



Marion County OREGON

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(503) 588-5036

MEMORANDUM

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SURVEY

TO: Marion County Hearings Officer

FROM: Marion County Planning Division/Lindsey King

SUBJECT: Comprehensive Plan Amendment/Zone Change Case 21-005/Enchanted Ridge Property Owners Association

DATE: July 20, 2021

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

FACTS:

1. Application of Enchanted Ridge Property Owners Association to change the zone from EFU (Exclusive Farm use) to AR-2 (Acreage Residential - 2 Acre Minimum) on 8 acres of and 85.60 acre parcel with an exceptions to statewide Goal 3 (Agricultural Land) and Goal 14 (Urbanization) on property located in the 2700 block of Enchanted View Lane SE, Salem (T8S; R3W; Section 36B; tax lot 400).
2. The property is located 600ft east of Enchanted Way SE south of Delaney Road SE, and west of Parish 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 parcel 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 form special assessment. Soils on the subject parcel are composed of 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. 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.
3. Surrounding properties to the north, west and south are zoned AR (Acreage Residential) and are composed of medium 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.
4. The applicant states that the "ultimate goal" of the proposal is to create four new 2.0-acre 'home site' parcels, leaving 77.60 'farm-parcel' acres in a remainder parcel which would be left vacant "while retaining the Farm Parcel as open space" This staff report considers the potential for the property to be divided in a series of partitions, or a subdivision, that will eventually result in the creation of up to four 2.0-acre residential lots.

5. 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*

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

STAFF FINDINGS AND ANALYSIS

6. Land use applications of this nature must be consistent with Statewide Planning Goals. In this specific case, the subject parcel is covered by Statewide 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 Statewide 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 exceptions to Goals 3 and 14.
7. Goal exceptions are governed by Statewide Planning Goal 2. Goal 2 is implemented through Oregon Administrative Rule (OAR) 660-004. Under OAR 660-004-0028(1), a local government may adopt an exception to a goal when the land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impractical. According to OAR 660-004-0028(2), whether land is irrevocably committed depends on the relationship between the proposed exception area and the lands adjacent to it. The findings for a committed exception must address the following:
- (1) *A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:*
 - (a) *A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).*
 - (b) *For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.*
 - (c) *An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.*
 - (2) *Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

- (a) *The characteristics of the exception area;*
 - (b) *The characteristics of the adjacent lands;*
 - (c) *The relationship between the exception area and the lands adjacent to it; and*
 - (d) *The other relevant factors set forth in OAR 660-004-0028(6).*
- (3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*
- (a) *Farm use as defined in ORS 215.203;*
 - (b) *Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
 - (c) *Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*
- (4) *A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.*
- (5) *Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.*
- (6) *Findings of fact for a committed exception shall address the following factors:*
- (a) *Existing adjacent uses;*
 - (b) *Existing public facilities and services (water and sewer lines, etc.);*
 - (c) *Parcel size and ownership patterns of the exception area and adjacent lands:*
 - (A) *Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.*
 - (B) *Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;*
 - (d) *Neighborhood and regional characteristics;*

- (e) *Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*
 - (f) *Physical development according to OAR 660-004-0025; and*
 - (g) *Other relevant factors.*
- (7) *The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.*

GOAL 3

8. The property is undeveloped, is currently assessed as a farm parcel, and is currently in agricultural production. A primary farm dwelling is the only option for placing a dwelling on the subject property because the soils on the property are classified as high value for agriculture. The applicant is requesting a rezoning of the property on the grounds that the location and configuration of the property along with surrounding rural residential development on medium sized lots have limited agricultural use of the property and made commercial agricultural use of the property impractical. In addition to the previously mentioned items the parcel is divided by two roads that create difficulty for farming equipment and other farm related items.
9. The applicant makes an argument for the inability of the property to be commercially farmed due to the location of the parcel and because the property is surrounded by non-farm uses. A review of the land use patterns and parcel configurations in area surrounding the subject parcel does not support that conclusion. The property is 85.60 acres in size and is the largest parcel among the EFU zoned properties located between Enchanted Way SE and Parrish Gap Road. According to Tax records, in 2014 the property was being farmed for seed, and it has been in agricultural production since that time. Nearly all of the farm-zoned properties in the area are currently specially assessed as farm land by the Tax Assessor and are in various types of agricultural production, as they have been for at least the past 50 years. Most of the dwellings in the immediately vicinity of the subject parcel, in both the AR zone and the EFU zone, were built between 1965 and as recently as 2018.

Review of historical air photos show that use of the farm land has not changed since the area was first developed, except for the approval of a subdivision in 1996 which allowed for the development of homes within the parent parcel from which the subdivision came from. The property was the result of a planned unit development (PUD 95-1) and subdivision (SUB 96-2). These land actions resulted in 23 residential lots within the AR zone and the remainder EFU parcel that is the subject of this land action. Both land use approvals included 100-foot dwelling setbacks from the property line abutting the subject parcel to minimize impacts of residential activities on agricultural use of the subject property. The applicant states that the rural residential properties in the adjacent Exception Area irrevocably commit the subject property to residential use. The dwellings adjacent to the subject property were built in the early 1960s up until as recently as 2018 and the subject parcel was farmed and continues to be farmed to the present day.

In this instance, no dwelling or other structures, nor any improvement of any kind is present on site. Public water and sewer service is not available on the subject property nor could it be provided to the property. The subject property is 85.60 acres in size; therefore, the property is not “committed” to a smaller minimum lot size. If the portion of subject parcel is approved for a zone change to Acreage Residential, the remaining farm parcel will be significantly affected as there would no longer be any contiguous resource land. The nearest resource land would be east of the proposed AR section. This inherently results in the increasing rural residential densities and removal of the largest farm parcel in that area. The parcel could

still be farmed, but residential uses could consequently cause disturbance and difficulties to the farmer(s). The applicant notes that the original area was granted an exception to Goal 3 based on a 1973 Subdivision that was approved (Exhibit 105). In the findings, the 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 farm land.

At 85.60 acres, the subject parcel is the second largest of the farm parcels located within a ¼ mile radius providing a buffer between the residential development and the smaller farm parcels to the north, west and south of the subject parcel. If portions of the subject parcel were to be converted to two-acre rural residential lots, the Special Agriculture-zoned farm lands to the east would be at far greater risk of being irrevocably committed to residential use.

Staff finds that the proposal does not meet the criteria for an irrevocably committed exception in OAR 660-004-00028.

GOAL14

10. OAR 660-004-00040 specifies how Goal 14 applies to rural lands in acknowledged exception areas planned for residential uses. The rule applies to “rural residential areas,” which under the rule means lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3, Goal 4, or both has been taken. The subject property is not within an urban growth boundary. Applicant has applied for a comprehensive plan change from Primary Agriculture to Rural Residential, a zone change from EFU to AR-2, and an exception to Goal 3. OAR 660-004-00040 applies. Under OAR 660-004-00040(8)(i)(B), the county must take an exception to Goal 14 when establishing a minimum two acre lot size.
11. Applicant asks the county to take an irrevocably committed Goal 14 exception to allow AR-2 zoning on the subject property. Under OAR 660-004-0010(1)(d)(D), an exception to Goal 14 must follow the requirements of OAR 660-014-0030 (irrevocably committed exception) or OAR 660-014-0040 (reasons exception). Because Applicant requests an irrevocably committed exception to Goal 14 to allow urban levels of development on rural land, OAR 660-014-0030 applies.
12. Under OAR 660-014-0030:
 - (1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goal 14’s requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.
 - (2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.
 - (3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:
 - (a) Size and extent of commercial and industrial uses;
 - (b) Location, number and density of residential dwellings;

- (c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and
 - (d) Parcel sizes and ownership patterns.
- (4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.
- (5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.
13. Applicant described nearby commercial and residential uses as well as parcel size and ownership patterns and concludes that the proposed development is consistent with existing development in the area and would not create a significant adverse impact on adjacent uses. The applicant notes that there is commercial development to the southwest of the property and a large amount of Residential land to the north, west, and portions to the southeast. The EFU parcel is contiguous with several other large commercial farming tracts to the east. The applicant notes that there is a development in the surrounding area that is not consistent with the current zoning and designation of the EFU property. While this is the case, properties in other zones are not required to only support uses that are consistent with the EFU zone. Uses must not create substantial conflicts with the EFU zone and the applicant does not explain why these uses create substantial conflicts. Dwellings approved on surrounding Acreage Residential lands are required to maintain a 100 foot special setback in order to minimize conflicts with parcels in farm use. Surrounding AR properties vary in average size from 2.2 acres to 1.7 acres in the area. Existing public facilities and services are discussed it is concluded that these facilities are adequate to serve the proposed development. There are no public water or sewer services available in the surrounding area.

Staff is unable to conclude based on the existing record that the land in question is committed to urban uses and urban level development rather than a rural level of development as required in OAR 660-014-0030 (4).

STATEWIDE PLANNING GOALS

14. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. The applicants address the goals, but from the discussion above, it is not clear that an exception to Goals 3 and 14 are justified.

COMPREHENSIVE PLAN AMENDMENT

15. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.
16. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of one parcel of land and the proposal can therefore be considered under the quasi-judicial amendment process.
17. The proposal must be consistent with applicable policies for Rural Residential developed contained in the comprehensive plan. These policies include:

8. *Since there is a limited amount of area designated Rural Residential efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than 2 acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10 acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.*

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 staff was unable to find that the criteria were satisfied. If the hearings officer reaches a different conclusion on the Goal 14 exception, this policy will be met.

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 an 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.

If a Goal 14 exception is justified, the applicable comprehensive plan policies will be met.

ZONE CHANGE CRITERIA

18. 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.*

19. If the comprehensive plan amendment is approved and the property is designated as rural residential, the proposed AR-2 will consistent with that designation. The applicants address the zone change criteria and the proposal appears consistent with the density and pattern of development on nearby land zoned Acreage Residential. Although the 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 parcel the majority of the land surrounding the subject parcel is zoned Acreage Residential (AR) with a small portion to the east backing up to Exclusive Farm Use (EFU). The parcels that are zones 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 four new home sites would not significantly adversely affect allowed used in the adjacent EFU properties.
- If the comprehensive plan amendment and goal exceptions are granted the proposal will satisfy the zone change criteria.

CONCLUSIONS

20. Based on the above, staff recommends denial of the proposal based on the existing record.
21. If the applicant's request is approved, staff recommends the following condition be applied.
- A. The applicant shall provide a legal description of the areas on the property being rezoned to AR 2.