



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 28, 2017

Department: Public Works Agenda Planning Date: June 22, 2017 Time required: 20 min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 530-566-4177

Department Head Signature:

TITLE Public hearing for Zone Change/Comprehensive Plan (ZC/CP) Case 17-001/Sharabarin.

Issue, Description & Background
Vasily and Marina Sharabarin submitted an application to amend the comprehensive plan designation from Primary Agriculture to Rural Residential, change the zone from EFU (Exclusive Farm Use) to AR-10 (Acreage Residential-Ten Acre Minimum), and to take an exception to Statewide Planning Goal 3, Agricultural Lands, on a 7.43-acre parcel in the 11,700 block of Carl Road NE, Woodburn. A public hearing was held on March 22, 2017, and on May 18, 2017, hearings officer issued a recommendation that the board of commissioners approve the request if satisfactory additional information is submitted.

In summary, the hearings officer found the applicant needs to provide additional information on location of a storm water easement which serves a mobile home park to the east and evidence to support why the property cannot be managed for a profit in farm use. If satisfactory additional evidence is provided, the hearings officer recommends the board take an irrevocably committed exception to statewide planning goal 3, and grant a comprehensive plan amendment to Rural Residential and a zone change to AR-10.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration:
1. Continue the public hearing.
2. Close the public hearing and leave the record open.
3. Close the public hearing and approve, modify, or deny the request.
4. Remand the matter back to the hearings officer.

Recommendation: The hearings officer recommends the board of commissioners close the public hearing and approve the request if additional satisfactory information is submitted.

List of attachments:
*Hearings officer's recommendation
*Supplemental information from applicant

Presenter: Joe Fennimore



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Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

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BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. ZC/CP 17-001
Application of:) Clerk's File No.
VASILY AND MARINA SHARABARIN) **Zone Change/Comprehensive**
) **Plan Amendment**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Vasily and Marina Sharabarin to amend the comprehensive plan designation from Primary Agriculture to Rural Residential, and change the zone from EFU (EXCLUSIVE FARM USE) to AR-10 (ACREAGE RESIDENTIAL-TEN ACRE MINIMUM) and to take an exception to Statewide Planning Goal 3, Agricultural Lands, on a 7.43-acre parcel in the 11,700 block of Carl Road NE, Woodburn, Marion County, Oregon (T5S, R1W, S4C, tax lot 2000).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and the Marion County Code (MCC) title 17, especially chapter 17.123, Oregon Administrative Rule (OAR) 660 division 004 and Oregon Statewide Planning Goals (OSWPG).

III. Public Hearing

A hearing on this matter was held on March 22, 2017. The Planning Division file was made part of the record. The record remained open until March 29, 2017 for applicants to submit additional materials. The following persons appeared at the hearing and provided testimony on the application:

1. Lisa Milliman Planning Division
2. Rebekah Dohrman Applicants' attorney

The following documents were presented, marked and entered into the record as exhibits:

- Ex. 1 June 9, 1989 letter from Susan Brody
- Ex. 2 April 28, 2017 email from John Rasmussen about Carl Road dedication
- Ex. 3 Applicants' April 28, 2017 open record memorandum with exhibits A through L

No objections were raised to notice, jurisdiction, conflicts of interest, evidence or testimony.

IV. Findings of Fact

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

1. The subject 7.43-acre property is designated Primary Agriculture in the MCCP and zoned EFU.

2. The subject property is on the east side of Highway 99E in the northeast corner of the Highway 99E - Carl Road intersection. The property was the subject of administrative review case AR 09-18 and is considered a legally created parcel for land use purposes. The Soil Survey for Marion County Area, Oregon, shows 100% of the soils on the property are high-value soils. Applicants submitted an individualized soil analysis discussed below.
3. Property to the southwest across Highway 99E and cater corner to the subject property is within the Woodburn city limits and urban growth boundary (UGB). From an aerial photograph in the record, the property appears to be in industrial or commercial use. Properties north of the Woodburn UGB are zoned EFU and consist of small parcels in residential use and larger farmed parcels. Directly north of the subject property are small parcels in residential use. A dual-zoned AR/EFU parcel abuts the subject property to the east with an EFU portion of it extending north. A small EFU zoned strip of the parcel directly borders the east property line of the subject property. The strip appears to be in use to access the mobile home park on the AR zoned portion of the parcel. EFU zoned property east of the dual zoned property is in farm use. An AR zoned mobile home subdivision is southeast of the subject property across Carl Road. Three small EFU zoned properties in residential use are west of the subdivision and south of the south eastern portion of the subject property. A large AR zoned mobile home park abuts Highway 99E south of the southwest portion of the subject property.
4. The subject property contains a well, farm field and paved area where a fruit stand once stood. Applicants ask to change the MCCP designation from Primary Agriculture to Rural Residential, and change the zoning from EFU to AR-10.
5. The Marion County Planning Division requested comments on the subject proposal from various governmental agencies.

The Marion County Public Works Land Development and Engineering Permits (MCPW LDEP) commented that the re-designation and re-zoning would have the potential to add ten average daily traffic trips on county roads, and asked to include its proposed condition A in any approval.

Condition A - Prior to issuance of building permits, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 30 feet for a Local road along the subject property Carl Road frontage, and a 35-foot property corner radius at the SW property corner intersection of Carl Road and Hwy 99E.

Nexus is due to the anticipated addition of traffic to the public road, and to accommodate sufficient width for future road shoulder improvements and utilities.

LDEP also noted the following engineering requirements:

- B. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. The following sub-requirements, numbered 1 through 3, pertain to access:
 - 1) No direct access to Hwy 99 will be allowed since full access is available off a Local county road.
 - 2) A total of one (1) residential access to Carl Road will be allowed. This may necessitate permanent closure of the existing west access.

- 3) At the time of application for building permits, an Access Permit will be required.
- C. The subject property is within unincorporated 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.
- D. Any excavation work within the public right-of-way for utility work requires permits from MCPW Engineering.
- E. An existing field fence appears to be located within what will become public right-of-way. Upon replacement of the fence, it shall be relocated onto private property. If the County undertakes road widening, the fence would need to be removed or relocated at that time at the Applicants' expense.

The Marion County Building Inspection Division commented that a building permit is required for new construction or placement of a manufactured home.

The Marion County Tax Office commented that property taxes for the subject property are paid, that a potential tax liability may exist which may need to be paid before a partition or adjustment would be approved, and that under ORS 92.095, all delinquent taxes and interest as well as taxes, which have become a lien during the tax year, must be paid before a partition shall be recorded.

The Oregon Department of Transportation commented that the property has no legal right of access to Highway 99E and that all access must be from Carl Road NE.

Other contacted agencies contacted failed to respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met.
2. Under MCCC plan amendment policy 2, plan changes directly involving five or fewer properties are quasi-judicial amendments. Comprehensive plan amendments are reviewed by zone change procedures established in MCC title 17. A plan amendment application may be processed simultaneously with a zone change request. The proposed comprehensive plan amendment involves one ownership, is a quasi-judicial plan amendment request and is being processed with a zone change application.
3. The Oregon Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified and provided no comments.
4. The subject property is designated and zoned for resource use and is subject to statewide planning goal 3, Agricultural Lands. Applicants seek a goal 3 exception for residential designation and zoning of the property.

GOAL 3 EXCEPTION

5. There are three types of exceptions to statewide planning goals. One is based on the concept that a property is too physically developed to be available for resource use, another on the concept that land surrounding a property is developed

to such an extent that the property is irrevocably committed to other than resource use, and the third requires the county to show other reasons why a goal exception is appropriate. Applicants propose an irrevocably committed exception.

6. Under OAR 660-004-0000(1), specific substantive standards in other divisions such as OARs 660-011, 012 and 014 for public services, transportation and urbanization, control the more general standards of OAR 660-004, but, definitions, notice, and planning and zoning requirements of OAR 660-004 apply to all types of exceptions. Here, goal 3, Agricultural Lands, applies because the subject property is designated and zoned for farm use. The goal 3 rule, OAR 660-033, contains no exception criteria. OAR 660-004 rules apply to this goal 3 exception request.

OAR 660-004-0028, irrevocably committed

7. Under OAR 660-004-0028:

- (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.

8. *DLCD v. Curry County*, 151 Or App 7 (1997) explains the concept of OAR 660-004-0028: "OAR 660-04-028(1) makes the nature of 'existing adjacent uses' the focal criterion for an irrevocably committed exception for particular property, and OAR 660-004-028(2) and (6) require adjacent uses and the relationship between the exception area and adjacent lands to be considered as factors." (Emphasis in the original.)
9. **Exception area characteristics.** The subject 7.43-acre lot at the northeast corner of the Highway 99E - Carl Road NE intersection is the exception area. The property is relatively flat and surrounded by low barbed-wire fencing except at the two entrances on Carl Road NE. The property has a well and electrical service. Applicants state the property is burdened by utility easements serving adjoining properties, including a 10' stormwater easement running across the northern boundary of the subject property that takes water from the mobile home park to the east to a public stormwater connection at Highway 99E. **Applicants should depict easements on a map or aerial photograph in the record to facilitate BOC review.** Applicants' farm stand once stood in a paved and graveled area in the southwest corner of the subject property.

The soil survey of Marion County Area, Oregon shows 100% of the subject property is high value soils. Applicants engaged a certified soil classifier to conduct an investigation of the subject property. In May 2016, Red Hills Soils certified soils classifier Andy Gallagher identified three soil types and a paved and graveled area on the subject property:

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Soil type	Classification	Acres/Percent*
Amity silt loam (Am) 0-2% slope	IIw-2	3.8 (58%)
Dayton silt loam (Da) 0-2% slope	IVw-1	0.7 (11%)
Woodburn silt loam (Wo)** 0-3% slope	IIe-1	1.5 (23%)
Paved/graveled	VIIs	(7.0%)

*The percentage and acreage calculations in the report appear off if 7.43 acres is used as the base property acreage (58% of 7.43 acres = 4.3 acres and not 3.8 acres, 11% = 0.8 acre, 23% = 1.7 acres, and 7% = 0.5 acre). If 6.0 acres soils shown above are subtracted from 7.43 total acres that would put the paved/graveled area at 1.43 acres or about 20% rather than 7% of the property. **Applicants should explain what base acreage was used for the report calculations and how acreage and percentages were determined.**

**Map symbol Wo is not found in the Soil Survey. Woodburn soil symbols are WuA, WuC, and WuD (with 0-3%, 3-12% and 12-20% slope respectively).

In general, class II soils have moderate limitations that reduce choice of plants or require moderate conservation practices; and class IV soils have very severe limitations that reduce the choice of plants, require careful management or both. Subclass symbol "e" shows erosion is the main limitation unless close growing plant cover is maintained; "w" shows that water in or on the soil interferes with plant growth or cultivation; and "s" indicates droughty or stony. Capability units show compatibility between soils classes. Soils in the same capability unit are suited to the same crops and pasture plants, require similar management and have similar productivity. Woodburn and Dayton soils are in soil capability unit 1 and could be well managed together but are separated from each other by intervening capability unit 2 Amity soils. Still, the property is planted wholly to cane berries and managed for one crop throughout.

Amity soils have restricted drainage, a moderately severe limitation for crops. In undrained areas, the seasonal high water table limits the choice of crops, but it can be used for forage crops, small grains, and grass seed. Drained areas are better suited than undrained areas to the crops commonly grown in the survey area.

Woodburn soils are suited to row crops, small grains, forage crops, vegetables, and many specialty crops. In some areas somewhat restricted drainage restricts the choice of crops.

Dayton soils have a surface layer of silt loam and a subsoil of clay. Drainage is poor and fertility is moderate or low. These soils are not suited to deep-rooted crops or to crops that cannot tolerate excess moisture. Droughtiness is a hazard to crops during dry weather in summer. When the soils are irrigated, care must be taken to prevent over-irrigation and drowning of the crop. Drainage is difficult to establish because of inadequate outlets and slowly permeable clay near the surface. Tile should be placed at close intervals below the clay subsoil. Even after the soils are drained, control of the water table is difficult.

The Soil Survey also places soils into woodland suitability groups, mainly according to their productivity for Douglas fir. Amity, Dayton and Woodburn soils are not in Survey woodland suitability groupings and the subject site is not treed.

Under MCC 17.136.140(D), high-value farmland means a tract composed predominantly of, among others, class II Amity and Woodburn soils, and class IV Dayton soils. The parcel, excluding the paved and gravel area is made up entirely of high value farm soils, is planted to cane berries and is specially assessed for farm use.

- 10. Adjacent land characteristics.** Given the roads and numerous small parcels around the property, adjacent land is broadly interpreted here to include abutting and nearby lands. Highway 99E, adjacent west of the subject property, is a five lane

arterial highway with two southbound travel lanes, two northbound travel lanes and a middle turn lane. The northbound lanes merge into one lane along applicants' west property line. Woodburn city limits are southwest across Highway 99E, cater corner to the subject property. From an aerial photograph in the record, property in that area of the city appears to be large parcels in industrial or commercial use.

North of the city limits and south of Goudy Gardens Road are ten tax lots, 0.17 to 7.0 acres, zoned EFU and most with single-family homes. Tax lot 051W04C01300 (0.63 acre) contains a triplex, Pro Side Construction and what applicants describe as an automotive sales and repair business. Eight tax lots with tax code 451, rural improved property *not specially assessed* are in residential rather than farm use. Tax lots 051W04C01100 (4.86 acres) and 1200 (0.19 acre) are part of the Imperial Garden nursery operation and have tax code 551, specially assessed improved farm land. Tax lot 051W04C1000, east of these parcels is in undetermined use. Tax lot 051W04C00700, north of Imperial Garden, across Goudy Gardens Road and west of Highway 99E is an EFU zoned 9.06 acre tax lot in farm use and assigned tax code 550, specially assessed farm land with no improvements. Tax lots 051W04C800 and 900, east of tax lot 700, are in undetermined use.

East of Highway 99E and north of the subject parcel is a cluster of small EFU zoned parcels with homes and having tax codes 451, rural improved property *not specially assessed*, that are not in farm use. Tax lot 051W04C00500, directly north of the subject property, is a 3.31 acre parcel with several structures including a home built in 1952. Applicants looked at tax records for the structures on this property and an aerial photo, and estimates the property has about 8,000 square feet of impervious surfaces (roofs and driveways) clustered at its boundary with the subject property.

Tax lot 051W04C02100, a dual AR-EFU zoned 7.47-acre parcel abuts the subject property immediately to the east and continues north. Woodburn Mobile Estates, a 30-space mobile home park is on the AR portion east of the subject property. The EFU portions of the property are not in farm use and include a small strip on the west side of the parcel next to the subject property used to access the mobile home park, and another portion east and northeast of the mobile home park. The property is in tax code 707, multifamily mobile home park. East of the mobile home park are tax lots 051W04C02300, 2.36 acres in tax code 451 (rural improved property *not specially assessed*) in nonfarm use, and tax lot 2400, 3.45 acres in tax code 551 (specially assessed for farm use unimproved) in farm use. Larger parcels in farm use predominate farther to the east.

Carl Road NE, directly south of the subject property, runs east-west and is, according to the MCCP Rural Transportation System Plan (RTSP), Appendix B, Roadway Inventory (2012 Update), a two-lane local road within a 40' right-of-way, with 20' asphalt travel surface and 3' gravel shoulders in this area. The road is in good condition and operates at level of service A.

South of Carl Road NE and southeast of the subject property is the approximately 10-acre, 44-lot AR zoned Chateau Ranchettes manufactured home subdivision. The city of Woodburn extended public water service to Chateau Ranchettes to alleviate a substandard water supply issue. The public water extension runs through NE Carl Road along the subject property's southern boundary line.

Three stacked EFU zoned parcels are west of Chateau Ranchettes and south of the southeast portion of the subject property. The northern most tax lot 051W04CD04700 is 1.35 acres with assigned tax code 451, rural improved property *not specially*

assessed, and is not in farm use. The middle lot, tax lot 051W04CD04701, is 1.35 acres assigned tax code 707, multifamily mobile home park, and containing one manufactured home. The southern-most tax lot, 051W04CD04702, is a 2.99-acre parcel also containing a manufactured home but with tax code 551, specially assessed for farm use unimproved. These three parcels were the subject of ZC/CP 89-9, an application seeking commercial use of the 5.7 acre parcel. The request was denied but in the file is a June 8, 1989 staff memorandum that determined the property was irrevocably committed to non-resource use, and DLCD concurred in a June 9, 1989 letter for the record. At some time after the denial, the property was divided into the current three parcels.

South of Carl Road NE at the intersection with Highway 99E is the Chateau Mobile Village, a 48-space mobile home park on 6.96 acres with tax code 707, multifamily mobile home park. Park development includes community centers, a pool and parking lots. Applicants' statement indicates the Chateau property was recently removed from the city of Woodburn UGB. To clarify this statement, the hearings officer looked at *1000 Friends of Oregon v. LCDC*, 237 Ore App 213, 239 P3d 272 (2010) and *1000 Friends of Oregon v. LCDC*, 260 Ore. App. 444 (2014) and, taking official notice, looked at the 2005 Woodburn comprehensive plan and at the 2015 Woodburn comprehensive plan approved by LCDC in 2016.

In the late 1990s, the city of Woodburn began the periodic review process to update its comprehensive plan and in 2005 amended its urban growth boundary (UGB). The 2005 expansion brought the Chateau Mobile Village into the city's UGB. The city submitted the amendment to the Land Conservation and Development Commission (LCDC) for review. LCDC approved the city's UGB amendment but the decision was appealed to the Oregon Court of Appeals. The court of appeals reversed LCDC's order and remanded the case to LCDC for reconsideration. LCDC completed reconsideration and issued a new order approving the city's UGB expansion. That order was appealed to the court of appeals where it was again reversed and remanded to LCDC for reconsideration. In 2015, Woodburn amended its UGB expansion and excluded the Chateau Mobile Village property from the UGB and restricted UGB expansion in the area east of Highway 99 for 20 years.

11. **Relationship between exception area and adjacent lands.** The subject property is in an area of smaller, mostly residential parcels that are not in farm use. The area is flat with no apparent topographic restraints. Restrictions are largely human-made. Highway 99E, a formidable structure, is heavily traveled and has no signal at its Carl Road intersection. The highway is a physical and functional barrier to farming the subject property in conjunction with farmland to the west. Small parcels mostly in separate ownership and manufactured home developments have stranded the subject property and preclude its farm uses from expanding onto neighboring properties.

MCCP Appendix A contains the county's original 1980 requests for exceptions to resource zoning in Marion County. Proposed exception 5.1 findings note that the area contains two mobile home parks and a mobile home subdivision that were all created before 1970 and that those properties are fully developed and not available for farm use. The findings show 44 occupied parcels in the 28-acre proposed exception area. Requested AR zoning was not contested.

Applicants point out that the predominant soils on subject property require good drainage and surrounding impervious surfaces (roadways, structures, etc.) hinder optimal drainage of the subject property, hindering the types of crops that can be grown on the subject property.

The dominating dense residential development causes problems on the subject property beyond drainage issues. Applicants point out that it is not uncommon for the neighboring mobile home parks and subdivision to use the subject property to park overflow cars or machinery during construction projects or road work. In January 2017, applicants found septic pump trucks and crews using the subject property as a staging area for servicing Chateau Mobile Village. Applicants report that this type of activity occurs frequently on the subject property.

12. **Other relevant factors under OAR 660-004-0028 (6) .**

Existing adjacent uses. Existing adjacent uses are addressed in section V10 above and incorporated here.

Existing public facilities and services. Carl Road and Highway 99E are directly south and west of the subject property. Highway 99E is a state controlled five-lane arterial roadway in this area. Carl Road is two lanes with shoulders flaring out at the Highway 99E intersection. Proposed AR-10 zoning adds only one homesite to the area for minimal impact on public roads. Water and wastewater facilities will be provided on site and will not require extension of public services. Electric and telephone services are already available in the area. Fire and public safety services are provided by the Woodburn Fire District and the Marion County Sheriff's Office. Applicants state a drainage easement follows the north property line of the subject property, carrying stormwater from Woodburn Mobile Estates to join a larger drainage system along Highway 99E. The exact location of the stormwater easement is not shown in the record. It is unclear whether the easement is public or private.

Parcel size and ownership patterns of exception area and adjacent lands. The subject property and parcels to the north, east and west (except the area directly west at the Highway 99E - Goudy Gardens Road intersection) are part of the 1913 Goudy Gardens subdivision. The Goudy Gardens plat map shows 20 lots ranging in size from 0.99 acre (lot 1) to 44 acres (lot 15). Most were 10-acre lots but many Goudy Gardens lots have been re-divided over the years into much smaller parcels. Most small lots are in separate ownership (see hearing notification map and property owner list) and not in farm use. Parcels to the south were not in the Goudy Gardens subdivision and it is unclear how many were created but most are in residential use. The manufactured home parks and subdivision were all developed in the 1970s.

Neighborhood and regional characteristics. Neighborhood characteristics have been explained above. Applicants' exhibit H is a more regional overview of the area between the urban areas in the cities of Woodburn and Hubbard. The only AR zoned properties in the area are the three manufactured home developments here and land just south of the Hubbard UGB. The remaining area is largely a blanket of EFU zoned land in farm use.

Natural or man-made features or other impediments separating the exception area from adjacent resource land. The subject property is the only land in farm use at the Highway 99E - Carl Road intersection node. The combination of roadways, dense manufactured home park and subdivision developments, and small EFU zoned parcels in rural residential use encapsulate the subject property and isolate it from other land in farm use.

Physical development. The subject property contains a paved and graveled area in its southwest corner. The property is served by electricity and a well. Applicants

mention a 10' stormwater easement along the northern boundary line but have not depicted it on a map or aerial photograph.

Additional factors. Applicants presented a staff memorandum for a 1989 zone change/comprehensive plan amendment for a then 5.7-acre parcel across Carl Road from the subject property. In the memorandum, the subject property is described as an EFU zoned property that is not in farm use, indicating that the subject parcel may have limitations for successful farm use. The memorandum, while not recommending commercial use of the property, found that the property was irrevocably committed to nonfarm use. That parcel, at almost six acres is similarly sized as the subject 7.43-acre property, and is similarly situated in its proximity to dense residential development that forecloses combining the property with other farmland to enhance its viability for farm use.

13. When determining whether uses or activities allowed by an applicable goal are impracticable, local governments do not need to demonstrate that every use allowed by the applicable goal is impossible; just that farm use as defined in ORS 215.203, propagation or harvesting of a forest product as specified in OAR 660-033-0120, and forest operations or forest practices as specified in OAR 660-006-0025(2) (a) are impracticable.

"The impracticability standard is a demanding one." *Friends of Linn County v. Linn County*, 41 Or LUBA 358, 363 (2002). When determining whether uses specified in the rule are practicable, the county cannot limit its analysis to commercial-level operations. "The test under the rule is not whether the property is capable of supporting 'commercial' levels of agriculture." *Gordon v. Polk County*, 54 Or LUBA 351 (2007), citing to *Lovinger v. Lane County*, 36 Or LUBA 1, 18 (1999). And, in *Lovinger*, at 19, the Land Use Board of Appeals stated, "we doubt that there is any definite or broadly applicable 'threshold' in determining whether farm uses are impracticable under OAR 660-004-0028 and ORS 215.203(2) (a). As intervenors point out elsewhere, a determination whether farm uses are impracticable under OAR 660-004-0028 and ORS 215.203(2) (a) is a matter of case-by-case analysis, after consideration of all the factors set forth in the rule."

14. *Farm use.* ORS 215.203 defines farm use:

(2) (a) As used in this section, means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing

cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267(3) or 321.824(3).

- (b) "Current employment" of land for farm use includes:
- (A) Farmland, the operation or use of which is subject to any farm-related government program;
 - (B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
 - (C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;
 - (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;
 - (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;
 - (F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);
 - (G) Water impoundments lying in or adjacent to and in common ownership with farm use land;
 - (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;
 - (I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;
 - (J) Any land described under ORS 321.267(3) or 321.824(3) [hardwoods intensively managed for fiber production]; and
 - (K) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:
 - (i) Only the crops of the landowner are being processed;
 - (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
 - (iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

- (c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.
- (3) "Cultured Christmas trees" means trees:
 - (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
 - (b) Of a marketable species;
 - (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture;
 - (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

In *Lovinger v. Lane County*, 36 Or LUBA 1, 17 (1999), LUBA, quoting earlier decisions, stated that "the appropriate standard for applying the definition of farm uses in the context of OAR 660-004-0028 is whether the subject property is capable, now or in the future, of being currently employed for agricultural production for the purpose of obtaining a profit in money." (Internal quotations and citations omitted.) Also in *Lovinger*, LUBA pointed out that it had "held that the term 'profit in money' as used in ORS 215.203(2)(a) means 'gross income' rather than 'profit' in its ordinary sense of net profit."

Assessor's office information puts the subject property at 7.43 acres. The soil scientist's report shows only 6.0 acres of viable farm soils on the property. Six acres is small for a farm parcel and there is no way to expand farming operations onto surrounding properties because the subject property is boxed in by small EFU parcels in separate ownerships that are in residential use, by high density manufactured home developments, and by roadway frontage. DPW seeks (and applicants agree to provide) additional right-of-way dedication along Carl Road that was required as a condition of approval in case AR 09-018 but was never dedicated. Additional right-of-way dedication would likely reduce the amount of useable farmland on the site.

According to applicants, lack of on-site management hinders the property's agricultural use. Trespass is an issue on the property given its proximity to dense residential development and Highway 99E. Applicants live in Aurora and say it is not uncommon for them to visit the property and find litter and unknown cars (and recently septic trucks and equipment) parked there. Applicants explain that driveways in the Chateau Mobile Village mobile home park to the south are narrow and service and emergency vehicles often use the subject property for parking when going to the mobile home park. Applicants also cite lack of on site management (and the property's small size) as a hindrance to using the property for livestock operations. Applicants say using the property to prepare, store and dispose of products or by-products raised on the land is also impracticable without on site management because they could not secure their farm stand products on the property.

Applicants say the property's soils an impediment to farm use because they require optimal drainage but because the property is surrounded by impervious surfaces (roadways, driveways, rooftops, etc.) and the on-site water has nowhere to go.

Applicants have shown impediments to farm use of the subject property and the record shows the property has not always been in farm use. But, the property is now planted to cane berries, is in resource deferral, and is producing farm income. Applicants imply farm deferral is not a reasonable reflection of profit in money because the farm deferral income standard for property tax purposes is "a very low bar" but do not identify what that bar is or why it should be discounted. As an example of the inability to make a profit or gross income on the property, applicants looked at AR 09-018, their previously denied primary farm dwelling application. In that decision the County held:

[Applicants] did not establish that the income was exclusively generated from berries grown on the subject 7.43 acres. Information obtained from the Oregon State University Extension Service indicated that acreage as small as 7.43 acres was not capable of producing \$80,000 gross income [the threshold for a primary farm dwelling] from berry production.

A Berry Economics report issued by the Extension Service provided an average for the years 2006-2008. The report assumed full production and documented an every year (EY) harvest average of 7000 pounds per acre at an average of \$0.65 per pound for a total of \$31,850 for 7 acres of production.

Applicants say it costs \$6,000 per acre to prepare, maintain, treat, harvest, and transport their berries each year for an annual cost of \$42,000 and \$31,850 annual income; a \$10,150 annual loss. These figures are not based on actual or current income so their use is limited, but they show farm use of the property may result in negative income. Over time, with no area to expand the operation and no reasonable alternative crops, negative income could show farm use of the property is impracticable because of on-site conditions and surrounding development. **Applicants should provide the Marion County Board of Commissioners (BOC) with any available supporting evidence showing why the subject property cannot be managed for a profit in money from farm uses described in ORS 215.203.**

15. *Propagation or harvesting of a forest product.* The property is not treed and is not in an area where forest products are grown and harvested. The property's soils are not in woodland suitability groupings. Timber and woodlot use of the parcel is not practicable.
16. *Forest operations/forest practices.* Under OAR 660-006-0025(2), forest operations and forest practices include, but are not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash. Timber generation and harvest are not practicable on the subject property so forestry management, operations, and practices are also impracticable.

PLANNING AND ZONING FOR EXCEPTION AREAS

17. If the BOC takes an exception to goal 3, the subject property must be evaluated under OAR 660-004-0018, planning and zoning for exception areas. OAR 660-004-0018

was amended February 10, 2016. This application was filed March 4, 2016. The latest version of the OAR is applicable.

- (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 that *satisfy (a) or (b) or (c) and, if applicable, (d)*:
 - (a) That are the same as the existing land uses on the exception site;
 - (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;
 - (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;
 - (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.
- (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.

(4) "Reasons" Exceptions:

- (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.
- (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.
- (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

(Emphasis shows newly added language.)

- 18. Statewide planning goals are evaluated in below. No public water or sewer services are currently provided or needed to support the one additional dwelling site that would result from AR-10 zoning. Highway 99E is a state controlled highway. Carl Road is a local road in good condition operating at a level of service A. Police and fire/life safety services are provided by the Marion County Sheriff's Office and Woodburn Fire District. No increases in public services are anticipated. Applicants are asking for one home on the subject 7.43 acres, technically changing the exception area density. OAR 660-004-0018(2) (b) is evaluated.
- 19. Under OAR 660-004-0018(2) (b), the BOC needs to determine whether the proposed change will maintain the land as rural land as defined by the goals. *Oregon's Statewide Planning Goals and Guidelines* glossary defines rural land as land outside urban growth boundaries that is:
 - (a) Non-urban agricultural, forest or open space,
 - (b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services and not suitable, necessary or intended for urban use, or
 - (c) In an unincorporated community.

The subject site is outside of a city UGB, and is currently non-urban agricultural land. If the goal 3 exception is taken, the land will not be zoned as agricultural, forest, or open space land. Definition (a) is not met by the proposal. The property is not in an unincorporated community. Definition (c) is not met by the proposal.

The subject property is in an area of mixed dense urban-like manufactured home settlements and acreage homesites. If a goal 3 exception is taken, an acreage homesite with no or minimal public services would result. The site is near the Woodburn UGB but is precluded from inclusion in the UGB for at least 20 years. With AR-10 zoning, the land would not be converted to urban land under goal 14. Definition (b) is met. The property will be maintained as rural land as defined in statewide planning goals. OAR 660-004-0018(2) (b) (A) is met.

This proposal will allow one additional dwelling in a nearly built out rural area. No additional public services will be required. This proposal will not commit adjacent or nearby properties to urban uses. OAR 660-004-0018(2) (b) (B) is met.

The subject property is isolated and insulated from other agricultural properties. Adding one home to this site is compatible with adjacent and nearby resource uses. OAR 660-004-0018(2) (b) (C) is met.

OAR 660-004-0018(2) (b) is satisfied.

20. The subject property is not in an unincorporated community. OAR 660-004-0018(2) (c) is not applicable.
21. The subject site is not proposed for industrial development. OAR 660-004-0018(2) (d) is not applicable.
22. If an exception is taken, OAR 660-004-0018 would be satisfied by application of the Rural Residential designation and AR-10 zoning.

APPLICATION OF GOAL 14 TO RURAL RESIDENTIAL AREAS

23. Under OAR 660-004-0040(7)(i), for rural residential areas designated after October 4, 2000, the affected county shall either:
 - (A) Require that any new lot or parcel have an area of at least ten acres, or
 - (B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the applicable requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."

No new lot is being created and applicants are requesting AR-10 zoning. OAR 660-004-0040 is satisfied.

GOAL 14 EXCEPTION

24. Applicants seek AR-10 zoning on the subject 7.43-acre property. The Marion County BOC allowed AR-10 zoning on other less-than-10-acre parcels and found no goal 14 exception needed. The hearings officer knows of no statutory or case law reason for the BOC to alter its interpretation. No goal 14 exception is required.

STATEWIDE PLANNING GOALS

25. Under the MCCP plan amendments section, comprehensive plan amendments must be consistent with statewide planning goals.

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.

Notice and the hearings process before the hearings officer and BOC provide an 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.

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific.

Applicants propose a site-specific M CCP amendment. The Planning Division notified the Woodburn Fire District, North Marion School District, DLCD, Oregon Highway District and various county departments of the proposed comprehensive plan amendment. Marion County DPW LDEP comments are set out above for BOC consideration. DPW requested additional right-of-way dedication as a condition of approval. Applicants agreed, noting that the right-of-way was not provided by applicants as required in a previous case.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

Applicants' request for a goal 3 exception is discussed above, and if taken, goal 3 will not be applicable.

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.

The subject site was not identified as potential forest land during the M CCP adoption process and on-site soils are not in woodland suitability groupings. Goal 4 does not apply.

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

This goal is concerned with M CCP-identified goal 5 resources. No M CCP-identified goal 5 resources are on or near the subject property. Goal 5 is not applicable.

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 proposed residential use would allow only one additional dwelling. Normal residential use would not emit excessive noise or airborne particulates. The property is flat, reducing potential erosion and runoff issues. Septic permits are required for on-site sewage disposal. In-place regulations will maintain the quality 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 subject property is not in an M CCP identified geologic hazard or floodplain area. Goal 7 is not applicable.

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.

This goal addresses commercial and industrial development, primarily in urban areas. OAR chapter 660, Division 009 applies only to comprehensive planning 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 660-008-0000 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.

Electric and telephone utilities are available in the area. No public water and sewer services are required. Little traffic will be generated by the proposed use. 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 property fronts Carl Road NE, an RTSP-identified local road in good condition operating at level of service A. Residential households generate an estimated ten traffic trips per day. Applicants do not propose changing nor will ten vehicle trips per day change the functional classification of Carl Road or standards implementing the local road classification. Marion County DPW commented on the application but expressed no concern about the proposal significantly affecting existing transportation facilities by allowing uses or levels of development inconsistent with Carl Road's functional classification that would degrade its performance standards, worsen its performance, or otherwise not meet the performance standards. Highway 99E is a state controlled highway. The Highway Department commented that no access to the property is allowed from the state highway. A condition of approval can restrict access to Carl Road NE only. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

One additional homesite will 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.

Applicants propose AR-10 zoning consistent with goal 14.

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 any ocean or coastal related resources. These goals do not apply.

With an exception to goal 3, applicants' proposal will be consistent with statewide planning goals.

MCCP AMENDMENT

- 26. The MCCP contains no specific plan amendment review criteria, but an amendment must be consistent with applicable MCCP policies.

General Rural Development Policy 2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.

The subject property is in a more nodal-type development area than a strip-type development area. The subject property is already surrounded by residential development and will not add to a perception of strip development in the area. General rural development policy 2 is satisfied.

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

This intergovernmental cooperation policy is not applicable here.

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

This intergovernmental cooperation policy is not applicable here.

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

Policy 3 provides aspirational direction to Marion County and does not apply here.

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

This aspirational policy does not apply.

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

Requiring applicants to file a declaratory statement in the Marion County deed records acknowledging and accepting farm and forest uses of surrounding properties at time of building permits will meet 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.

Under MCC 17.128.050(A), dwellings on AR zoned properties shall be set back 100' from resource-zoned property. At 7.43 acres, the subject property can be developed in accordance with this standard, satisfying rural residential policy 6.

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 subject site is in an area of AR zoning and most properties in the area are in residential use. If a goal 3 exception is taken, the subject property will be declared committed to residential use. The property is near the city of Woodburn and with its adjacent highway access, is reasonably accessible to other employment centers. Rural residential policy 7 will be satisfied.

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 two acres allowing for a range of parcel sizes from two to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10-acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.

Applicants request a ten-acre minimum lot size. Rural residential policy 8 is met.

Rural Residential Policy 9. When approving rural subdivisions and partitions 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.

No subdivision or partition is proposed or allowed under AR-10 zoning. Rural residential policy 9 does not apply.

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 subject property already has a well and at 7.43 acres can likely accommodate a septic system. Septic permitting will be required prior to construction. In place septic review standards and criteria satisfy rural residential policy 10.

Rural Residential Policy 11. Rural residential subdivisions shall be required to have paved streets.

No subdivision will result from this application. This policy is not applicable.

Rural Residential Policy 12. Where a public or community service district exists, the extension of services within designated rural residential areas may be permitted. The district may be allowed to provide service extensions to lands

outside the designated residential areas if necessary for health and safety reasons but the district shall only annex lands designated for residential use.

No public or community water or sewer district service is required. This policy is not applicable.

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

No public water service available to the subject property. The city of Woodburn extraterritorially extended public water service to the 10-acre, 44-lot Chateau Ranchettes manufactured home subdivision southeast of the subject property for health and safety reasons, but at one home on 7.43 acres, extension of services is not required or anticipated. This policy is not applicable.

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

The subject property is cater corner to the Woodburn UGB but development east of Highway 99 is restricted for at least 20 years. No redevelopment plan is required.

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

The subject parcel is less than 20 acres. Rural residential policy 15 is not applicable.

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

Applicants request AR-10 zoning on the subject property. This policy is satisfied.

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

No restriction on mobile home development is proposed or allowed. This policy is satisfied.

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

The proposed plan designation and zone change will not require new rural services. Water and wastewater disposal will be provided for on the site. Carl Road NE is an M CCP-identified local road that is in good condition that operates at level of

service A. Adding one new homesite will not tax roadways in the area. Sheriff and fire/life safety services are in place. Electric and telephone services are already available in the area. Rural services policy 1 is met.

Rural Services 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.

AR-10 zoning of the subject property will allow one additional homesite, and will not tax current rural services or lead to any need for urban services. Rural services policy 2 is met.

Rural Services 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.

The proposed comprehensive plan amendment and zone change would allow one new dwelling. Few rural services would be consumed so no new rural services are needed. The proposal completes rather than encourages further settlement of the area. The proposal will not result in an urban density. Rural services policy 3 is met.

Rural Services 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.

The proposed comprehensive plan amendment and zone change would result in one new home. Few rural services would be consumed so no new rural services would be provided. Electric and telephone utilities are already in the area. No new public facilities are required. Rural services policy 4 is met.

27. If the goal 3 exception is taken, applicable M CCP policies are or can be met.

ZONE CHANGE

28. Under MCC 17.123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:
- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
 - 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.

29. This application includes an MCCP amendment request that would change the MCCP designation from Special Agriculture to Rural Residential. If the MCCP amendment is approved, the proposed AR-10 zone would be consistent with the Rural Residential plan designation and applicable MCCP policies. MCC 17.123.060(A) would be satisfied.
30. The area surrounding the subject property is zoned EFU and AR and is in varying densities of residential use. Changing the subject property to AR-10 zoning would allow one new home. If the goal 3 exception is taken, and the comprehensive plan amendment approved, rural residential zoning of the subject property would be appropriate considering area uses, density and development in the area. MCC 17.123.060(B) would be satisfied.
31. Electric, telephone and other utilities and services are available in the area. Carl Road NE is in good condition and operates at a level of service A. No public water or sewer services are required. Adequate public facilities, services, and transportation networks are in place. MCC 17.123.060(C) is satisfied.
32. MCC 17.123.060(D) is difficult to evaluate. There is no guidance on the breadth of comparison required; the immediate area, the whole county, or somewhere in between. Applicants looked at AR zoned properties five to six miles distant from the subject property.¹ This seems a reasonable distance and results in neither an unwieldy nor a myopic study area.

AR zoned properties in this immediate area are fully developed manufactured home parks and a mobile home subdivision. Applicants found the next closest AR zoned properties are just south of the city of Hubbard, and with the exception of a 4.58 and a 3.4 acre parcel, other AR zoned parcels within the study area are about one acre or less and are already developed. The two larger parcels are in common ownership; one with a single-family home and the other in farm use. It is not clear whether an AR zone suffix applies to the two parcels, but all new AR zoned parcels must be least two acres. If the two parcels are not contiguous and are considered separately, the 3.4 acre parcel could not be further divided and the 4.58 acre parcel could be divided into only two parcels, allowing only one new homesite. The parcels are developed as one 7.98-acre parcel; with a variance, two new homesites might result. All-in-all, the BOC could find other AR zoned lands within a reasonable distance from the subject property are not reasonably available alternatives, and could find, with a goal 3 exception and MCCP amendment approval, that MCC 17.123.060(D) is satisfied.

1

TAX LOT	ACREAGE	DISTANCE
041W33DB 02900	4.58	Approx. 5 [miles]
041W33DC 00600	3.4	Same
041W33DC 00700	0.52	Same
041 W34CD 01000	1.03	Approx. 6 [miles]
041W34CD 00900	0.86	Same
041W34CD 00500	0.77	Same
041W34CD 00600	0.86	Same

33. The AR zone is the only zone allowed under the Acreage Residential designation. AR-10 is the least intensive AR zone suffix. MCC 17.123.060(E) is not applicable.
34. If a goal 3 exception is taken and the MCCP amendment is approved, the BOC could approve the requested zone change.

VI. Recommendation

If satisfactory additional information as addressed above is provided, the hearings officer recommends the BOC take an irrevocably committed exception to statewide planning goal 3, and grant a comprehensive plan amendment to Rural Residential and zone change to AR-10.

VII. 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 18th day of May 2017.



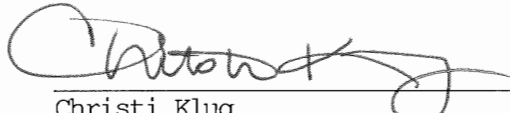
Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Vasily and Marina Sharabarin 6363 S. Zimmerman Rd. Aurora, OR 97002	<u>Agencies Notified</u> Planning Division (via email: gfennimore@co.marion.or.us) Public Works Engineering (via email: jrasmussen@co.marion.or.us) Building Inspection (via email: twheeler@co.marion.or.us) Assessor's Office (via email: assessor@co.marion.or.us) Tax Office (via email: adhillon@co.marion.or.us) AAC Member No. 6 1000 Friends of Oregon (via email: meriel@friends.org) ODOT Region 2 (via email: odotr2planmgr@odot.state.or.us)
Rebekah Dohrman P.O. Box 10194 Eugene, OR 97440 (via mail & email: rebekah@dohrmanlandlaw.com)	DLCD 635 Capitol Street NE, Suite 150 Salem, OR 97301-2540
John Singer 21875 Butteville Rd. NE Aurora, OR 97002	

by mailing to them copies thereof, except as specified above for agency notifications. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 10th day of May 2017, and that the postage thereon was prepaid.


Christi Klug
Secretary to Hearings Officer



REBEKAH DOHRMAN
REAL ESTATE · LAND USE · PROPERTY TAX

June 21, 2017

Sent via email to: gfennimore@co.marion.or.us

Marion County Board of Commissioners
c/o Joe Fennimore, Planning Director
Marion County Planning Division
5155 Silverton Rd NE
Salem, OR 97305

*Re: Case No. ZC/CP 17-001; June 28, 2017 BOC Public Hearing
Applicants: Vasily and Marina Sharabarin*

Dear Commissioners:

In the Marion County Hearings Officer's May 18, 2017 decision recommending approval of the above-referenced application, the Hearings Officer requested additional information from the applicants. Those requests appear below in **bold** text and are followed by Applicants' responses.

1. **Applicants should depict easements on a map or aerial photograph in the record to facilitate BOC review.** *See, Page 6 of the Hearings Officer's Recommendation.*

An aerial photograph of the subject property with the storm sewer water easement depicted is included as Exhibit A to this letter. As you will see, this easement runs from east to west along the northern boundary of the subject property. The purpose of this easement is to connect storm water from the mobile home park located east of the subject property to a storm sewer water outpour/drainage ditch located in Highway 99E. Attached as Exhibit B is the recorded easement for additional reference.

2. **Applicants should explain what base acreage was used for the report calculations and how acreage and percentages were determined.** *See, Page 7 of the Hearings Officer's Recommendation.*

Applicants hired Andy Gallagher of Red Hills Soil to conduct a soil analysis of the property. After following up with Mr. Gallagher per the Hearings Officer's request, Applicants learned the following information. To determine acreage of the subject property, Mr. Gallagher used an aerial photo of the subject property that was available online. That aerial photo did not include property line. Mr. Gallagher used a program to measure the subject property based on apparent property lines. Mr. Gallagher's measurements resulted in a parcel of approximately 6.45 acres. Based on that acreage, Mr. Gallagher determined the acres/percentages presented in Applicants' Written Statement, Exhibit C, and in the Hearings Officer's Recommendation, page 7. Using the 6.45 acres, Mr. Gallagher determined that the paved/graveled area was approximately 0.45 acres or 7% of the overall 6.45 acres.

After receiving the Hearings Officer's Recommendation, Applicants provided Mr. Gallagher with a map from Marion County Assessment and Taxation that depicted the property lines. Mr. Gallagher used the same software on that map to determine that the parcel's acreage was approximately 6.7 acres. Based on that measurement, Mr. Gallagher revised the acres/percentages for each soil classification as follows:

Amity	3.9 acres	58%
Dayton	0.7 acres	11%
Woodburn	1.7 acres	25%
Pavement	0.4 acres	6%

Mr. Gallagher found that the differences between the two results were insignificant as the parcel remains predominantly high value soil. The Hearings Officer's analysis as well as the information contained in Applicants' Written Statement are still relevant for purposes of determining whether the request complies with the approval criteria.

While reviewing the question of the subject property's true acreage, it came to Applicants' attention that the 7.43 acres that the County Assessor shows is actually subject to a Warranty Deed to the Oregon Department of Transportation for 16,800 square feet, more or less, outside of the existing Highway 99E right-of-way. For reference, the Warranty Deed is attached as Exhibit C. 16,800 square feet is the equivalent of approximately 0.4 acres. Therefore, the acreage actually available for farm use is likely closer in reality to the 6.7 acres that Mr. Gallagher measured than the 7.43 acres listed in the County's Assessment and Taxation records.

Further, and as pointed out by the Hearings Officer, of the total acreage, only 6 acres, or 6.3 acres using the revised measurements, is actually high value soils. If the application is approved, the County will require dedication of right-of-way along Carl Road which further decreases the total area of high-value farm soils.

- 3. Applicants should provide the Marion County Board of Commissioners (BOC) with any available supporting evidence showing why the subject property cannot be managed for a profit in money from farm uses described in ORS 215.203.** See, Page 14 of the Hearings Officer's Recommendation.

In Applicants' Written Statement they used income and expense information from Case No. AR 09-018, Applicants' previous primary farm dwelling application that was denied. In that decision, the County determined that the property was likely to harvest 7,000 pounds of berries per acre at an average of \$0.65 per pound for a total of \$31,850 for 7 acres of production. As discussed above, the actual total acreage is likely less than 7 acres.

In Applicants' Written Statement, they estimated that it costs \$6,000 per acre to prepare, maintain, treat, harvest, and transport their berries each year for an annual cost of \$42,000 (using 7 acres of production). These numbers equal an annual loss of \$10,150.

Applicants looked more closely at the expenses in farming the Carl Road property and came up with the following:

Training berries:	\$1,000 per acre (labor only - fall and spring season)
Spraying:	\$1,000 per acre (product only -pre-bloom, bloom, pre-harvest, harvest, post-harvest, weed control in spring)
Fertilizing:	\$400 per acre

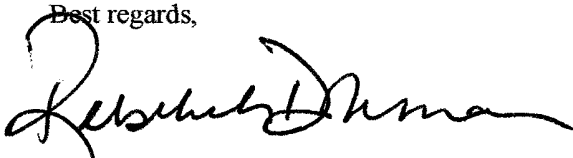
Tractor Work/Tilling:	\$600 per acre (5-6 times per year, tilling, discing, fuel, flail/mow canes)
Watering:	\$500 per acre
Harvesting:	\$2,100 per acre (labor only- hand pick)
Teardown after harvest:	\$300 per acre
<u>Management/Supervision:</u>	<u>\$1,400 per acre</u>
Total:	\$7,300 per acre

Based on the above cost/expense information, the annual cost to farm the subject property in berries is \$51,100. This makes the annual loss \$19,250. The Hearings Officer accepts that an annual loss or negative income, over time, with no area to expand the operation and no reasonable alternative crops could show farm use of the property is impracticable because of on-site conditions and surrounding development.

Applicants would like to supplement the information contained in their application materials by stating that they are berry farmers. Taking a risk on a new, unfamiliar crop on such a small parcel does not make financial sense. Applicants estimate that removing the berries and readying the land for new planting would probably alone cost \$14,000 at \$2,000 per acre. Planting a new crop would be a substantial investment followed by a period of no income waiting for harvest. (For example, blueberries can take 7 years for full production/harvest and could cost up to \$17,000 per acre to establish). Further, the same conditions that make farming the subject property impracticable would still exist regardless of what crop the Applicants tried. See Applicants' Written Statement, pages 9-11.

Applicants respectfully request that the Board approve this application.

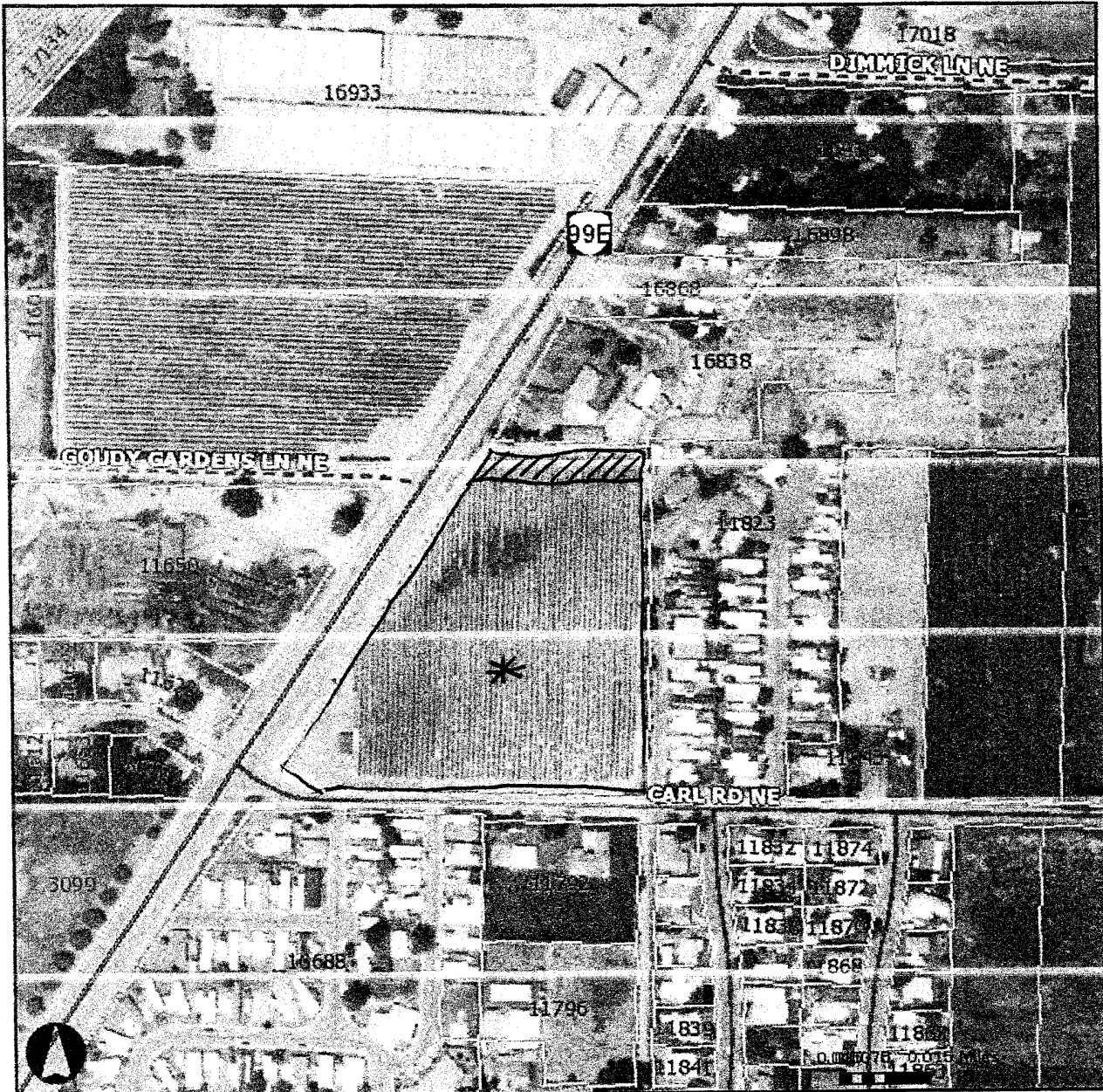
Best regards,



Rebekah Dohrman
Applicants' Representative

EXHIBIT A

aerial



Marion County Disclaimer

The map information made available on this web site does not represent legally recorded maps or surveys and is not intended to be used as such. Nor should this information be used for navigational, tracking or any other purpose requiring exact measurement of distance or direction or precision in the depiction of geographic features.

The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any map information on this web site.

To report any errors or discrepancies or if additional information is desired please contact: GIS@co.marion.or.us.

The User expressly acknowledges and accepts that the use of any information appearing on MongoWeb is at the User's sole risk.

* Subject parcel

▨ Storm sewer easement, approximate location

EXHIBIT B

REEL
447

PAGE
236

EASEMENT

THIS GRANT OF EASEMENT is made this 31 day of December, 1985, by and between DEWEY B. SHOEMAKER ^(deceased) and BEVERLY A. SHOEMAKER, husband and wife, and RUSSELL D. SHOEMAKER and NANCY S. SHOEMAKER, husband and wife Grantors, and DONALD M. KILPATRICK, JACK L. WARD and MAURICE D. HOLMAN, dba COMMONWEALTH INVESTORS, Grantees.

FOR GOOD AND VALUABLE CONSIDERATION, Grantors convey to Grantees, their heirs, successors and assigns, an easement consisting in the use of a strip of land ten feet (10') in width, north to south, commencing at the northeast corner of Grantors' property located in Marion County, Oregon, described on Exhibit "A", attached hereto and incorporated herein by reference, and continuing in a general westerly direction along the north edge of Grantors' property to the state maintained drainage ditch along the eastern side of Pacific Highway 99E. This easement is for the purpose of transporting storm sewer water from Grantees' property located in Marion County, Oregon, described on Exhibit "B", attached hereto and incorporated herein by this reference, subject to the following conditions:

1. Prior to construction, Grantees shall submit to Grantors, for Grantors' approval, specifications and plans describing construction of the storm water sewer system. Grantees shall pay the cost of constructing the system.
2. So long as the storm water sewer system, that is the subject matter of this easement, will function adequately for the benefit of the dominant estate, Grantors shall have the right, at their own expense, to tap into the system for the benefit of the servient estate.

3. The easement granted herein shall terminate at such time as the dominant estate described on Exhibit "B" is no longer used as a mobile home park.

4. So long as the storm water sewer system, that is the subject matter of this easement, will function for the benefit of the dominant estate, Grantees shall be responsible for, and perform all repairs and maintenance on said storm water sewer system at Grantees' expense. Such repairs and maintenance shall include, but not be limited to keeping said storm water sewer system free of debris and sedimentation, leaks, stoppages, filling of holes and sedimentation of surface ground above said system with soil and materials consistent with the use of the surface land.

5. Prior to making any improvements, and/or substantial repairs, Grantees shall submit to Grantors for Grantors' approval, specifications and plans describing construction of such improvements and repairs to the storm water sewer system; Grantors agree not to unreasonably withhold their consent to said improvements and/or substantial repairs.

6. Grantee shall not overburden the use of this easement for the storm water sewer system as provided by the terms of this easement.

7. Grantee shall indemnify Grantor from any and all liability for injury to Grantor or third persons, or damages to Grantor's property when such injury or damage results from, arises out of, or is attributable to any construction, maintenance or repairs of said storm water sewer system.

8. Grantee shall, at all times, provide reasonable and adequate liability insurance coverage and name Grantors as an additional insured on such liability insurance policies covering liability for injury to persons or property when such injury or damage results from, arises out of, or is

attributable to any construction, maintenance or repairs of said storm water sewer system.

IN WITNESS WHEREOF, the parties hereto have executed this Easement agreement as of the date first hereinabove written.

GRANTORS:

DEWEY B. SHOEMAKER (deceased)
Beverly A. Shoemaker
BEVERLY A. SHOEMAKER
Russell D. Shoemaker
RUSSELL D. SHOEMAKER
Nancy S. Shoemaker
NANCY S. SHOEMAKER

GRANTEES:

COMMONWEALTH INVESTORS
Donald M. Kilpatrick
DONALD M. KILPATRICK
Jack L. Ward
JACK L. WARD
Maurice D. Holman
MAURICE D. HOLMAN

**** ACKNOWLEDGEMENTS ****

STATE OF CALIFORNIA)
: ss. _____, 198__.
County of _____)
(deceased)

PERSONALLY APPEARED before me DEWEY B. SHOEMAKER, BEVERLY A. SHOEMAKER, RUSSELL D. SHOEMAKER and NANCY S. SHOEMAKER, being first duly sworn, who acknowledged the foregoing Easement to be their voluntary act and deed.

BEFORE ME:

Notary Public for California
My Commission Expires: _____

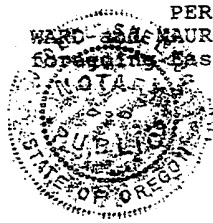
STATE OF OREGON)
: ss. December 27, 1985.
County of Multnomah)

PERSONALLY APPEARED before me DONALD M. KILPATRICK, JACK L. WARD and MAURICE D. HOLMAN, being first duly sworn, who acknowledged the foregoing Easement to be their voluntary act and deed.

BEFORE ME:

Jack L. Ward

Notary Public for Oregon
My Commission Expires: 8-2-89



GENERAL ACKNOWLEDGMENT

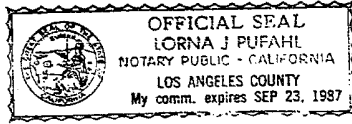
NO. 201

State of CALIFORNIA }
County of LOS ANGELES } ss.

On this the 31st day of December 19 85, before me,

Lorna J. Pufahl

the undersigned Notary Public, personally appeared
RUSSELL D. SHOEMAKER



personally known to me
 proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is subscribed to the
within instrument, and acknowledged that he executed it.
WITNESS my hand and official seal.

Lorna J. Pufahl
Notary's Signature

7110 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91364

CREDIBLE-WITNESS ACKNOWLEDGMENT

NO. 308

State of California }
County of Los Angeles } ss.

On this the 23rd day of January 19 86,
before me, the undersigned Notary Public, personally appeared
BEVERLY A. SHOEMAKER

proved to me on the basis of satisfactory evidence, in the form of
the oath or affirmation of JAMES SCHIADA

to be the person(s) whose name(s) is subscribed to the within
instrument and acknowledged that she executed the same
for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Lorna J. Pufahl
Notary's Signature Lorna J. Pufahl

7150 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91364

GENERAL ACKNOWLEDGMENT

NO. 201

State of CALIFORNIA }
County of LOS ANGELES } ss.

On this the 31st day of December 19 85, before me,

Lorna J. Pufahl

the undersigned Notary Public, personally appeared
NANCY S. SHOEMAKER



personally known to me
 proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is subscribed to the
within instrument, and acknowledged that she executed it.
WITNESS my hand and official seal.

Lorna J. Pufahl
Notary's Signature

7110 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91364

EXHIBIT "A"

That parcel of land situated in the John Purvine Donation Land Claim Number 60, in the Southwest quarter of Section 4, Township 5 South, Range 1 West of the Willamette Meridian, Marion County, Oregon which is more particularly described as follows:

Beginning at an iron pipe on the Northerly right of way line of County Road NO. 531 which is 20.00 feet North 2 degrees 01' West and 2744.50 feet South 88 degrees 08' West from the Southeast corner of Goudy Gardens as recorded in Volume 9, Page 143, record of Town Plats for Marion County, Oregon; thence South 88 degrees 08' West 749.00 feet to the Easterly right of way line of Pacific Highway 99E; thence Northeasterly along the Easterly right of way line of said Highway 741.2 feet more or less to a point on the South line of Lot 6 in Goudy Gardens; thence Easterly along the South line of Lot 6, 349.00 feet to a point which is North 2 degrees 01' West and 625.54 feet from the place of beginning; thence S. 2 degrees 01' East 625.54 feet to the place of beginning.

EXHIBIT "B"

PARCEL I:

That parcel of land situated in the John Purvine Donation Land Number 60 in the Southwest quarter of Section 4, Township 5 South, Range 1 West of the Willamette Meridian, Marion County, Oregon, which is more particularly described as follows: Beginnign at a 3/4 inch iron pipe on the Northerly right-of-way line of county No. 531, which bears South 88 degrees 08' West 2500.50 feet along the center line of said County Road, said centerline being also the South line of the John Purvine Donation Land Claim No. 60, and North 2 degrees 0' West 20.00 feet from the Southeast corner of Goudy Gardens as recorded in Volume 9, Page 143, Marion County Book of Town Plats, and running thence from the true point of beginning South 88 degrees 08' West 244.00 feet along the Northerly line of said County road to a 1/2 inch iron pipe; thence North 2 degrees 01' West 625.54 feet to a 1/2 inch iron pipe on the Southerly line of Lot 6 in Goudy Gardens as recorded in Volume 9, Page 143, Marion County Book of Town Plats; thence North 88 degrees 06' East 244.00 feet along the Southerly line of said Lot 6 to a 1/2 inch iron pipe; thence South 2 degrees 01' East 625.0 feet to the point of beginning.

PARCEL II:

That parcel of land situated in the John Purvine Donation Land Claim No. 60 in the Southwest 1/4 of Section 4, Township 5 South, Range 1 West of the Willamette Meridian, Marion County, Oregon which is more particularly described as follows: Beginning at a 1/2 inch iron pipe on the North line of Lot 13 of Goudy Gardens which bears South 88 degrees 08' West 2500.00 feet and North 2 degrees 01' West 645.70 feet from a 2-inch iron pipe marking the Initial Corner of Gardens as recorded in Volume 9, Page 143, Marion County Book of Town Plats, and running thence from the true point of beginning; North 88 degrees 06' feet East 90.00 feet along the North line of said Lot 13 to a point; thence South 2 degrees 01' East 525.70 feet to a point; thence south 88 degrees 06' West 90.00 feet to a point; thence North 2 degrees 01' West 525.70 feet to the point of beginning.

STATE OF OREGON

County of Marion

I hereby certify that the within was received and duly recorded by me in Marion County records:

REEL PAGE
447 236

MAR 5 2 24 PM '86

ALAN H. DAVIDSON
MARION COUNTY CLERK

BY DEPUTY

25⁰⁰
6

*Return to -
Commonwealth Commercial
Brokerage Co
3718 SW Condon Suite 110
Portland OR 97201*

EXHIBIT C

REEL PAGE
883 201

Highway Division
File 57953
9B-30-16

W.V.T.

129663

SEP 11 1991

WARRANTY DEED

BEVERLY A. PATRICK, who took title as Beverly A. Shoemaker; RUSSELL D. SHOEMAKER and NANCY SHOEMAKER, husband and wife, Grantors, convey unto the STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Highway Division, Grantee, fee title to the property described on Exhibit "A" attached hereto and by this reference made a part hereof.

TOGETHER WITH ALL abutter's rights of access between the above-described parcel and Grantors' remaining real property, EXCEPT, however,

Reserving access rights, for the service of Grantors' remaining property, to and from said remaining property to the abutting highway at the following place_, in the following width_, and for the following purpose_:

Hwy. Engr's Sta.	Side of Hwy.	Width	Purpose

The access rights reserved herein are subject to the statutes and regulations controlling access to the highway system. A standard Approach Road Permit must be applied for and obtained from the Highway Division's District Maintenance Office before construction is begun. When the State constructs the approach road, Grantors will be required to sign a standard Approach Road Permit to assure proper operation and maintenance of the approach road.

Grantors covenant to and with Grantee, its successors and assigns, that they are the owners of said property which is free from encumbrances, except for easements, conditions, and restrictions of record, and will warrant the same from all lawful claims whatsoever, except as stated herein.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

6-12-91

71500-230

EXHIBIT A

File 57953
Dewey B. Shoemaker, et al
RDS 4-10-89 9B-30-16

Survey Approval Project
Section: Woodburn N.C.L.-Lincoln St.
Highway: Pacific Highway East
Throughway

SEP 11 1991

A parcel of land lying in Lot 14, GOUDY GARDENS, Marion County, Oregon; the said parcel being that portion of said lot included in a strip of land variable in width, lying on the Southeasterly side of the center line of the relocated Pacific Highway East which center line is described as follows:

Beginning at Engineer's center line Station 1615+00, said station being 6826.45 feet North and 4532.72 feet East of the Southwest corner of the Christopher C. Cooley D.L.C. No. 41, Township 5 South, Range 1 West, W.M.; thence South 33° 48' 34" West 1155.25 feet; thence on a 34,377.47 foot radius curve left (the long chord of which bears South 33° 24' 04" West 490 feet) 490 feet; thence South 32° 59' 34" West 432.07 feet; thence on a 22,918.31 foot radius curve right (the long chord of which bears South 33° 33' 34" West 438.66 feet) 438.67 feet; thence South 34° 06' 28" West 484.01 feet to Engineer's center line Station 1645+00.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Southeasterly Side of Center Line
1616+50		1620+00	40 in a straight line to 60
1620+00		1625+50	60
1625+50		1626+00	60 in a straight line to 70
1626+00		1627+00	150 in a straight line to 44

Bearings are based upon the Oregon Co-ordinate System, North Zone.

The parcel of land to which this description applies contains 16,800 square feet, more or less, outside of the existing right of way.

ael/
4-18-89

NOTE: Access Controlled (to Parcel).

Highway Division
File 57953
9B-30-16

The true and actual consideration received by Grantors for this conveyance is

\$ ~~1,350.~~ 2,700.00 (RDS) (nd)

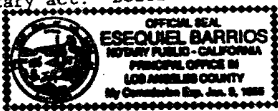
Dated this 22 day of July, 1991.

Beverly A. Patrick
Beverly A. Patrick
Russell D. Shoemaker
Russell D. Shoemaker
Nancy Shoemaker
Nancy Shoemaker

SEP 11 1991

CALIFORNIA
STATE OF ~~OREGON~~, County of LOS ANGELES

JULY 22, 1991. Personally appeared the above named Beverly A. Patrick,
who took title as Beverly A. Shoemaker, who acknowledged the foregoing instrument to be her
voluntary act. Before me:



Esequiel Barrios
Notary Public for ~~California~~ CALIFORNIA
My Commission expires JAN 2 1995

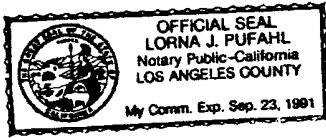
STATE OF ~~OREGON~~ / CALIFORNIA County of LOS ANGELES

August 5, 1991. Personally appeared the above named Russell D. Shoemaker
and Nancy Shoemaker, who acknowledged the foregoing instrument to be their voluntary act.

Before me: Lorna J. Pufahl

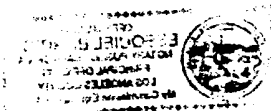
Lorna J. Pufahl
Notary Public for ~~Oregon~~ California
My Commission expires Sept. 23, 1991

6-12-91
Page 2 - WD
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RETURN TO
OREGON STATE HIGHWAY DIVISION
RIGHT OF WAY SECTION
417 TRANSPORTATION BLDG.
SALEM, OREGON 97310

SEP 11 1991



STATE OF OREGON

County of Marion
I hereby certify that
the within was received
and duly recorded by
me in Marion County
records:

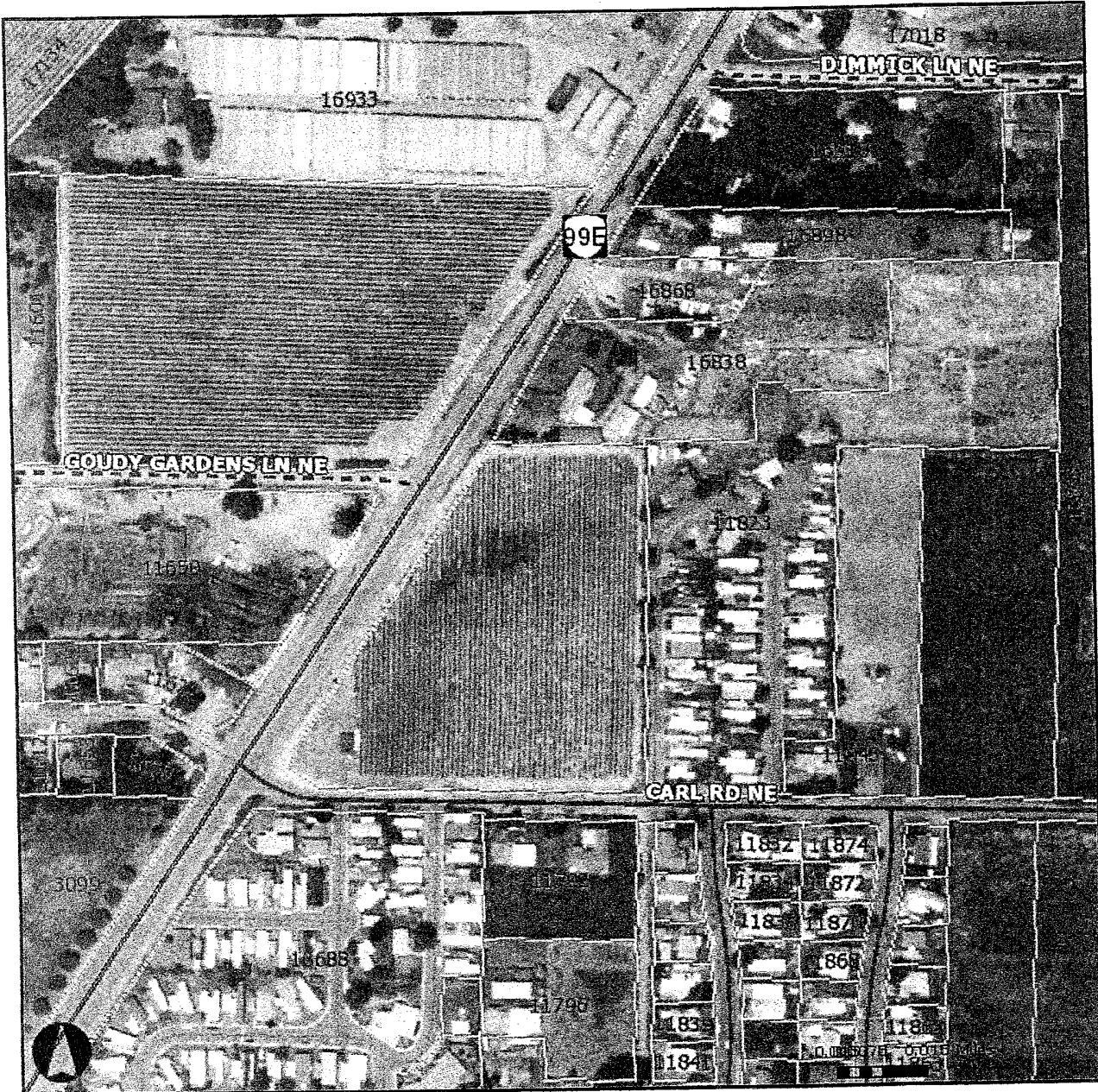
REEL PAGE
883 201

SEP 11 11 22 AM '91

ALAN H. DAVIDSON
MARION COUNTY CLERK
BY *[Signature]* DEPUTY

Fee \$ 0
Hand Returned

aerial



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