



Marion County OREGON

PUBLIC WORKS

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MEMORANDUM

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SURVEY

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Lisa Milliman
SUBJECT: Comprehensive Plan Amendment/Zone Change/Partition 19-005/Pfennig
DATE: July 17, 2019

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

FACTS:

1. Application of Lois M. Pfennig, Trustee of the Henry O. and Lois M. Pfennig Trust, to change the zone from SA (Special Agriculture) to AR-2 (Acreage Residential - 2 Acre Minimum) with an exception to statewide Goal 3 (Agricultural Land) and Goal 14 (Urbanization) on a 20.46 acre, and then a partition to divide the 20.46 acre parcel into three parcels containing 2 acres, 2 acres, and 16.46 acres each on property located in the 2400 block of 62nd Avenue SE, Salem (T8S; R2W; Section 4A; tax lot 2800).
2. The property is located west of 62nd Avenue SE, south of Macleay Road SE, and north of Culver Drove SE. The property is unimproved and has a small amount of frontage on an undeveloped right-of-way identified as Wickiup Street SE and access from Whispering Way SE, a private easement. The parcel is currently being farmed and is specially assessed for agriculture by the Marion County Tax Assessor’s Office. Soils on the subject parcel are composed of Amity (Am), Woodburn (WuA), Concord (Co), and Silverton (SuC) Class II and III silt loam soils that are defined as high value for agriculture. The property is described in its current configuration in deeds as far back as 1958 and is a legal parcel for land use purposes.
3. Surrounding properties to the west and south are zoned SA and composed of small to medium sized lots in agricultural and rural residential use. Property to the north and east is zoned AR and developed with small rural residential lots.
4. The applicant states that the “ultimate goal” of the proposal is to create two new 2.0-acre parcels, leaving 18.46 acres in a remainder parcel which would be left vacant “for the time being.” This staff report considers the potential for the property to be divided in a series of partitions, or a subdivision, that would eventually result in the creation of up to 10 2.0-acre residential lots.
5. Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use case:

“Condition A – *On the plat, show sufficient right-of-way dedication to serve the future AR-2 lots.*

Condition B – *Prior to plat approval, provide a stormwater detention template plan prepared by a licensed civil engineer addressing stormwater detention on each of the proposed lots to be constructed in conjunction with homebuilding.*

Condition C – *Prior to plat approval, provide a notarized Road Maintenance Agreement (RMA) regarding the proposed shared access easement.”*

LDEP requested that the following requirements and advisories be included:

D. In accordance with Marion County Code 11.10, driveway “Access Permits” for access to the public right-of-way will be required upon application for building permits for a new dwelling on any of the resulting parcels. Driveways must meet sight distance, design, spacing, and safety standards.

E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

F. Individual lot stormwater detention systems, typically exfiltration pipes inside round rock trenches, would need to be constructed and inspected prior to final building inspection. An On-site Stormwater Discharge Permit is required from MCPW Engineering for the template design to serve typical lots, and a Plumbing Permit is required from the Building Department for actual construction inspection.

G. Utility work within the public right-of-way requires permits from MCPW Engineering.

H. The subject property is situated within Marion County’s DEQ-defined Stormwater Management Area (SMA). Marion County has been delegated authority by DEQ to operate a NPDES 1200-CN program for ground disturbing activities of 1 to under 5 acres. An Erosion Prevention & Sediment Control (EPSC) Permit will be required to put in the access easement. Individual lot home construction will also require a permit for each lot unless done under an aggregate EPSC Permit.

I. There is concern that applying a step-wise approach to developing the entire subject property as AR-2 in combination with the northern neighboring parcels under similar ownership may invoke difficulties with access that meets MCPW as well as fire access standards.

J. The land use application site map has Whispering Way annotated as a 40 feet wide easement. However, it is noted that Partition Plat #2012-08, and subsequently Partition Plat #2019-38, indicates Whispering Way as being a total of 26 feet in width.

K. Construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.

L. Applicant is advised to coordinate with the local fire marshal for any required fire turnarounds and/or turnouts that may need to be depicted on the plat.

M. Per Partition Plat #2012-08, and subsequent Partition Plat #2019-38, the easement shown on the site plan from Macleay Road (Whispering Way) does not serve the subject property and is therefore not a legal access for the subject property. This easement currently serves two parcels without frontage to public right-of-way.”

Marion County Onsite Wastewater Specialist commented: "Site evaluation required for two new 2.0 acre parcels."

Marion County Fire District No. 1 commented on fire safety, access, and premise identification requirements for development of the property.

Oregon Department of Land Conservation and Development commented that "Irrevocably committed exceptions must demonstrate compliance with OAR 660-004-0018(2), which addresses planning and zoning for exception areas. Specifically, the applicant must demonstrate that approval of the exception meets the following requirements:

- *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*
- *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;*

The applicant should address whether future residential uses will irrevocably commit adjacent lands zoned Special Agriculture and how it will be compatible with adjacent farm use. It is insufficient to rely on current compatibility with adjacent farm uses since the use of the subject property is proposed to change to residential."

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

STAFF FINDINGS AND ANALYSIS

6. Land use applications of this nature must be consistent with Statewide Planning Goals. In this specific case, the subject parcel is covered by Statewide Goal 3 (Agriculture Land). There is a mechanism, however, for not applying the Goal to areas with certain characteristics. This mechanism is the Goal exception process that requires specific findings justifying why such lands are not available for resource use. There are three types of exceptions to Statewide Goals that may be granted. The first two are based on the concept that the subject property is "physically developed" or "irrevocably committed" to a certain use. The third is a "reasons" exception where there is a demonstrated need for the proposed use or activity. The applicant indicated that the proposal qualifies for an irrevocably committed exception.
7. Goal exceptions are governed by Statewide Planning Goal 2. Goal 2 is implemented through Oregon Administrative Rule (OAR) 660-004. Under OAR 660-004-0028(1), a local government may adopt an exception to a goal when the land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impractical. According to OAR 660-004-0028(2), whether land is irrevocably committed depends on the relationship between the proposed exception area and the lands adjacent to it. The findings for a committed exception must address the following:
 - (1) *A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:*
 - (a) *A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).*
 - (b) *For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.*
 - (c) *An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.*

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

likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

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

8. The property is undeveloped, currently assessed as a farm parcel, and in agricultural production. A primary farm dwelling is the only option for placing a dwelling on the subject property because the soils on the property are classified as high value for agriculture. The applicant is requesting a rezoning of the property on the grounds that the small size of the property along with surrounding rural residential development on small lots have limited agricultural use of the property and made commercial agricultural use of the property impossible.
9. 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. However, review of the land use patterns and parcel configurations in the area surrounding the subject parcel does not support that conclusion. The property is 20.46 acres in size and is the largest parcel among the SA zoned properties located between Macleay Road SE and Culver Road. According to Tax records, in 2002 the property was being farmed for grass seed, and it has been in agricultural production since that time. Nearly all of these farm-zoned properties in the area are currently specially assessed as farm land by the Assessor and are in various types of agricultural production, as they have been for at least the past 50 years. Indeed, most of the dwellings in the immediately vicinity of the subject parcel, in both the SA zone and the AR zone, were built in the 1960s and early 1970s and review of historical air photos show that use of the farm land has not changed since the area was first developed. The subject parcel is adjacent to Goal Exception Area 21.1 – Macleay, identified in Appendix A of the Marion County Comprehensive Plan. This exception area was already developed with small residential lots at the time the Comprehensive Plan was acknowledged in 1987, although many of the larger parcels were partitioned during the 1980s and 1990s into one to two acre residential lots. Oak Meadows Subdivision, composed of 59th Avenue SE, Tumalo Drive SE and Wickiup Street SE, was platted in 1957 as a suburban residential subdivision of one half acre lots. Oak Dell Farm Subdivision was platted in 1914 and composed of ten 16 to 20 acre hobby farm parcels. The subject parcel is a part of Oak Dell Farm, located at the western edge. The other parcels in Oak Dell Farm were later further divided to create the one to eight-acre rural residential lots located adjacent to 59th Avenue SE and east, between Macleay Road SE and Culver Drive SE / Ganon Street SE, as can be seen on the Exception Area map. The parcel directly north of the subject parcel was originally a portion of Lot 1 of Oak Dell Farm and later included in the exception area because it was located in between the residentially developed areas of Oak Meadows and Oak Dell Farm, located on the south side of Macleay Road SE. This property has been owned by the applicant since acknowledgement of the Marion County Comprehensive Plan in 1987, and was partitioned in 2007 and again in 2015. About one half of the original 11.75-acre property has been farmed along with the subject parcel for many years and the rest of the land contains the farm house built in 1949 and farm and accessory structures. Both partition approvals included 100-foot dwelling setbacks from the property line abutting the subject parcel to minimize impacts of residential activities on agricultural use of the subject property.

The land outside the Macleay Exception Area in all directions was being farmed in the 1980s, when the Comprehensive Plan was acknowledged, and continues to be farmed to the present day. The applicant states that the rural residential properties in the adjacent Exception Area irrevocably commit the subject property to non-resource use. However, the dwellings adjacent to the subject property were built in the early 1970s and the subject parcel was farmed and continues to be farmed to the present day. In this instance, no dwelling or other structures, nor any improvement of any kind is present on site. Public water and sewer service is not available on the subject property nor could it be provided to the property. The subject property is 20.46 acres in size, therefore, the property is not “committed” to a smaller minimum lot size.

If the subject parcel is approved for a zone change to Acreage Residential, the remaining farm parcels to the west and south will be at far greater risk of impact from increasing rural residential densities and removal of the largest farm parcel in that area will reduce the potential for the adjacent farmland to be farmed as a conglomerate. At 20.46 acres, the subject parcel is the largest of the farm parcels located between the Acreage Residential-zoned lands in Exception Area 21.1 and North Santiam Highway and the Salem-Keizer Urban Growth Boundary, providing a buffer between the residential development and the smaller farm parcels to the west and south of the subject parcel. If the subject parcel were to be converted to two-acre rural residential lots, the Special Agriculture-zoned farm lands to the west and south would be at far greater risk of being irrevocably committed to residential use.

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

10. In 2000, the Department of Land Conservation and Development (DLCD) made rules in response to a 1986 Oregon Supreme Court Decision, *Curry County*, regarding which rural residential land is considered to be rural. DLCD determined that, in order to maintain the rural residential land as rural, and not urban, after October 4, 2000, zoning regulations applying to rural residential land existing at that time had to require a minimum parcel size of two acres, OAR 660-004-0040(8)(c) and (d). Zoning applied to land redesigned rural residential after October 4, 2000 had to require a minimum parcel size of ten acres in order to maintain the land as rural and not urban or take an exception to Goal 14, OAR 660-004-0040(8)(i).
11. OAR 660-004-0040(8)(i)(B) permits zoning with as low as a two acre minimum parcel size to be applied to property designated as rural residential after October 4, 2000, if an exception to Goal 14 is taken. The minimum lot size adopted by the county must also be consistent with OAR 660-004-0018.
12. OAR 660-004-0010(1)(d)(D) establishes that an exception to Goal 14 must follow the applicable requirements in OAR 660-014-0030 or 660-014-0040, in conjunction with the requirements in OAR 660-004. OAR 660-014-0030 applies to rural lands irrevocably committed to urban level of development and the criteria in OAR 660-004-0028 also apply. 660-014-0040 applies to the establishment of new urban development on undeveloped rural lands, and is essentially a “reasons” exception, and the criteria in OAR 660-004-0020 and -0022 also apply.
13. OAR 660-014-0030: The applicants calculate the average parcel size in the adjacent Acreage Residential area to be 3.45 acres and the median parcel size to be 2 acres. In 2000, DLCD determined that parcels two acres and greater on rural residential land existing at that time was considered rural. Parcels smaller than two acres were determined to be urban. Since the average parcel size of the adjacent Acreage Residential land is greater than 2 acres, it appears to still be rural in nature. An exception to Goal 14 must demonstrate how the land is irrevocably committed to an urban level of development. Since adjacent lands are still considered to be rural based on DLCD’s rules, that land cannot commit the subject property to urban development. This exception would appear to apply in other circumstances, such as rural residential development in subdivisions with existing smaller than two acres parcel sizes which DLCD determined to be urban in nature. This circumstance may commit a nearby property to an urban level of development and permit a lot size of less than ten acres to be applied.

OAR 660-014-0040: The applicants make arguments related to this rule but do not appear to address specific criteria in the rule regarding reasonable accommodation of the stated need for additional residential land through expansion of existing urban growth boundaries or intensification of development in existing rural communities. This rule does not appear to be satisfied, but need not be addressed if the applicants are applying for an irrevocably committed exception instead.

OAR 660-004-0020 and -0022: The applicants did not address this rule, but need not be addressed if the applicants are applying for an irrevocably committed exception instead.

OAR 660-004-0018: This rule must be applied to ensure that rural land does not require urban levels of services. The proposed zoning must retain the land as rural in all other aspects aside from the minimum parcel size to ensure that the requirements of this rule are satisfied. It is not clear that developing land with a minimum parcel size of two acres would maintain the land as rural, would not commit adjacent lands to uses not allowed by the goal, and would be compatible with adjacent and nearby resource uses.

STATEWIDE PLANNING GOALS

14. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals. The applicants address the goals, but from the discussion above, it is not clear that an exception to Goal 14 is justified. It is also not clear, without at a minimum demonstrating satisfying OAR 660-004-0018, that the proposed lower minimum parcel size will not have an impact on nearby resources uses such as farming. In addition, the applicants have not demonstrated that the proposed lower minimum parcel size will satisfy Goal 11 - Public Facilities and Services by ensuring the development not cause a reliance on an urban level of services.

COMPREHENSIVE PLAN AMENDMENT

15. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.
16. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of one parcel of land and the proposal can therefore be considered under the quasi-judicial amendment process.
17. The proposal must be consistent with applicable policies for Rural Residential developed contained in the comprehensive plan. These policies include:
 8. *Since there is a limited amount of area designated Rural Residential efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than 2 acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10 acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.*
 9. *When approving rural subdivisions and partitionings each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel.*

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 is proposing to rezone the subject parcel to an Acreage Residential zone with a minimum lot size of less than 10 acres. The requirements for an exception to Goal 14 are addressed above and staff finds that the criteria for a Goal 14 exception have not been met.

The applicant states that two-acre minimum lots can be expected to be able to support a well for drinking water and onsite sewage treatment systems for waste disposal. The applicant has addressed access for only the initial two 2-acre parcels that are proposed, but does not indicate how access will be provided, should the remaining 18.46-acre parcel be developed, much less partitioned or subdivided in the future, unless a variance is approved to the requirement that the number of dwellings served by a private road not exceed four.

The proposal does not appear to be consistent with the Rural Residential policies in the Marion County Comprehensive Plan.

ZONE CHANGE CRITERIA

18. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:
 - A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
 - B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
 - C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
 - D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
 - E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*
19. The applicants address the zone change criteria and the proposal appears consistent with the density and pattern of development on nearby land zoned Acreage Residential. Although the county is not required to provide residential land in the manner that cities are, there is other land in the county 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 seven parcels to the east of the subject parcel, between 62nd Avenue SE and 70th Avenue SE that are already zoned AR and large enough to be partitioned to create a total of 12 new parcels, which is two more than the maximum that could be created under the applicant's proposal. The applicant does not adequately address why other land in the county is unavailable or not well suited for a single-family residence. The applicant's statement indicates that one only need to establish that the proposed use would not be expected to require public water and sewer service to comply with OAR 660-004-0018. The applicant proposes to change the zone on the entire property to Acreage Residential with a two acre minimum lot size but does not show how new lots that could be created if the 18 acres remaining after the initial partition was later divided, would be provided with access to roads. The applicant goes on to state that since there is other rural residential land in the area already, converting the subject parcel to AR- 2 acre minimum zoning would not irrevocably commit the remaining agricultural land to urban uses, after previously claiming the same residential uses have irrevocably committed the subject parcel to non-farm uses. It is not possible to determine that the proposed change in minimum parcel size would not significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses. It does not appear the applicant has met the criteria for a zone change.

PARTITION

20. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres. The two smaller proposed new parcels will each be at least two acres each and are consistent with this standard. In addition, the resulting undeveloped parcels, if they can obtain septic approval, appear to be of sufficient size and shape to meet the development standards in the AR zone. The remainder is over 18 acres in size. Since the proposal is to rezone the entire 20.46 acre parcel to AR-2 acre minimum, it is reasonable to expect that in time, additional two-acre lots would be created. The applicant has not provided information on where access to these potential lots would be obtained. The access proposed for the initial two-acre lots would be via Whispering Way SE, a private easement serving two lots to the north of the subject parcel that don't have frontage on a public road. If the remainder 18 acre parcel is developed, a variance to Marion County Code Chapter 17.110.800 is necessary to provide access to this lot.
21. MCC 17.128.050 establishes special siting standards for dwellings near resource zones:
- (a) *Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.*
 - (b) *The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.*

The special setback in #9(a) can be applied to any approval. #9(b) requires that a Declaratory Statement be recorded with the property deed because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. Any approval can be conditioned to meet this criterion.

22. Both parcels would appear to have access to an existing private easement; therefore, no new easement should be required.

CONCLUSIONS

23. Based on the above, staff recommends denial of the proposal based on the existing record.
24. If applicant's request is recommended for approval, Planning recommends the following conditions be applied:

Prior to recording the final plat:

- A. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036) and shall contain the notation that the survey is the result of Partition Case 19-001. Following plat approval it shall be recorded with the Marion County Clerk.
- B. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.
- C. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final mylar to the County Surveyor.

- D. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
- E. On the plat, show sufficient right-of-way dedication to serve the future AR-2 lots.
- F. Prior to plat approval, provide a stormwater detention template plan prepared by a licensed civil engineer addressing stormwater detention on each of the proposed lots to be constructed in conjunction with homebuilding.
- G. Prior to plat approval, provide a notarized Road Maintenance Agreement (RMA) regarding the proposed shared access easement..

Prior to issuance of building permits on the resulting parcels:

- H. The partition plat shall be recorded.
- J. The applicant 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.
- L. Any dwelling shall maintain 100 foot setback from land in farm use to the west and southwest.
- M. In accordance with Marion County Code 11.10, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new dwelling. Driveways must meet sight distance, design, spacing, and safety standards.
- N. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.
- O. Individual lot stormwater detention systems, typically exfiltration pipes inside round rock trenches, would need to be constructed and inspected prior to final building inspection. An On-site Stormwater Discharge Permit is required from MCPW Engineering for the template design to serve typical lots, and a Plumbing Permit is required from the Building Department for actual construction inspection.
- P. Utility work within the public right-of-way requires permits from MCPW Engineering.
- Q. The subject property is situated within Marion County’s DEQ-defined Stormwater Management Area (SMA). Marion County has been delegated authority by DEQ to operate a NPDES 1200-CN program for ground disturbing activities of 1 to under 5 acres. An Erosion Prevention & Sediment Control (EPSC) Permit will be required to put in the access easement. Individual lot home construction will also require a permit for each lot unless done under an aggregate EPSC Permit..

Additional conditions:

- R. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum two acres in size, prior to any right-of-way dedication.

- S. Staff recognizes the final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum 2.0 acres prior to any required right-of-way dedication.
- T. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
- U. The applicant should contact Marion County 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.
- V. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories that may be required.