

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application ) Case No. CP/ZC 21-005  
Enchanted Ridge )  
Property Owners Association ) **COMPREHENSIVE PLAN**  
 ) **AMENDMENT / ZONE CHANGE**

**I. Nature of the Application**

This matter came before the Marion County hearings officer on the Application of Enchanted Ridge Property Owners Association to change the zone from EFU (Exclusive Farm Use) to AR-2 (Acreage Residential – 2 acre minimum) and to change the Comprehensive Plan Designation from Primary Agriculture to Rural Residential with exceptions to Statewide Planning Goal 3 (Agricultural Lands) and 14 (Urbanization) on 8 acres of an 85.60 acre parcel on property located in the 2700 block of Enchanted View Lane, SE Salem (T8S; R3W; Section 366B; Tax Lot 400).

**II. Relevant Criteria**

The standards and criteria relevant to this Application are found in the Marion County Code (MCC), title 17, especially MCC 17.123, 17.128, and 17.136; the Marion County Comprehensive Plan (MCCP), especially the Agricultural Lands Policies and the Rural Industrial Policies; the Statewide Land Use Planning Goals, particularly Goal 3 (Agricultural Lands) and Goal 14 (Urbanization); and Oregon Administrative Rules Chapter 660, Division 4.

**III. Hearing**

A public hearing was held on the Application on July 29, 2021. At the hearing, the Planning Division file was made part of the record. The following persons appeared in person and provided testimony on the Application:

- |    |                 |                            |
|----|-----------------|----------------------------|
| 1. | Lindsey King    | Planning Division          |
| 2. | Mark Shipman    | Applicant's Representative |
| 3. | Don Lulay       | For Applicant              |
| 4. | Michael Karrick | For Applicant              |
| 5. | Bonnie Kelly    | For Applicant              |
| 6. | Eugene Webb     | For Applicant              |
| 7. | Teresa Lulay    | For Applicant              |
| 8. | Brian Christ    | Opposition                 |
| 9. | Dale Abraham    | Opposition                 |

No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony presented at the hearing. No documents were presented, marked, or entered into the record as exhibits. At the conclusion of the public hearing, the record was closed.

#### IV. EXECUTIVE SUMMARY

The Applicant requests a Zone Change from EFU (Exclusive Farm Use) to AR-2 (Acreage Residential - 2-acre minimum) and to change the Comprehensive Plan Designation from Agriculture to Residential with exceptions to Statewide Planning Goal 3 (Agricultural Lands) and 14 (Urbanization) on 8 acres of an 85.60-acre parcel on property located in the 2700 block of Enchanted View Lane, SE Salem. The Applicant has satisfied the relevant approval criteria, including the requirements for an exception to Goal 3, a comprehensive plan amendment, a zone change, and the hearings officer recommends **APPROVAL** of the Application.

Recommendation for approval of the Application requires taking an exception to Goal 3. However, the unique characteristics of the property, the surrounding residential uses, the prior exception granted by the County, and the ability for the significant majority of the property to remain zoned EFU and designated for agricultural use supports the exception to Goal 3.

#### V. FINDINGS OF FACT

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

1. The Application is presented on behalf 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 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.

3. The property is located within a Sensitive Groundwater Overlay zone. The property was created in 2009 by Partition Plat 2009-043 and is a legal parcel for land use purposes.
4. Surrounding properties to the north, west and south are zoned AR (Acreage Residential) and are composed of 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.
5. Initially, the Applicant stated 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.
6. After the Application was initially submitted, the Applicant revised its development plan, reducing the proposed Homesites from the initial four (4) residential parcels to a proposed three (3) residential parcels (measuring approximately 2.80 acres, 2.36 acres, and 2.13 acres in size) and increasing the size of the remnant Farm Parcel to approximately 78.31 acres.
7. The parcel that the HOA is planning on retaining as part of the “Farm Parcel” is the smallest of the previously proposed parcels (approximately 1.62 acres in size) and the only Homesite that was identified as being below the two (2) acre AR-2 zone minimum. As discussed below, Applicant does not believe it is required to obtain a Goal 14 Exception.
8. Applicant modified its request to reflect this change. Applicant is now requesting the application of two (2) independent Goal 3 exception areas. The first would be applied to the three (3) proposed homesites to facilitate the development of parcels that are too constrained to be practicably farmed. The second would be applied to the Farm Parcel to allow Applicant to consolidate the farmable area in a sub-80-acre parcel (78.31 acres, representing an acreage reduction below the minimum of 1.69 acres). Applicant is also requesting a zone change and corresponding comprehensive plan amendment for the only

the Homesites. The Farm Parcel will continue to be zoned EFU and designated for agricultural use, while the Homesites will be zoned AR and designated for residential use.

9. 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.

10. Don Lulay is the President of the Enchanted Ridge Property Owners Association. Mr. Lulay and his wife live in the neighborhood. Mr. Lulay testified regarding the uniqueness of the property. Mr. Lulay addressed that the original landowner, Mr. Vandegreave, wanted 23 two-to-five-acre parcels to maintain the “farm character” of the property. Mr. Lulay testified that the development of the residential parcels would allow the neighborhood to have the financial viability to protect the farm parcel from development. Mr. Lulay also testified regarding prior farming of the residential parcels by the Doefler family, and their lack of desire to continue farming of the residential parcels. Mr. Lulay testified that farmers are willing to farm the larger 77-acre Farm Parcel, but it is not cost effective to farm the smaller parcels because of the difficulty in accessing and farming the smaller parcels.
11. Michael Karrick testified in favor of the application as a homeowner in the neighborhood. Mr. Carrick testified that he is strongly in favor of approval to prevent the farmland from being developed from individuals and entities outside of the Enchanted Ridge Property Owners’ Association. Mr. Karrick also testified that the smaller residential lot has a large sequoia tree that prevents farming.
12. Bonnie Kelly testified as a homeowner in the neighborhood. Ms. Kelly testified that she always wondered why the residential parcels at issue in this Application, which she referred

to as the “gap pieces,” were not developed because they look like they should be residential parcels. Ms. Kelly does not believe that the residential parcels can produce significant crops because of the trees on the property. Ms. Kelly supports that the Farm Parcel, which she referred to as the “heartland,” be kept in agricultural production.

13. Eugene Webb testified in favor of the Application. Mr. Webb owns Lot 7, which is next to one of the “gap” properties at issue in this application. Mr. Webb raised concerns about the use of chemicals for farming. Mr. Webb stated that there is a risk to children and pets in the area from the use of agricultural chemicals if the lot was to be farmed.
14. Teresa Lulay testified to reiterate what had been stated. Ms. Lulay stated that allowing the two gap properties to be residential lots is a “win-win.” The visual aspect of the empty lots that cannot be farmed in a similar manner to the Farm Parcel is inconsistent with the homes in the neighborhood.
15. Brian Christ initially indicated his intention to oppose the Application. However, when it was learned that the small parcel was no longer the subject of the Application, Mr. Christ offered general comments as opposed to comments in opposition. Mr. Christ addressed that his main concern is water availability, and that the dust and dirt concerns of the neighborhood should not be considered as such consequences are the natural result of farming. Mr. Christ was positive of the proposal to include only three residential parcels, as opposed to four, because he has concerns about the impact of potential residences on water and impact to other wells.
16. Dale Abraham testified in opposition to the Application to express his concerns about future development. Mr. Abraham lives north of the neighborhood and is concerned about development of the area, including the impact on the water supply as a result of additional development to the school that is located in the area. Mr. Abraham is concerned about future changes to the zoning as a threat to the water supply.

## **VI. ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Applicant has the burden of proving all applicable standard and criteria are met.
2. 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 that a Goal 14 exception is not required to the extent that the Application is compliant with Goal 14.

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



as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions 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 Exception

4. The property is undeveloped, is currently assessed as a farm parcel, and is currently in agricultural production. 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 make commercial agricultural use of the property impractical. In addition to



the previously mentioned items, the parcel is divided by two roads, which creates difficulty for farming equipment and other farm related items.

5. 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. As of the date of the hearing, the property was being farmed for seed, and it has been in agricultural production since that time. However, the property has not been farmed as one 85.60-acre parcel. The testimony and maps of the area support a determination that there are smaller parcels as well as a significantly larger 77-acre parcel that has been and can continue to be farmed.
6. If the portion of subject parcel is approved for a zone change to Acreage Residential, the remaining farm parcel can be preserved even though it will not be contiguous to resource property. The farm parcel could still be farmed, but with co-existing residential uses. The area was previously granted an exception to Goal 3 based on a 1973 Subdivision that was approved (Exhibit 105). In the findings, 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 farmland.
7. Staff found that the proposal does not meet the criteria for an irrevocably committed exception in OAR 660-004-00028, and if the property were to be considered as one parcel, such a finding is accurate. However, the property does not need to be considered as a whole, because the residential parcels and the Farm Parcel are not indistinguishable. Although the Farm Parcel should continue in agricultural production, the residential parcels do appear to be irretrievably committed to residential use.
8. Regardless of the commitment to residential use, Applicant states that there are three possible goal exception pathways established in ORS 197.732. Applicant previously applied for an exception under an “irrevocably committed” exception which Staff and DLCD suggested was not the correct exception process. Applicant requested that Staff and DLCD reconsider this request based on the clarification provided above.
9. Applicant has provided alternative findings for the Application of a “reasons” exception, established in ORS 197.732(2)(c):

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

*(a) 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.*

10. Applicant previously provided findings addressing the application of the goal exception process to the Subject Property. The additional criteria regarding the application of a reasons exception 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.*

*(4) "Reasons" Exceptions:*

*(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.*

11. As part of the consolidated application, Applicant is requesting a comprehensive plan map amendment, changing the designation for the Subject Property to "Residential" and a corresponding zone change to "AR-2" for the Homesites. The AR-2 zone establishes a confined set of permitted uses that would be permitted under the new zoning. The Farm Parcel will remain designated "Agricultural" and zoned "EFU". Both zoning designations

carry restrictions on the permitted and conditional uses in the zone, which are subsequently guided by additional development and siting requirements. If the County determines that a “limited use overlay” is necessary for the Homesites, Applicant request that the County apply an overlay restricting the use to a single-family dwelling. Applicant does not believe that a limited use overlay is necessary for the Farm Parcel, as the EFU Zone is already highly regulated, but is willing to discuss reasonable restrictions on the uses permitted on that parcel. This criterion is met.

***2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:***

***(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;***

12. Applicant is requesting the application of two separate exception areas. The “***Homesites Exception Area***” consists of approximately 7.29 acres, which are highly constrained by existing roads, utilities, neighboring residential uses and geological constraints which have been discussed in detail in Applicants previous materials. The “***Farm Parcel Exception Area***” is approximately 78.31 acres in size and represents two wide swaths of potentially usable agricultural land, which would allow for a more efficient farm use on those two portions of property.
13. The purpose of Goal 3 is “to preserve and maintain agricultural lands” for existing and future uses. Applicant’s proposal is consistent with the intent of Goal 3. Applicant’s proposal is narrowly tailored to allow for the purchase of the Subject Property by the HOA. The division and sale of the Homesites to a developer will allow the HOA to purchase and maintain the pastoral character and maintain the Farm Parcel for agricultural use, making sure that that parcel is maintained in a manner that is consistent with the developed residential uses in the area, albeit with a slightly reduced parcel size, below the 80-acre minimum.

14. Applicant has proposed the restructuring of the Subject Property as proposed to ensure that the proposed exceptions are confined to those areas that are truly unsuitable to Farm Use due to extensive slopes and existing roads. The Application allows for the highest and best use of these lands, removing isolated and difficult to farm acreage and converting it to a suitable rural residential use while preserving and maintaining the usable acreage. Applicant has provided evidence into the record from area farms outlining why the Homesites are not practicably farmable due to the isolation of the Subject Property, the established roads, and the limited ability to use the type of equipment that is needed to farm in the area.
15. In addition to the constraints and limitations on the Subject Property, there is also a broad recognition within the surrounding community that this is a reasonable proposal for the efficient use of the Subject Property. The County has not received any opposition to the Application and Applicant has submitted a letter in support of the application from Doerfler Farms. For these reasons, the policy focused on maintaining and preserving rural resource lands are not applicable to the Subject Property. This criterion is met.

***(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:***

***(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;***

16. There is a deficit of available residential land in Marion County. Applicant provided a detailed inventory of the available residential land in the surrounding area and provided additional documentation regarding the lack of housing in Marion County as well as the State of Oregon. While it is possible that additional residential development in Marion County could be done at a higher density, the County and State have both established density restrictions on lands outside of established UGBs. *See OAR 660-015-0000*. There are not available residential lands in the area that would permit the development of three parcels in compliance with the applicable zone minimums established under the Code.
17. The Farm Parcel is a request for a minor deviation from the 80-acre minimum, allowing the more efficient use of that parcel for a farm use that is compatible with the surrounding

existing residential development. The request for the exception is coming from the surrounding property owners and applies only to the Farm Parcel because the uses on the Farm Parcel disproportionately impact these residential uses. Therefore, there is not another site that is available because the issue at hand relates to this particular parcel of property. This criterion is met.

***To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed***

***(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?***

18. Applicant has provided evidence in the record showing that there are not available residential lands in the surrounding area. While there is the possibility for increased densities in the surrounding areas, this would require requests to avoid the application of various development standards and potential additional Goal 14 exceptions for those rural lands that have already been developed with existing residential uses. It is not feasible to increase the density in the surrounding area without drastically changing the County Code. This reason favors the application of the exception. The request for the exception to the Farm Parcel is specifically tied to its proximity to the existing surrounding residential uses. There is not an alternative site because the property is irrevocably tied to the existing residential uses in the area. The Application seeks to maintain and preserve the portion of the Subject Property that can be practicably farmed. Applicant is asking for a minimal reduction in the minimum parcel size.

***(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?***

19. Marion County has a Marion County Comprehensive Land Use Plan Background and Inventory Report, which was updated in November of 2004, which suggests that at that



time there was adequate acreage residential property to address the expected population growth. However, in the intervening 17 years, the population of the Willamette Valley has vastly exceeded the population growth projections for the surrounding urban areas.<sup>1</sup> This has resulted in an increase in demand for housing of all types in Marion County's urban centers as well as within the County. This apparent lack of residential lands is borne out by the inventories of the surrounding area that has been provided by Applicant as part of this application. There is an acute need for residential properties throughout the state, supporting Applicant's proposed development of the Homesites. This reason favors the application of the exception.

- 20.** Applicant has reviewed the available lands in the area and there are not available lands that are similarly situated to the Subject Property. The goal exception request as it applies to the Farm Parcel is requested due to the proximity of the existing residential uses as well as the desire to maintain and preserve that area for a farm use that is compatible with the existing residential uses. The request for the Goal 3 exception as it applies to the Farm Parcel is unique to that parcel and cannot be accommodated on other resource lands.
- 21.** Rural residential uses are typically characteristic of larger acreage residential uses, as maintained by the acreage minimums within the AR Zones. The goals and policies of Marion County identify both the need and desire for a more pastoral lifestyle as well as emphasizing the need for residential options near rural industrial, commercial, and resource uses. Applicant has discussed in detail the lack of available residential lands throughout the County, including those areas within the neighboring UGBs, all of which have seen a decrease in buildable residential lands over the last planning period. Applicant has demonstrated that there are not similarly sized and available residential properties in the surrounding area. Additionally, the Subject Property is specially positioned to allow for quick access to the surrounding industrial and commercial employment lands as well as resource lands in the vicinity. This is especially crucial when examining the increase in traffic and density occurring in the surrounding urban centers, constraining the practicality of traveling from urban centers to rural employment lands. This is consistent with the intent

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<sup>1</sup> [https://www.oregon.gov/das/OEA/Documents/OR\\_pop\\_trend2019.pdf](https://www.oregon.gov/das/OEA/Documents/OR_pop_trend2019.pdf)

and the purpose of rural residential lands, which, by definition, cannot be developed within an urban growth boundary.

22. As to the Farm Parcel, agricultural uses are specifically sited outside of urban growth boundaries due to the status of these properties as intensely used employment lands. There is acknowledgement throughout State and County laws, rules, and regulations acknowledging that the intensity of farm uses require a special protected status and location away from residential uses, requiring rural residential users to recording declarations limiting their ability to object to farm uses in the area. Resource lands are specifically set aside for employment uses which are noisy, dusty, and often require the application of pesticides and herbicides. For this reason, there is a strong policy preference to locate farm uses outside of the UGB where rural residential users anticipate this level of use, as is the case with the surrounding residential uses.

***Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?***

23. Rural residential living, especially within the AR Zones, require the rural residential users to ensure that their parcels are self-sufficient, including specially the ability to provide water and sewage management systems within the discrete parcel that the home is located on. As part of Applicant's forthcoming subdivision application, Applicant will demonstrate that it is able to develop the Homesites in a way that will contain these systems. As previously stated, there are existing roads and utility lines within the Subject Property that the Homesites will be able to access that are already adjacent to the Homesites. The Farm Parcel is similarly served by utilities, if outbuildings were required in the future to serve a farm use on a potential conditional use of the Subject Property. No additional public facilities are proposed or contemplated in association with these uses.

***(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." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to***

*reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site 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. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;*

24. Applicant is not aware of any other locations that are being considered for an exception by the jurisdiction, but the unique status of the Subject Property makes it preferable to a theoretical standard EFU parcel that is similarly located within the County. The Applicant has a long-term interest in ensuring that the proposed exceptions do not have a negative long-term effect on either the Homes Sites or the Farm Parcel. Applicant has limited its request in this way to reduce long-term impacts, including confining the application of the exception areas only where they are consistent with the existing uses and promote a more efficient use of the Farm Parcel. This proposal is unique due to the existing residential uses in the surrounding area and the fact that the Applicant has a vested interest in controlling the use of the Farm Parcel to minimize and environmental, economic, social, or energy consequences that the Homesites might have in the surrounding area. This focus on the slow, consistent, and responsible development of the Subject Property in a manner that is consistent with the existing uses is different from the type of interests implicated in a similar development on land that might be similarly constrained but where the Applicant will not retain the same, long term interest in the exception areas. This position is supported by the fact that the Subject Property will be owned and managed by the HOA, meaning that the use and ownership of the exception areas will remain with the owners of the surrounding residential uses, even if individual homes transition in ownership over time. Additionally, the confluence of the SGO Zone, mapped Geohazard Area, and AR development standards will require a higher level of conservation and efficiency for the eventual development of the Homesites. The Subject Property is uniquely suited for the application of the two Goal 3 exception areas.

***(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.***

25. Applicant is proposing the addition of three (3) homesites on the Subject 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.

***660-004-0022***

***Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)***

***(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that***

*require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.*

26. As outlined above, there has been extensive economic development in Marion County in the interim period between the application of the neighboring exception areas and this Application. The addition of industrial and commercial uses in the area have greatly expanded and commercial activity in the nearby urban areas have outpaced what was originally anticipated when the original exception areas were applied. Residential development is desperately needed in all areas of Oregon in a variety of locations and at a variety of price points to address the existing housing crisis. The application of the modest exceptions requested by Applicant will support an efficient and well contained shift from resource lands to rural residential lands, allowing for minimal development in an area already heavily constrained by adjacent similar development. The economic development in the area relies on the existence of an adequate housing supply, the application of this exception area is justified under the shift in the surrounding area over the planning period. This criterion is met.

#### Goal 14 Exception

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

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

*(8)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.*

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



*area.*

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

27. The Marion County Code has an adopted zoning ordinance that allows for the development of rural residential uses on “rural lands” provided they comply with the applicable development standards. There are several numerical designations, establishing the minimum acreage permitted in the zone. Applicant has requested a zone change to AR-2, allowing for parcels that exceed two acres in size. Developing the Homesites in compliance with the requirements of the AR-2 zone and the applicable development standards, a DLCD acknowledged zone in Marion County, favors a determination that the Application complies with Goal 14.

The purpose of Goal 14 is to “provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.” OAR 660-015-0000(14). The Application as revised is in conformance with Goal 14. Applicant has provided sufficient evidence in the record demonstrating that the area is highly developed with existing rural residential and commercial uses. A core element of this Application is that the pattern of development in the area demonstrates an acknowledged pattern of residential and commercial development, demonstrating the transition from residential to urban uses that are contemplated within the purpose statement of Goal 14. The adopted exceptions in the area have already created the pattern of development one expects to see in areas adjacent to and often within a UGB but exterior to established City Limits. Allowing for the continuation of this development allows for the efficient use of both the agricultural and proposed residential lands, as outlined further in the Application materials. These facts support a determination that the Application complies with Goal 14, and therefore, a Goal 14 Exception is not required.

Further the purpose and intent of the AR Zone is to primarily provide for acreage homesites. Each parcel must be able to provide an adequate water supply and wastewater disposal system that will not exceed the environmental capabilities of the area or compromise the rural character of the area. MCZO 17.128. 010. Applicant is proposing the

future land division, creating legal units of land for each of the Homesites, which will allow for the development of acreage homesites. By proposing a use that is outright permitted in an acknowledged zone, Applicant is in compliance with Goal 14 Conformance with the applicable development standards and regulations will ensure conformance with Goal 12. The request is compliant with Goal 14, a Goal Exception is not required.

28. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. The Applicants address the Goals, and the exceptions to Goals 3 and 14 is justified as proposed, or with respect to Goal 14, not required.

### **COMPREHENSIVE PLAN AMENDMENT**

29. 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.
30. 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.
31. The proposal must be consistent with applicable polices 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 the criteria were satisfied or not required.

9. *When approving rural subdivisions and partitioning each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel.*

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

10. *All residential uses in rural areas shall have water supply and distribution systems and sewage disposal systems which meet prescribed standards for health and sanitation.*

Applicant has demonstrated that it is feasible to develop septic and water facilities on the property. At the time of development, they will be required to obtain all permits and meet all health standards. This policy is met.

Because a Goal 14 exception is not required, the applicable comprehensive plan policies will be met.

32. Comprehensive plan amendment approval is recommended.

### **ZONE CHANGE**

33. 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.*
34. Because it is recommended that the comprehensive plan amendment is approved and the property is designated as rural residential, the proposed AR-2 will be 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.
35. 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, most 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 three new residential parcels would not significantly adversely affect allowed used in the adjacent EFU properties.
- Because the comprehensive plan amendment and goal exceptions are recommended, the proposal will satisfies the zone change criteria.

36. 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 (to the extent applicable).
37. The proposed zone change is recommended.

#### **VII. RECOMMENDATION**

It is hereby found that the Applicant has met the burden of proving the applicable standards and criteria for approval of a comprehensive plan amendment from Agriculture to Residential with exceptions to Statewide Planning Goal 3 (Agricultural Lands) and a zone change from EFU (Exclusive Farm Use) to AR-2 (Acreage Residential - 2-acre minimum) on approximately 8 acres of an 85.60-acre parcel on property located in the 2700 block of Enchanted View Lane, SE Salem. Therefore, the hearing officer **RECOMMENDS** the Marion County Board of Commissioners **GRANT** the comprehensive plan amendment and zone change Applications, subject to the following condition: The Applicant shall provide a legal description of the areas on the property being rezoned to AR 2.

#### **VIII. REFERRAL**

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

DATED at Salem, Oregon, this 29<sup>th</sup> day of October, 2021.



Jill F. Foster  
Jill F. Foster

Marion County Hearings Officer



**CERTIFICATE OF MAILING**

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

Aileen Kaye  
AAC 1  
10095 Parrish Gap RD SE  
Turner OR 97362

Brian Crist  
2732 Enchanted View LN  
Turner OR 97392

Dale Abraham  
2918 Maranatha CT SE  
Turner OR 97392

Beverly and Michael Carrick  
8226 Enchanted Ridge  
Turner, OR 97392

Gene and Laura Webb  
8188 Valley WY  
Turner OR 97362

Bonnie Kelly  
8358 Valley WY  
Turner OR 97362

Dan and Marjorie Mendenhall  
2702 Enchanted View LN SE  
Turner OR 97362

Lulay  
8388 Valley Way  
Turner OR 97392

Agencies Notified:

Planning Division  
(via email: [BReich@co.marion.or.us](mailto:BReich@co.marion.or.us))

(via email: [Lking@co.marion.or.us](mailto:Lking@co.marion.or.us))  
(via email: [Planning@co.marion.or.us](mailto:Planning@co.marion.or.us))

Code Enforcement  
(via email: [lrobinson@co.marion.or.us](mailto:lrobinson@co.marion.or.us))

Building Inspection  
(via email: [deubanks@co.marion.or.us](mailto:deubanks@co.marion.or.us))

(via email: [kaldrich@co.marion.or.us](mailto:kaldrich@co.marion.or.us))  
PW Engineering

(via email: [jrasmussen@co.marion.or.us](mailto:jrasmussen@co.marion.or.us))


[Planning@cityofsalem.net](mailto:Planning@cityofsalem.net)  
[hornerd@keizer.org](mailto:hornerd@keizer.org)  
[andrew@friends.org](mailto:andrew@friends.org)

Mark Shipman  
Attorney  
250 Church ST SE Suite 200  
Salem, OR 97301

Enchanted Ridge Property Owners Assoc  
8388 Valley WY  
Turner OR 97392

Mark Shipman  
Saalfeld Griggs PC  
PO Box 470  
Salem OR 97308

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 1st day of November, 2021 and that the postage thereon was prepaid.

  
\_\_\_\_\_  
Sandy Benninger  
Administrative Assistant to the  
Hearings Officer