *The proposed rezone conforms to Rural Residential Policy 10, which prescribes standards for health and sanitation. All existing lots already have approved septic systems on the property.*
7. *The proposed rezone conforms to Rural Residential Policy 14. The subject site is more than one mile of the Silverton Urban Growth Boundary. No land division is requested or is possible, and no redevelopment plan is needed.*
8. *This proposal conforms to Rural Residential Policy 16 since the zoning designation will become AR-10. All of the lots within the rezone area are below the lot size standard for the zone, and are pre-existing lots of record. [This finding is no longer applicable since this application seeks to justify the change in zone from AR-10 to AR in order to allow the division of a 5 acre parcel in the future, while still maintaining the minimum 2 acre parcel size required for rural residential homes.]*
9. *Based on the evidence and testimony the Board finds that it is appropriate to condition this approval to further mitigate the potential for conflicts with farm uses in the area by requiring all the property owners to sign and record a declaratory statement advising current and future owners of these properties that there are farm uses in the area. In addition, the Board finds that it is also appropriate to ensure that all of the subject properties have adequate and safe driveway access to a public road. The evidence indicates that two properties need to obtain driveway permits from the Marion County Public Works Department. These issues can be made conditions of approval. [The applicant has already filed a declaratory statement for the subject property when his existing home was constructed, and that would continue to apply to both parcels after the land division, since the declaratory statement runs with the land. In addition, the subject property also has an approved and fully functional safe access point onto Abiqua Road, which both the existing and any new future parcel would use.]*
10. *The proposed AR-10 zone will be consistent with the new Rural comprehensive plan designation. All applicable MCCP policies have been addressed and satisfied by this request. [The proposed AR zone is also consistent with the rural residential plan designation.]*
11. *The proposed zone change will not alter the pattern of development in the area. The pattern of development was established years ago, and this request will be in conformance with the surrounding rural residential parcels.*

12. *The subject property is located along Abiqua Road NE and all utilities are located along Abiqua Road NE. There are adequate public facilities; services and transportation networks in place which currently serve the subject property.*

13. *The subject property is best suited for the proposed zone change. There are very few parcels or areas zoned AR in Marion County that are not already fully parcelized and developed with residential homes. The subject parcel is unique in that it is fully serviced, has all necessary infrastructure and public facilities in place to serve the property. The property has septic systems on each parcel. The property has good access and frontage on a county road. The property is not located in a flood plain or area of environmental significance.*

The findings set forth above from Ordinance 1426 are support the Application but are not repeated herein.

15. The Applicant addressed the criteria in the comprehensive plan and the proposal appears consistent with the Rural Residential policies in the Marion County Comprehensive Plan. This is an efficient use of acreage residential land as it meets the minimum lot size and zone code for the zone and it has been shown that this parcel can support a septic, well and access point. The proposal meets the comprehensive plan criteria.

ZONE CHANGE CRITERIA

16. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:

- A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
- B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
- C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
- D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
- E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

17. The Applicant addresses the zone change criteria and the proposal is consistent with the density and pattern of development on nearby land zoned Acreage Residential. The zone is appropriate as this area is largely rural residential with similar lot sizes. This zone change would be appropriate for the area as it matches the pattern of development around it. There is no need for public utilities at the site but the site can contains all the necessary infrastructure that would be needed for a new dwelling, the site is also served by Mt. Angel Fire District and the Marion County Sheriff. The Applicant makes findings that rural residential land in the County is in great demand and there are not many parcels of this size available. Applicant makes findings that it is more practicable to locate a homesite here rather than farm the land and that in the study area, there are not parcels suitable for a partition to create a new homesite. The proposed use is not more intense than uses allowed in the current zone or by the EFU zone and meets the zone change criteria.

VII. Recommendation

As determined by Marion County in Ordinances 1215 and 1426, the surrounding land uses and density create a pattern of development that support small parcel rural residential homesites.

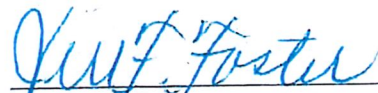
It is hereby found that the Applicant have met the burden of proving that the criteria for a comprehensive plan amendment and zone change. The hearings officer recommends the comprehensive plan designation change, exception to Goal 14 and the zone change from AR-10 to A-2 be approved, and recommends that the following condition be applied:

Prior to issuance of building permits on the resulting parcel, any future development shall be subject to the AR-2 zone code, the Sensitive Groundwater Overlay Zone requirements, building department requirements, other agency requirements from Marion County Public Works and all applicable codes and laws.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon this 11 day of August, 2022.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Jason Feusner
16207 Abiqua Road NE
Silverton, OR 97381

Wallace W. Lien
1004 Crescent Drive NW
Salem, OR 97304

Agencies Notified:

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Friends of Marion County

(Via email: rkaye2@gmail.com)

Assessor

(Via email: Assessor@co.marion.or.us)

Surveyors' office

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Fire district Silverton

(Via email: billmiles@silvertonfire.com)

School district Silver Falls

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Building Inspection Septic

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(Via email: angela.curnahan@state.or.us)

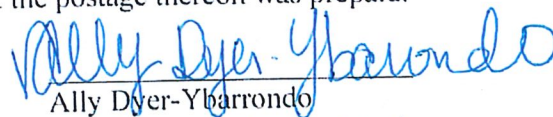
(Via email: pwingard@dled.state.or.us)

Water District Pudding River

(Via email: anna@puddingriverwatershed.org)

(Via email: cleanpuddingriver@gmail.com)

By mailing to them copies thereof, I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 11 day of August, 2022 and that the postage thereon was prepaid.



Ally Dyer-Ybarondo
Administrative Assistant to the
Hearings Officer