



Marion County
OREGON

ZONE CHANGE/COMPREHENSIVE PLAN CHANGE APPLICATION

RECEIVED

JUN 01 2021

**Marion County
Planning**

Do not double-side or spiral bind any documents being submitted

Fee: Please check the appropriate box:

- | | |
|--|---|
| <input type="checkbox"/> Zone Change - \$1880+\$30/acre | <input type="checkbox"/> Mineral Aggregate Site - \$5300 base fee + |
| <input type="checkbox"/> Comprehensive Plan Change - \$3755+\$60/acre | \$25/acre – 0-100 acres |
| <input checked="" type="checkbox"/> Zone Change/Comprehensive Plan Change - \$3755+\$60/acre | \$75/acre – 101-200 acres |
| + Goal 14 & (2) Goal 3 Exceptions (1 to AR parcels; 1 to remnant EFU parcel) | \$100/acre – 201-399 acres |
| | \$150/acre – 400+ acres |

PROPERTY OWNER(S): Maymie Irene Updegrave Trust & the Western Oregon Conference Association of 7th Day Adventists, as Trustees	ADDRESS, CITY, STATE, AND ZIP: 19800 Oatfield Rd Gladstone OR 97027
PROPERTY OWNER(S) (if more than one): N/A	ADDRESS, CITY, STATE, AND ZIP N/A
APPLICANT REPRESENTATIVE: Mark D. Shipman/Saalfeld Griggs PC	ADDRESS, CITY, STATE, ZIP PO Box 470, Salem, OR 97308
DAYTIME PHONE (if staff has questions about this application): 503-399-1070	E-MAIL: mshipman@sglaw.com; margaret@sglaw.com; and hstevenson@sglaw.com
ADDRESS OF SUBJECT PROPERTY: 8S-3W-36 TL 400	SIZE OF SUBJECT PROPERTY: 85.60 Acres +/-
The property owners request to change the zone from (current) <u>EFU</u> to (proposed) <u>AR-2</u> and/or change the Comprehensive Plan designation from <u>Agricultural</u> to <u>Residential</u> . Provide detailed information on the attached "Applicant Statement" page.	
Will a railroad highway crossing provide the only access to the subject property? () Yes (x) No If yes, which railroad:	

FOR OFFICE USE ONLY:			
Township <u>8</u>	Range <u>3W</u>	Section <u>36</u>	Application elements submitted:
Tax lot number(s) <u>400</u>			<input checked="" type="checkbox"/> Title transfer instrument
Zone: <u>EFU</u>	Comp Plan: <u>Primary Ag</u>		<input type="checkbox"/> 2 Site plans showing existing/proposed zoning
Zone map number:	<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural		<input checked="" type="checkbox"/> Applicant statement
<input type="checkbox"/> TPA/header	<u>Updegrave</u>		<input type="checkbox"/> GeoHazard Peer Review (if applicable)
Case Number:	<u>20421005 14</u>		<input checked="" type="checkbox"/> Filing fee
Signs given (min. agg. only):	<u>CP/2C 21-</u>		Application accepted by: <u>AS</u>
Date determined complete:			Date:

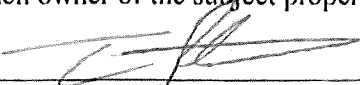
THE APPLICANT(S) SHALL CERTIFY THAT:

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

PRINTED NAME AND SIGNATURE of each owner of the subject property.


Tim Peterson, as Trustee of the
Maymie Irene Updegrave Trust

Print Name


Signature

Tim Peterson, as Secretary of Western Oregon
Conference Association of Seventh-day Adventists

Print Name


Signature

Print Name

Signature

Print Name

Signature

DATED this 26th day of May, 20 21

June 1, 2021

VIA HAND DELIVERY:

Marion County Planning Division
5155 Silverton Rd. NE
Salem, OR 97305

RE: Consolidated CP-ZC-EXCS (Enchanted Ridge Property— 8S-3W-36, TL 400)
Our File No: 40736-00001

Dear Planning Staff:

Please find the enclosed consolidated request for a Comprehensive Plan Amendment, Zone Change and for Exceptions to Planning Goals 3 & Goal 14. Goal 3, submitted on behalf of our client, Enchanted Ridge Property Owners Association, for the above-referenced property. Enclosed for this filing are the following items:

- 1) Check in the amount of \$8,891.00 as calculated by Alyssa Schrems;
- 2) Executed Application Form; and
- 3) Written Statement, which includes the following exhibits:
 - a. Vesting Deed (Exhibit 101);
 - b. Zoning Map (Exhibit 102);
 - c. Site Plan (Exhibit 103);
 - d. Surrounding Property Inventory (Exhibit 104);
 - e. Previous Exception Narrative as provided by MCPD (Exhibit 105);
 - f. Soil Analysis (Exhibit 106);
 - g. Soil Map (Exhibit 107);
 - h. Hydrological Review Letter (Exhibit 108); and
 - i. TPR Analysis (Exhibit 109).



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JUN 01 2021
Marion County
Planning

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Salem, Oregon 97301

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Salem, Oregon 97308

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June 1, 2021
Marion County Planning Division
Page 2

Following your review please do not hesitate to contact Mark Shipman (mshipman@sglaw.com), Margaret Gander-Vo (margaret@sglaw.com) or myself if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hannah Stevenson".

HANNAH F. STEVENSON
PARALEGAL
hstevenson@sglaw.com
Voice Message #325

hst:hst
Enclosures
cc: Client

**CONSOLIDATED ZONE CHANGE/COMPREHENSIVE PLAN AMENDMENT/GOAL EXCEPTIONS
WRITTEN STATEMENT**

OWNER:

Western Oregon Conference Association of Seventh
Day Adventists, Trustee of the Maymie Irene
Updegrave Trust U/T/D 02/12/92, as amended
19800 Oatfield Rd
Gladstone, OR 97027

APPLICANT:

Enchanted Ridge Property Owners Association
8388 Valley Way
Turner, OR 97392

APPLICANT'S REPRESENTATIVE:

Mark Shipman, Attorney
Margaret Gander-Vo, Attorney
Saalfeld Griggs PC
PO Box 470
Salem, OR 97308
Phone: 503- 399-1070
Email: mshipman@sglaw.com
Email: margaret@sglaw.com



SUBJECT PROPERTY INFORMATION:

The property is approximately 85.6 acres in size and is identified as Tax Lot 400 in Township 8 South, Range 3 West, Section 36, in Marion County, Oregon (the "**Property**"). The Property is owned by Western Oregon Conference Association of Seventh Day Adventists, Trustee of the Maymie Irene Updegrave Trust U/T/D 02/12/92, as amended (the "**Owner**") but is in the process of being sold to Enchanted Ridge Property Owners Association, an Oregon non-profit organization (the "**Applicant**"), via a Purchase and Sale Agreement, contingent on the approval of this consolidated land use application. The current vesting deed (Warranty Deed) was re-recorded in the Marion County Records at Reel 4105, Page 216, has been provided as part of this application and is attached hereto as **Exhibit 101**. The Owner has consented to this consolidated application request, as evidenced by its signature on the land use application. The Property is designated as Primary Agriculture in the Marion County Comprehensive Plan and zoned Exclusive Farm Use (EFU) in the Marion County Rural Zoning Ordinance, as shown on the Zoning Map which is attached hereto as **Exhibit 102**. The Property is located within the Cascade School District Catchment and the Turner Fire District. It is located outside of the City of Salem and the City of Turner Urban Growth Boundaries and is not within any city limits. The Property is not within a FEMA flood plain and there are no identified wetlands located on the Property, however, it is located within Marion County's Sensitive Groundwater Overlay Zone and there is a mapped landslide hazard on the Property.

BACKGROUND AND PROPOSAL:

The Property was created by Partition Plat 2009-043 and is designated as Parcel 1 therein. The Property is bounded by AR zoned land to the North and to the majority of the East, South, and West. The Southwest corner of the Property is bordered by commercially zoned properties and developed with the Hope Valley R.V. Park and the Enchanted Forest Theme Park. The Property is essentially an isthmus of EFU Property predominantly surrounded by Rural Residential and Commercial development. Applicant is requesting the following: (1) an exception to Statewide Planning Goals 3 and 14 for the Homesites, defined below; (2) an exception to Statewide Planning Goal 3 for the Farm Parcel, defined below; (3) a comprehensive plan designation change from Agricultural to Residential for the Homesites; and (4) a zone change for the Homesites from Exclusive Farm Use (EFU) to Acreage Residential (AR-2 pursuant to Section 123.020 of the Marion County Rural Zoning Code ("**MCC**" or the "**Code**"). Applicant is filing this application as a consolidated application (the "**Application**"). Applicant will be subsequently requesting a subdivision of the Property into five parcels, separating four (4) two (2) acre parcels (the "**Homesites**") from the approximately 77.60 acre remnant parcel (the "**Farm Parcel**") (the "**Subdivision Application**"); Upon approval of this Application and the Subdivision Application (collectively the "**Applications**"), Applicant plans to sell the Homesites to a developer who will develop them with homes similar to the existing homes in the surrounding area while retaining the Farm Parcel as open space (the "**Proposed Use**"). The Proposed Use would not be permitted in the EFU Zone but would be a permitted in the AR zone, subject to the applicable development standards. The proposed site plan for this Application is attached hereto and incorporated herein as **Exhibit 103**.

SURROUNDING PROPERTY INFORMATION:

The properties that immediately surround the Subject Property are zoned, designated, and used as follows:

<u>PROPERTY</u>	<u>ZONING</u>	<u>USE</u>
North	AR	Residential
South	AR/C	Residential/Commercial
East	AR	Residential
West	AR/EFU	Residential/Agricultural

The general development in the surrounding area shows a pattern of development which is not consistent with the current zoning and designation of the Property. There is a high level of commercial development, with several commercial properties adjacent to the Property including the Enchanted Forest Theme Park, Hope Valley Resort, as well as several other commercial properties owned by various entities including a mini storage location and several undeveloped commercial properties. Hope Valley Resort is a development of tiny homes which is partially developed along the Property's southern property line, some of which will be immediately adjacent to the existing residential uses. There are additional, undeveloped portions of this development which extend east beyond the Property leaving potential for services that support the surrounding residential uses. This pattern of commercial development has resulted in approximately seventeen (17) commercial properties, which are primarily held by different owners. This is particularly true when you view Hope Valley Resort which has approximately ninety (90) manufactured

homes through the lens of its existing residential use, where the lots themselves are held in common ownership but the residential use is occupied by a variety of owners, emphasizing a higher level of residential use than is common in the County. Applicant has provided a Surrounding Property Inventory and correlating map that shows the parcels, use and ownership to further emphasize the development already present in the area. See **Exhibit 104**.

In addition to a high level of commercial development in the area, the Property is located in the center of a large swath of developed AR Properties. The surrounding area has been committed to residential use and is fully developed for that purpose. Applicant's Surrounding Property Inventory shows the extent of this parcelization and the diversity of ownership in the area. Within the surrounding residential clusters the average size of the parcels varies from approximately 2.5 acres in size for the cluster along Enchanted Ridge Court SE, to approximately 2.2 acres in size along the northern branch of Valley Way SE, to 1.7 acres in size along the southern terminus of Valley Way SE. The residential parcels to the north are significantly smaller, measuring an average of 1.3 acres in size, similar to suburban residential development within the city limits. These areas are served by existing utilities and rural service providers, with some of that infrastructure running through the Property along the developed road system.

The balance of the surrounding area is comprised of acreage homes, more similar to what is traditionally developed in the AR Zone, along with the Wat Buddha Oregon Temple and Church on the Hill (COTH) (of the Willamette Christian School).

These hubs of development adjacent to AR zones is consistent with other areas set aside for residential use throughout the County, providing commercial and support services in a confined and well defined area. The development of the surrounding area is so extensive that with the sloped topography of the Property, the Property is an isolated patch of EFU property bound by residential development to an extent that irrevocably commits it to residential use.

The Property itself is divided into four (4) parcels by the following roadways: Enchanted View Lane SE, Enchanted Ridge Court SE, and Valley Way SE. The portion of the Property North of Enchanted View Lane SE is bordered by large residential parcels all of which are more than one acre in size but less than two acres. This residential development continues along Enchanted Ridge Court SE and along Valley Way SE, with the exception of an approximately six hundred forty-four (644') foot stretch of the Property which abuts additional EFU property. The southwest corner of the Property is adjacent to property zoned as "Commercial" and developed with the Enchanted Forest Theme Park. The surrounding area is largely residential in nature and the existing pattern of development has resulted in a parcel of EFU zoned Property surrounded by extensive parcelization.

Prior to the adoption of the Marion County Comprehensive Plan, a large portion of the adjacent rural residential properties was granted an exception to Goal 3 due to both a pre-existing subdivision approval and a finding by Marion County (the "**County**") that despite the predominance of high quality soils on the property, the level of residential and prospective commercial development in the vicinity supported the granting of an exception to Goal 3, as the area was developed to an extent that would disrupt any potential agricultural use of the property. The discussion of these exceptions was provided to the Applicant by Marion County Planning and has been included for reference as part of this Application. See **Exhibit 105**.

APPLICANT'S PROPOSED FINDINGS:

EXCEPTION TO STATE PLANNING GOALS 3 AND 14

The purpose of Statewide Planning Goal 3 (herein "**Goal 3**") is to preserve and maintain agricultural lands and the purpose of Statewide Planning Goal 14 (herein "**Goal 14**") is to contain urban development and plan for orderly growth through a variety of tools, including the urban growth boundary ("**UGB**"). The mechanism for excusing the application of both Goals 3 and 14 is through the goal exception process under one of the three exceptions to the Statewide Goals established in ORS 197.732:

(2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Proposed Finding: As discussed above, the Property is surrounded by non-resource use with the exception of a small portion of the eastern property line. Due to the development pattern in the area, the portion of the Property designated herein as the Homesites is irrevocably committed and is therefore unavailable for resource use. Applicant therefore submits this Application for an irrevocably committed exception to Goals 3 and 14. Applicant is requesting two separate Goal 3 exception areas, one applied to the Farm Parcel and a separate application to the Homesites. The reason for requesting the application of the exception areas in this bifurcated manner is to allow for the creation of the Farm Parcel, which will be substandard upon the approval of the proposed Subdivision Application but to retain that area as EFU lands in hopes of retaining it for open space, as an amenity to the residential uses in the area. The applicable implementing rules for ORS 197.732 are OAR 660-004-0018 and 660-004-0028, which have

been provided in relevant part below in bold and italics with Applicant's proposed findings following in plain type.

- (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.***

Proposed Finding: Applicant's proposal is essentially the expansion of an existing exception area which was allowed for the development of an approved, but undeveloped subdivision, that was established prior to the adoption of the Marion County Comprehensive Plan. *See Exhibit 105.* The development of these residential properties resulted in a residential neighborhood which surrounds the Property and in rural roads which result in several small, isolated parcels within the larger Property which under Applicant's proposal will be portioned from the EFU Parcel. In the narrative of the previously applied Goal Exception the County's justification focused on the surrounding residential areas as an indication that the areas adjacent to those then approved residential uses had irrevocably committed the remaining parcels to residential use. That logic applies to the proposed exception area as well. In looking at the topography of the Property in addition to the size, nature, and developed roads and utilities through the Property the County erred in not identifying the Property as additional exception area when it applied the original exception area to the surrounding residential areas. The surrounding development has irrevocably committed the Homesites to residential development and resulted in a configuration that constricts the Farm Parcel to the degree that it is a substandard parcel. This is precisely the type of circumstance that the goal exception process was intended to remedy.

- (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):***

- (a) That are the same as the existing land uses on the exception site;***

Proposed Finding: The Property was previously leased to a series of tenants primarily to farm grass seed, including most recently the owners of the EFU property along the Property's eastern property line. This farmer has decided not to continue farming the parcel for a variety of factors, including the lack of profit that can be derived from the Property in its current configuration. The Proposed Use differs from the existing land uses for the Property as it relates to the Homesites, however the Farm Parcel will remain undeveloped and available for resource or recreational use but will be below the 80-acre minimum for EFU parcels.

With the exception of a small portion of the eastern property line, the Property is surrounded on all sides

by either residential or commercial development which was developed pursuant to a previously granted exception which left the Property an isolated area surrounded by residential uses with an isthmus of the Property extending to neighboring EFU property. However, the application of the zoning designation makes these areas appear to be a continuous farmable parcel, which is not the case.

Due to the slopes in the area the Property's eastern boundary line runs along a ridge that makes access by farm equipment from the farm parcel to the east impossible. Instead of farming that area as a consolidated unit, tenant farmers have to access the Property from the west through a gated entrance which limits the size of equipment that is able to access the Property. Once on the Property, the ability to farm the individual components of land is further limited by a variety of elements. The existing roadways and utility lines that serve the adjacent residential uses have led to heavy compaction along the roadways as well as further limitation of the individual units, in an effort to avoid damaging the infrastructure. Picture attempting to farm approximately 85% of Bush Pasture Park while residential users are walking along the pathways and complaining about the noise and dust as well as trying to navigate large farm equipment along a typical county road while avoiding residential traffic.

Upon approval of the Application, the existing resource use will be reduced to the Farm Parcel, which is comprised of the two largest continuous sections of the Property. The level of development in the area has irrevocably committed the Homesites to residential use, justifying an application of the Goal 3 Exception to those parcels which will ultimately result in a substandard farm parcel. The acreage constraints on the Farm Parcel justify the application of the Goal 3 exception under this subsection as it will allow for the continuation of the existing use on the Farm Parcel. As it relates to the Farm Parcel, this criterion is met.

As it relates to the Homesites, while the use on the Property is not residential in nature, it is surrounded by residential uses which have impacted the ability to sell or lease the Property for future farm use in a manner so as to irrevocably commit the Homesites to residential use. While the residential component of the Proposed Use does not currently exist on the Property, it is in conformance with the nature of the surrounding area. Approval of the exception may be accomplished via satisfaction of any of the criteria set out in this Section 2, as it relates to the Homesites this criterion is not applicable.

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;

Proposed Finding: Applicant is proposing the addition of four (4) homesites on the Property via the Subdivision Application, which will be developed at a later date. The proposed Homesites will be properly classified as rural in nature. As part of this Application, Applicant is requesting a comprehensive plan designation change from "Agricultural" to "Rural Residential" and a zone change from "EFU" to "AR-2" for the Homesites. The Rural Residential designation and implementing AR-2 zone allow for the development of acreage parcels where property owners understand that in order to enjoy the benefits of rural living, they are obligated to provide many of the services that are provided by the governing jurisdictions in urban settings. The Property is adjacent to residential and commercial areas that access some degree of urban services. PGE, NW Natural Gas, Century Link, and Wave all have underground infrastructure through the Property, serving the surrounding residential uses. Where possible, the Proposed Development will

connect to the existing infrastructure. Where necessary, the individual homesites will be developed with on-site wells and on-site septic systems, in line with what is expected for similar rural development. The ability to contain and provide these services without adversely impacting the surrounding area, including the Farm Parcel, is consistent with the County's interpretations regarding the goals and policies of the rural residential designation under the Marion County Comprehensive Plan as implemented by the AR zone. This criterion is satisfied.

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and

Proposed Finding: While Applicant is adding a maximum of four (4) additional homesites under the Subdivision Application proposal, it is a modest increase in an area which is already heavily developed with similar homes. The Homesites will be developed in a manner that is consistent with the existing development pattern and will not result in an additional impact to the adjacent resource use. The Proposed Development retains the largest parcels of continuous agricultural land, retaining the majority of the acreage as EFU. The only parcel of resource land that would potentially be impacted by the Proposed Development is the parcel of EFU zoned property to the east of the Property. However, this property is already bounded by similar residential development along the majority of its western property line and is located along the opposite side of a ridge. The Proposed Development will not impact that property's ability to continue to operate as an agricultural parcel. This will be further accomplished by the established special siting standards set forth in MCC 17.128.050, which requires special setbacks as well as requiring the recordation of a declaratory statement acknowledging the protected status of resource use on the adjacent parcels. Applicant has been in conversation with the neighboring property owners and hopes to provide a letter of support as part of this Application. This criterion is satisfied as applied to both of the proposed exception areas.

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.

Proposed Finding: As previously stated, the surrounding area is developed with existing residential and commercial uses. Only a small portion to the eastern property line is adjacent to an existing agricultural use and that adjacent parcel is bounded along the majority of its western property line by pre-existing residential uses. Upon approval of this Application, one of the Homesites will also share its eastern property line with the Farm Parcel, although the proposed property line is an extension of the existing residential property line, creating a straight property line by cutting of the areas already pinned in by residential uses. The Homesites adjacent to neighboring agricultural uses will be developed with adequate setbacks to prevent further encroachment of the proposed residential use on the adjacent farm uses and upon approval of this Application and will be subject to a declaratory statement restricting subsequent property owners from objecting to the neighboring resource use. As stated above, Applicant will connect to public facilities where available but will be able to support the Proposed Development with onsite well and septic systems, containing any potential impact within the Homesite parcels and preventing any impact on adjacent resource use. The Homesites are proposed for areas of the Property which are already surrounded by existing residential uses, consolidating the Farm Parcel into two large swaths that can be more efficiently committed to resource use and allowing for the development of the portions of the Property isolated by the existing residential properties as a use that is compatible with the adjacent uses. This criterion is satisfied as applied to both of the proposed exception areas.

- (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;***

Proposed Finding: The Subject Property is not located within an unincorporated community. This criterion is not applicable.

- (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.***

Proposed Finding: The Proposed Development is residential and agricultural in nature. This criterion is not applicable.

OAR 660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

- (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).***

Proposed Finding: As addressed above, Applicant is requesting a goal exception under ORS 197.732(2)(b). To obtain approval for a goal exception under that title, Applicant must demonstrate conformance with the requirements of this section.

- (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;***

Proposed Finding: As previously stated, the Property is approximately 85.60 acres in size and was created by Partition Plat 2009-043. It is designated as "Agricultural" under the Marion County Comprehensive Plan and Zoned "EFU." It is outside of both the City of Salem and the City of Turner UGBs and is outside of any city limits. There are not any wetlands or flood plains on the Property. A small portion of the Property is mapped with a landslide hazard and is therefore subject to the County's "Geological Hazardous Areas Overlay Zone." The Property is located within a "Sensitive Groundwater Overlay Zone." The Property is irregularly shaped and segmented into four (4) tracts of various sizes by Enchanted View Lane SE, Valley Way SE, Enchanted Ridge Court SE. Applicant's Proposed Development of the Property takes advantage of this existing parcellation, retaining as much of the Property as EFU as is feasible given the existing constraints on the Property. While the Property contains multiple categories of soils and is primarily

designated as High Value Soil (98%) as mapped by the National Resource Conservation Service. Applicant has provided a soil analysis as part of this application which is attached to this application as **Exhibit 106**. More specifically, the map areas identified as the Homesites (north of the Carricks; and east of Valley Way SE) are designated as High Value Soils – Jory (JoC) Class II north of the Carricks; and Jory (JoC) Class 2, Nekia (NeC) and (NeD) Class 3, east of Valley Way SE. Applicant has provided a soil map of the Property which is attached to this Application as **Exhibit 107**. The soil characteristics of the Property are predominantly classified as high class soils, however, the adjacent land uses to the north, west, and south make use of the Property for commercial farm use impracticable.

The parcels surrounding the Property are not held in common ownership, rather they are developed with individual residential uses that are held by the current occupants. This will also be true of the Homesites, once developed and conveyed to the ultimate owners of those properties, joining the large clusters of residential properties and developed roadways enveloping the Property. The Property in its current configuration is a single, isolated parcel, cut off from the adjacent farm parcel by steep slopes that create a barrier to the operation of this Property for “farm use” as statutorily defined. Upon development of the Homesites, these slopes will continue to provide additional buffering between the Homesites and the neighboring agricultural use as well as the fact that the elevation of the Homesites will be higher in elevation than the adjacent farm uses not owned by the Applicant. The lower Homesites, adjacent to Enchanted Ridge Court SE, will be bounded on at least three sides by either existing residential uses or roadways, as well as being on a higher elevation than the resource land which is directly adjacent to it, representing the initial climb uphill from a valley within the Property. This unique topography will buffer any future resource use, keeping it largely isolated from the Homesites.

While the Homesites are currently held in common ownership, for these parcels in particular, the application of the previous zone exception area created a scenario where EFU zoned parcels are confined to a degree that they are irrevocably committed by virtue of their location near existing roadways and the adjacent residential uses. The result of the application of the Goal 3 and Goal 14 exceptions in this circumstance is to create consolidated pieces of land better associated with the zoning and use of those parcels. The Farm Parcel will be confined to acreage that can be used either for resource use if interest for a smaller EFU parcel arises but would also be manageable by the surrounding residential users as open space for recreation in relation to the established residential uses.

As outlined above, the topography of the Property acts as an additional restriction on the Property that was not previously considered when the original goal exception was applied. The Property itself slopes into the center from both the south east and the south west, creating a valley sloped down to the north west 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 to the center of the valley. This has resulted in the County mapping an excessive slide overlay on the eastern rim of the Property, adjacent to the neighboring EFU property, which effectively cuts that property off from the 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, 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 unsurmountable.

Applicant has provided a letter from the neighboring property owner outlining how this Property is so restricted as to make farming of the Property impracticable. It is the hope of the Applicant that by confining the Farm Parcel and consolidating the boundaries into a more compact shape, it can be more efficiently committed to resource use, perhaps rendering it more profitable and therefore more attractive to farming tenants. In the event that the Farm Parcel remains unprofitable to farm, the new parcel structure will allow for better maintenance and enhancement of the Farm Parcel, retaining it as open space which can be used as an amenity for the adjacent residential uses. By retaining the Farm Parcel as EFU Property, subject to an exception to allow for a reduction in the parcel size, Applicant is attempting to maintain the pastoral character of the area while simultaneously creating a parcel that is reasonably committed to resource use.

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 in determine whether land zoned for exclusive farm use 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 on a determination that the Property is 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 portions of the perimeter, committing a smaller proportion of the Farm Parcel to irrevocable development. The Property will still be accessed via the private roads, but crossings will be minimized and more of the work will be confined in a specified, usable area. Rather than allowing for 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 parcels that may be feasibly employed for agricultural production, although at a reduced parcel size, requiring the application of a Goal 3 exception.

(b) The characteristics of the adjacent lands;

Proposed Finding: The areas directly adjacent to the Homesites are part of an exception area which was adopted prior to the adoption of the Marion County Comprehensive Plan. As previously mentioned, the adjacent properties were granted an exception at the request of Marion County due to the approval of a subdivision and the subsequent construction of approximately nine (9) homesites in the area as well as two other parcels of land which had been "committed to development based on specific development approvals." See *Exhibit 105*.

The adjacent lands are heavily developed with both residential and commercial uses. To the north, the previously approved exception area has been fully developed with residential sites that are between one (1) and three (3) acres in size, similar in nature and character to Applicant's proposed residential parcels. As stated in the document applying the exception to the neighboring properties, the County identifies

that the soil classifications on the adjacent properties and the slopes in the area are nearly identical to the Property and cites the development in place at the time of the application of the exception as justification for the application of the exception. *See Exhibit 105*. Applicant is requesting the application of an exception to the Property under the same justification, which is more pronounced at this time than the development in place at the time of the original exception application.

The Applicant is an association of the property owners immediately adjacent to the Property, which is primarily comprised of parcels averaging 2.5 acres in size. These parcels are developed with large homes with expansive landscaping, resulting in parcels that are significantly developed. In addition to lands immediately adjacent to the Property are smaller residential properties that average less than an acre in size and are similarly developed with residential homes.

To the south and further east 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 the 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. This has constricted the practicability of farming on the Property, even as part of a larger farming operation due to the isolation of the parcel by the adjacent commercial and residential development.

(c) The relationship between the exception area and the lands adjacent to it; and

Proposed Finding: The Property is under contract to be sold by the current Owner to the Enchanted Ridge Property Owners Association ("**ERPOA**"), the Applicant. ERPOA is an association of the surrounding property owners who is purchasing the Property in hopes of expanding the existing residential development in a manner that will retain the rural character of the neighborhood while allowing for the efficient use of the Property, which is currently underutilized due to the constraints placed on it by the surrounding development.

As discussed above, the Property designated for the Homesites is confined by both the topography of the site, the development of the adjacent properties, and the infrastructure that runs through the Property in order to serve the existing adjacent residential uses. The application of the goal exception prior to the adoption comprehensive plan allowed for the development of the existing residential areas while pinning in the Property and cutting off access from any point other than through the now developed private roads that connect to the adjacent public road system. By applying the exception area in this manner, the County created an island of EFU property that appears to be connected to the adjacent EFU property to the east, but in reality, the topography of the area is such that the Property is fully cut off from any agricultural uses.

The result of the application of the previous exception to the surrounding properties permitted the construction of the residential uses in the area, which necessitated roads through the Property as well as the extension of underground utilities along the roadways. By virtue of this residential development, the Property has become irrevocably committed to residential use, playing a supporting role to the adjacent uses which has rendered it impracticable for agricultural use.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

Proposed Finding: Applicant will address these factors in detail below.

(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).

Proposed Finding: As outlined above, the Property is surrounded by high levels of residential and commercial development which restricts the ability of the Property owner to lease the farm to larger farming operations. The existing slopes on the site and the rural roads that bisect the Property, requiring navigation of these roads with large farm equipment to access relatively small parcels of the Property. Additionally, due to required setbacks from the roads, the underground utilities, and adjacent residential and commercial uses, the amount of the Property that is practically available for resource use is heavily constrained to the point that it has become impracticable to productively farm the Property. These constraints would similarly constrain any forest operations on the Subject Property. The combination of these factors results in a property designated for resource use but with large portions of the Property on which resource use is impracticable.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

Proposed Finding: The Property is surrounded by residential uses that extend to the north and the east. The majority of these parcels are less than three acres in size and are each developed with a single-family residence. The majority of the property Owners in this area are either retired, employed in the adjacent urban centers, or support the surrounding rural resource uses. The owners of the residential properties primarily chose to live in the rural residential area due to the larger parcel sizes and lower levels of urban development. There is also an adjacent Buddhist Temple and private school which serves the broader community.

To the south of the of the Property is commercial development, including a developed tiny home park

which is operated primarily as a seasonal accommodation but is occupied by some users year-round. A larger portion of property southwest of the Property is developed with the Enchanted Forest amusement park. While some of this parcel remains wooded, it is fully developed with commercial amenities.

To the east of the Property is the only resource use surrounding the Property. As stated previously, a small portion of the Property is adjacent to this resource use, with approximately six hundred eighty five (685) feet of shared property line. The remainder of the adjacent parcel's eastern property line is shared with the adjacent residential uses, which are similar in size and nature to Applicant's proposed residential development.

Applicant's proposed residential uses would be consistent with the general development that has already occurred throughout the surrounding area and would not create a significant adverse impact on the adjacent uses. This factor favors a determination that the Property is irrevocably committed to non-resource use.

(b) Existing public facilities and services (water and sewer lines, etc.);

Proposed Finding: The Property is surrounded by existing residential and commercial uses. These uses are served by established utilities; however, the majority of the surrounding uses are supported by well water and on-site septic systems. Applicant will connect to the available utilities and is prepared to develop onsite septic systems and wells in order to serve the proposed residential sites. The pre-existing exception area is served by underground PGE, NW Natural Gas, Century Link and Wave infrastructure which will be available for the proposed Homesites. The purpose and intent of the AR Zone is to allow for rural residential uses where the development provides its own services, including well water and septic. There are existing utility lines that will serve the Homesites. Public roads will provide access to existing private roads that will provide access to each Homesite. The Property is within a defined ambulance district and is within the jurisdiction of the Marion County Sheriff, which provides policing services to the region. The Turner Fire District will provide emergency fire services and there is adequate road access to each of the Homesites by virtue of the existing roadways. The availability of public services and the feasibility of providing other necessary services supports a determination that the Homesites are irrevocably committed to non-resource use.

(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 nonresource 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.

Proposed Finding: As provided above, the surrounding development was permitted under a previous exception that was permitted prior to the adoption of the Marion County Comprehensive Plan. The surrounding residential development was approved under a subdivision application which provided approval for approximately 134 acres which was modified to allow for the development of 40 dwellings, developing approximately 90 of the original 134 acres. The dwellings developed under this modified subdivision proposal were primarily ½ acre lots with some clusters of larger acreage parcel spread out over the original 134 acre parcel. *See Exhibit 105.* In addition to the exception approved for the surrounding residential properties, an exception was granted via the same exception approval for the existing Enchanted Forest Parcel and the existing Hope Valley Resort which border the Property to the south and southwest. The Enchanted Forest Theme Park was already operating at the time of the exception. *Id.* The Hope Valley Resort was approved and under development at the time the exception was granted. As with the Property, the surrounding properties were created as legal lots at the time the exception was granted and the exception document (Exhibit 105) points to the existing approvals and the proposed development pattern as justification for the application of the exception. None of the properties were approved for development within the constraints of the EFU Zone, all of the development has been permitted via a County initiated goal exception. Applicant's position is that the underlying justification for application of this exception is equally applicable to the Property.

(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;

Proposed Finding: As provided above, the Property is approximately 86 acres in size and is not owned in common ownership with any of the surrounding properties. While the Property itself is not characterized by small lots, it is surrounded by smaller parcels and it is bisected by existing roadways that create isolated parcels within the larger Property. Rather than a small parcel surrounded by resource use, the Property is a larger parcel with irregular extensions into areas of existing residential and commercial uses. This is the type of Property, isolated from existing resource uses by clusters of residential development, that the exception process was designed to address. This factor favors a determination that the Property is irrevocably committed to non-resource use.

(e) Neighborhood and regional characteristics;

Proposed Finding: As outlined above in the discussion related to the adjacent uses, the majority of the

surrounding area is developed with acreage residential homes and commercial uses. Applicant's proposed residential development is consistent with the existing development in the area. The surrounding area is characterized as higher-end development which is largely self-sufficient due to the existing utilities and County's rural services and which takes advantage of the opportunity for larger tracts that exists primarily on lands outside of existing UGBs. The proposed use will continue the existing development pattern and will allow for a more efficient use of the Property than is currently possible given the physical constraints on the Property due to the previously approved developments in the area. This factor favors a determination that the Property is irrevocably committed to non-resource use.

(f) 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;

Proposed Finding: The Property is bisected by three existing roads with adjacent utility lines and right of way that provide access and electricity and other services to the existing residential area. These roads divide the Property into four distinct parcels and reduce the size of each parcel further due to the inability of farm equipment to utilize the area abutting the roadways. This development impedes the practicability of using the full Property for resource use. This factor favors a determination that the Property is irrevocably committed to non-resource use.

(g) Physical development according to OAR 660-004-0025; and

Proposed Finding: As outlined above, there are three existing roads and residential uses that bisect the and isolate sections of the Property along with utility lines that run adjacent to these roads. These roads segment the property into four distinct parcels, making resource use on the Property inefficient, and therefore more costly. This level of physical development impacting the Property is a factor in favor of the determination that the Homesites as part of the overall Property are irrevocably committed to non-resource use.

(h) Other relevant factors.

Proposed Finding: The Property is located within the County's Sensitive Groundwater Overlay as well as having a small portion of one of the proposed Homesites mapped with landslide hazards. These natural constraints further restrict potential agricultural uses which can be somewhat overcome by resource efficient development and careful engineering. These natural constraints provide additional buffering that was not previously considered in the process that applied the previous exception area, leading to a greater isolation of the EFU property that perhaps was previously intended. factor favors a determination that the Property is irrevocably committed to non-resource use.

(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.

Proposed Finding: Applicant has provided a current map showing the Property and the adjoining lands, demonstrating the extent of development in the surrounding area which has rendered the Property irrevocably committed to non-resource use.

Applicant has provided evidence into the record showing that the Property satisfies the applicable approval criteria for the approval of an exception to Goal 3 and Goal 14.

COMPREHENSIVE PLAN CHANGE CRITERIA:

Marion County has two Housing Goals and seventeen Rural Residential Policies, conformance with which are applicable approval criteria for this Application. The goals and policies are set out in bold and italics below with Applicant's proposed findings, where applicable:

The housing goals of Marion County are:

- a. To facilitate the development of safe, affordable housing by providing for a variety of choices in type, location and density consistent with urban and rural land use plans.***

Proposed Finding: Applicant is proposing single family homes, similar in size and quality to the surrounding homes in the area. Marion County is in the midst of a severe housing crisis which has been exacerbated by the recent wildfires in the area. <https://www.co.marion.or.us/pages/news.aspx?NewsId=645>. The County has been coordinating with various federal and state agencies to obtain additional funding to provide housing relief to those displaced and redevelop existing rural residential properties to increase supply in the County, satisfying Policy 1. *Id*; <https://www.co.marion.or.us/HA>. However, there is currently not enough supply to meet the demand for housing within the County, both in urban and rural areas, with an estimated need of more than 7,100 units. <http://www.oregonhousingalliance.org/wp-content/uploads/2019/04/Marion-County-2018-color.pdf>. While the existing housing crisis is particularly acute regarding affordable housing, affordable housing is not the only needed housing and housing "should be built to serve people at a variety of incomes levels. A housing supply that meets community needs is one that offers people a range of different places to live, different community densities to choose from, and does not overburden the financial resources of any group living there." <https://www.oregon.gov/lcd/OP/Pages/Goal-10.aspx>. While the proposed housing is not affordable housing, it will provide housing at a time when all levels of housing are needed within Marion County. There is currently not an adequate amount of residential land to meet these needs. The Application is consistent with this goal.

- b. To minimize adverse social, economic, environmental and energy impacts resulting from housing development in rural areas.***

Proposed Finding: Applicant is proposing the addition of four (4) additional residential sites in the Subdivision Application which will be developed with homes similar to those in the surrounding area, conforming to the existing development pattern in the area. The existing homes are high quality homes and will allow for increased diversity in the inventory of homes in Marion County without impacting the existing socio-economic pattern in the area. Applicant plans to develop the homes by taking advantage of sustainable building practices and energy efficient technology to the maximum extent feasible to avoid adversely impacting the surrounding area. In addition to these safeguards, a large portion of the Property will remain as undeveloped open space, preserving habitat for wildlife and retaining elements of the

existing rural character.

Rural Residential Policies

- 1. Marion County will cooperate with the Marion County Housing Authority and other agencies to develop programs and funding sources to increase the level of support for maintenance and rehabilitation of existing housing in rural areas.**

Proposed Finding: Marion County has an established a housing authority that which focuses on providing low-income housing options and assistance throughout Marion County in both rural and urban areas. <https://www.co.marion.or.us/HA>. The Proposed Use does not impact this work and this policy is not applicable to Applicant's proposal.

- 2. Marion County will cooperate with governmental agencies and housing authorities within the region to promote unified housing policies and to ensure an equitable distribution of assisted housing units throughout the County.**

Proposed Finding: Marion County has an established a housing authority and engages in coordination with applicable state and federal agencies. The Proposed Use does not impact this work and this policy is not applicable to Applicant's proposal.

- 3. Marion County will attempt to keep development requirements to a minimum so that the cost of rural residential housing can be kept as low as possible consistent with public safety and health requirements thereby helping to make rural housing a viable housing choice available to low- and moderate-income families.**

Proposed Finding: The County has developed policies and development requirements designed to protect the community's health and safety. Applicant intends to comply with the applicable development regulations. This policy is satisfied.

- 4. Marion County will encourage rural residential housing that takes maximum advantage of renewable energy resources and use of innovative technology in order to make rural housing as energy efficient and self-sustaining as possible to reduce the public cost of providing basic utility services to rural housing.**

Proposed Finding: Applicant intends to develop the Proposed Use in such a way as to take advantage of available building innovations in order to decrease the impact on the surrounding natural resources. Applicant hopes to take advantage of programs established by the County in order to facilitate development in a way that will facilitate the use of renewable energy sources. This policy shall be satisfied upon development.

- 5. Marion County considers rural residential living a distinct type of residential experience. The rural lifestyle involves a sacrifice of many of the conveniences associated with urban residences and the acceptance of lower levels of governmental services, narrow roads and the noises, smells and hazards associated with rural living and accepted farm and forest management practices. Marion County finds that it is financially difficult, not cost effective and inconsistent with maintaining a rural lifestyle for government to reduce or eliminate the inconveniences caused by lower levels of public services or farming and forest management**

practices. When residences are allowed in or near farm or forest lands, the owners shall be required to agree to filing of a declaratory statement in the chain of title that explains the County's policy giving preference to farm and forest uses in designated resource lands.

Proposed Finding: The Property will be developed in accordance with the requirements of rural residential development. Future development of the Property with rural homesites will require the development of the homesites with wells and septic systems. The area surrounding the Property is developed with rural residential sites that are similar to the Proposed Use. The Property is located within the Turner Fire District and the surrounding area is developed with paved roads that are accessible to emergency vehicles. Development of the properties will be subject to declaratory statements that acknowledge the primacy of natural resource use in the surrounding area. Owners of rural residential properties understand that the tradeoff for the benefits of rural living come at the cost of urban levels of services. This policy is satisfied.

- 6. Where designated rural residential lands are adjacent to lands protected for resource use, a reasonable dwelling setback from the resource land shall be required, and any other means used, to minimize the potential for conflicts between accepted resource management practices and rural residents.***

Proposed Finding: The Proposed Use will allow for the approval of the Subdivision Application that will result in four (4) residential parcels that are at least two (2) acres. This will provide adequate space for substantial setbacks from the surrounding uses. Moreover, upon approval of this final partition only two (2) of the proposed lots will be adjacent to land dedicated to resource use that is not owned by the Applicant, the remainder will be surrounded by the existing residential and commercial development. This policy is satisfied.

- 7. Lands available for rural residential use shall be those areas developed or committed to residential use or significant areas unsuitable for resource use located in reasonable proximity to a major employment center.***

Proposed Finding: As stated previously, the Property is surrounded by rural residential development to the extent that it is irrevocably committed to rural residential use. The surrounding area is developed with acreage residential properties and developed roadways. This level of development along with the slopes on the Property makes continued resource use on the Property unfeasible. The Property is located between the City of Salem and the City of Turner with access to I-5, meaning that the surrounding urban employment centers are close at hand. This policy is satisfied.

- 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 two acres allowing for a range of parcel sizes from two 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.***

Proposed Finding: As outlined in detail above, Applicant is requesting an exception to Goal 14 to allow for four (4) homesites that will be smaller in size than the ten (10) acre minimum. Applicant is proposing lots that are similar in size to the surrounding parcels, allowing for better integration of the Homesites into the existing development pattern. The remainder of the property will remain undeveloped, retaining

elements of the existing rural nature of the area. Provided Applicant's goal exception is approved, this policy is satisfied.

- 9. *When approving rural subdivisions and partitionings 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.***

Proposed Finding: As part of the Subdivision Application, Applicant will provide a hydrological review which demonstrates that there is adequate ground water to support wells for each of the proposed homesites. *See Hydrological Review Letter, Exhibit 106.* Applicant has also provided a soils analysis which demonstrates that the soils will support on site waste through a septic tank and that it is feasible to construct dwellings on each of the four (4) proposed homesites. *See Exhibit 106.*

- 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.***

Proposed Finding: Applicant has provided evidence that it is feasible to construct waste water disposal systems and wells on each of the proposed home sites. Each home site will be developed with adequate water and septic systems for the proposed residential use which will be reviewed and approved by Marion County Building prior to the development of the proposed residences on the Homesites. This policy is satisfied.

- 11. *Rural residential subdivisions shall be required to have paved streets.***

Proposed Finding: There are two paved roads that serve the Property, Enchanted View Lane SE and Enchanted Ridge Court SE. Both of these roadways are paved and in good condition and will serve the proposed Homesites. The proposed configuration of the parcels will not require additional roadways because the roadways will provide access to the Homesites. This policy is satisfied.

- 12. *Where a public or community service district exists, the extension of services within designated rural residential areas may be permitted. The district may be allowed to provide service extensions to lands outside the designated residential areas if necessary for health and safety reasons but the district shall only annex lands designated for residential use.***

Proposed Finding: There is not a developed community service district in the area, however, there are existing utility lines to the surrounding residential properties. At the time of development, these lines will be extended to the proposed residential sites. Applicant is not proposing annexation of the Property as alternative means of providing adequate services are available. This policy is satisfied.

- 13. *Where the use of community water supply systems is cost effective and there is not a service district able to provide the service they may be allowed. The availability of community water services shall not be considered justification for increasing the density of development beyond two acres per dwelling.***

Proposed Finding: There is not an existing community water supply system in the vicinity and Applicant is not proposing partitioning the Property into units that are smaller than two acres. In the event a

community water system is developed and approved, the proposed residences may elect to connect to the system. This policy is satisfied.

- 14. In rural residential areas within one mile of an urban growth boundary, a redevelopment plan may be required as a condition of land division. The plan shall demonstrate that reasonable urban density development is possible should the urban growth boundary need to be expanded in the future.***

Proposed Finding: The Property is not located within one (1) mile of an urban growth boundary. A redevelopment plan is not required. This policy is not applicable.

- 15. Where parcels of 20 acres or larger are suitable for rural residential development and previous nearby development does not create a precedent for conventional subdivision development, the developer shall be encouraged to cluster the residences through the planned development process to retain any resource use potential, preserve significant blocks of open space and wildlife habitat and to provide buffers between the residences and nearby resource uses and public roadways.***

Proposed Finding: Applicant will be submitting the Subdivision Application subsequently to this Application, which will create a total of four (4) home sites. These homesites will be clustered near the existing residential development and roadways, preserving large open blocks that will maintain the rural character of much of the Property while providing adequate buffers where possible. Applicant's intent is to develop the Property in a manner that will comply with this policy. This policy is satisfied.

- 16. The Acreage Residential (AR) zone will be the predominant zone applied to the lands designated Rural Residential. A numerical suffix may be used to indicate the minimum lot size allowed in the zone.***

Proposed Finding: Applicant is requesting a zone change to AR-2 in order to maintain the existing development pattern. The majority of the surrounding parcels are between one (1) and three (3) acres in size. Additionally, two of the proposed parcels are bound by Enchanted View Lane SE to the north and existing residential parcels to the south, restricting the feasible size of those portions of the Property to smaller acreage parcels. The portion of the Property that will result in the final two parcels is bounded to the west by Valley Way SE and residential parcels to the north and the south that are all less than two (2) acres in size. This will allow for consistent development throughout the area as well as maintaining larger swaths of open space, in conformance with the policies addressed above. This policy is satisfied.

- 17. In rural areas mobile homes and manufactured dwellings will be allowed on the same basis as conventional site-built single-family housing.***

Proposed Finding: Applicant is proposing the construction of conventional single-family housing. This policy is not applicable.

Applicant is proposing a change in the comprehensive plan designation to "Rural Residential" and a corresponding zone change to "Acreage Residential-2." Applicant has demonstrated that the proposed development is consistent with Marion County's Rural Residential Goals and Policies. This criterion is satisfied.

ZONE CHANGE CRITERIA:

Under MCC Section 123.020(C) the owner of a piece of property may initiate a quasi-judicial zone change consistent with the application requirements of MCC 119.020 and 119.025 and subject to satisfaction of the mandatory approval criteria set forth in MCC 123.060, which is set out in bold and italics below with Applicant's proposed findings, where applicable:

17.123.060 Criteria.

Approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:

- 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***

Proposed Finding: As part of this Application, Applicant is proposing a comprehensive plan amendment, changing the designation from "Primary Agriculture" to "Rural Residential." Upon approval of the comprehensive plan amendment, the implementing zone for the Subject Property will be Acreage Residential-2. As part of this Application, Applicant demonstrated consistency with these goals and policies in detail above. This criterion is satisfied.

- B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and***

Proposed Finding: The proposed change will allow for residential development that is consistent with the existing residential development in the surrounding area. Applicant's proposal is designed to continue the existing development pattern in the area that was previously permitted under a County initiated goal exception pursuant to a subdivision approval which had been adopted prior to the adoption of the statewide planning goals. Applicant's proposal will allow for the development of a portion of the Property with residential uses while allowing the remainder of the Property to remain as open space, allowing the continuation of the existing development pattern while simultaneously maintaining the rural character of the area. The proposed change is consistent with the surrounding uses and will have minimal, if any, impact on the surrounding use. This criterion is satisfied.

- 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***

Proposed Finding: As previously addressed, the proposed development is currently served by well-developed county roads including Enchanted View Lane SE, Valley Way SE and Enchanted Ridge Court SE. There are existing electrical facilities serving the surrounding residential and commercial developments. Each homesite will be developed with an onsite well and septic system which will provide water for any residential development that will occur on the Property. The proposed residential development will be subject to the rules and regulations in place at the time of the development, which will be subject to approval by the Marion County Building Department, the Oregon Health Authority, the Oregon Department of Environmental Quality, and other regulating entities. The Property is within the Turner Fire District and Cascade School District. There is a system of private and public roads that serve the surrounding area. Applicant has provided a transportation planning rule analysis as part of this

Application, showing that the Proposed Use will not significantly impact the transportation systems in the area. **Exhibit 108.** Adequate public facilities and services are in place. This criterion is satisfied.

- 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***

Proposed Finding: As established above, Marion County is in the midst of a severe housing shortage. At the time of filing this Application, there is only one (1) residential property available for purchase that is located just West of I-5, which is outside of the Surrounding Property Inventory perimeter (Exhibit 104) but is comparable in size and topography to the Homesites. The available residential properties, or lack thereof throughout the County, do not fully meet the need for housing in the area. The size of the Property will allow for the addition of several residential homesites near the City of Salem and the City of Turner, which means that rural residents will be a short commute from both urban and rural employment opportunities. This criterion is satisfied.

- 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.***

Proposed Finding: Applicant is proposing the addition of a total of four (4) acreage residential properties in the Subdivision Application while maintaining a large swath of open space through the retention of a single larger parcel. Residential uses are permitted as an accessory use in the EFU zone; however, Applicant is proposing a level of density which is more intensive than what would be permitted in the EFU zone. As addressed above, the Homesites will be developed with homes similar to the neighboring residential uses. The surrounding area is already heavily developed with an existing subdivision and several other acreage residential homes sites in addition to several commercial developments. The Homesites will be developed in a manner that will not significantly impact the adjacent residential uses, the adjacent commercial uses, or the adjacent farm uses including the use of water efficient and sustainable technologies to reduce the impact on the surrounding resources. The small scale of the proposed development and the level of development in combination with the level of existing development in the area supports the determination that the proposed use will not significantly adversely affect the existing permitted uses. This criterion is satisfied.

CONCLUSION:

The Applicant has shown compliance with all applicable regulations which would permit a zone change, comprehensive plan change, and exceptions to Goal 3 and Goal 14. Applicant has also shown that all aspects of this request are in conformance with the applicable goals and policies of the Statewide Planning Goals, the Marion County Comprehensive Plan, and the Marion County Rural Zoning Ordinance. As such, the Applicant respectfully requests that the proposed request be APPROVED as submitted.

EXHIBIT LIST:

Exhibit 101 – Vesting Deed for the Subject Property
Exhibit 102 – Zoning Map
Exhibit 103 – Proposed Site Plan
Exhibit 104 – Surrounding Property Inventory
Exhibit 105 – Exception Summary Narrative from MCPD
Exhibit 106 – Soil Analysis
Exhibit 107 – Soil Map
Exhibit 108 – Hydrological Review Letter
Exhibit 109 – TPR Analysis