

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:	)	Case No. ZC CP AR 25-001
	)	COMPREHENSIVE PLAN
JEROME P. LACKNER	)	AMENDMENT / ZONE CHANGE /
	)	ADMINISTRATIVE REVIEW

RECOMMENDATION

I. Nature of the Application

This matter comes before the Hearings Officer on the Application of Jerome P. Lackner for a zone change, comprehensive plan change, and administrative review to change the zone from EFU (Exclusive Farm Use) to FT (Farm Timber) zone; to change the comprehensive plan designation from Primary Agriculture to Farm Timber, and to establish a template test dwelling on 21.67 acre parcel in the EFU (Exclusive Farm Use) zone located at the end of Wagner Lane SE in the 22600 block (T9S; Range 2E; Section 18A; Tax Lot 100).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Oregon Statewide Planning Goals, Marion County Comprehensive Plan Policies (Forest Land and Farm / Timber Land Policies), and Marion County Code Chapter 17, especially 17.123 (Zone Change Procedure), 17.136 (Exclusive Farm Use Zone), and 17. 139 (Farm / Timber Zone), MCC 138.060 (Special Siting Standards) (Unincorporated Community Industrial Zone).

III. Public Hearing

A public hearing was held on this matter on May 15, 2025. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

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|----|----------------|---------------------------------|
| 1. | Austin Barnes | Marion County Planning Division |
| 2. | Norman Bickell | Representative for Applicant |

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

IV. Executive Summary

Applicant seeks a zone change, comprehensive plan change, and administrative review to change the zone from EFU (Exclusive Farm Use) to FT (Farm Timber) zone; to change the comprehensive plan designation from Primary Agriculture to Farm Timber, and to establish a template test dwelling on 21.67 acre parcel.

At the time Applicant purchased the property, it was in timber use, and Applicant planted timber to replace the timber harvested by the prior owner. The subject property has historically been in timber production, has never been in farm use, and continues to be managed for timber production.

The proposed zone change is consistent with the historic and ongoing use of the property. Applicant has established compliance with all applicable criteria, and the hearings officer recommends **APPROVAL** of the application.

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following finding of fact:

1. The subject property consists of one parcel, totaling 21.67 acres. The property is designated Primary Agriculture in the Marion County Comprehensive Plan (MCCP) and zoned EFU (Exclusive Farm Use).
2. The property is located at the terminus of Wagner Ln SE, a public road that is graveled. The property is vacant and planted with commercial timber. There are no streams, floodplains, wetlands or geo-hazards mapped on the subject property.
3. Surrounding properties to the west, and south are zoned EFU and in various types of farm use. Property to the north and east are zoned TC (Timber Conservation) and are in active timber use.
4. Applicant seeks to change the Comprehensive Plan designation from Primary Agriculture to Farm Timber and change the zoning from EFU to FT (Farm Timber).
5. Marion County Planning Division requested comments from various governmental agencies. The following comments were received:

Marion County Public Works Land Development and Engineering Permits (LDEP) commented:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits, an Access Permit will be required.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Any new utility service extensions such as electric power originating from within the public right-of-way to the property require permits from MCPW Engineering.

Marion County Septic commented: "A soils and site evaluation will be required before building."

Marion County Building Department commented: "Permits are required to be obtained prior to the development of structures and/or utilities installation on private property."

All other contacted agencies either failed to respond or stated no objection to the proposal.

6. The Application was signed by Jerome P. Lackner, as the owner of the property who purchased the property from the Estate of Ledor and Tyler Pinkston on September 16, 1992. Mr. Lackner should be prepared to present a copy of his deed if requested to the Board of Commissioners.

VI. Additional Findings of Fact and Conclusion of Law

1. Applicant has the burden of proving compliance with all applicable criteria.

STATEWIDE PLANNING GOALS

2. The Marion County Comprehensive Plan amendments section states that comprehensive plan amendments must be consistent with statewide planning goals, or seek exemptions to them. The relevance of each goal in this proposal is addressed below:

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The notice and hearings process before the hearings officer and Board of Commissioners (BOC) provides opportunity for citizen involvement. Goal 1 is satisfied.

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Applicant proposes a site-specific comprehensive plan amendment and an administrative review for a template dwelling. The Planning Division notified local and state agencies, including the Oregon Department of Land Conservation and Development (DLCD), for comments. Goal 2 is satisfied.

*Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.
OAR 660-033 governs agricultural lands.*

OAR 660-033-0145:

- (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;*
- (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and*
- (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.*

Applicant's request to re-designate and rezone the subject property for farm/forest use is evaluated under OAR 660-006, specifically, OARs 660-06-0015, 660-006-0050 and 660-006-0057, and no Goal 3 exception is required to designate the subject property for forest use. Therefore, Goal 3 is met.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

OAR 660-006-0015:

(1) Lands inventoried as forest lands must be designated in the comprehensive plan and implemented with a zone that conserves forest lands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732, the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is zoned with an Exclusive Farm Use Zone pursuant to ORS chapter 215 provided the zone qualifies for special assessment under ORS 308.370, or is an "abandoned mill site" zoned for industrial use as provided for by ORS 197.719. In areas of intermingled agricultural and forest lands, an agricultural/forest lands designation may also be appropriate if it provides protection for forest lands consistent with the requirements of OAR chapter 660, division 6. The plan shall describe the zoning designation(s) applied to forest lands and its purpose and shall contain criteria that clearly indicate where the zone(s) will be applied.

(2) When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

The subject property is not inventoried, designated or zoned as forest land. No Goal 4 exception is required. Marion County is not a marginal lands county. The subject property is not an abandoned mill site. The property is zoned EFU under ORS Chapter 215. ORS 308.370, a farm use special assessment provision, was repealed in 1999. ORS 308A now governs farm use special assessment. EFU zoned land in farm use may receive special farm assessment but the farm use definition does not include land subject to forest use special assessment (ORS 308A.056(2)). The subject property is currently specially assessed for forest use. To approve the subject application, the BOC must inventory the property, apply a farm/forest designation and zone consistent with OAR 660-006, and explain the factors used to select the farm/forest designation. Under the M CCP forest lands section:

An area located east and south of the city of Silverton and commonly referred to as the Silverton Hills consist[s] of a mixed pattern of farm and forest land uses. The topography of this area consists of relatively level ridge tops with intervening stream canyons. The level areas are largely devoted to farm and woodlot uses while the stream canyons and steeper ridges are devoted to forest uses. This area is a transition between the Western Cascades and the Willamette Valley floor.

Under the provisions of OAR 660-006-0050, a governing body may establish agricultural/forest zones in accordance with both Goals 3 and 4 and consistent with OAR Chapter 660, Divisions 6 and 33. The mixed nature of the farm and forest uses in this area justifies the application of an agricultural/forest zone and both Goals 3 and 4. The Farm/Timber designation is discussed in the Forest Lands section of the Marion County Comprehensive Plan and policies pertaining to this designation are also included in the forest land goal and policies section.

The Farm and Timber designation has been applied to lands in Marion County that support a mixture of both agricultural and forestry activities. Designated areas were characterized by wide varieties in terrain, soil types and land use conditions. These areas are located in the foothills of the Cascade Mountains and are characterized by steep canyons, broad ridge tops and narrow alluvial river terraces. Soil types vary considerably in agricultural productivity from Class II to VI agricultural capability. The area is predominantly Class 2 and 3 timber soils which make a majority of the area highly productive forest land.

Whenever the terrain is not too steep and the soils have agricultural capability, the land is typically in farm use. Otherwise, the land is managed as woodland. As a result of the mixed terrain and soils, this area consists of a very mixed pattern of farm and forest uses frequently including both uses on a single tract. Therefore, both the agricultural lands and forest lands goals are applied, as authorized by OAR 660-006-0050.

The variable terrain and crop capabilities have contributed to the existing land use pattern that is a transition area between the predominately large-scale farms on the low land to the west and the large-scale commercial timber operations on the higher elevations to the east. The most common management units in the FT areas range from 20 to 40 acres. Ownership fragmentation and the alternating farm and timber character make it unlikely that these smaller farm and timber tracts will be consolidated to achieve larger management units.

A minimum parcel size of 80 acres is applied to the Farm/Timber land in Marion County. This minimum was chosen because it is consistent with the existing parcel sizes in this area being managed for timber and agriculture production on a commercial basis. Also, this parcel size is consistent with both OAR 660-06-0026 and 660-33-100, and it exceeds the recommendations of the State Department of Fish and Wildlife for the protection of significant deer and elk habitats. This area is primarily located within the peripheral deer and elk habitat as identified by the State Department of Fish and Wildlife. With development limited to such low densities, the watershed, open space and other resource values found on forest lands will be protected.

There are 15,000+ Farm/Timber designated acres in Marion County (MCCP, page I-14), most of it in the Silverton Hills, coexistent with the peripheral big game habitat area. In ZC/CP 15-001, ZC/CP 11-002 and ZC/CP 03-5, the BOC recognized that land outside the Silverton Hills area may qualify for Farm/Timber designation if it has sufficient Farm/Timber characteristics. The Farm/Timber area is described as an area of stream canyons and broad ridge tops. This description fits the subject property, but in miniature.

The variable topography makes integration with neighboring farm parcels less likely. At 21 acres, the property is in line the 20 to 40-acre common Farm/Timber parcel size.

The land adjacent to the north is zoned FT, and surrounding area of the subject parcel is devoted to timber and farming activities. As stated, the subject property has never been actively farmed. The previous owner harvested timber, and the Applicant has replanted timber during his ownership. The property has historically been devoted to timber and the Farm/Timber designation better suits the subject property than a Timber Conservation zone designation.

The Santiam Canyon Fire had a significant impact on the parcel by burning most of the acreage that was in 25+ years of replanting, as evidenced aerial photographs. Applicant provided proof of ongoing management for commercial forest use. Receipts provided by Applicant illustrate purchases from nurseries of commercial tree species.

The site shares sufficient characteristics to allow Farm/Timber designation and zoning. OAR 660-006-0015 is satisfied.

OAR 660-006-0050:

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33.

(2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.

(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.

Goals 3 and 4, and OAR Chapter 660, Divisions 6 and 33 are being considered in this request to re-designate and rezone the subject property. Aerial photographs and the narrative in the record show the subject property was mostly treed and not apparently farmed at that time. OAR 660-006 dwelling standards apply. OAR 660-006-0055 is satisfied.

OAR 660-006-0057:

Any rezoning or plan map amendment of lands from an acknowledged zone or plan designation to an agriculture/forest zone requires a demonstration that each area being rezoned or replanned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone.

The area to consider for re-designation and rezoning consists solely of the subject properties. It contains a mixture of soils that are suitable for farm or forest uses. Practical

restrictions on this property do not make it wholly productive for solely farm or solely forest use. OAR 660-006-0057 is satisfied.

Goal 4 is satisfied.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

There are no scenic, historic, or natural resources identified in the MCCP on the subject or nearby properties. Goal 5 is satisfied.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

The parcel is not within an identified ground water overlay or any big game habitat. Farm/forest designation and zoning will allow forest uses and perhaps a future dwelling. The Marion County Code contains development standards related to septic system requirements that will have to be met if development occurs. Normal residential use would not emit excessive particulates or noise. In-place regulations will maintain the level of air, water and land resources. Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

The property contains no identified hazards. Goal 7 is satisfied.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

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

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 addresses commercial and industrial development, primarily in urban areas. OAR Chapter 660, Division 009 applies only to comprehensive plans for areas within urban growth boundaries. Goal 9 is not applicable.

Goal 10: Housing. To provide for the housing needs of citizens of this state.

OAR 660-008 is intended to define standards for compliance with Goal 10. OAR 660-008 deals with providing an adequate number of needed housing units, and efficient use of buildable land within urban growth boundaries. The subject property is not within an urban growth boundary. Goal 10 does not apply.

Goal 11: Public Facilities and Services. *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Applicant states that all rural services are provided in the area. Electric and telephone utilities are available in the area. Fire protection is provided by the Stayton Fire District and police protection is provided by the Marion County Sheriff. No public water and sewer services will be required. Little traffic will be generated by the proposed use, except during timber harvest. Goal 11 is satisfied.

Goal 12: Transportation. *To provide and encourage a safe, convenient and economic transportation system.*

Under OAR 660-012-0060(1), if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP [transportation system plan]. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The subject parcel will obtain its access of the Eastern end of Wagner Lane SE. The change in zone will not significantly impact the easement because any proposed use would comply with the zoning would be similar for both zones. The proposal would allow one dwelling that would potentially generate 10 traffic trips a day and forest use traffic would be minimal, except during harvest. Applicant does not propose changing the

functional classification of the road or standards implementing them. LDEP expressed no concern about the plan and zone amendment significantly affecting the existing transportation facility by allowing uses or levels of development that would be inconsistent with roads serving the property. Goal 12 is satisfied.

Goal 13: Energy Conservation. *To conserve energy.*

Both farm and forest uses are similar in nature, and changing the zone to FT will not create a more energy intensive use than is permitted in the EFU zone. An additional home site and continued forest use would not significantly increase energy consumption. Goal 13 is satisfied.

Goal 14: Urbanization. *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.*

Changing the Marion County Comprehensive Plan designation to Farm/Timber and zoning to FT will not urbanize the subject property. Goal 14 does not apply.

Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

The subject site is not within the Willamette River Greenway, or near ocean or coastal related resources. These goals do not apply.

COMPREHENSIVE PLAN AMENDMENT

3. The Marion County Comprehensive Plan does not contain specific review criteria for plan amendments. However, all comprehensive plan amendments must be consistent with applicable MCCP goals and policies. If the subject property is designated Farm Timber, forest lands goals and policies will apply. Therefore, the proposal must be consistent with the forest lands and goals and policies.

Forest Land and Farm/Timber Land Policy 1: *Protect the resource values of those areas designated as Forest Lands by applying a Timber Conservation [TC] zone consistent with OAR 660 Division 6.*

Applicant asks for Farm/Timber rather than Forest Land designation. Forest Land designation, TC zoning and Forest Land and Farm/Timber Land Policy 1 do not apply.

Forest Land and Farm/Timber Land Policy 2: *Protect the forest resource value of those areas designated as Farm/Timber Lands by applying a Farm/Timber zone consistent with OAR 660 Division 6.*

Forest Land and Farm/Timber Land Policy 3: *Protect the agricultural resource value of those areas designated as Farm/Timber Lands by applying a Farm/Timber zone consistent with OAR 660 Division 33.*

The existing parcel has been in timber use as far back as records can be researched. The parcel has had commercial timber harvested through the years and has been replanted with commercial tree species. Applicant proposes Farm/Timber designation and FT zoning. The subject parcel contains woodland and high value farm soils. FT zoning will recognize the parcel's current forest use while also protecting it for any future agricultural use. If re-designated Farm/Timber, OAR 660, Divisions 6 and 33 will be applied as required, and policies 2 and 3 will be met.

Forest Land and Farm/Timber Land Policy 4: Non-forest and non-farm uses included in OAR 660-06-0025 and OAR 660-33-0120 may be allowed when the activity meets criteria that ensure there will be no significant adverse impacts on farm or forest practices occurring on nearby lands or increase risks associated with fire.

Any requested OAR 660-06-0025 or 660-33-0120 uses will be reviewed and required to comply with all state and local criteria, including special fire protection standards. Policy 4 is met.

Forest Land and Farm/Timber Land Policy 5: Subdivision development is prohibited and other land divisions creating new dwelling sites are not compatible with the protection and efficient management of Forest Lands and Farm/Timber Lands and are discouraged.

Subdivision is not requested or allowed under the proposed designation and zoning. Policy 5 is met.

Forest Land and Farm/Timber Land Policy 6: Division of forest lands and agricultural lands into parcels smaller than 80 acres may be permitted only for those non-forest uses specified in OAR 660 06 0026(2) and those non-farm uses specified in OAR 660 33 0120.

The minimum parcel size in the FT zone is 80 acres. The subject 21.67-acres are below that standard. Land division is not requested or allowed. Policy 6 is met.

Forest Land and Farm/Timber Land Policy 7: Lot line adjustments may be appropriate provided tracts over 80 acres are not reduced below 80 acres. Tracts capable of significant timber or agricultural production but already below 80 acres should not be reconfigured in a manner that makes them less suitable for timber or farm management.

No property line adjustments are requested, and any future property line adjustment request will be reviewed for compliance with applicable MCCP policies and MCC criteria. Policy 7 is met.

Forest Land and Farm/Timber Land Policy 8: Strict criteria should be applied to ensure that any dwellings and accessory structures permitted on existing parcels will not interfere with accepted forest or farm management practices on adjacent lands, have adequate road access, fire protection and domestic water supply, and do not increase fire hazards.

The applicant has submitted for a template test dwelling which will be reviewed for compliance applicable criteria in the Marion County Code. Policy 8 is met.

Forest Land and Farm/Timber Land Policy 9: If special siting and fire hazard protection requirements are imposed dwellings may be appropriate on existing parcels with low cubic foot per acre per year productivity, on parcels with timber management limitations due to the proximity of dwellings and a highly parcelized ownership pattern, or on existing parcels of 160 acres or more created prior to January 1, 1994. Dwellings allowed under OAR 660-06-0027(1)(a), (e) and (f), as limited in the TC zone, are consistent with this policy.

MCC 17.139.070 contains special siting and fire hazard protection requirements for the FT zone. If a dwelling is allowed on the subject property, it would have to meet any applicable OAR 660-006 and MCC chapter 17.139 requirements. Policy 9 is met.

Forest Land and Farm/Timber Land Policy 10: The siting of dwellings in the Farm/Timber zone must meet the applicable criteria in either OAR 660, Division 6 or 33 based on the predominant use of the tract on January 1, 1993.

Applicant purchased the property in September, 1992, and began restocking timber resources. A 1992 aerial photograph shows the subject property predominantly in trees. The parcel was in forest use on the January 1, 1993. If, in the future, a dwelling is requested for the parcel, it will be reviewed and have to comply with OAR 660-006 and MCC requirements. Policy 10 is met.

Applicant's proposal is consistent with statewide planning goals and the applicable goals and policies in the M CCP.

ZONE CHANGE

4. 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

The zone will be consistent with the goals and policies of the comprehensive plan as the comprehensive plan will change with it and will match the land use pattern in the area which is a mix of farm and forest uses. The criterion is met.

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

The zone will be consistent with the surrounding uses as it will match the land use pattern in the area which is a mix of farm and forest uses. The criterion is met.

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

The parcel is served by the Stayton Fire District, Marion County Sheriff's Office, has a public road providing access and will be served by a well and septic system. The criterion is met.

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

While the applicant is not proposing a specific use that needs to be located on the subject parcel, the applicant seeks to better align the present and future use of the parcel with its zoning. The applicant has no intentions to farm the property and would rather continue its commercial timber production use, which better suits the size and topography of the parcel. The criterion is met.

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.

The new zone does not allow uses that are more intensive, rather it allows a combination of the same uses of the EFU zone with some added timber uses, which are already present on the site. By applying the FT zone to the property, there will be a benefit for the long term management of timber use. The new zone will better align the zoning with the present and future use of the parcel. The criterion is met.

TEMPLATE TEST

5. According to Chapter 17.139.030(B) of the Marion County Code (MCC) a single-family dwelling subject to the special use and siting requirements in MCC 17.139.070 may be allowed provided:

(a) The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

The subject parcel is owned by Jerome P. Lackner. Mr. Lackner does not own any other contiguous lands and there is not a dwelling on the subject property. The criterion is met.

(b) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract. The other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.

The Applicant owned the lot in 2019 and was not a part of any tract. There was no dwelling on the subject property in 2019 either. The criterion is met.

(c) The lot or parcel is:

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(1) Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or

(2) Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or

(3) Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least eleven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; and

(4) If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or

(5) If the tract abuts a road that existed on January 1, 1993 and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.

The FT zone permits dwellings that meet the template test criteria. The proposed dwelling will comply with the template test and is therefore not prohibited by the regulations. A study map produced by the Marion County Planning Division plots out a 160 acre square centered on the subject parcel that indicates that there are 20 lots with 10 dwellings in the study area. The study area encompasses an area that has been highly compromise by the Santiam Canyon fire, and many of the dwellings were destroyed and replaced.

The parcel can produce 2884.8 cubic feet per year of wood and abuts a road that did exist on January 1, 1993, Wagner Rd SE, as such, the applicants may use a square or rectangle to satisfy the template test. In this case, they have used a square that is aligned to the maximum extent with Wagner Rd SE. They have counted and marked on the map where 3 dwellings are that have existed since January 1, 1993 and the rectangle touches 20 total lots. There are no historic structures or sites. The criterion is met.

(6) Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.

No lots located within an urban growth boundary were used in this analysis. The criterion is met.

(c) The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836.

Applicant details compliance with MCC 17.110 through 17.110.836, and the proposal complies with the General Provisions Section of the MCC 17.110.830 – 17.110.836. The parcel is not within an identified groundwater limited area, and the proposed dwelling will use a domestic well that is exempt from requiring a water right. The subject parcel is not within 1,500 feet of an aggregate site, nor will a dwelling have an adverse impact of natural areas, noise impacts or wildlife habitats where the area is already developed with dwellings. The criterion is met.

(d) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

The parcel is not located within the Major Big Game Habitat Overlay. The criterion does not apply.

Development density shall be controlled so that significant wildlife habitat will not be adversely affected in the County's resource zones. The standards for dwelling density in big game habitat, as identified on the habitat maps, shall be: one dwelling unit/80 acres in major habitat; one dwelling unit/40 acres in peripheral habitat. If dwellings are clustered within 200 feet of each other, these densities may be doubled.

This criterion does not apply.

The special standards in MCC 17.139.070 include:

(a) Special Siting Requirements:

(1) Dwellings and structures shall comply with the special requirements in subsection (a)(2) or (3) of this section. Compliance with the provisions in subsection (a)(2) of this section and subsections (b), (f) and (g) satisfies the criteria in (a)(3) of this section. Alternative sites that meet the criteria in subsection (3) of this section and may be approved as provided in MCC 17.110.680.

(2) Siting Standards for Dwellings and Other Buildings.

A. Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.

This setback will be applied only to all property lines, as they all are in farm or forest use. The site plan submitted with this application meets this standard. The criterion is met.

B. The special setback in subsection (a)(2)(A) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in subsection (a)(2)(A) of this section prohibit a claimant's application for homesites under ORS 195.300 to 195.336.

The setbacks will not be applied in such a way, the parcel is large enough to accommodate the setbacks. The criterion is met.

C. The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.

The parcel does not abut a public road, but is located directly southeast of Wagner Ln SE. It will be accessed by an approximately 400-foot-long easement that runs from the end of Wagner Ln SE through tax lot 1200 to the north and then the driveway will enter the subject property. The driveway on the subject property is 200 feet long and ends at a flat area, suitable for building, that is outside of the reforested area of the property. The criterion is met.

(3) Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (a)(2) of this section may be approved if the proposed site will meet the following criteria:

A. The site will have the least impact on nearby or adjoining forest or agricultural lands.

B. The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

C. The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.

D. The risks associated with wildfire are minimized.

Applicant does not request an alternative site. The area was chosen by Applicant because it is relatively flat and outside of the reforested portion of the property. The criterion do not apply.

(b) Declaratory Statement. The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:

"The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily

produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937."

Compliance may be met through a condition of approval.

(c) Domestic Water Supply.

(1) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as de-fined in the Forest Practices Rules (OAR Chapter 629).

(2) Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.

(3) If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.

This shall be made a condition of approval.

(e) Road Access. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Access is not being taken via a Forest Service Road, and the criterion do not apply.

(e) Tree Planting Requirements for Lots or Parcels over 10 Acres:

(1) Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

(2) At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.

This shall be made a condition of approval.

(f) Fire Protection.

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.

(2) If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.

Applicant is within the Stayton Fire District. The criterion are met.

(3) Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:

A. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.

B. Road access to the water supply required in subsection (F)(3)(A) of this section shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.

The Stayton Fire Department has not commented regarding these requirements. At this time this section does not apply, but fire requirements may change when a building permit is applied for.

(g) Fire Hazard Reduction.

(1) The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

(2) The dwelling shall have a fire-retardant roof.

(3) The dwelling shall not be sited on a slope of greater than 40 percent.

(4) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

This shall be made a condition of approval.

(h) Road and Drainage Standards.

(1) Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.

(2) Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements of the local fire protection district or forest protection district, except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.

(3) Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.

This shall be made a condition of approval.

6. Applicant seeks to change the comprehensive plan designation from Primary Agriculture to Farm/Timber, which required consideration of the Forest Land and Farm/Timber Land policies. Marion County Planning found that the policies are satisfied and, if the Board of Commissioners (BOC) approves the comprehensive plan amendment, states that the proposed FT zone will be consistent with the Farm/Timber plan designation. MCC 17.123.060(A) is satisfied. Marion County Planning, and the hearings officer finds that the subject property contains sufficient FT zone characteristics and FT zoning can be applied here to protect this site for FT uses, and recommends the proposed zone change.
7. If the Board of Commissioners (BOC) approves the Zone Change/Comprehensive Plan Change/Administrative Review, Marion County Staff and the Hearings Officer recommend the following conditions:
 - A. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
 - B. Prior to issuance of any building permits, the applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
 - C. The proposed dwelling shall be located substantially as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
 - D. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.

- E. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.
 - F. The dwelling shall maintain a special 200-foot setback from all property lines. Accessory structures shall maintain a special 100-foot setback from surrounding properties in farm or timber production.
 - G. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).
 - H. Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
 - I. All standards contained in MCC 17.139.070 shall be made conditions of approval.
 - J. As an advisory, the applicant should contact the Stayton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
8. The proposed conditions of approval are necessary for the public health, safety, and welfare.

VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of a zone change, comprehensive plan change, and administrative review to change the zone from EFU (Exclusive Farm Use) to FT (Farm Timber) zone; to change the comprehensive plan designation from Primary Agriculture to Farm Timber, and to establish a template test dwelling on 21.67 acre parcel in the EFU (Exclusive Farm Use) zone located at the end of Wagner Lane SE in the 22600 block (T9S; Range 2E; Section 18A; Tax Lot 100).

Therefore, the Hearings Officer recommends that the Marion County Board of Commissioners **GRANT** the Application subject to the following conditions that are necessary for the public health, safety, and welfare:

1. Applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permits, the applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

3. The proposed dwelling shall be located substantially as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
4. Applicant/Owner shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
5. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.
6. The dwelling shall maintain a special 200-foot setback from all property lines. Accessory structures shall maintain a special 100-foot setback from surrounding properties in farm or timber production.
7. Applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).
8. Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
9. Applicant shall comply with all standards contained in MCC 17.139.070. shall be made conditions of approval.
10. As an advisory, Applicant should contact the Stayton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. 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 30th day of June, 2025.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Norman Bickell
2232 42nd Ave SE, #771
Salem, Oregon 97317
Nbickell0027@aol.com

Area Advisory Committee 8: (via email)

Eugene Fief
20293 N Santiam Hwy
Stayton, OR 97383
genefief5310@gmail.com

Randall Tinney
PO BOX 242
Mehama, OR 97384

Roger Kaye
Friends of Marion County
Rkaye2@gmail.com
P.O. Box 3274
Salem, OR 97302

1000 Friends of Oregon
133 SW 2nd Ave
Portland, OR 97204-2597

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us
Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: (via email)
Stayton Fire District

jay.alley@staytonfire.org
jack.carriger@staytonfire.org

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

School District: (via email)
North Santiam School District
20256 Grim Rd. NE
Aurora, OR 97002
ginger.redlinger@nsantiam.k12.or.us

State Agencies Notified: (via email)
karen.grosulak-mccord@dlcd.oregon.gov
sarah.marvin@state.or.us
hilary.foote@state.or.us
odfw.info@state.or.us

Special Agencies Notified: (via email)
Jill Engel
PO Box 1261
Salem, OR 97303
info@marioncofarm.com

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 30th day of June, 2025 and that the postage thereon was prepaid.

A handwritten signature in blue ink, appearing to read "Gayle M.", is written over a horizontal line.

Administrative Assistant to the
Hearings Officer