



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Public Works

Title:

Consider accepting appeal of the Planning Commission decision approving Subdivision/Variance 25-001/Olander

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 5 Min Contact: John Speckman Phone: 503-566-4173

Requested Action:

Staff recommended motion: Accept the appeal of the Planning Commission's decision approving Subdivision/Variance 25-001/Olander.

Other motion options for consideration are:

1. Deny the appeal and uphold the Planning Commission's decision.
2. Remand the matter back to the Planning Commission.

Issue, Description
& Background:

Subdivision/Variance 25-001 is an application for a conceptual and detailed approval to subdivide a 24.60-acre parcel into seven lots and for a variance to allow seven dwellings to be accessed off a private lane in an AR-3 (Acreage Residential - 3 acre minimum) zone located in the 6700 Block of Peter Road SE, Aumsville. On November 4, 2025, the Planning Commission held a public hearing where a motion was passed to approve the proposal. A neighbor appealed the Planning Commission's decision. The appellants provide new arguments related to potential effects on stormwater and traffic as a result of the proposal, and the additional dwellings allowed by the proposed variance. Staff recommends the Board accept the appeal.

Financial Impacts:

None

Impacts to Department
& External Agencies:

None

List of attachments:

Appeal, Planning Commission Decision

Presenter:

John Speckman

Department Head
Signature:

La Brandon Purck



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December 3, 2025

VIA HAND DELIVERY AND EMAIL: planning@co.marion.or.us

Marion County Board of Commissioners
c/o Marion County Clerk
555 Court St NE
Salem, OR 97301

Re:	<u>Appeal Of Planning Commission Action</u> <u>Subdivision/Variance Land Use Applications</u>
Application No.	SUB/VAR 25-001
Public Hearing:	November 4, 2025
Decision Date:	November 20, 2025
Subject Property:	Near the 6700 Block of Peter Road SE, Aumsville, OR (Marion County Assessor Tax Lot Map No. 081W19C002900)
Applicants:	Daniel E. Olander and Darcy K. Olander
My Clients:	Ann & Greg Hale (6851 Peter Road)

To The Honorable Members of the Marion County Board of Commissioners:

Executive Summary

There are two land use applications which are the subject of this appeal. First, a subdivision approval to divide the above referenced 24.60-acre parcel into seven lots. Second, a variance application to allow seven dwellings to be accessed off a private road.

The Marion County Planning Commission held a public hearing on the applications on November 4, 2025. The hearing drew significant public interest, with many citizens in attendance expressing concerns. According to the sign-in sheet, more than a dozen families registered to testify in opposition to the applications, while only the Applicants spoke in support.

The primary concerns are whether flood and traffic issues will be sufficiently addressed with the conditions of approval, and whether the Applicants' request for a variance to have seven (7) homesites (instead of four (4) or five (5)) should be allowed. For example, Dan Goffin, Chairman of the Beaver Creek Water Control District, was among those who testified in opposition, because the development of the subdivision under the current¹ proposal would exacerbate flooding and cause financial hardship to those impacted.

¹ At the hearing Mr. Goffin argued the subdivision be limited to only four homesites, with a fifty-year storm system required, to mitigate flooding into Beaver Creek. *See* Video of Planning Commission Hearing, at approximately 22 minutes at 50 seconds. That is a reasonable request.

My clients, Ann & Greg Hale (“Hale Family”), are among those who testified and would be negatively impacted. The Hale Family lives directly south/southwest of the Applicants’ property, at 6851 Peter Road SE. My clients join those who have serious unresolved² concerns with the Applicants’ proposed development.

The Planning Commission approved the applications. This was error. We respectfully request the Marion County Board of Commissioners schedule a public hearing to correct the errors, address the citizen concerns, and/or impose additional or more specific conditions of approval as needed.

To summarize some of the errors:

- The Planning Commission erred by approving the Subdivision application when there was insufficient evidence to establish MCC 17.172.430 (stormwater management) was met, or alternatively, “feasible” to meet with the conditions of approval imposed.
- The Planning Commission erred in approving the Variance application when there was insufficient evidence MCC 17.122.020(1) was met, because there was no evidence of “unnecessary, unreasonable hardships” and variance relief is not applicable.
- The Planning Commission erred in approving the Variance application when the request seeks more than “the minimum necessary to permit the development of the property for the proposed use” and therefore MCC 17.122.020(3) is not met.
- The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not establish the development will not “have a significant adverse effect on property or improvements in the neighborhood of the subject property” and MCC 17.122.020(4) is not met.
- The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not

² My clients proactively tried to collaborate with the Applicants prior to the submission of applications to avoid objecting to the development during the land use process. Unfortunately, the Applicants have been wary of giving information or assurances sufficient for my clients to avoid asserting their rights in this land use matter. The Applicants remained noncommittal at the Public Hearing. *See* Video of Planning Commission Hearing, at approximately 16 minutes and 55 seconds (statement by Applicants’ representative: “we are happy to meet with Mr. Rhoten and his client at any time, to go over this project. Honestly, we haven’t at this time because we haven’t even started the engineering”). This appeal is necessitated because of that. Even so, my clients remain willing to work with Applicants even during the pendency of this appeal.

establish the development will not have “a significant adverse effect upon the health or safety of persons working or residing in the vicinity” and therefore 17.122.020(5) is not met.

- As a technical and substantive matter, the written decision and its findings in support of the approval decision appear inadequate under Oregon Land Use Board of Appeals (LUBA) case law in light of the above concerns.

These items are more specifically discussed below:

Facts

My clients, the Hale Family, are among those who objected to the applications. The Hale Family Property consists of three tax lots (081W300000301; 081W300000300; 081W300000400) approximately 45.64 acres in total size, directly south and southwest of the Applicants' property. My clients' property is Special Agriculture (SA) and currently in farm use.

1. Water Runoff.

Water runoff is the Hale Family's primary concern. The Applicants' property slopes on multiple sides. This includes draining from the center of the Applicants' property into the Hale Family property behind my clients' barn, and from the Applicants' property to the southwest corner. There are ditches on the neighboring property and the Hale Family property routing the water runoff to Beaver Creek. Even so, under current conditions water accumulates in the southwestern area of the Applicants' property and seasonally floods the Hale Family property. The Applicants' site plans informally show the southwestern corner as having “wetlands” and the neighboring property does in fact have a mapped wetlands area.

The proposed development (seven lot subdivision) would cause a significant increase in impervious surfaces (roofs, driveways, patios, etc.) and therefore increase water runoff volume onto neighboring properties, including my clients' and into Beaver Creek.

My clients' concerns are particularly acute because the ditch on the neighboring property is largely unmaintained. This means even a modest increase in water runoff will increase flooding onto the Hale Family property (as well as increase flooding into Beaver Creek and have other related impacts). Consequently, the Hale Family – through no fault of its own – will lose a significant amount of land currently dedicated to farm use if the flooding is not adequately mitigated. Many others at the Planning Commission hearing testified to their own potential hardships as well.

2. Traffic.

The proposed development will significantly increase traffic in this rural area. This was also a major concern. Assuming³ ten (10) trips per day for one dwelling on the proposed seven (7) lots, there could be almost a forty to fifty percent (50%) increase in daily trips roughly estimated.⁴ And the actual number could potentially be higher.

This is a concern because (1) Peter Road is often used for large agricultural equipment and other agricultural-related vehicles, as well as school buses and other oversized vehicles, which already causes issues with existing traffic, and (2) the intersection of Peter Road and Brownell Drive SE will become more hazardous with the increase in traffic given the existing issues with the intersection.

Specifically, Brownell Drive SE is a common route to Silver Falls State Park and has a variety of fast traffic. Further, Brownell Drive SE has “blind corner” to the east when pulling out of Peter Drive and has a “dip” when facing to the west. Multiple individuals testified at the Planning Commission hearing and expressed concerns over historic and increased traffic associated with the proposed development.

Analysis

Errors of the Planning Commission include, but are not necessarily limited to, the following, in light of these facts:

- 1. The Planning Commission erred by approving the Subdivision application when there was insufficient evidence to establish MCC 17.172.430 (stormwater management) was met, or alternatively, “feasible” to meet with the conditions of approval imposed.**

The Marion County Code (“MCC”) has criteria required to gain “conceptual” and⁵ “detailed” subdivision approval. MCC 17.172.430 relates to stormwater management. It says:

³ This figure is based upon sources stating the ITE Trip Generation Manual (“ITE Manual”) estimates a single-family residential property generates 10 trips per day.

⁴ This figure is based upon a review of arial photographs from the Marion County Surveyor’s Office Survey Graphic Index, which, based on my rough approximation, shows 15 distinct properties which appear to have dwellings.

⁵ The Marion County Code draws a distinction between “conceptual” and “detailed” subdivision approval. Detailed approval is required prior to plat recordation and requires more specifics than conceptual approval (including engineering and design information). *See* MCC 17.172.700; MCC 17.172.840. Technically the application was for both conceptual and detailed approval. As such, the Applicants’ failure to provide detailed information is objectionable.

“The impact of proposed subdivisions [] on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.” (Emphasis added).

MCC 17.172.430 mandates three things: **(1) an evaluation of the impacts of the subdivision on stormwater, (2) mitigation of those adverse impacts, and (3) compliance with public works engineering standards to compensate for adverse impacts on drainage systems or networks.**

It is the Applicants’ burden of proof to show the criterion is met. *See, e.g., York v. Clackamas County*, LUBA No. 2019-081 at 12 (2020). There needs to be substantial evidence in the record showing compliance with the above standards, or alternatively, compliance is “feasible” if a condition of approval is imposed to ensure compliance. *See generally Meyer v. City of Portland*, 67 Or. App. 274, *rev den*, 297 Or. 82 (1984). If compliance with approval criteria is “uncertain” at the public hearing stage or “subject to future [] determination” then it is not considered “feasible,” however. If so, imposing conditions of approval to ensure compliance is not enough to conclude the criteria is met. *Gould v. Deschutes County*, 216 Or. App. 150, 161 (2007). In other words, conditions cannot substitute for compliance with approval standards or, similarly, unlawfully delegate or defer demonstration of compliance with a review standard to an administrative or ministerial decision-maker.

Accordingly, the case law establishes it is not enough to impose a condition of approval requiring staff review and approval of plans submitted after the public hearing stage, if compliance remains “uncertain” at the public hearing phase. *E.g., Gould v. Deschutes County*, 227 Or. App. 601, 606 (2009) (“the evidentiary record of a land use decision must show that compliance with the approval standards was ‘likely and reasonably certain,’ without regard to any modification as a result of later administrative review”); *Gould v. Deschutes County*, 216 Or. App. 150, 163 (2007) (Court of Appeals found approval not based on substantial evidence when “county’s decision [] allows the mitigation plan justification to be established by future discussions among [the applicant and governmental officials] and not on evidence submitted during the public hearings. That robs interested persons of the participatory rights allowed by the county ordinance”); *Hodge Oregon Properties v. Lincoln County*, 194 Or. App. 50, 53-53 (2004) (cannot defer to later review by county staff and “effectively ignore the possibility that the applicant actually might not be able to comply with” the applicable standards and criteria); *Township 13 Homeowners Association, Inc. v. City of Waldport*, LUBA Nos. 2006-171, 2006-172, 4-8 (2007) (remand of an application that did not provide soil or geotechnical analysis at the preliminary stage, because the use of conditions of approval “impermissibly deferred application of the relevant criteria to a time in the future when there will be no

opportunity for public hearing or comment”); *Western Express v. Umatilla County*, LUBA No. 2007-010, 19-22 (2007) (quoting *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992) for the applicant’s requirement to provide evidence “feasible solutions to identified problems exist”).

Here, the Planning Commission imposed a condition of approval in an attempt to ensure compliance with MCC 17.172.430. Specifically, the Planning Commission decision requires the Applicants submit a “a stormwater attenuation plan for review and approval” prior to recording the final plat. Implicitly⁶ – but not directly stated – this means Marion County staff would apply its baseline engineering standards when reviewing the stormwater plan.

Assuming that is the case, this means, at bottom⁷, the Applicants need to show it is “reasonably certain” that (1) the Marion County stormwater standards can be complied with, and (2) that Marion County stormwater standards go far enough to ensure “potential adverse impacts [are] mitigated” in this circumstance.

The Applicants failed to meet this burden. There is zero evidence in the record pertaining to the evaluation of water runoff impacts, and zero evidence⁸ on how stormwater will be mitigated. While the Applicants expressed an intention to attempt to comply with Marion County standards, they have not shown compliance with baseline standards is possible⁹ or will adequately¹⁰ mitigate the flooding and stormwater concerns. In other words, the methods of solving identified problems (flooding) remain “uncertain.”

⁶ The fact the conditions of approval do not directly specify the standards which Marion County staff will apply in reviewing any future stormwater plan is objectionable in of itself and should be clarified.

⁷ In addition, the Applicants must “evaluate” the adverse impacts to meet the criteria. There is no evidence that occurred here.

⁸ **At the public hearing on November 4 the Applicants’ representative conceded “we haven’t even started the engineering” and therefore didn’t have any specifics to offer on the stormwater mitigation plans.** See Video of Planning Commission Hearing, at approximately 16 minutes and 55 seconds.

⁹ At the Planning Commission hearing the Applicants’ representative referenced MCC 15.15 and MCC 15.20 as some of the relevant standards governing stormwater. To the extent those apply, we note those provisions require stormwater drainage plans to be submitted and approved “prior to the issuance of a Marion County land use [] approval[.]” See MCC 15.20.060; See Video of Planning Commission Hearing, at approximately 13 minutes and 30 seconds.

¹⁰ The Marion County Code itself states stormwater standards in MCC 15.15 are only “minimum standards” and compliance with the standards “does not mean or imply that compliance with this chapter by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the state by a responsible person.” See MCC 15.15.060.

Indeed, minimum standards often don't go far enough. This situation is similar to *Nicta v. Oregon City*, LUBA No. 2018-102 (2019). There, in a slightly different context LUBA found it was inadequate to merely rely upon City standards for stormwater mitigation, when those standards did not fully address the stormwater issues presented. *See Nicta v. Oregon City*, LUBA No. 2018-102, Slip Opinion at 13-17 (2019) (City's argument stormwater runoff would be sufficiently mitigated by complying with City regulations was inadequate, where impervious surfaces would increase runoff and City regulations only capture and treat 80% of runoff).

It is legally required for the Applicant to provide information and assurances at this stage to ensure the development won't make the flooding worse and that mitigation is feasible. They have not. It was error to find this criterion was met merely by imposing the condition of approval without finding "feasibility" and without further clarification on the required standards.

2. The Planning Commission erred in approving the Variance application when there was insufficient evidence MCC 17.122.020(1) was met, because the Applicants' hardship is self-imposed and there was no evidence of "unnecessary, unreasonable hardships[.]"

The variance is requested because Marion County regulations limit the Applicants to only four or five lots with dwellings in the subdivision unless the Board of Commissioners accepts a dedication of land for a public Marion County owned road. *See* MCC 17.172.160 (requires Marion County Commissioner approval of public road dedication); MCC 17.110.800 (stating private drives may only serve four dwelling units). Thus, the Applicants could conceivably develop the property with four or five lots without the variance. Alternatively, they could have first attempted to obtain a public road dedication, which they did not. In any event, the Applicants are choosing to try and divide the subject property into seven lots, instead of four or five, and choosing to do so without seeking approval for a public road dedication. Under these circumstances we contend the purported hardship is self-imposed and variance relief is not applicable.

Further, the Applicants assert they will incur monetary hardship if the variance is not granted and the additional lots are not allowed. This type of request – to obtain a variance to use land in a more profitable fashion – is often deemed a self-imposed hardship of the type the Oregon Court of Appeals and LUBA regularly reject. *E.g. Reagan v. City of Oregon City*, LUBA No. 2000-125, Slip Opinion at 12-14 (2001) (No variance was allowed to create a second lot out of an existing lot when the applicant's circumstances "merely constitute a monetary hardship or inconvenience."); *see also Lovell v. Planning Com. of Indep.*, 37 Or. App. 3, 7 (1978) ("To obtain a variance, the individual property owner must demonstrate a peculiar hardship or practical difficulty not shared by others . . . Even if [applicant] could use her land more profitably, as suggested by [the findings], that would be insufficient to establish a practical difficulty warranting a variance"); *Roberts v. City of Gearhart*, LUBA No. 99-196, Slip Opinion at 11-12 (2000) (No variance was granted just because the applicant couldn't construct as much storage as applicant wanted to at a preferred location).

Lastly, the argument is not factually supported. Marion County Tax Assessor records show the Applicants were able to acquire the entire 24.60-acre property for only \$280,000.00. This amount is also shown as the consideration reflected on the face of the deed within the planning department file. Therefore, the only evidence is contrary to the Applicants' contentions, as the Applicants are likely to obtain a significant amount of profit from this development even if only four or five lots are created and served by a private drive. And it is possible larger lots could yield a higher sales price, leading to the same amount of profit. We simply don't know.

In sum, there was zero evidence in the record to support the Applicants' argument – assuming this qualifies for variance relief – and the Planning Commission erred in finding MCC 17.122.020(1) satisfied.

- 3. The Planning Commission erred in approving the Variance application when the request seeks more than “the minimum necessary to permit the development of the property for the proposed use” and therefore MCC 17.122.020(3) is not met.**

The “proposed use” at issue is a housing subdivision. As stated above, the Applicants could develop the property into a housing subdivision and have four or five lots with dwelling units served by a private drive. Thus, the Applicants are seeking more than the “minimum necessary” to allow for the proposed use, and this criterion is not met. The Planning Commission erred by finding otherwise.

- 4. The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not establish the development will not “have a significant adverse effect on property or improvements in the neighborhood of the subject property” and MCC 17.122.020(4) is not met.**

Allowing the variance would increase the development to allow for seven lots with dwellings, as opposed to four or five. This would increase the impervious surfaces – and exacerbate water runoff/stormwater.

As stated herein – and shown in the record of the proceedings before the Planning Commission – there is abundant evidence that water runoff and stormwater from the increased impervious surfaces would have a significant adverse impact on my clients' property and on other property in the vicinity, and in Beaver Creek, leading to additional downstream issues. This would be worsened by allowing the variance. Thus, the Planning Commission erred in finding this criterion was met, particularly when there is zero evidence in the record establishing the runoff can be adequately mitigated.

- 5. The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not establish the development will not have “a significant adverse effect upon the**

health or safety of persons working or residing in the vicinity” and therefore 17.122.020(5) is not met.

Similarly, many individuals testified at the public hearing on November 4 to existing vehicular and traffic safety issues. The testimony expressed concerns the increase in households exacerbate problems. My clients share these well-founded concerns. The Planning Commission erred in finding the criterion met.

6. As a technical and substantive matter, the written decision and its findings in support of the approval decision appear inadequate under Oregon Land Use Board of Appeals (LUBA) case law in light of the above concerns.

In general, findings must “(1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards.” *Heiller v. Josephine County*, LUBA No. 92-032, Slip Opinion at 7 (1992). Additionally, findings “must address and respond to specific issues relevant to compliance with applicable approval standards that were raised in the proceedings below.” *Id*; citing *Norvell v. Portland Metropolitan Area Local Government Boundary Com.*, 43 Or App 849, 853, 604 P2d 896 (1979).

We contend the findings of the Planning Commission are inadequate as a technical matter. Amongst other things, the findings do not specifically set forth or tie the relevant facts (or lack thereof) to the approval standards or respond to the issues asserted by the opponents at the November 4 public hearing and in the written materials in advance. This could be cured, however, by holding a public hearing on the matter and issuing new findings.

Conclusion

For the reasons above, and others, we respectfully request the Marion County Board of Commissioners accept the appeal, pursuant to MCC 17.172.820 and/or 17.122.120, and hold a public hearing on the matter. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nicholas A. Rhoten', with a stylized, flowing script.

Nicholas A. Rhoten

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

NOTICE OF DECISION SUBDIVISION/VARIANCE CASE 25-001

APPLICATION: Application of Daniel E. Olander and Darcy K. Olander for conceptual and detailed approval to subdivide a 24.60-acre parcel into seven lots and for a variance to allow seven dwellings to be accessed off a private lane in an AR-3 (Acreage Residential - 3 acre minimum) zone.

DECISION: On November 4th, 2025, the Marion County Planning Commission **GRANTED** conceptual and detailed approval to subdivide the property into seven lots subject to the conditions identified in the following conditions of approval.

EXPIRATION DATE: This decision is valid only when exercised by **December 5th, 2027**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drain field replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS

1. Prior to recording the final plat, the applicants shall obtain a septic site evaluation from the Marion County Septic Division on each undeveloped parcel.
2. Subdivision name must be approved per ORS 92.090.
3. Must be surveyed and platted per ORS 92.050.
4. Subdivision plat must be submitted for review. Checking fee and recording fees required.
5. Per ORS 92.065 - Remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or other conditions or circumstances cause the delay (or resetting) of monumentation.
6. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.
7. Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.
8. All easements (utility, drainage, septic, etc.) required by reviewing agencies shall be shown on the final plat.
9. In accordance with Marion County Ordinances and OAR 340-21-060, during the land clearing and road construction phase of this development, dust suppression measures such as water trucks shall be employed as necessary to prevent off site deposition of dust generated by the construction activities or related vehicular traffic on adjacent properties.
10. Dust suppression measures shall also be provided during construction of the dwellings on these proposed parcels.

11. All parcels will be required to submit a Sensitive Groundwater Overlay declaratory statement prior to issuance of building permits. MCC 17.181.120 (A).
12. The applicant shall submit a water-level monitoring plan to the county. The plan shall be peer reviewed by the county at the expense of the applicant and is subject to approval by the county. Prior to building permits being issued, the water-level monitoring plan shall be approved and implemented.
13. Static water level measurements shall be taken for any new wells on the parcels prior to issuance of a building permit.
14. ENGINEERING CONDITIONS

Condition A – Prior to Plat approval, provide a notarized Non-Remonstrance Agreement to be recorded concurrently with the subdivision plat documenting agreement for cooperative, collective financial cost sharing by the Developer with the adjacent Apostolic Church organization toward an annual Peter Road lignin dust suppression application, and, for financial participation toward a potential Peter Road future paving project.

Nexus is attributable to the anticipated increase in traffic. The Condition is in keeping with MCC 17.110.780(A), 17.110.800 and 17.172.320. Please note the Apostolic Christian Faith Church of Silverton (TL# 081W19C002501) has recorded a like agreement with Marion County at Reel 4027 / Pg 122.

Condition B – Prior to plat approval provide a notarized Road Maintenance Agreement for the private access easement to be recorded concurrently with the subdivision plat.

Condition C – Prior to subdivision plat approval, design and construct a minimum 20-foot wide private all-weather access road in substantial conformance with approved engineering plans as certified by the Engineer-of-Record.

Condition D – Prior to subdivision plat approval submit a stormwater attenuation plan for review and approval that addresses runoff from the proposed private road as well as parcels. If the system as designed will serve two or more parcels in aggregate, then it shall be constructed prior to plat approval. If detention is addressed as individual parcel exfiltration systems, then a template design shall be provided, and each system shall then be constructed in conjunction with its respective dwelling, with said exfiltration system to be completed prior to issuance of each respective Certificate of Occupancy.

Nexus is due to the creation of 0.5-acre plus of impervious surfaces, the sloping nature of the site, and to satisfy MCC 17.172.430.

Condition E – On the subdivision plat depict a 30-foot R/W half-width dedication for public road purposes along the subject property Peter Road frontage.

Intended to satisfy MCC 17.172.340.

15. The name approved for the private road extending west and south from Peter Rd SE is **Olander Ln SE**, which shall be shown on the final subdivision plat.

APPEAL PROCEDURE: This decision may be appealed to the Marion County Board of Commissioners by submitting a written appeal explaining wherein the Marion County Planning Commission decision is in error, along with a fee of \$500.00. The appeal must be received in the Marion County Clerk's Office, 555 Court St. NE, Salem, by 5:00 p.m. on **December 5th, 2025**. If an appeal is received it will be reviewed by the Board of Commissioners to determine if it merits further hearing and consideration by the Board. Questions regarding this decision or the appeal procedure should be directed to the Marion County Planning Division, 5155 Silverton Road NE, Salem, (503) 588-5038.

FINDINGS AND CONCLUSIONS: The Planning Commission decision is based on the following findings and conclusions.

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The property is not within any UGB (Urban Growth Boundary). The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.
2. The property is on the north side of Highway 22, less than a half mile north of the Aumsville UGB. The property is located approximately a quarter mile south of Brownell Dr SE, and 200-feet west of Peter Rd SE. The only frontage on a public road is via an access point on the northeastern corner of the subject property which meets Peter Rd SE approximately 850-feet south of where Peter Rd SE meets Brownell Dr SE. The property has no mapped geohazard, floodplain, or wetlands. The southwestern corner is adjacent to a pond and mapped wetlands on another property. The entire parcel consists of hydric soils, and slopes generally towards the southwestern corner. The property is located within an SGO (Sensitive Groundwater Overlay) zone. The applicant has an approved and peer-reviewed hydrogeology report for the proposed lots indicating that there is a viable, long-term supply of groundwater available for the new residential wells.
3. Most adjacent properties to the north, east and west are zoned AR and developed with single family homes. The property directly north is developed with a religious organization. Properties to the east of Peter Rd SE are zoned EFU (Exclusive Farm Use) and are in active farm production, producing primarily hay, grass seed or Christmas trees. To the south are properties zoned SA (Special Agriculture) in agricultural use adjacent to Highway 22. South of Highway 22 is the City of Aumsville.
4. The applicant is proposing to subdivide a 24.60-acre parcel into seven lots which would all be served by a single private road. Six of these seven lots would not have frontage on a public road. To exceed the maximum of four lots without frontage on a public road (MCC 17.110.800) the applicant proposes a variance.

AGENCY COMMENTS:

5. Marion County Planning requested comments from various agencies. Those comments provided are included as follows in this section.

Public Works Land Development and Engineering (LDEP) requested that the following be included in the staff report for consideration by the Planning Commission.

ENGINEERING CONDITIONS

Condition A – Prior to Plat approval, provide a notarized Non-Remonstrance Agreement to be recorded concurrently with the subdivision plat documenting agreement for cooperative, collective financial cost sharing by the Developer with the adjacent Apostolic Church organization toward an annual Peter Road lignin dust suppression application, and, for financial participation toward a potential Peter Road future paving project.

Nexus is attributable to the anticipated increase in traffic. The Condition is in keeping with MCC 17.110.780(A), 17.110.800 and 17.172.320. Please note the Apostolic Christian Faith Church of Silverton (TL# 081W19C002501) has recorded a like agreement with Marion County at Reel 4027 / Pg 122.

Condition B – Prior to plat approval provide a notarized Road Maintenance Agreement for the private access easement to be recorded concurrently with the subdivision plat.

Condition C – Prior to subdivision plat approval, design and construct a minimum 20-foot wide private all-weather access road in substantial conformance with approved engineering plans as certified by the Engineer-of-Record.

Condition D – Prior to subdivision plat approval submit a stormwater attenuation plan for review and approval that addresses runoff from the proposed private road as well as parcels. If the system as designed will serve two or more parcels in aggregate, then it shall be constructed prior to plat approval. If detention is addressed as individual parcel exfiltration systems, then a template design shall be provided, and each system shall then be constructed in conjunction with its respective dwelling, with said exfiltration system to be completed prior to issuance of each respective Certificate of Occupancy.

Nexus is due to the creation of 0.5-acre plus of impervious surfaces, the sloping nature of the site, and to satisfy MCC 17.172.430.

Condition E – On the subdivision plat depict a 30-foot R/W half-width dedication for public road purposes along the subject property Peter Road frontage.

Intended to satisfy MCC 17.172.340.

ENGINEERING REQUIREMENTS

- F. Access to all parcels shall be shared from a single connection point to Peter Road.
- G. Any work, including utility work within the public right-of-way such as electrical service interconnection, will require a separate permit from PW Engineering.
- H. Developer(s) may be held responsible for excessive damage to the Peter Road gravel surface attributable to heavy truck traffic in support of onsite construction activities; it is advised to video the Road from Brownell Drive to the access point prior to any heavy hauling.

ENGINEERING ADVISORY

- I. DEQ regulates erosion control for sites of 1.0-acre plus of total disturbance through issuance of the NPDES 1200-C Construction Stormwater Erosion Permit.

Marion County Septic commented: “All 7 lots must have an approved site evaluation. Current site evaluation applications 555-25-005588 through 555-25-005594 to serve all 7 lots are in review.”

Marion County Building commented: “No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property.”

Marion County Survey commented:

- 1. Subdivision name must be approved per ORS 92.090.
- 2. Must be surveyed and platted per ORS 92.050.
- 3. Subdivision plat must be submitted for review.
- 4. Checking fee and recording fees required.
- 5. Per ORS 92.065 - Remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or other conditions or circumstances cause the delay (or resetting) of monumentation.
- 6. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

All other commenting agencies either failed to comment or stated no objection.

ANALYSIS AND CONCLUSIONS:

- 6. The applicant is proposing to subdivide a 24.60-acre parcel into seven lots and proposes a variance to allow seven dwellings to be accessed off a private lane in an AR-3 (Acreage Residential - 3 acre minimum) zone.
- 7. **Roads, Streets and Easement:** Standards for this section are listed in MCC 17.172.140 through 17.172.340 and include:

17.172.140 ENGINEERING STANDARDS AND REQUIREMENTS Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County Department of Public Works.

Marion County Land Development and Engineering submitted conditions of approval, requirements, and advisories outlined in section 4 of this document.

17.172.160 DEDICATION OR DEEDING OF ROADWAY No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as a roadway without first obtaining the approval of the Board and delivering the deed to the Board for its endorsement. No dedication is effective unless the property is accepted by the Board and recorded with the Marion County Clerk's Office.

No public right of way dedication is proposed with this application.

17.172.180 DEAD-END STREETS When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County Department of Public Works.

No dead end streets are proposed with this application. The applicant proposes a cul-de-sac with fire turnarounds, and will need to ensure proper fire turnaround specifications are met.

17.172.200 RADIUS AT STREET INTERSECTIONS The property line radius at street intersections shall be to the Marion County Public Works Department's standards.

The standard does not apply because these are private streets. The applicant has, however, indicated that they plan to build to public street standards.

17.172.220 STREET GRADES No street grade shall be in excess of 12% unless the Commission or Hearings Officer finds that, because of topographic conditions, a steeper grade is necessary. The Commission or Hearings Officer shall require a written statement from the Director of Public Works indicating approval of any street grade that exceeds 12%.

The proposed private street would meet this standard.

17.172.240 DEDICATION OF RIGHT-OF-WAY If land to be subdivided or partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the Zoning Ordinance, standard right-of-way widths are subject to the standards of the Marion County Department of Public Works.

The 30-foot right-of-way width along Peter Road required by LDEP shall be a condition of approval.

17.172.260 ADDITIONAL RIGHT-OF-WAY WIDTHS Where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way may be required to be dedicated to allow all cut and fill slopes to be within the right-of-way.

The 30-foot right-of-way width along Peter Road required by LDEP shall be a condition of approval.

17.172.280 PERFORMANCE STANDARDS Whenever adequate assurances of performance are required as a condition of approval of any subdivision under this ordinance, the applicant shall meet the requirements of this section.

Marion County Land Development and Engineering did not request that a Performance & Warranty Construction Bond be submitted.

17.172.300 UTILITY EASEMENTS Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.

This shall be a condition of approval.

17.172.320 STREET OR ROAD IMPROVEMENTS All street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the Director of Public Works. Subdivision plats shall not have final approval until such time as the Director of Public Works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County Department of Public Works.

The development will be located on a private road, no upgrades are needed.

17.172.340 PRIVATE STREETS In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the Homeowners Association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

The applicant proposes utilizing a private street, therefore this criterion shall be a condition of approval.

8. **Lots:** Standards for this section are listed in MCC 17.172.360 through 17.172.380 and include:

17.172.360 LOT SIZE All lots approved under this Chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the State or County in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimension shall be as prescribed in the corresponding zone.

The Comprehensive Plan states that all lots must be, as a minimum, two acres in size and the AR-3 (Acreage Residential) zone has a minimum lot size of three acres. The proposed lots range from 3 to 5.99-acres in size. All the lots will conform to the minimum lot size standards and are of sufficient size and shape to accommodate a dwelling.

17.172.380 CURVED FRONT LOT LINES When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

As a condition of approval, all curved front lot lines will be measured and shown on the final plat by bearing and chord distance.

9. **Sewage, water and utilities:** Standards for this section are listed in MCC 17.172.400 through 17.172.440 of and include:

17.172.400 SEWAGE DISPOSAL All new or refigured lots or parcels, 10 acres or smaller in size, shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. All new or reconfigured lots or parcels with an existing on-site septic system, that were authorized by an approving authority, shall be reviewed to determine that the existing system is either located entirely on the same lot or parcel containing the existing dwelling, or that proper easement is provided to allow the continued use and maintenance of the system. The commission, director, or hearings office may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director, or hearings officer deems it necessary and provided the connection is available

A condition of approval shall require the applicant obtain a favorable septic approval for each proposed lot prior to the subdivision plat being recorded. In addition, the County On-site Wastewater Specialist is required to sign the plat.

17.172.420 WATER SUPPLY All lots or parcels shall be served by an authorized public or private water supply system or individual private wells.

(a) *Public or Private Systems: Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity,*

storage, and distribution system requirements of the State Health Division and the Marion County Department of Public Works.

- (b) *Individual Private Wells: Individual private wells must meet the construction requirements of the Oregon State Water Resources Department and be located in accordance with requirements of the State Health Division in relation to public or private sewage disposal systems. The bacteriological quality of this water may be determined through the Marion County Health Department. Upon receiving the recommendations from the State Health Division or Marion County Health Department, the Hearings Officer or Commission may require the use of an engineered public or private water system in any proposed subdivision. Other criteria to be considered in making this determination are the recommendations contained in the Marion County Water Quality Management Plan, Marion County Comprehensive Plan, and Chapter 181 of the Marion County Rural Zoning Ordinance.*

The applicant indicates that water will be provided by individual private wells, not by a private or public water system. Privately owned wells — including their location — are not regulated by Marion County. Wells in the development must meet the requirements of the Oregon Water Resources Department.

17.172.430 STORMWATER MANAGEMENT. The impact of proposed subdivisions and partitions on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.

Marion County Land Development and Engineering as well as Oregon DEQ regulate stormwater detention. LDEP requires a stormwater attenuation plan be submitted for review prior to the subdivision plat being approved. This shall be a condition of approval.

17.172.440 UNDERGROUND UTILITIES EASEMENTS Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. When possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide easements on both sides of all road or street rights-of-way of 60 feet or less.

No street rights-of-way are being proposed. Utility easements meeting this standards shall be a condition of approval.

10. **Access Standards:** *MCC 17. 172.560 requires that all lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.*

- (a) *Have a minimum easement width of 20 feet;*
- (b) *Have a maximum grade of 12%;*
- (c) *Be improved with an all-weather surface with a minimum width of 12 feet;*
- (d) *Provide adequate sight-distance at intersections with public roadways;*
- (e) *Be provided with a road name sign at the public roadway as an identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.*

The proposed private street shall meet these standards as a condition of approval.

11. **Sensitive Groundwater Overlay (SGO) Zone:** *MCC Chapter 17.181 provides standards for development within an SGO zone, specifically section 17.181.120 (B) provides monitoring requirements for subdivisions in SGO zones:*

- 1. An approved water-level monitoring plan is required as a condition of approval for subdivisions.*
- 2. The monitoring plan shall be submitted to the county for peer review and is subject to approval by the county.*
- 3. The monitoring plan shall be approved and implemented before building permits are issued.*

An approved water-level monitoring plan shall be made a condition of approval, and no building permits will be issued prior to the plan being approved by the County.

5. A minimum of one observation well per 15 lots is required in each subdivision and at least one observation well is required for each phase of a subdivision. Monitoring shall begin at the start of development of Phase 1 of an approved subdivision. A report that includes an analysis of data collected to date shall be submitted to the county for peer review prior to approval of the next phase of development.

This standard is not required as there are only 7 lots being developed.

6. Evidence of water level declines shall require preparation of a hydrogeology study prior to the release of the next phase for development if the county determines that the available data suggests that groundwater supplies may not be sufficient for additional development.

There are no phases for this development and as such this standard does not apply.

7. Access easements that allow county and OWRD personnel to measure water levels shall be recorded with deeds for lots containing an observation well as a condition of approval of the subdivision.

This shall be a condition of approval.

Staff has considered MCC 17.181.140 and does not recommend any conditions from that section of code as the size and nature of this development do not warrant it.

12. **Variance:** Standards for this section are found in MCC 17.122.020 and include:

1. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and

The applicants propose a variance to MCC 17.110.800 (Dwellings and all other buildings to be accessible to public street) which limits the number of dwellings served by a private road to four (without frontage on a public right-of-way) unless they were created prior to May 1st, 1977. The subject property has 60-feet of frontage on a public right-of-way. The configuration of this parcel predates the current owner and constrains the way in which a road may be constructed off Peter Road SE to access the proposed parcels. Adherence to the four dwelling/parcel limitation would decrease the amount of parcels that could be created within this 24.6-acre property that could be fully developed if not for the constrained access. The applicant argues that the value of each of the lots will be approximately \$250,000, that adherence to MCC 17.110.800 would present an opportunity cost of approximately \$750,000, and that this estimated sum constitutes an unreasonable financial hardship. The purpose of the acreage residential zone is to implement the rural residential designation for exception lands which are intended as areas to provide housing for the segment of the population desiring a rural homesite. The subject parcel could not be developed to its full potential within the AR-3 zoning without modification to requirements of MCC 17.110.800. This is a practical difficulty which can be relieved by granting this variance. The criterion is met.

2. There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and

The unusual circumstance that applies to the subject property is the way it has been configured. The parcel is a rectangular 24.6-acre parcel, with a small, curved portion extending from the northeast corner which terminates at the right-of-way for Peter Road. The bulk of the property is separated from the right-of-way by other rural residential properties along Peter Road. It is unusual for such a large AR parcel to have such little frontage on the right-of-way. The criterion is met.

3. The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and

The property is in the AR-3 zone, where the minimum parcel size is 3-acres. The applicant proposes a subdivision to create 7-parcels. The property could technically be partitioned into 8-parcels, but the southernmost area has particularly wet soils which are being consolidated into a 5.99-acre parcel. The proposed degree of variance to allow for 2 additional parcels and dwellings accessed off the proposed private road (without frontage on a public right-of-way) is the minimum degree of variance required to permit the subdivision. The criterion is met.

4. The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and

The applicant proposes to construct a private street with the same standards as a full public street. The proposed private road will allow for safe and orderly access to the proposed parcels in such a way that does not interfere with adjacent rural residential, religious organization, and agricultural uses. Stormwater attenuation plans will be required prior to plat approval, and if a stormwater system will serve more than two parcels it shall be required to be constructed prior to plat approval. The stormwater requirements and permitting through Marion County Land Development, Engineering, and Permits shall ensure that runoff created by additional impervious surfaces permitted by the proposed variance is adequately contained in such a way that does not interfere with adjacent rural residential, religious organization, and agricultural uses. The criterion is met.

5. The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and

The street will be designed to full public street standards, and accommodate fire apparatus, delivery vehicles, and passenger cars without creating hazards to those using the roadway or adjoining properties. The proposed street design will accommodate the level of traffic produced by this 7-parcel subdivision in such a way that does not produce an adverse effect on the health or safety of persons in the vicinity. The criterion is met.

6. The variance will maintain the intent and purpose of the provision being varied.

The purpose of MCC 17.110.800 is to ensure that access to dwellings is safe and capable of accommodating emergency vehicles. Often private roads are smaller than public roads, and limiting the number of dwellings accessed off them is necessary to maintain safety of the residents. The applicant proposes a private road developed to the full width prescribed by Marion County for a public road. The proposed road will have a turnaround that meets county and fire district standards, ensuring safe and efficient access for emergency vehicles. The proposed variance to allow for 7 dwellings to be accessed off this road is therefore consistent with the intent and purpose of the provision in MCC 17.110.800. The criterion is met.

DELIBERATION:

On November 4th, 2025, the Planning Commission held a public hearing about the proposed 7-lot subdivision of 24.60-acres in the AR- 3 zone, with a Variance to the limitation in MCC 17.110.800 to the number of lots without frontage on a public road that may be served by a private road. The staff summary was heard. The applicant's engineer provided testimony. Testimony in opposition from neighbors and Beaver Creek Water Control District was heard. The applicant provided rebuttal to comments from opposition. The Planning Commission asked questions of the Applicant and Marion County staff. Deliberations were held regarding the proposal, and whether this application met all standards for the proposed Variance. Testimony indicated that the application meets the required criteria.

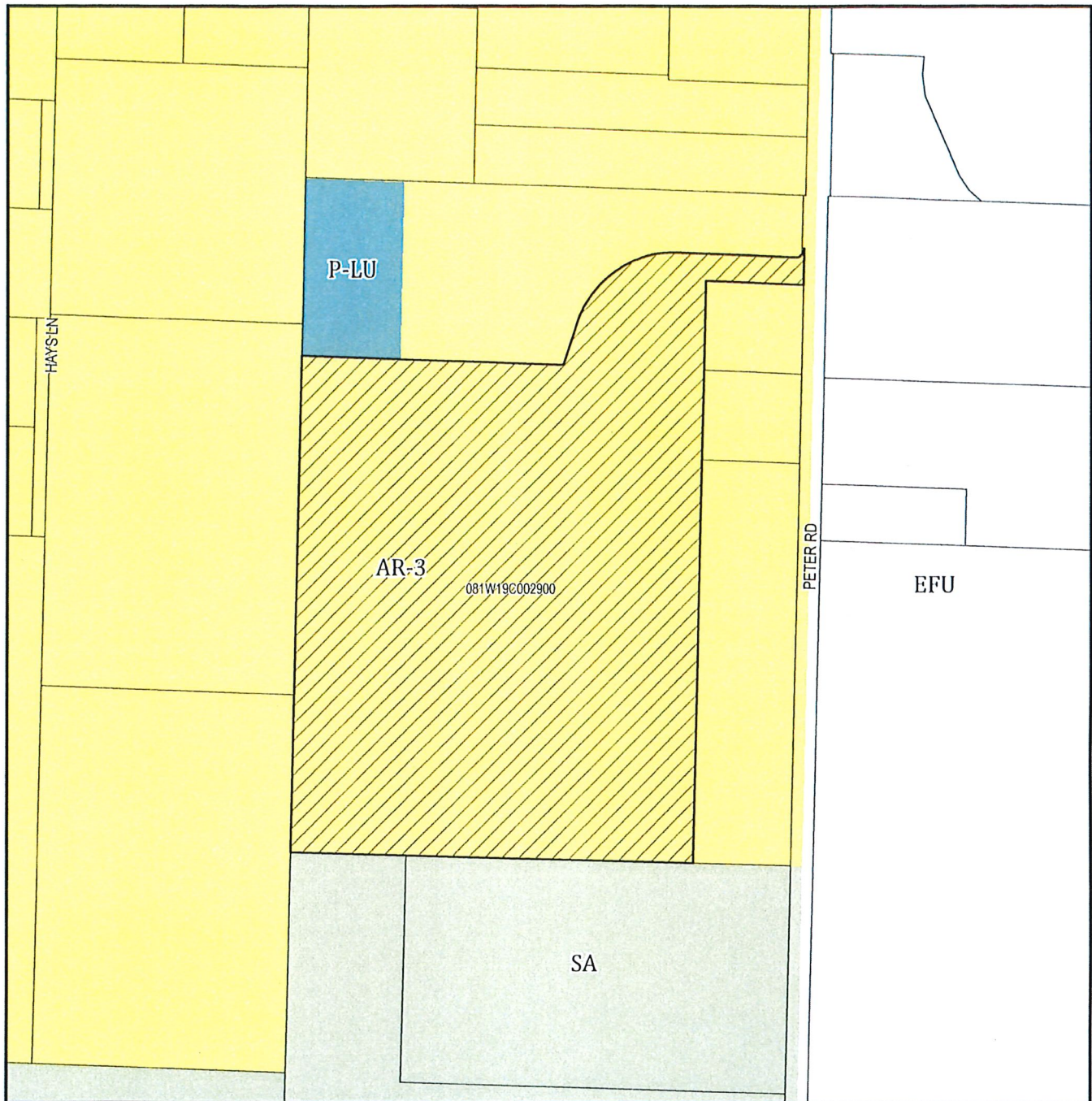
DECISION:

At the November 4th, 2025, meeting, after reviewing testimony in the record and presented at the hearing, a motion was made and seconded to **APPROVE** the proposal, with one additional condition ensuring dust mitigation during construction. The motion passed 5 to 1.

SIGNED AND FINALIZED THIS 20th day of November 2025

By Brandon Reich
 Planning Commission Secretary

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.



ZONING MAP

Input Taxlot(s): 081W19C002900

Owner Name: OLANDER, DANIEL E OLANDER,
DARCY K

Situs Address: (No Situs Address)

City/State/Zip:

Land Use Zone: AR-3

School District: CASCADE

Fire District: AUMSVILLE

Legend

Input Taxlots

Lakes & Rivers

Highways

Cities



scale: 1 in = 324 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.