



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date:	August 10, 2022		
Department:	Public Works	Agenda Planning Date:	July 28, 2022
		Time required:	None
<input type="checkbox"/> Audio/Visual aids	None		
Contact:	Lindsey King	Phone:	503-566-4162
Department Head Signature:	<i>for Brandon Reich</i>		

TITLE

Schedule final consideration to adopt an administrative ordinance granting Comprehensive Plan/Zone Change (CP/ZC) Case 21-005/Enchanted Ridge Property Owners Association

Issue, Description & Background

The Marion County Hearings Officer held a duly noticed public hearing and on October 29, 2021, the Hearings Officer issued a report recommending the Board approve the request. The Board held a duly noticed public hearing on the application on January 12, 2021, considered all the evidence in the record, and approved the request. The Board's decision was then appealed to the State, which after consideration was remanded back to the County. The case was remanded back to the Hearings Officer on March 10, 2022, who recommended approval. The Board held an additional public hearing on June 8, 2022 and approved the request.

The ordinance and findings have been prepared and the matter needs to be scheduled for final consideration and adoption.

Financial Impacts:

None

Impacts to Department & External Agencies

None

Options for Consideration:

1. Schedule adoption of the ordinance at the next board session, August 24, 2022.
2. Direct staff to prepare a modified ordinance.
3. Choose not to proceed with adopting an ordinance at this time.

Recommendation:

Staff recommends the board schedule final consideration and adoption of the attached ordinance at the next regular session on August 24, 2022.

List of attachments:

Ordinance

Presenter:

Lindsey King

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

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the application of:)	Case No. ZC/CP21-005
Enchanted Ridge Property Owners Association)	
)	Clerk's File No.

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Enchanted Ridge Property Owners Association to change the Comprehensive Plan designation from Primary Agriculture to Rural Residential, with an Exceptions to Goal 3 (Agricultural Lands) and 14 (Urbanization), and to change the zone from Exclusive Farm Use (EFU) to Acreage Residential (AR-2) on 8 acres of an 85.60 acre parcel on property located in the 2700 block of Enchanted View Lane, SE Salem (Township 8 South; Range 3 West; Section 36; Tax Lot 400)

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on July 29, 2021. On October 29, 2021, the Hearings Officer issued a report recommending the Board approve the request. The Board held a duly noticed public hearing on the application on January 12, 2022, and remanded back to the Hearings Officer for further consideration. On March 10, 2022, the Hearings Officer held a duly noticed public hearing on this application and on May 26, 2022, issued a recommendation of approval. On June 8, 2022, the Board held a duly noticed public hearing and considered the Planning Division file, the Hearings Officer's recommendations, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Facts and Findings contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Primary Agriculture to Rural Residential is hereby **GRANTED**. The requested zone change from EFU (Exclusive Farm Use) zone to AR (Acreage Residential) zone is hereby **GRANTED**.

The property rezoned by this Ordinance is described in Exhibit B, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____, 2022, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

FINDINGS AND CONCLUSIONS

Case No. CP/ZC/P 21-005

EXECUTIVE SUMMARY

The Applicant requests a Zone Change from EFU (Exclusive Farm Use) to AR-2 (Acreage Residential - 2-acre minimum) and to change the Comprehensive Plan Designation from Agriculture to Residential with exceptions to Goal 3 (Agricultural Lands) and 14 (Urbanization) on 8 acres of an 85.60-acre parcel on property located in the 2700 block of Enchanted View Lane, SE Salem (the "Property").

The Applicant has satisfied the relevant approval criteria, including the requirements for an irrevocably committed exception to Goals 3 and 14, a comprehensive plan amendment, a zone change, and the Board approves the Application. The Applicant has provided substantial evidence to find that uses allowed by Goal 3 on the 8-acre Exception Area, are impracticable, and that adjacent lands/uses have irrevocably committed the Exception Area to uses not allowed by Goal 3.

I. FINDINGS OF FACT

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

1. The Application is presented on behalf of Enchanted Ridge Property Owner's Association to change the zone from EFU (Exclusive Farm use) to AR-2 (Acreage Residential- 2 Acre Minimum) on 8 acres of an 85.60-acre parcel with exceptions to Goal 3 (Agricultural Land) and Goal 14 (Urbanization) on property located in the 2700 block of Enchanted View Lane SE, Salem (Township 8 South; Range 3 West; Section 36; tax lot 400).
2. The Property is located 600 feet east of Enchanted Way SE south of Delaney Road SE, and west of Parrish Gap Rd SE. The Property is unimproved and has Enchanted View Lane SE going from the west end of the parcel to the east where Enchanted View Way meets with Valley Way SE. The Property is currently being farmed and is specially assessed on 77.47 acres for agriculture by the Marion County Tax Assessor's Office. The remaining 8.13 acres have been disqualified from special assessment. Soils on the subject parcel are mapped by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) as Jory (JoC), McAlpin (MaA), Nekia (NeF), and Silverton (SuC) Class II and III silt loam soils that are defined as high value for agriculture. Approximately 2% of the soils are Class VI Silverton (SuC), which is defined as non-high value.
3. The Property is located within a Sensitive Groundwater Overlay zone. The Property was created in 2009 by Partition Plat 2009-043 and is a legal parcel for land use purposes.
4. Surrounding properties to the north, west and south are zoned AR (Acreage Residential) and are composed of small sized lots in rural residential use. Property to the east is zoned EFU and is in farm production, a portion of the easterly lots are zoned AR and developed with rural residential lots and homes.
5. Initially, the Applicant stated that the "ultimate goal" of the proposal is to create four new 2.0-

acre 'home site' parcels, leaving the remaining 77.60 acres vacant for farm use (the "**Farm Parcel**").

6. After the Application was initially submitted, the Applicant revised its' development plan, reducing the proposed homesites from the initial four (4) residential parcels to a proposed three (3) rural residential parcels (measuring approximately 2.80 acres, 2.36 acres, and 2.13 acres in size) (the "**Homesites**"), and increasing the size of the remnant Farm Parcel to approximately 78.31 acres.
7. Applicant modified its request to reflect this change. Applicant is now requesting the application of two (2) independent Goal 3 Exception Areas (the "**Exception Areas**"). The first would be applied to the three (3) proposed homesites to facilitate the development of parcels that are too constrained to be practicably farmed. The second would be applied to the Farm Parcel to allow Applicant to consolidate the farmable area in a sub-80-acre parcel (78.31 acres, representing an acreage reduction below the minimum 80 acres by 1.69 acres). Applicant is also requesting a zone change and corresponding comprehensive plan amendment for only the Homesites. The Farm Parcel will continue to be zoned EFU and designated for agricultural use, while the Homesites will be zoned AR and designated for residential use.
8. Marion County Public Works Land Development and Engineering Permits (LDEP) added the following advisories to be included in the land use case:

ENGINEERING ADVISORIES

A. PW Engineering has no action items for the proposed Zone Change itself.

B. The following items are noted for future reference:

- *Enchanted View Lane is a private easement not maintained by Marion County. Recording of a Road Maintenance Agreement will be required in conjunction with platting.*
- *ODOT has jurisdiction over Enchanted Way with regards to the access connection with Enchanted View Lane, and utility work therein.*
- *Transportation System Development Charges will be assessed at the time of Application for Building Permits*

Prior to the board's hearing DLCD responded with letters addressing the Application. All other agencies contacted either failed to respond or stated no objection to the proposal. DLCD wrote two letters, one concerning the alternative Reasons exception, which the Applicant has since dropped and is not pursuing. The other letter related to the irrevocably committed exception, which the Applicant, and these findings, address below.

9. Don Lulay is the President of the Enchanted Ridge Property Owners' Association. Mr. Lulay and his wife live in the neighborhood. Mr. Lulay testified regarding the uniqueness of the Property. Mr. Lulay addressed that the original landowner, Mr. Updegrave, wanted twenty three (23) two-to-five-acre parcels to maintain the "farm character" of the Property. Mr. Lulay testified that the development of the three (3) residential parcels would allow the neighborhood to have the financial viability to protect the Farm Parcel from development. Mr. Lulay also

testified regarding prior farming of the residential parcels by the Doerfler family, and their lack of desire to continue farming the proposed residential parcels. Mr. Lulay testified that farmers are willing to farm the larger 78-acre Farm Parcel, but it is not cost effective to farm the proposed smaller residential parcels because of the difficulty in accessing and farming the proposed smaller parcels.

10. Michael Carrick testified in favor of the application as a homeowner in the neighborhood. Mr. Carrick testified that he is strongly in favor of approval to prevent the farmland from being developed from individuals and entities outside of the Enchanted Ridge Property Owners' Association. Mr. Carrick also testified that the smallest proposed residential lot has a large sequoia tree that prevents farming.
11. Bonnie Kelly testified as a homeowner in the neighborhood. Ms. Kelly testified that she always wondered why the proposed residential parcels at issue in this Application, which she referred to as the "gap pieces," were not developed because they look like they should be residential parcels. Ms. Kelly does not believe that the proposed residential parcels can produce significant crops because of the trees on the property. Ms. Kelly supports that the Farm Parcel, which she referred to as the "heartland," be kept in agricultural production.
12. Eugene Webb testified in favor of the Application. Mr. Webb owns Lot 7, which is next to one of the "gap" properties at issue in this Application. Mr. Webb raised concerns about the use of chemicals for farming. Mr. Webb stated that there is a risk to children and pets in the area from the use of agricultural chemicals if the lot was to be farmed.
13. Teresa Lulay testified to reiterate what had been stated. Ms. Lulay stated that allowing the two gap properties to be residential lots is a "win-win." The visual aspect of the empty lots that cannot be farmed in a similar manner to the Farm Parcel is inconsistent with the homes in the neighborhood.
14. Brian Crist initially indicated his intention to oppose the Application. However, when it was learned that the small parcel was no longer the subject of the Application, Mr. Crist offered general comments rather than comments in opposition. Mr. Crist addressed that his main concern is water availability, and that the dust and dirt concerns of the neighborhood should not be considered as such consequences are the natural result of farming. Mr. Crist was positive of the proposal to include only three residential parcels, as opposed to four, because he has concerns about the impact of potential residences on water and impact to other wells.
15. Dale Abraham testified in opposition to the Application to express his concerns about future development. Mr. Abraham lives north of the neighborhood and is concerned about development of the area, including the impact on the water supply as a result of additional development to the school that is located in the area. Mr. Abraham is concerned about future changes to the zoning as a threat to the water supply.

II. ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant has the burden of proving all applicable standards and criteria are met.
2. Land use applications of this nature must be consistent with the Goals. In this specific case, the subject Property is covered by Goal 3 (Agriculture Land). There is a mechanism, however, for

not applying the Goal to areas with certain characteristics. This mechanism is the goal exception process that requires specific findings justifying why such lands are not available for resource use. There are three types of exceptions to the Goals that may be granted. The first two are based on the concept that the subject Property is "physically developed" or "irrevocably committed" to a certain use. The third is a "reasons" exception where there is a demonstrated need for the proposed use or activity. The Applicant indicated that the proposal qualifies for an irrevocably committed exception to Goal 3 and Goal 14.

3. 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 were 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.

Goal 3 Exception

4. The Property is undeveloped and is currently partially assessed for farm use special assessment. The portions of the Property which comprise the Farm Parcel are currently in agricultural production. The Applicant is requesting a rezoning of the proposed Homesites on the grounds that the location and configuration of the Homesites, along with surrounding rural residential development on small sized lots, have irrevocably committed the Homesites to uses not allowed under Goal 3.
5. A determination that the Property is irrevocably committed requires an analysis of the relationship between the proposed exception area and the lands adjacent to it. OAR 660-004-0028(2). A determination that the proposed residential parcels are irrevocably committed depends on the following: (1) the characteristics of the exception area; (2) the characteristics of the adjacent lands; and (3) other relevant factors included in OAR 660-004-0028(6). The factors in OAR 660-004-0028(6) are addressed below.
6. *Characteristics, parcel size, and ownership pattern of the exception areas.*

The Exception Areas are part of the Property (85.60 acre parcel), that was created by Partition Plat 2009-043. The Exception Areas consist of two parts, the rural residential portions adjacent to the current homesites, and the remainder of the property. Both of which are within sub area #5 of the Battle Creek Delaney Road Interchange exception area, which was adopted prior to the adoption of the Marion County Comprehensive Plan. The properties north and south of the proposed Exception Areas were granted an exception at the request of Marion County due to the preliminary approval of a subdivision (Sunnyside Heights) on the 134 acres, in 1973; the property owner (Updegrave) subsequently agreed to reduce the number of lots in the development, and the corresponding exception area down to 44 acres in 1980. Mr. Updegrave chose to keep the 'gap' (Exception Area) open east of Valley View Way SE as a cut through from his adjoining farm to the east off of Parrish Gap Road SE, rather than having to drive his farm equipment north on Parrish Gap Rd, then west on Delaney Road, and east on Enchanted Way SE to the Property.

The Exception Areas are designated as "Agricultural" under the Marion County Comprehensive Plan and Zoned "EFU." They are outside of both the City of Salem and the City of Turner UGBs and are outside of any city limits. There are no wetlands or flood plains on the Exception Areas. However, that portion of the Homesites lying east of Valley Way SE, is mapped with a landslide hazard zone, and is therefore subject to Marion County's "Geological Hazardous Areas Overlay Zone." The Homesites are also located within a "Sensitive Groundwater Overlay Zone," and contains steep slopes that are not safe to farm. The Homesites are irregularly shaped and separated from the larger Farm Parcel by Enchanted View Lane SE, Valley Way SE, and Enchanted Ridge Court SE. In addition to the roads, the Homesites have Portland General Electric, Northwest Natural Gas, Wave Broadband, and Century Link phone line utilities installed underground along the front portions of the

Homesites. Soils in the Exception Areas are designated as High Value Soils. More specifically, the map areas identified for the Homesites, north of the Carricks (TL 700, T8S, R3W; Sec 36B) and east of Valley Way SE are designated as Jory (JoC) Class II, Nekia (NeC) and (NeD) Class III. While the soils are designated as high-value, Cole Sandlin, the tenant farmer, has identified that due to the Jory soil conditions, farming the Homesites east of Valley Way SE would cause mud slides to the East due to the softness and instability of the soils and steep slopes in this portion of the Property. The proposed parcel sizes for the Homesites are approximately 2.80 acres, 2.36 acres, and 2.13 acres in size.

Finally, the Exception Areas are currently held in common ownership by the Western Oregon Conference Association of Seventh Day Adventists as Trustee of the Maymie Irene Updegrave Trust U/T/D 02/12/92.

7. Characteristics, existing uses, parcel size, and ownership patterns of adjacent lands; neighborhood and regional characteristics.

The areas directly adjacent to the Homesites are also within sub area #5 of the Battle Creek Delaney Road Interchange exception area. The adjacent properties, within the "Enchanted Ridge" neighborhood, were granted an exception at the request of Marion County due to the preliminary approval of a subdivision (Sunnyside Heights) on the 134 acres, in 1973; the property owner (Updegrave) subsequently agreed to reduce the number of lots in the development, and the corresponding exception area down to 44 acres in 1980.

The adjacent lands are heavily developed with both residential and commercial uses. To the north, the previously approved exception area within the "Enchanted Ridge" neighborhood has been fully developed with residential sites that are between one (1) and three (3) acres in size. Outside of the Enchanted Ridge neighborhood, lands immediately adjacent to the north are smaller residential properties that average less than an acre in size and are similarly developed with residential homes accessing off of Maranatha Ct. SE, Bear Creek Lane SE, and Lavender Lane SE. All of these homes eventually connect to Enchanted Way SE and to Delaney Road at the Delaney Road I - 5 Interchange. To the west are lands that are zoned AR and developed with residential uses. Further west lies Interstate 5.

To the south and further west are lands developed for commercial uses including mini storage units, a tiny home development with more than 90 individual developed parcels, and Enchanted Forest, a theme park that draws significant crowds during the summer months. Further south along Enchanted Way SE is Willamette Valley Vineyards, which similarly draws regional traffic to its tasting room as well as events that take place on their property. To the northwest of the Property is a private school and a Buddhist temple, both of which serve large groups throughout the region. These uses draw extensive traffic to the area by virtue of regionality of many of the surrounding uses as well as the extensive residential development in the area.

To the east are lands devoted to commercial farm uses and consist of larger parcels abutting Parrish Gap Road SE. These lands are physically separated from the Exception Areas by steep slopes, that cannot be safely farmed. The elevation difference between the Exception Areas (520') and the EFU zoned parcels along Parrish Gap Road (330') is approximately 190'.

Applicant has completed an evaluation and inventory (Exhibit 104) of all parcels within a study area comprising those lands east of I - 5, south of Delaney Road SE, west of Parrish Gap Road SE, and north of Cloverdale Dr. SE. This area comprises 1,021.3 acres. The study area includes

a total of 131 tax lots, which are broken down further into rural residential parcels (90), commercial parcels (17), farm parcels (14), and timber parcels (10).

There are four distinct neighborhoods within the region that are framed by arterial roads, topography, creeks, and different zones – the Enchanted Ridge/Enchanted Way/Maranatha Court SE neighborhood where the Property lies; the “Parrish Gap” neighborhood (east); the Enchanted Forest/MHC Hope Valley, LLC neighborhood (south); and the Cloverdale neighborhood (further south).

The Enchanted Ridge/Enchanted Way/Maranatha Court SE Neighborhood: The Property is located at the top (600’ elevation) of a small ridge that runs parallel to I-5 and Parrish Gap Road SE and is framed in by Delaney Road SE to the north and Rogers Creek to the south. More particularly, the slopes fall off significantly to the east from the exception areas (520’) down to Parrish Gap Road SE (330’) and the farm parcels located to the east. The ridge is undulating north to Maranatha Court SE., then falls off steeply downhill to the north to Delaney Road SE; the ridge also falls off steeply to the south from the Enchanted Ridge neighborhood (600’) down to the Commercially zoned property and Tiny Home village of MHC Hope Valley, LLC, (400’) along Rogers Creek. The slopes then rise uphill to the south to an elevation of 800’ at Willamette Valley Vineyards and then drops in elevation, again, down to Cloverdale Road SE at 540’.

Within the Enchanted Ridge/Enchanted Way/Maranatha Court SE neighborhood there are 63 residential parcels zoned AR; one EFU zoned farm parcel; a portion of land identified as Interchange District; and 13 commercial zoned parcels linked to both Enchanted Forest and to Hope Valley Resort, located off of Enchanted Way SE. The AR, C and ID properties are all exception properties. Except for two RA zoned parcels that are owned by the same owner Carleton, all other AR zoned properties are owned by different owners; in addition, there are 13 Commercial properties which are all owned by MHC Hope Valley, LLC, the owner of Hope Valley Resort, as identified in Exhibit 104.

The Parrish Gap Neighborhood: These properties consist of larger SA and EFU zoned properties that abut Parrish Gap Road to the east of the Property. These farm parcels are on the valley floor at an elevation of approximately 300’ +/- and consist of a mix of farm uses.

The Enchanted Forest/MHC Hope Valley, LLC Neighborhood: These properties include 5 commercial properties – associated with Enchanted Forest and the Hope Valley Resort; 5 AR zoned properties that access onto Hanneman Lane SE, then onto Enchanted Way SE; and 8 SA zoned properties that also access onto Hanneman Lane SE, then onto Enchanted Way SE. These properties are located south of Rogers Creek and on the northern slopes (opposite of the Enchanted Ridge neighborhood) of the next hill/ridgeline that compromises the Cloverdale neighborhood.

The Cloverdale Neighborhood: This area compromises the rest of the study area. This includes the land at the top of the hill (Willamette Valley Vineyards & Winery) and those SA, FT, and AR zoned parcels to the south and east towards Cloverdale Road.

8. *Relationship between the exception area and the lands adjacent to it.*

The presence of the roads and utility lines that run through the Homesites, and the existing adjacent residential parcels, have severely isolated and parcelized the Homesites in a manner

that was not adequately addressed by the application of the initial goal exception. Applicant provided both maps and tables in Exhibit 104 depicting the Property as well as the surrounding area, covering a significant portion of the region while also providing detail regarding the adjacent properties. These materials show that since the application of the original Goal 3 exception in this area, the Homesites have become increasingly isolated by the adjacent development. Additionally, Applicant provided ownership information that shows that while initially the Homesites, east of Valley Way SE, and the adjacent property had been held under common ownership, the adjacent farm parcel along Parrish Gap Road has been sold several times over the intervening years and there is no longer a continuity of ownership between the two farm properties. This lack of connection represents a further change in the relationship between the Homesites, the Farm Parcel, and the surrounding areas to the east, further isolating the Homesites. As such, the relationship between the Homesites and the surrounding properties has resulted in a configuration by which resource use on the Homesites is constrained in a way that was not intended and which has rendered resource use on the Homesites impracticable.

9. Existing public facilities and services.

There are utility facilities and services in the area, including, Portland General Electric, Northwest Natural Gas, Wave Broadband, and Century Link that provide all the necessary services to the Homesites. Water is provided by domestic wells and sanitation is provided by septic systems.

10. Natural or man-made features.

The steep slopes on the eastern portion of the Homesites separate the Homesites from the resource lands to the east. The paved roads, underground power, natural gas, broadband, and telephone lines all provide manmade features that physically separate the Homesites from the Farm Parcel to the west.

11. Physical Development according to OAR 660-004-0025.

Applicant is not claiming a physically developed exception under OAR 660-004-0025; however, the Property is currently developed with paved roads, and underground power, natural gas, cable, broadband, and telephone service.

12. Other relevant factors.

Other relevant factors include the unique location of the Homesites within the Enchanted Ridge development. This is a unique property in that a larger subdivision development was approved in 1972 which drove the exception taken to the statewide goals in 1980.

13. Applicant established in the Application that the adjacent properties were previously designated for acreage residential parcels. As part of that historical Goal 3 exceptions determination, additional setbacks were applied to ensure adequate buffering for the exception lands, including the residential parcels now within the Enchanted Ridge Property Owner's Association. However, these buffers have proven to be largely ineffective due to the configuration of the roadways through the portions of the Property that were built in order to provide access to the surrounding residential parcels as well as the utility lines that run along these roadways. The constraints these infrastructure improvements have on the proposed residential parcels severely constrain access to these parcels in a way that was not anticipated

at the time the original exception area was applied, making farming on the areas isolated by these improvements impracticable for agricultural use.

The Applicant makes an argument for the inability of the Homesites to be commercially farmed due to the location of the Homesites and because the Homesites are surrounded by non-farm uses. As of the date of the hearing, the area being retained as the Farm Parcel was being farmed for grass seed, and it has been in agricultural production since that time. The Homesites are “managed” by the tenant farmer but cannot be farmed. Testimony provided by the Applicant from the individual farming the Farm Parcel as well as from previous farm tenants discuss the impracticability of farming the proposed Homesites, identifying the constraints created by the infrastructure needed to support the uses on the adjacent lands as well as the geological constraints that make connection to the neighboring agricultural lands impassable. This testimony established that the Property has not been farmed as one 85.60-acre parcel since the development of the surrounding residential sites due to the limitations in accessibility that the adjacent uses have created. The testimony and maps of the area support a determination that there are smaller parcels that cannot be practicably farmed while providing a path to retain and farm the significantly larger 78-acre parcel, in line with the purpose and intent of Goal 3.

Webster’s Dictionary¹ defines Impracticable as: not practicable; incapable of being performed or accomplished by the means employed or at command. Better clarity is found in the synonyms = unworkable, unfeasible, not worth considering. While the Homesites qualify as Ag Land by definition, just like they did in 1980, they are unworkable, unfeasible and not worth considering, which is supported by the letters from Doerfler Farms, and by Cole Sandlin, the past and current farmers.

Doerfler Farms used to lease the Property from the Updegrave Trust and they farmed it for years, in fact Kevin, Kent and Amy Doerfler the former owners of Doerfler Farms, bought the adjoining 72 ac. parcel to the east, from the Updegrave Trust (under K2A Properties, LLC), however, as more homes became established within Enchanted Ridge neighborhood, it became impracticable to farm the Property inside of the developed roads and Doerfler Farms gave up farming the entire Property as being unworkable. There are paved roads, there are buried public utilities along the roads serving the platted lots and the Exception Areas. There are 19 – and soon to be 20 rural residential homes that access the paved roads. There are steep slopes separating the Homesites on the east from the Doerfler farmed properties on the valley floor along Parrish Gap Road. The Exception Area for the rural residential lots are not practicable to farm and therefore qualify as irrevocably committed. The Exception Area for the farm parcel is practicable to farm and will remain as such.

14. DLCD commented that the Property is part of one of the largest continuous swaths of agricultural land in the area, however, this is incorrect. The Applicant provided testimony and Marion County’s own geological hazard maps establish that the geological configurations of the proposed Exception Area in the “gap parcel” result in a natural break between the portion of the Property which is usable as agricultural lands and the adjacent agricultural land to the east, which is owned by K2A Properties, LLC. Applicant established through testimony from the adjacent property owner, who had for a time attempted to farm the Property, that farming the Homesites is impracticable for the types of agricultural uses that are commercially viable on the Property. Commercial viability (gross profitability) of resource use on a given property

¹ “Dictionary.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/dictionary>. Accessed 9 Mar. 2022.

alone is not sufficient for a determination that a given property is irrevocably committed, but it is a factor that weighs towards a determination that the proposed residential parcels are irrevocably committed to non-resource use. This is in line with the definition of "farm use" in 215.203(a) which specifically references the use of land for "the primary purpose of obtaining a profit." Gross profit is revenue minus the cost of providing the goods or services sold. Cole Sandlin, the tenant farmer in his letter to Marion County has identified that the costs of providing the goods grown and harvested off of the Homesites well exceeds his revenue received from this portion of the Property. As such, Applicant has demonstrated that the ability to use the Homesites for the purpose of making a profit when employed for farm use, is not only limited by the constraints placed on these isolated portions of the Property but exceeds his revenue.

15. DLCD additionally remarked on Oregon's "right to farm" laws, which are codified in ORS 30.930. Applicant does not dispute DLCD's statement regarding the legal right of farmers to carry out farm and forest practices on the Property. Rather, the Applicant pointed to evidence in the record submitted by the tenant farmer that the proximity of residential properties to the Homesites make farming impracticable due to the chilling effect this proximity has on the tenant farmer's perceived ability to use commercially reasonable implements on these properties. This statement gives further weight to the determination that the Homesites are "irrevocably committed" due to do the determination that these portions of the Property are uniquely pinned in by the configuration of the neighboring residential properties permitted under the historical exception applied to the surrounding properties. These statements focus on one of many factors that support the determination that farming these isolated tracts is not practicable, not on the legality of farming or forest uses on these portions of the Property which is not at question here.
16. If the portion of Property is approved for a zone change to Acreage Residential, the remnant Farm Parcel can be preserved even though it will not be contiguous to resource property. The Farm Parcel could still be farmed, but with co-existing residential uses. The area was previously granted an exception to Goal 3 based on a 1973 Subdivision that was approved (Exhibit 105). In the findings, Marion County notes that the subject EFU parcel was left as one farm parcel as it was the best grazing land and allowing the entire area to be changed to Residential use would "destroy the rural character of the area." Approval of this Exception Area was based around clustering the houses to the north, south, and west to decrease conflicts with surrounding farmland as well as the continuity of ownership between the Property and the resource property to the east. However, this finding failed to note the excessive slopes that run adjacent to the property line that divides the Property from K2A Properties, LLC's parcel and the constraints these topographical features would place on moving farm equipment between the Enchanted Ridge area (west) and the valley floor to the east.

As outlined above, the topography of the Property acts as an additional restriction on the Property and Homesites that was not previously considered when the original goal exception was applied. The Property itself slopes into the center from both the southeast and the southwest, creating a valley sloped down to the northwest of the Property. This isolates the Property from the adjacent EFU and commercial lands, creating a bowl rimmed with existing residential uses, with significant elevation changes from the top of the ridge down to the center of the valley. This has resulted in Marion County mapping an excessive slide overlay on the eastern rim of the Property, adjacent to the neighboring EFU property, which effectively cuts that neighboring EFU property off from the subject Property and rendering it impossible to

farm that area with the large-scale heavy machinery used in modern farming operations. When tenant farmers were accessing the Property, they were required to travel along public and private roadways to access the Property, leave that road system, cross private property outside of the Enchanted Ridge subdivision, then enter back into the Property, using the existing residential access which is a system of private roads that further limit the ability to farm the balance of the Property.

As the residential area around the Property developed under the previously applied goal exception, there has been an increase in residential traffic, including an increased level of vehicular, bike, and pedestrian traffic which has increasingly limited the hours of farm operation due to the noise, dust, and inability to maneuver large farm equipment around residential traffic and over the maze of roads that bisects the Property. These limitations have rendered the resource use impracticable, making the barriers to farming the Homesites unsustainable.

Applicant has provided a letter from the neighboring farm property owner (Doerfler Farms) to the east, off of Parrish Gap Road, outlining how the entire Property is so restricted as to make farming of the Property impracticable. If Doerfler Farms finds that the Property is too impracticable to farm and walked away from farming it, this makes the Homesites even more impracticable as has been noted above.

This application of the goal exception process is consistent with the type of analysis that is required for determining whether farm use on a property has been rendered "impracticable." While cost alone is not dispositive to determine whether land zoned for exclusive farm use is "impracticable" as statutorily defined, a local jurisdiction is not precluded in evaluating whether "the current employment of the land for the primary purpose of obtaining a profit in money by engaging in specified farm or agricultural activities" is rendered impracticable by virtue of the level of costs or expenses required. *Wetherell v. Douglas Cty.*, 342 Or. 666, 160 P.3d 614 (2007). However, in this instance it is a factor weighing in favor of a determination that the Homesites are irrevocably committed by the adjacent development.

The Farm Parcel itself is not as steeply sloped as the surrounding area and the impact of the adjacent residential development is somewhat minimized by the location of the utilities and roads along only the developed portions of the perimeter, committing a smaller proportion of the Property to irrevocable development. The Farm Parcel will still be accessed via the private road on the north, but crossings across Enchanted Ridge Court SE and Valley View Way SE will be eliminated and more of the work will be confined in a specified, usable area. Rather than allowing for a cascading effect, permitting unrestricted residential development in the area, reconstructing the Property in this way attempts to constrain the proposed residential development to those parcels that are already constricted by the existing residential uses while maintaining the land that may be feasibly employed for agricultural production, although at a reduced parcel size, requiring the application of a Goal 3 exception.

The Applicant proposed to place a restrictive covenant on the Farm Parcel as a condition of approval for this Application in order to prevent concern by DLCD and others that this proposed change would result in a cascading effect on the Farm Parcel rendering it impracticable to farm. Staff has considered the restrictive covenant and does not agree with adding it as a condition of approval. Staff finds that the restrictive covenant would not be consistent with Marion County's land use program. Meaning, if Marion County desired to initiate a county wide legislative process to change certain SA or EFU zoned properties to AR,

it would practically affect the Property in a negative manner in the future. Rather, Staff finds that the exceptions process and public comment/participation will act as a sufficient barrier to prohibit further parcelization of the Farm Parcel, unless Marion County includes this property in a future legislative process to add more acreage residential property to Marion County's inventory.

17. Staff initially found that the proposal does not meet the criteria for an irrevocably committed exception in OAR 660-004-0028, and if the Property were to be considered as one parcel, such a finding is accurate. However, the Property does not need to be considered as a whole, because the Homesites and the Farm Parcel are distinguishable, the relationship between the Farm Parcel and the adjacent lands and the Homesites and the adjacent lands is different. When looking at the Farm Parcel, the consolidation of acreage and the buffering used as justification in the original exception narrative remains true. The record supports a determination the Farm Parcel remains large enough that the buffering from the adjacent residential parcels and the associated infrastructure is adequate to allow for continued resource use. There is adequate maneuvering space for large equipment, the slopes within the Farm Parcel are manageable, and the lack of utilities and roadways allow for a variety of resource uses. Although the Farm Parcel should continue in agricultural production, the Homesites are irrevocably committed to residential use because the relationship of these portions of the Property is constrained by both the characteristics of the surrounding area and its relationship to the adjacent lands.
18. A determination that the Property is irrevocably committed requires an analysis of the relationship between the proposed exception area and the lands adjacent to it. OAR 660-004-0028(2). Applicant provided evidence into the record showing that the surrounding area is heavily developed with acreage residential and commercial properties with minimal resource uses in the vicinity and with only a single adjacent resource use, the farm use to the east. The remainder of the surrounding properties are developed with various rural residential subdivisions or commercial uses, as shown in Applicant's Exhibit 104. The existing rural residential uses applied to the Property, were permitted via the historical exception committing those areas to rural residential use. This has created a unique context in which there is a substantial amount of urban-rural interface, which is not seen in other areas within Marion County. This unique configuration has created a highly incompatible environment for the use of the Homesites for viable (gross profitable) agricultural production, in a manner that was anticipated in the historical exception for these surrounding properties. In the historic exception narrative, the goal was to allow for a modified development, under which the "best grazing land will be retained, and the density will be reduced to conform better with the rural character of the area." Applicant has provided evidence in the record that demonstrates that the Application is consistent with the original intent and purpose of the application of the historic exception. At the time, the Property was owned in conjunction with the agricultural parcel to the east. However, that parcel has subsequently been sold and the lack of contiguous ownership has rendered the original facts that lead to the existing configuration of the applied exception areas moot. As a result, the Homesites are no longer in use as a pathway between the two properties. The Homesites have always been impracticable to farm, it has been the lack of using these areas as access points that has led to the realization that the Homesites are impracticable to farm.
19. DLCD commented in a letter submitted in response to this Application that a lack of commercial viability alone does not render the farm use impracticable to a degree that the Homesites are irrevocably committed to non-resource use. This is true; however, Applicant

relies on commercial viability as one factor among several that support the determination that the Homesites are irrevocably committed. Namely, (1) lack of commercial viability; (2) limited access and maneuvering space due to the adjacent residential parcels; (3) sharp slopes along the ridgeline adjacent to the property lines; (4) constraints stemming from the roadways and the utilities along the roadway that limit the ability to farm this property; and (5) the geological and topographical makeup of these particular parcels makes resource use, from crop farming to forest use, unproductive. Applicant has established when viewed through the totality of the circumstances, the relationship between the adjacent lands and the pattern of development applied via the previous goal exception have rendered the Homesites irrevocably committed.

20. DLCD also commented that this Application was similar to the Pfennig Trust case (CP/ZC/P 19-005) in which LUBA found that Marion County improperly determined that the Pfennig property was irrevocably committed. A close examination of the facts of the Pfennig application against the facts of the Enchanted Ridge (ERPOA) Application is necessary to show that the ERPOA application is noticeably different than Pfennig.

EXAMINATION OF FACTS COMPARISON

Pfennig Trust Case No. CP/ZC/P 19-005

ERPOA Case No. 21-005

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| <ul style="list-style-type: none"> - Pfennig involved a 20.46 ac. SA zoned parcel that the applicant wanted to get an exception to the entire property in order to create two, 2 ac. parcels, and a 16.46 ac. parcel with subsequent partitions to the 16.46 ac. parcel. Pfennig wanted to convert farmland out of the heart of the property for residential use. | <ul style="list-style-type: none"> - ERPOA involves a 85.60 ac. EFU zoned parcel that the applicant is wanting an exception to separate off three parcels, not the whole Property. Further, in ERPOA, the Applicant is not attempting to take any portion of the heart of the farm property, but only the isolated areas that are truly irrevocably committed. |
| <ul style="list-style-type: none"> - The Pfennig property is bordered on the north, northwest, and east by AR zoned properties, but is bordered by SA zoned properties to the south, and west. In Pfennig, there are farm uses occurring west of the Pfennig property on the SA zoned land. | <ul style="list-style-type: none"> - The ERPOA Property is bordered by SA to the east, but surrounded, north, south, east and west by AR and Commercially zoned property. In ERPOA, there are no farm uses adjacent to the property in the neighborhood. |
| <ul style="list-style-type: none"> - Access to the Pfennig property was by a single access road (Whispering Way SE) off of Macleay Road SE that ends at the northern tip of the Pfennig property. There are no other access roads that split up the Pfennig property. | <ul style="list-style-type: none"> - Access to the ERPOA Property is by a single access road (Enchanted View Lane SE) off of Enchanted Way SE, but then splits into three different access roads (Enchanted View Lane, Enchanted Ridge Court, and Valley Way SE). These access roads are paved and cut through the ERPOA Property serving the existing adjoining residential development. |
| <ul style="list-style-type: none"> - Only 4 AR zoned parcels abutted Whispering Way SE. | <ul style="list-style-type: none"> - 30 AR zoned parcels abut the ERPOA Property (off of Enchanted View Lane, |

Enchanted Ridge Court, Valley Way SE, and Maranatha Ct. SE).

- The topography of the Pfennig property is flat and does not affect the ability to farm (topographically) the Pfennig property.
- The topography of the ERPOA Property is not level but has multiple slopes throughout the property that affect the ability to farm the Homesites.
- Pfennig argued that externalities surrounding the property warranted the exception but didn't articulate how the externalities caused the property to be irrevocably committed; nor did they address how the relationship between the exception area and adjoining lands/uses committed the property to uses not allowed by Goal 3.
- ERPOA is not arguing that externalities of the Farm Parcel warrant the exception; rather, it is the location of the Homesites, within the existing Enchanted Ridge Subdivision that was part of the prior (1980) Goal exception, sandwiched between other rural residential lots and homes, the steep topographic features, soil conditions, private utilities that run above and underground through the Homesites that cause the Homesites to be irrevocably committed. ERPOA has addressed the relationship between the Homesites and adjoining lands/uses committing the property to uses not allowed by Goal 3.

The only similarity between the two applications is the request for the irrevocably committed goal exception. Otherwise, the Pfennig Trust application failed to meet its burden of proving the property was irrevocably committed; where the ERPOA Applicant has provided substantial evidence and analysis of showing the Homesites are irrevocably committed to non-resource uses not allowed by Goal 3.

OAR 660-004-0028 is Satisfied

21. Applicant previously provided alternative findings for the Application of a "reasons" exception, established in ORS 197.732(2)(c), however, the Applicant has agreed that a reasons exception is not appropriate under the facts of this case and has withdrawn that request.
22. OAR 660-004-0018. OAR 660-004-0018 covers planning and zoning in exception areas: OAR 660-004-0018(2) applies when local governments take irrevocably committed exceptions under ORS 197.732(2)(6) and OAR 660-004-0028 and OAR 660-014-0030.

Under OAR 660-004-0018(2), plan and zone designations shall limit uses, density, and public facilities and services to those that will maintain the rural lands character of the area; and will not commit nearby lands to non-resource uses; and which will be compatible to the surrounding area.

The rural residential uses proposed here with the 2 acre minimum lot size with the homes using domestic well and septic systems guarantee the land will be maintained as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements.

The rural residential uses allowed here will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028.

The uses proposed here will be a total of no more than 3 parcels with non-resource dwellings, given the shape of the Homesites, the current roads, and current subdivision lots. The density will be just over 2 acres, which is very close to the median size of parcels in the study area. No public facilities or services will be required, as the water will be provided by individual wells, and waste will be disposed of by individual septic systems.

This rule focuses on adjacent or nearby resource lands, that is lands available for agricultural production. All of the lands to the north, west and south are planned, zoned and developed for rural residential and commercial use, and therefore are not available for agricultural production. To the east is EFU, however, the steep slopes on the eastern edge of the Property prohibit the K2A, LLC property (TL 302) immediately adjacent to the Property, to be used for agricultural production.

As noted above, the areas directly adjacent to the Homesites are also within sub area #5 of the Battle Creek Delaney Road Interchange exception area. The adjacent properties, within the "Enchanted Ridge" neighborhood, were granted an exception at the request of Marion County due to the preliminary approval of a subdivision (Sunnyside Heights) on the 134 acres, in 1973; the property owner (Updegrave) subsequently agreed to reduce the number of lots in the development, and the corresponding exception area down to 44 acres in 1980.

The adjacent lands are heavily developed with both residential and commercial uses. To the north, the previously approved exception area within the "Enchanted Ridge" neighborhood has been fully developed with residential sites that are between one (1) and three (3) acres in size. Outside of the Enchanted Ridge neighborhood, lands immediately adjacent to the north are smaller residential properties that average less than an acre in size and are similarly developed with residential homes accessing off of Maranatha Ct. SE, Bear Creek Lane SE, and Lavender Lane SE. All of these homes eventually connect to Enchanted Way SE and to Delaney Road at the Delaney Road I - 5 Interchange. To the west are lands that are zoned AR and developed with residential uses. Further west lies Interstate 5.

To the south and further west are lands developed for commercial uses including mini storage units, a tiny home development with more than 90 individual developed parcels, and Enchanted Forest, a theme park that draws significant crowds during the summer months. Further south along Enchanted Way SE is Willamette Valley Vineyards, which similarly draws regional traffic to its tasting room as well as events that take place on their property. To the northwest of the Property is a private school and a Buddhist temple, both of which serve large groups throughout the region. These uses draw extensive traffic to the area by virtue of regionality of many of the surrounding uses as well as the extensive residential development in the area.

To the east are lands devoted to commercial farm uses and consist of larger parcels abutting Parrish Gap Road SE. These lands are physically separated from the Exception Areas by steep slopes, that cannot be safely farmed. The elevation difference between the Exception Areas (520') and the EFU zoned parcels along Parrish Gap Road (330') is approximately 190'.

Applicant has completed an evaluation and inventory (Exhibit 104) of all parcels within a study

area comprising of those lands east of I – 5, south of Delaney Road SE, west of Parrish Gap Road SE, and north of Cloverdale Dr. SE. These sub-areas and the more specific uses are identified in these findings on Page 10.

Placing three more homes on TL 400 will not have any long-term future impact on the K2A, LLC farm. The subject property is adjacent, but is buffered by the steep slopes and elevation difference (190'), which is a natural dividing line between the AR lands to the west and the farm-land to the east. Moreover, these houses will be appropriately set back, and will be required to sign a Declaratory Statement that no complaints will be allowed about the activities at either the Farm Parcel, or the K2A property.

The small parcel size of the predominate number of parcels in the area preclude any further impetus for a higher density zone. Where the average parcel size is only 3.45 acres, and the median size 2.0 acres, the only zone allowed to increase density would only allow 2 acre parcels, meaning few of the parcels in the study area would even qualify for a partition.

OAR 660-004-0018(2)(B) is therefore complied with as this proposal will not commit adjacent or nearby resource lands to non-resource uses.

OAR 660-004-0018(2)(C) requires that the proposal must be compatible with adjacent or nearby resource uses, The list of adjacent and nearby resource lands is set forth above, and in Exhibit 104 and 105. The focus here is on compatibility. The only nearby farm is the Doerfler Farm and K2A property (also owned by the Doerfler Family) adjacent to the east. As noted above, it will be buffered from the subject property by steep slopes and elevation difference of 190'. In addition, there are already six (Tax lots 300, 600, 700, 800, 900, and 1000) rural residential lots and homes adjacent to the K2A property within the Enchanted Ridge subdivision. There is nothing that will take place with the 3 new homes projected here, that would not already be taking place on the six other homes that are adjacent to the EFU zoned K2A property. More importantly, Amy Doerfler of K2A, and Doerfler Farms, wrote a letter in support of the zone change request, see Applicant's Exhibit 110, where she concluded that the addition of the two additional rural residential lots next to their farm would not affect their farm operation, and would not affect their ability to farm their property.

There is no evidence that the past compatibility will not extend into the future when the development pattern proposed here is the same as that established in the study area.

OAR 660-004-0018(2)(C) is complied with in this case, as the new 2 acre non-resource parcels will be compatible with the adjacent K2A farm operation.

Goal 14 Exception

OAR 660-004-0040 outlines the application of Goal 14 to Rural Residential Areas. The relevant portion of this chapter reads, in part:

6)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (8) of this rule.

(8)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is

taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum lot size for each rural residential area.

(c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.

23. Under OAR 660-004-0040(6), on October 4, 2000, Marion County's land use regulations contained the AR-2 zone, a rural residential zone. All of the proposed rural residential lots within the residential exception areas will be greater than 2 acres in size meeting the AR-2 minimum lot size. Further, the new lots will be zoned AR-2, thus meeting the Goal 14 requirements.
24. Under OAR 660-004-0040(8), none of the proposed lots will be less than 2 acres in size, therefore the provisions of OAR 660-004-0040(8) are not applicable to this application.
25. Under OAR 660-014-0030 the finding that the subject Property is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standards (e.g., that it is not appropriate to apply Goal 14's requirement prohibiting the establishment of urban uses on rural lands) where, as here, the conclusion that the subject property is irrevocably committed to urban levels of development is made and supported by the evidence in the record. Where such a finding is made, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

The decision to approve the Application is based on site specific facts and a detailed land use inventory of the surrounding area. These findings clearly set forth the justification for granting the irrevocably committed exception. The exception area is detailed on Map 8.3W.36, as Tax Lot 400, a copy of which is included in the record. OAR 660-014-0030(3) lists the following factors to be considered when determining whether land is committed to urban levels of development:

Size and extent of commercial uses: There are 17 parcels of land that are in commercial uses in the study area, and the majority of those lie adjacent (south) or near (north) of the subject Property. The exact location, ownership, use, tax value, structures and much more information is included in the record (Applicant's Exhibit 104) as to each of these 17 parcels.

Sub-area 5 of the Battle Creek/Delaney Interchange Exception Areas, as approved by Marion County and the Land Conservation and Development Commission, lies within the study area and consists of the Enchanted Forest amusement park, the former Thrillville amusement park, and adjacent RV park. This commercial area was granted an exception due to the development proposals and approvals.

These commercial uses are not on the subject Property, but they are adjacent to, or on nearby properties. They play a small part in the discussion here of the irrevocable commitment to non-resource uses.

Location, number and density of residential dwellings: In the study area there are 90 rural

residential parcels, and 82 dwellings. The subject Property is located in the northern portion of the study area. The boundaries of the study area were drawn from all of the surrounding Assessor Maps.

In the study area is the developed Enchanted Ridge Subdivision, Freeway Estates, and sub-areas 4 and 5 of the Battle Creek/Delaney Interchange Exception Areas, as approved by Marion County and the Land Conservation and Development Commission. Sub-area 4, specifically southeast of the I-5 and Delaney Road interchange consists of the church property, and other steep parcels that were deemed to be committed to development in 1979. To the south of sub-area 4 were 33 rural residential parcels, already zoned AR, that were determined to be uncontested exception areas, see Applicant's Exhibit 105. Adjacent to the uncontested exception areas lies the subject Property.

Sub-area 5 includes the subject Property, rural residential property to the west, and commercial property to the south. This area was granted an exception to the Statewide Planning Goals in 1979 because of prior approved development proposals, and pre-existing AR zoned property. Sub-area 5 was considered a highly incompatible environment for agricultural production due to the development proposals, and the heavily parcelized (AR) zoned residential property to the north and west. The subject Property is located in the middle of a vast area of highly developed small parcels, which supports and justifies the exception here.

Location of urban levels of facilities and services: including at least public water and sewer facilities: There are no public sewer or water facilities that are available to serve the subject Property, or the surrounding areas. It is feasible for the subject Property to obtain an adequate supply of quality water from domestic wells, and it is feasible for the property to support on-site septic systems for the proper disposal of wastewater. The urban services in the area include Portland General Electric, Northwest Natural Gas, Wave Broadband, and Century Link, all of which provide all the necessary services to the Exception Area. The subject Property has legal and adequate access. These services constitute an urban level of facilities and services.

Parcel sizes and ownership patterns: The small parcel sizes and non-resource uses are detailed in the study area. The median parcel size is 2 acres and 91% of the parcels have dwellings. This is exactly the kind of area that is acceptable for an exception to Goals 3 and 14.

The combined adjacent ownerships only serve to further justify this exception because it demonstrates that aside from the commercial properties, the combined ownerships generally follow the pattern of small parcels with non-resource dwellings, which is exactly what is proposed here.

26. Proposals to amend the comprehensive plan must be consistent with the Goals. The Applicant addressed the Goals, and the exceptions to Goals 3 and 14 are justified as proposed.

COMPLIANCE WITH OTHER RELEVANT STATEWIDE GOALS & GUIDELINES

Goal 1: Citizen Involvement: Notice and the hearings process before the hearings officer and this Board provide an opportunity for citizen involvement. Goal 1 is satisfied.

Goal 2: Land Use Planning: Applicant's proposal is examined under Goal 2 plan amendment requirements. As part of the goal, each plan and related implementation measure is coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. The Planning Division notified The Turner Fire District, Salem- Keizer School District, Marion County departments, and DLCD, of the proposed comprehensive plan amendment. The Board has evaluated the Goal 2 exception criteria and considered agency comments in evaluating and approving this application. Goal 2 is satisfied.

Goal 3: Agricultural Lands. An exception has been proven here by a preponderance of the evidence and as set forth in these findings. Goal 3 is excepted to, and no longer applicable.

Goal 4: Forest Lands. The subject Property and surrounding properties are not identified as forest lands in the Marion County Comprehensive Plan. Goal 4 is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. The Marion County Comprehensive Plan does not identify any Goal 5 resources as being on or near the subject Property. Goal 5 is not applicable.

Goal 6: Air, Water and Land Resources Quality. No significant particulate discharges are anticipated. Septic permitting and the ability to drill domestic wells has been proven feasible. Goal 6 is satisfied.

Goal 7: Areas subject to Natural Disasters and Hazards. The subject Property is not in a Marion County Comprehensive Plan identified floodplain but is located within a Sensitive Ground Water area overlay zone, and there is a mapped landslide hazard area on the subject Property. The Board finds that the Applicant/developer will need to obtain a peer approved hydrology study for any future partition, that will assure domestic water will be available for any future rural residences. Further, the location of the landslide hazard area is located on the eastern edge of the subject Property that will be avoided during construction. Goal 7 is satisfied.

Goal 8: Recreational Needs. No Goal 8 resources are identified on the subject Property or implicated by this application. This goal is not applicable.

Goal 9: Economic Development. OAR chapter 660, Division 009 does not require or restrict planning for industrial and other employment uses outside an urban growth boundary (UGB), but counties must comply with the division requirements within UGBs. The subject Property is not within a UGB. Goal 9 is not applicable.

Goal 10: Housing. OAR 660-008 defines standards for compliance with Goal 10 regarding adequate numbers of needed housing units and efficient use of buildable land within UGBs. The subject Property is not within a UGB. Goal 10 does not apply.

Goal 11: Public Facilities and Services. Applicant has shown it is feasible for domestic water wells to be constructed on the subject Property. With this showing of feasibility, no urban water service will be necessary. Wastewater service feasibility has also been shown, and a condition requiring septic permitting is being imposed, therefore there is no need for urban wastewater services. Goal 11 is satisfied.

Goal 12: Transportation. With an easement to use Enchanted Way SE, the proposed parcels

would be served by a private roadway system onto Enchanted Way SE through the existing paved road system. Regardless of where the parcels access public roads, traffic use generated would be fairly minimal. Applicant does not propose changing the functional classification of any road or standards implementing them. Goal 12 is met.

Goal 13: Energy Conservation. Normal residential use will not significantly impact energy consumption. Goal 13 is satisfied.

Goal 14: Urbanization. An exception has been proved here by a preponderance of the evidence and as set forth in these findings. Goal 14 is excepted to, and no longer applicable.

Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. The subject Property is not within the Willamette River Greenway, or near any ocean or coastal-related resources. These goals do not apply.

Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. The Applicants address the Goals, and the exceptions to Goals 3 and 14 is justified as submitted.

COMPREHENSIVE PLAN AMENDMENT

27. All Comprehensive Plan changes are subject to review by DLCD. The DLCD was notified as required by State Law and did not comment prior to this report being prepared.

28. 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 MCC 17.123. 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 Property is comprised of one parcel of land and the proposal can therefore be considered under the quasi-judicial amendment process.

29. The proposal must be consistent with applicable policies for Rural Residential development 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.*

The Applicant is proposing to rezone a portion of the subject parcel to an Acreage Residential zone with a two-acre minimum lot size. The requirements for an exception to Goal 14 are addressed above and the criteria were satisfied.

9. *When approving rural subdivisions and partitioning 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.*

Applicant indicates that, as part of the future subdivision application they will provide a hydrological review demonstrating that there is adequate ground water to support wells for each of the proposed home sites and included a letter from a Registered Hydrogeologist stating that adequate water is available. A soil analysis was included indicating that septic systems could be supported on the site. There is adequate access to the property. This policy is met.

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.*

Applicant has demonstrated that it is feasible to develop septic and water facilities on the property. At the time of development, they will be required to obtain all permits and meet all health standards. This policy is met. Because a Goal 14 exception is not required, the applicable comprehensive plan policies will be met.

30. Applicant's comprehensive plan amendment is approved.

ZONE CHANGE

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

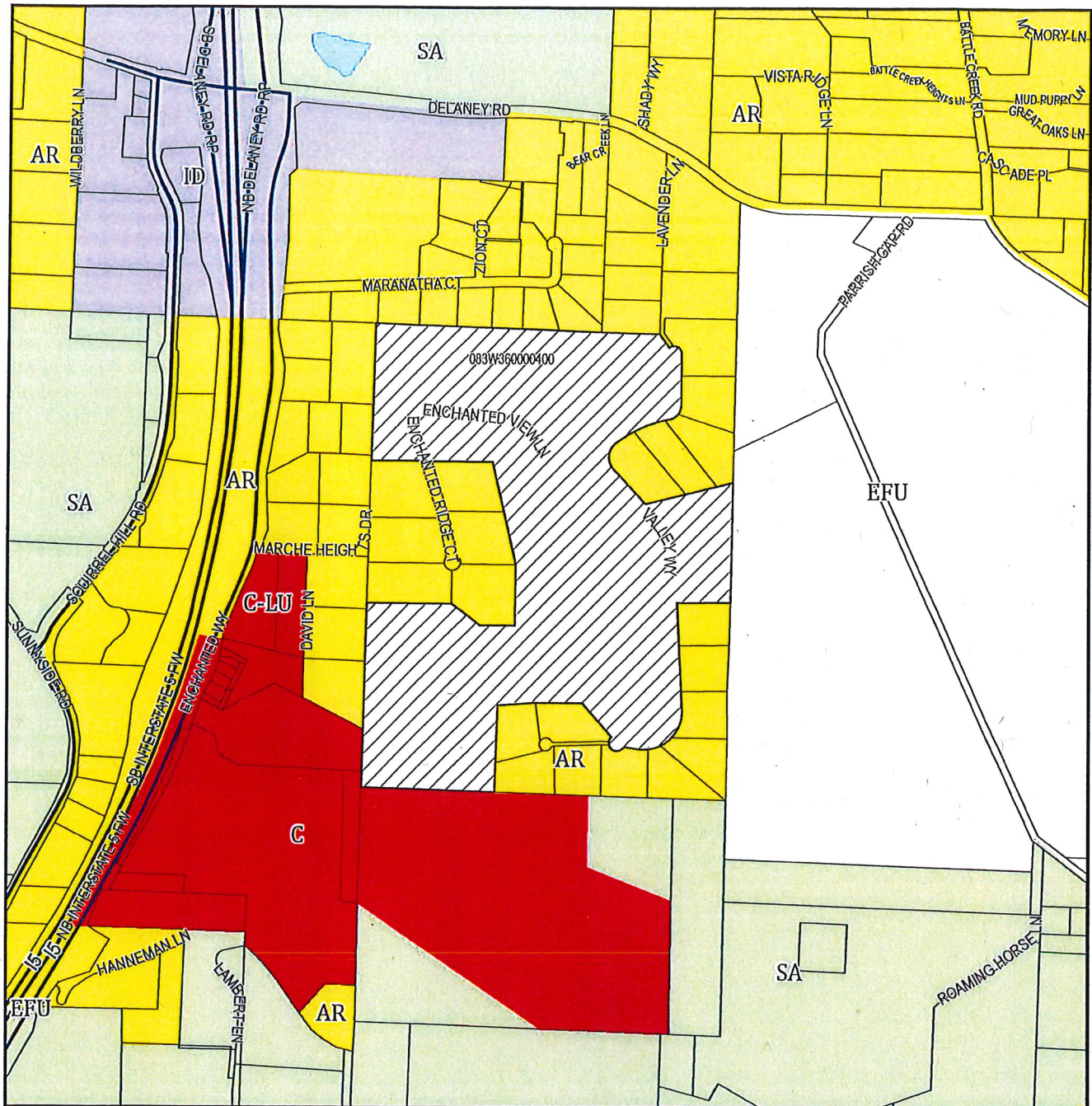
- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
- B. The proposed change 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.*

32. Because the board approves the comprehensive plan amendment and the Property is designated as rural residential, the proposed AR-2 will be consistent with that designation. The Applicant addresses the zone change criteria, and the proposal appears consistent with the density and pattern of development on nearby land zoned Acreage Residential.

33. Although Marion County is not required to provide residential land in the manner that cities are, there is no other land in the immediate vicinity that a single-family dwelling could be placed upon or that could be divided up to permit the placement of a single-family dwelling. There are two roadways dividing up the parcel, Enchanted Ridge Court SE and Valley Way SE. Aside from the subject Property, most of the land surrounding the subject Property is zoned Acreage Residential (AR) with a small portion to the east backing up to Exclusive Farm Use

(EFU). The parcels that are zoned AR are developed with dwellings and accessory structures, the EFU parcels are farmed with farm dwellings and accessory structures. The Applicant shows two areas that are being proposed for the zone change, one on the northwestern portion of the parcel and the other on the eastern side. The Applicant also states that the surrounding parcels are primarily larger AR home sites, which does not commit the use to urban as they are on individual well and septic with no urban services provided. The development of three new residential parcels would not significantly adversely affect allowed uses in the adjacent EFU properties. Because the comprehensive plan amendment and goal exceptions are approved, the proposal will satisfy the zone change criteria.

34. The Applicant has satisfied all of the approval criteria with substantial evidence in this record, and the application for a Comprehensive Plan Amendment from Primary Agriculture to Rural Residential, and to change the zone from Exclusive Farm Use (EFU) to Acreage Residential with a 2 acre minimum parcel size (AR), and for the remnant parcel of 78.31 acres is hereby approved subject only to the conditions of approval set forth in Exhibit B.



ZONING MAP

Input Taxlot(s): 083W360000400

Owner Name: MAYMIE IRENE UPDEGRAVE TR & W
OR CONF ASSC 7TH DAY

Situs Address: ADVENTIISTS TRE
(No Situs Address)

City/State/Zip:

Land Use Zone: EFU

School District: CASCADE

Fire District: TURNER

Legend

Input Taxlots

Lakes & Rivers

Highways

Cities



scale: 1 in = 839 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.