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MEMORANDUM

TO: Marion County Hearings Officer

FROM: Marion County Planning Division/Reich

SUBJECT: Comprehensive Plan/Zone Change 19-001/Clements

DATE: June 7, 2019

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

FACTS:

1. The subject property consists of 1.5 acres designated Primary Agriculture in the Marion County Comprehensive Plan (MCCP) and zoned EFU (Exclusive Farm Use), Chapter 17 of the Marion County Code (MCC).

2. The property is located on the north side of Nusom Road NE in the 9200 block. The property was described by deed (Deed 207, Page 234) as far back as 1930 and considered a legally created parcel for land use purposes. According to the Soil Survey for Marion County, Oregon, 100% of the soils on the property are high-value soils.

3. Surrounding properties are also zoned EFU and consist of small rural residential lots and farmed parcels.

4. The applicant is requesting to change the Comprehensive Plan designation from Primary Agriculture to Rural Residential, and change the zone from EFU to AR (Acreage Residential).

5. Public Works Land Development and Engineering Permits (LDEP) requested the following Requirement be included in the Planning Division staff report:

"A. In accordance with Marion County Code 11.10, driveways must meet MCPW Engineering standards for safety and construction. The following numbered sub-requirements pertain to access:

1) During an initial site inspection it was noted that vegetation to the east of the driveway may be impeding intersection sight distance and will need to be trimmed as a matter of public safety. Complete this trimming prior to the scheduled hearing before the Marion

5155 Silverton Rd. NE ● Salem, OR 97305 ● www.co.marion.or.us

County Hearing Officer, currently scheduled on July 10, 2019, and provide photographic evidence of before and after vegetation trimming to achieve adequate sight distance to the east of the access. Photos can be sent via email to MHepburn@co.marion.or.us or hard copies can be mailed to the following address: Attn: Max Hepburn, LDEP, 5155 Silverton Road NE, Salem OR 97305

2) Alternatively, if trimming is not conducted prior to the aforementioned land use hearing date, the Applicant shall be required to apply for and obtain an Access Permit to trim vegetation to achieve adequate sight distance, as well as make any improvements as deemed necessary to the access in accordance with Marion County Standards."

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

STAFF FINDINGS AND ANALYSIS:

6. In land use actions of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized.

GOAL EXCEPTION

7. 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. In this case, the applicant indicated that the proposal qualifies for an irrevocably committed exception.

8. 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 nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone

cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

(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.

9. The property is developed with a grange hall. However, that use has been discontinued for some years. A primary farm dwelling is the only option for placing a dwelling on the subject property because the soils on the property are predominantly high value for agriculture. The applicant is requesting a rezoning of the property on the grounds that the small size of the property along with surrounding parcelization and the existing trees and grange hall on the site have limited agricultural use of the property and made commercial agricultural use of the property impossible.

10. The applicant makes an argument for the inability of the property to be commercially farmed due to the small size of the parcel and because the property is surrounded by non-farm uses, such as residential uses and a commercial property at the corner of Labish Center Road and Howell Prairie Road. The property is too small by itself to be commercially farmable and appears too small to be included as a viable part of another farm operation in the area. The proposal meets the criteria for an irrevocably committed exception in OAR 660-004-00028.

11. Planning and zoning for exception areas is regulated by OAR 660-004-0018:

(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.

(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

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

(b) That meet the following requirements:

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

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

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

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.

12. The proposal meets the criteria for an irrevocably committed exception; therefore the applicant must address the criteria above. In this instance, no dwelling is present on site; however there is a former grange hall. A dwelling and a grange hall generally share many of the same characteristics. Usually a grange hall contains bathrooms and a kitchen or cooking area. The applicant demonstrates how the hall can be converted physically into a dwelling with customary residential rooms. Keeping the use residential, instead of, for instance, commercial or industria, would preserve the nature of the property and ensure that the uses on the exception site are essentially the same as the existing land uses. Although the property is 1.5 acre, it still should be zoned AR-10 in order to be consistent with requirements in OAR 660-004-0040(8)(i)(a). This 10-acre zoning also ensures that the property size will be consistent with uses in a rural residential exception area. The proposal meets the criteria for an irrevocably committed exception in OAR 660-004-00018.

STATEWIDE PLANNING GOALS

13. Proposals to amend the Comprehensive Plan and take an exception to a Statewide Planning Goal must be consistent with the remaining Goals:

- Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.
- Goal 2: Land use Planning. The subject application for a goal exception is considered under the regulations for this goal.
- Goal 3: Agricultural Lands. The applicant is requesting an exception to this goal.
- Goal 4: Forest Lands. The subject property has not been determined to be forest land. This goal does not apply.

- Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property.
- Goal 6: Air, Water and Land Resources Quality. The subject property is not within an identified air quality area. The property is not in the sensitive groundwater overlay zone.
- Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
- Goal 8: Recreation Needs. No recreational uses of the property are proposed in conjunction with this application. This goal does not apply.
- Goal 9: Economic Development. Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal.
- Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- Goal 11: Public Facilities and Services. The subject parcel can be served by the usual rural facilities, such as a roadway, telephone and electrical service, and septic system. This goal is met.
- Goal 12: Transportation. Were the rezone granted to AR-10, the conversion of a previously existing grange hall to a dwelling will not have a significant impact on the county roadway system in this area because of the minimal number of trips associated with a residence and the adequacy of the roadway to accommodate the probable level of additional traffic.
- Goal 13: Energy Conservation. Normal residential use of the property will not significantly impact energy consumption. This goal is met.
- Goal 14: Urbanization. OAR 660-004-0040(8)(i)(A) states that for rural residential areas designated after the effective date of this rule, any new lot or parcel shall be at least 10 acres, unless an exception to Goal 14 is justified. The applicant is proposing to apply a 10-acre density standard to the new AR zone. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.

COMPREHENSIVE PLAN AMENDMENT

14. 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.

15. The 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 Marion County Code Chapter 17.123. 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.

16. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The policies that need to be addressed by applicant include:

Agricultural Lands Policy #1: Preserve lands designated as Primary Agriculture by zoning them EFU (EXCLUSIVE FARM USE). Lands designated as Special Agriculture should be protected by the corresponding SA zone and farmland in the Farm/Timber designation should be protected by the Farm/Timber zone.

Agricultural Lands Policy #2: Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.

Agricultural Lands Policy #3: Discourage development of non-farm uses on high value farmland and ensure that if such uses are allowed that they do no cause adverse impacts on farm uses.

Regarding Agricultural Lands Policies 1, 2 and 3, the applicant did not specifically address any agricultural policies, however, the applicant's statement includes arguments that the land cannot be farmed due to the small size of the parcel, existing trees on the site, the existing grange building and development and the small parcels sizes of adjacent properties make it difficult to farm the subject property even in conjunction with surrounding land that is being farmed. Staff concurs with the applicants that placement of a dwelling on the property would not affect farm uses on agricultural lands in the vicinity.

Rural Residential Policy #5: Marion County considers rural residential living a distinct type of residential experience. The rural life style involves a sacrifice of many of the conveniences associated with urban residences and the acceptance of lower levels of governmental services, narrow roads and the noises, smells and hazards associated with rural living and accepted farm and forest management practices. Marion County finds that it is financially difficult, not cost effective and inconsistent with maintaining a rural life style for government to reduce or eliminate the inconveniences caused by lower levels of public services or farming and forest management practices. When residences are allowed in or near farm or forest lands, the owners shall be required to agree to filing of a declaratory statement in the chain of title that explains the County's policy giving preference to farm and forest uses in designated resource lands.

The applicants agree to file of a Farm/Forest Declaratory statement for the property to comply with this policy.

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

The applicants agree to a 100 feet special setback. However, due to the size of the parcel this does not seem practical and staff recommends the standard setback from property lines in the AR zone be applied.

Rural Residential Policy #7: Lands available for rural residential use shall be those areas developed or committed to residential use or significant areas unsuitable for resource use located in reasonable proximity to a major employment center.

The property is generally unsuitable for resource use due to the presence nearby of other non-farm uses, both residential and commercial. Staff agrees that this policy is satisfied by the proposal.

Rural Residential Policy #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.

Staff recommends that a 10 acre minimum be applied to the proposed AR zone on the property.

Rural Residential Policy #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.

The applicant states that water and septic are already present on site and can be made available to the property. Staff agrees that based on the potential level of development (one home), the proposal satisfies this policy.

Rural Services, General Policy #1: The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The applicant states the use will not require new rural services and water and wastewater disposal are available on site. Nusom Road appears able to provide adequate service to the traffic expected from a single-family dwelling. Other utilities are available to the site. This policy is satisfied.

Rural Services, General Policy #2: It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.

The proposed development of a single-family dwelling is consistent with the character of surrounding uses, as described above, and will not increase the potential for urban services because necessary rural services are present on or available to the property. This policy is satisfied.

Rural Services, General Policy #3: Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

No additional facilities and services are proposed except for ones already present in the rural area to serve a single-family dwelling. This policy is satisfied.

Rural Services, General Policy #4: The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.

No additional facilities and services are proposed except for ones already present in the rural area to serve a single-family dwelling. This policy is satisfied.

ZONE CHANGE

17. 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.

18. The proposed AR-10 zone would comply with #17(A). The applicants meet the criteria for an irrevocably committed exception on the subject parcel; therefore, the criterion in #17(B) is also met. Adequate public facilities, services, and transportation networks appear to be in place; the criterion in #17(C) is met. The county keeps no inventory of lands needed for rural residential development. The criterion in #17(D) does not apply. There is no other zone which implements the Rural Residential plan designation; therefore the criterion in #17(E) is met.

19. Based on the above discussion, all of the criteria to justify an exception to Goal 3 - Agricultural Lands are met and staff recommends the application for a Comprehensive Plan and Zone Change be approved.

CONCLUSION:

20. Staff recommends approval of the proposal to amend the Comprehensive Plan designation from Primary Agriculture to Rural Residential and to change the zone from EFU to AR10.