



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 30, 2016

Department: Public Works Agenda Planning Date: Nov. 23, 2016 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Receive hearings officer's recommendation for Zone Change/Comprehensive Plan Amendment (ZC/CP) Case 16-001/Gray.

Issue, Description & Background The hearings officer issued a recommendation on October 24, 2016, to deny ZC/CP Case 16-001. As part of the land use process, the board of commissioners must officially receive the decision.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: The land use process mandates that the board of commissioners must receive the hearings officer's decision. As this is process only, there are no options for consideration.

Recommendation: Staff recommends the board of commissioners receive the hearings officer's decision.

List of attachments: Hearings officer's decision

Presenter: Joe Fennimore

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

Copies to: Joe Fennimore gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. ZC/CP 16-001
)
Application of:) Clerk's File No.
)
RICHARD GRAY) **Zone Change/Comprehensive**
) **Plan Amendment**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Richard Gray to amend the comprehensive plan designation from Special Agriculture to Rural Residential, and change the zone from SA (SPECIAL AGRICULTURE) to AR-10 (ACREAGE RESIDENTIAL-TEN ACRE MINIMUM) and to take an exception to Statewide Planning Goal 3, Agricultural Lands, on a 5.0-acre parcel at 3464 Ridgeway Drive SE, Turner, Marion County, Oregon (T9S, R3W, S1D, tax lot 2200).

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.

III. Public Hearing

A public hearing on this application was held before the Marion County Hearings Officer on April 13, 2016. At hearing, the Planning Division file was made part of the record. The hearings officer asked if there were any objections to making the record in Mark IV Village (Plat 367) a part of the record. There were no objections and the file is included in the record. The record remained open until April 18, 2016 for the Planning Division and April 29, 2016 for applicant to submit additional materials. The following individuals appeared at the hearing and provided testimony on the application:

1. Lisa Milliman Planning Division
2. Richard S. Gray Applicant
3. Wallace W. Lien Applicant's attorney

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

- Ex. 1 April 14, 2016 memorandum from Marion County Planning Division
- Ex. 2 Applicant's open record memorandum with property tax printouts and well log (applicant's exhibits O through Q)

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 5-acre lot is designated Special Agriculture in the M CCP and zoned SA under MCC Title 17. The property is in a Sensitive Groundwater Overlay (SGO) zone.
2. The subject property is on the south side of Ridgeway Drive SE about one mile west of the Ridgeway Drive SE-Parrish Gap Road SE intersection. The subject property was legally created as lot 7 of the Mark IV Village Subdivision. According to the U.S. Department of Agriculture (USDA) Soil Conservation Service (SCS) *Soil Survey for Marion County Area, Oregon* (1972), 100% of the soils on the property are high-value farm soils. (The USDA Natural Resources Conservation Service (NRCS) is successor to the SCS and publishes the web soil survey discussed in section V below.)
3. Surrounding properties are zoned SA and consist of small rural residential and farmed lots.
4. Applicant asks the Marion County Board of Commissioners (BOC) to change the M CCP designation from Special Agriculture to Rural Residential, change the zoning from SA to AR-10, and to take an exception to Statewide Planning Goal 3, Agricultural Lands.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

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

ENGINEERING REQUIREMENTS

The following comments lettered A and B, are informational only regarding Public Works Engineering requirements and issues that the applicant should be aware of if the proposal is approved.

- A. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. There is currently one driveway access. A second temporary farm access was added under Access Permit #11-02892 that is believed to have been removed. Since the land use application states that the property is too small in area to profitably farm, a total of only one (1) permanent access will be allowed. The existing access is depicted on the land use application site plan. An Access Permit will be required at the time of application for building permits for the change in use. Evidence of Fire Department approval may be required for Permit issuance of the access plan (see Engineering Advisory, further below).
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances #00-10R and #98-40R, respectively.

ENGINEERING ADVISORY

The Applicant should be aware of the following advisory, lettered C:

- C. If the home were to be set back next to the shop, as suggested in the land use application plan, the fire department may deem the driveway a *Fire Apparatus Access Road*. The existing gate opening width and driveway curvature may not accommodate fire access. The local fire district has authority to require, as a condition for issuance of building permits, that driveways and private easements either meet fire district standards for access, have a fire

sprinkler suppression system installed on certain proposed structures, or be approved by waiver of the local fire marshal. The *Marion County Fire Code Applications Guide* stipulates fire apparatus access road[] geometry and clear span. As mentioned in Engineering Requirement A, fire district approval or waiver may be required for final access inspection acceptance.

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

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has 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. Applicant seeks 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 exception is based on the concept that a property is too physically developed to be available for resource use, the second on the concept that land surrounding a property is developed to such an extent that the property is irrevocably committed to uses other than resource use, and the third requires the county to show other reasons why a goal exception is appropriate. Applicant proposes physically developed and irrevocably committed exceptions under OAR 660-004-0025 and OAR 660-004-0028.

OAR 660-004-0000(1) explains that 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. Goal 3, Agricultural Lands, is the applicable goal here because the subject property is designated and zoned for farm use under goal 3. There are no specific goal 3 exception criteria for agricultural land in OAR 660-033, so OAR 660-004-0025 and OAR 660-004-0028 are examined here.

OAR 660-004-0025, physically developed

6. Under OAR 660-004-0025:
 - (1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).

- (2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

The subject five-acre lot is fairly flat with no waterways or distinctive physical features. A shop with electrical power was placed on the property in 2012 as a farm structure. A driveway runs to the shop from Ridgeway Drive SE. The shop and driveway are centrally located on the property but appear to take up less than an eighth of the lot's total area. And, as farm related development, the shop and driveway do not restrict goal 3 use of the property. The electric line supporting the farm building is not depicted on a map, photograph or site development plan, nor is the domestic well. The well appears to be the only nonfarm development on the property. OAR 660-004-0025 does not restrict the type of farm zone uses that must be considered when taking a physically developed exception. ORS 215.283 lists over 50 EFU zone uses. Applicant has not provided an analysis showing why these uses are precluded by physical development of the subject property. Instead, applicant argues that the BOC, by its decision in ZC/CP 04-05 (*Negley*), determined that property in platted subdivisions become physically developed by plat approval, without regard to actual physical development. The BOC's physically developed exception analysis in *Negley* states:

The application stated that the property is committed to the existing use because the parcel is part of a subdivision that contains five single-family dwellings, six accessory structures, six wells, septic drainfields, as well as other established development standards common to a rural residential subdivision. The statement also noted that lot sizes in the subdivision range from .82 to 1.08 acres and are limited for agriculture production because of size and development on the parcels. The subject parcel is .77 acres and contains a dwelling, accessory structure, driveway, and septic system, and, therefore, restricted for agriculture activities. The applicants contend that the parcel was developed and committed to a non-agriculture rural residential use when the subdivision was platted prior to implementation of the Statewide Planning Goals. However, since the land division, the parcel remained compatible with agriculture operations to the north and east.

[] The Board agrees with these conclusions. The parcel was developed as a small rural residential lot within an approved subdivision that essentially removed it from any extensive agriculture production. Soils on the parcel and within the subdivision are high value farmland soils, but with approval and development of the subdivision, the high value soils were eliminated as a resource, and commercial agriculture use was no longer an option. The development of a dwelling, well, septic system, and accessory structure on the .77 acres left the property more physically developed for rural residential use than agricultural uses common to the agricultural planning goal. The Board

finds that the subject property meets criteria for a "Physically Developed" exception to Goal 3.

The BOC considered platting in the above analysis but emphasized the particular property's exceedingly small lot size (0.77 acre) and nearly 100% development in determining that agricultural use of the lot was unavailable. The circumstances here are substantially different. The subject lot is five acres and is only marginally developed, and that development is agriculture related. An interpretation that subdivision lots on resource lands are automatically developed under OAR 660-004-0025 by virtue of platting without regard to actual development is inconsistent with statewide planning goals and related ORS and OAR provisions. MCCP appendix A, Marion County's originally proposed resource goal exception documents, contains several exception proposals for platted subdivisions and some, such as the White Cloud Subdivision, were never approved by the Land Conservation and Development Commission (LCDC) and remain undeveloped. Applicant's proposed interpretation of the *Negley* decision would automatically revive the old subdivisions despite prior contrary LCDC decisions.

The hearings officer finds the subject property is not physically developed to the extent that it is no longer available for uses allowed by the applicable goal and recommends the BOC not take a physically developed exception for the subject property. The hearings officer also recommends the BOC affirmatively reject applicant's *Negley* argument.

OAR 660-004-0028, irrevocably committed

7. Note: Applicant's final record submission refers to a discussion at hearing about changes to OAR 660-004-0028 criteria and states there have been no recent changes to the OAR. The hearings officer listened to the hearing recording and the referenced discussion was about recent changes to OAR 660-004-0018, not OAR 660-004-0028. There have been no OAR 660-004-0028 changes since 2011.

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 exception area is five acres on the south side of Ridgeway Drive SE. The site contains a well, large shop building with

electricity, graveled driveway and open land. The lot is ringed by trees. Applicant's exhibit G topography map shows an approximate 10' elevation change on the southerly portion of the property but about a 30' elevation change across the northern portion. Applicant states the subject property is made up of class II and III Nekia soils, and includes soil information at applicant's exhibit I. Exhibit I includes a Marion County soil analysis printout based on the 1972 *Soil Survey of Marion County Area, Oregon*. The printout shows the property contains 100% high value farm soils, with about 4.5 acres (about 90%) consisting of class 2 Nekia silty clay loam, 2-7% slopes (NeB), and about 0.5 acre (about 10%) consisting of class 3 Nekia stony silty clay loam, 2-12% slopes (NkC). Applicant's exhibit I includes a DLCD website printout about agricultural soils capability assessment and procedures for changing soil classifications. Applicant is not asking to change the soil classification. Exhibit I also includes an NRCS web soil survey printout. The NRCS printout contains an Irrigated Capability Class table showing the NeB and NkC soils rated class 3, contrary to the 1972 *Soil Survey*, the county printout and applicant's written statement identifying NeB with a class 2 soil rating. The web survey printout shows irrigated ratings but not non-irrigated or other ratings. If NeB soils are class 3 rather than class 2 soils, MCC 17.137.130(D) (and similarly, MCC 17.136.140(D)) may be less clear than when adopted:

"High-value farmland" means a tract composed predominantly of:

1. Soils rated Class I or II, prime, or unique, either irrigated or not irrigated;
2. The following Class III soils: Chehalem (CeC), Concord (Co), Hullt (HuD), Jory (JoD), Nekia (NeC, NeD, NkC), Salkum (SkD), Silverton (SuD), and Woodburn (WuD);
3. The following Class IV soils: Bashaw (Ba), Camas (Ca), Courtney (Cu), Dayton (Da), and Jory (JoE).

If NeB is a class 3 soil rather than class 2, it is not a named class III soil in MCC definitions, but could still be an MCC identified (2) soil if it is a named prime or unique soil. **Applicant should provide the BOC with a full web soil study printout or at least information on the prime/unique status of NeB soils.** Whether NeB is prime, unique, class II or class III, the NRCS web study printout photograph, taken on between July 14, 2010 and November 9, 2011, shows the subject property in apparent farm use, similar to the property to the east.

The *Soil Survey* also looks at forestry capabilities of Marion County soils and places the soils in three-character woodland suitability groups, mainly according to their productivity for Douglas fir. The woodland capability grouping for the NeB and NkC soils is not in the record but the subject property is fairly devoid of trees except along its perimeter and is not actively managed for timber production. Still, lack of timber management does not necessarily mean lack of productive capability. **Applicant should explain woodland capabilities of the site.**

10. **Adjacent land characteristics.** Ridgeway Drive is directly north of the subject property. According to the MCCP Rural Transportation System Plan (RSTP), Appendix B, Roadway Inventory (2012 update), Ridgeway Drive is a two-lane local road, with a 19' paved travel surface and 1' gravel shoulders in good condition and operating at level of service A. No other roadways border the subject property. One single family dwelling is considered to add ten traffic trips to roads per day.

All surrounding properties are zoned SA. Applicant provided a table showing several properties in the area, including adjacent properties. In the table, applicant identifies tax map and lot, property size, dwelling status, and comments on whether the property is in farm use, farm deferral and so on. Assessor's Office property information printouts for the each tax lot are also provided. Property record printouts contain various information including tax codes but provides no key for the codes. The Assessor's office publishes a list of property class codes. The hearings officer takes official notice of and refers to the code list for assistance in understanding the information in the record. The code list is included in the record for reviewer convenience.

Tax lots are often used as short hand for parcels or lots. Often they exist to the same extent, such as the lots and tax lots within the Mark IV subdivision, but they can differ. For ease of identification, the properties examined here are referred to by tax lot numbers. Also, parcel and lot are often used interchangeably, but they are defined for land use purposes. Under ORS 215.010(1), terms defined in ORS 92.010 have those meanings except that "parcel":

- (a) Includes a unit of land created:
 - (A) By partitioning land as defined in ORS 92.010;
 - (B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or
 - (C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.
- (b) Does not include a unit of land created solely to establish a separate tax account.

Under ORS 92.010:

- (4) "Lot" means a single unit of land that is created by a subdivision of land.
* * *
- (6) "Parcel" means a single unit of land that is created by a partition of land.

Proper use of lot and parcel gets muddled when origins of property configurations are not identified in the record. To hopefully simplify matters, though use of the terms parcel and lot may not always be exact in applicable OARs, in record documents, and probably in this recommendation, they should be recognized as meaning identified units of land.

Tax lot 092W0700700 borders the subject property to the east, is part of the Sunnyside Fruit Farms No. 5 subdivision, is 8.01 acres and contains a house built in 1925. According to applicant, this property is not in farm use or in farm deferral. But, looking at aerial photographs in the record (see applicant's exhibits J and N1) the lot appears to be in some farm use, and applicant's supporting property tax printout (hearing exhibit 2, applicant's exhibit P) shows a property class code 551 and according to the property class code list, that means the property is specially assessed for farm use. Property across Ridgeway Drive to the north is also part of the Sunnyside Fruit Farms No. 5 subdivision and is made up of three abutting tax lots in the same ownership, 93W01D01800, 2000 and 2100. Tax lot 1800 is 2.69 acres with a house built in 1946 and is disqualified from farm use taxation. Tax lot 2000 is 13.01 acres and contains no dwelling. Applicant's table states the property is not in farm use or deferral but it is coded 581, multiple special assessments. Applicant's photograph N2 shows no obvious farm use on the property but it is treed and special assessment may be based on woodlot use. Tax lot 2100 is 0.96 acres, has a home built in 1972, and contains no apparent

resource use but the property tax printout shows code 641, specially assessed forest land. Property to the west, southwest and south are part of the Mark IV Village subdivision. Tax lot 093W01D02300 to the west is 5.00 acres, contains a house built in 1972, and has a 551 property class code indicating special assessment, but shows no apparent farm use based on photos in the record. The northeast corner of tax lot 093W12A00200 meets the southwest corner of the subject property. The lot is 4.79 acres, contains a house built in 1983, is not specially assessed, and is not in apparent farm use. Tax lot 093W12A00100 south of the subject property is 5.12 acres, contains a house built in 1983 and is not in farm deferral. Applicant's exhibit N3 photo shows a portion of the property may have some minor farm use.

Surrounding properties appear to be relatively flat though the tract to the north is more steeply sloped, gaining 70' in elevation from east to west (applicant's exhibit G). This gain may be associated with the more sloping NkC soils that continue onto this property. Surrounding properties are not large commercial farm fields.

11. **Relationship between exception area and adjacent lands.** The subject property and the three adjacent Mark IV lots are similarly sized and are in separate ownership. The properties outside the subdivision are somewhat larger with the three tax lot property to the north totaling 16.65 acres in one ownership and the 8.01 acre property to the east in another ownership. Three of the five surrounding properties are specially assessed for resource use; one to the west shows no apparent resource use, one to the north contains two dwellings and trees, and one to the east contains a farm field. The two lots that are not specially assessed show no or little farm-like use. The subject property is not specially assessed or currently in farm on its own or with neighboring properties. Farming in conjunction with the property to the north seems unlikely because it is dissimilar based on slope and vegetation type. Joint farming with other properties is more feasible in the sense that perimeter trees could be removed to facilitate shared use, but joint use would require coordination and cooperation with individual, basically rural residential, property owners. Neighboring properties don't appear to be good candidates for joint farming operations.
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. Ridgeway Drive directly north of the subject property is a two-lane local road, with a 19' paved travel surface and 1' gravel shoulders in a 40' right-of-way in good condition and operating at level of service A that separates the subject property from the ownership to the north. Ridgeway Drive connects with Cloverdale Drive, a two-lane local road, Cloverdale has a 20' paved travel surface and 3' gravel shoulders within a 50' right-of-way. It is in good condition, operates at level of service A, and becomes a minor collector as it approaches the Interstate 5 freeway. The proposed single family dwelling will not impair movement of farm related vehicles on area roadways. No public water or sewer facilities serve area properties. Utilities such as telephone service are available in the area. A single family dwelling on the subject property will not disrupt Turner Fire District and Marion County Sheriff's Office fire protection and law enforcement services.

Parcel size and ownership patterns of exception area and adjacent lands. OAR 660-004-0028(6)(c) uses the term parcel, but it is interpreted expansively to include lots and parcels. Under OAR 660-004-0028(6)(B), existing parcel sizes and contiguous ownerships are considered together in relation to land's actual use. The subject property and lots adjacent to the west, southwest and south are Mark IV Village lots, created by subdivision plat in 1972, and all are in separate ownership. All but the subject property contain dwellings. Properties to the north and east are part of the Sunnyside Fruit Farms No. 5 subdivision. Most of these are fruit farm tracts, as evidenced by Assessor's Office maps in the record that show old lot numbers and current and former property lines, and have been further divided or combined since the original subdivision. The property east of the subject property is a portion of Sunnyside Fruit Farms No. 5, lot 34. It is not clear when or how the property was created in its current configuration. The property to the north is three tax lots in one ownership across Ridgeway Drive. Tax lots 1800, 2000 and 2100 were part of Sunnyside Fruit Farms No. 5, lot 45. It is unclear when or how lot 45 was further divided to create this ownership in its current configuration.

Neighborhood and regional characteristics. Applicant's exhibit H shows a zoning overview of the larger region which is a mixture of mostly SA, EFU (exclusive farm use) and AR zoned properties. I-5 runs north and south through the region. The EFU zoned land shown in applicant's exhibit H is mostly west of I-5 and is on the periphery of the SA and AR zoned area east of I-5. AR zoned property abuts the Mark IV Village's northwestern-most lot. MCCP appendix A does not directly address this AR zoned area but at time of MCCP adoption, this area contained 17 properties and ten dwellings. Rural Residential designation and AR zoning of this area were not contested by LCDC. AR zoned property to the northeast of the Mark IV Village subdivision is part of the Sunnyside Fruit Farms No. 5 subdivision. This area is identified in appendix A as Ridgeway and at that time contained 182 acres, 63 parcels and 41 dwellings. Its designation and zoning were uncontested. A larger AR zoned area, identified in appendix A as Summit Hill, is southeast of Mark IV beyond larger SA zoned parcels. Appendix A shows Summit Hill contained 352 acres, 44 parcels and 23 dwellings at MCCP adoption. The area's designation and zoning were uncontested. Some properties in these AR zoned areas were further divided after MCCP adoption.

Applicant provided a neighborhood study area analysis that includes Mark IV Village and Sunnyside Fruit Farms No. 5 subdivision property. (See Assessor's Office maps 092W06C, 092W07, 093W01D and 093W12A and applicant's exhibit 2 table.) These subdivisions were created prior to MCCP adoption and without goal consideration. They may be considered in the goal exception process.

MARK IV VILLAGE. The Mark IV subdivision was created as a rural residential subdivision in 1972, and is made up of 19 lots: block 1, lots 1-13, and block 2, lots 1-6. Block 1 contains all lots north of Continental Drive. Block 2 contains all lots south of Continental Drive. All lots remain in their original configuration. Fifteen lots within the subdivision contain dwellings. Four lots have no dwellings. The subject property, tax lot 0093W01D02200, is the northeasterly most lot of block 1. It is not specially assessed for resource use. Tax lot 0093W12A00300, is 4.98 acres, is not specially assessed for resource use, and is approved for a lot of record (LOR) dwelling. With approval of the LOR dwelling, the subject property will be the only lot in block 1 with no house. The other vacant lots are in block 2, tax lots 93W12A00800 (7.18 acres) and 900 (5.65 acres). These lots total 12.99 acres, and are in one ownership. Applicant states both are vacant and not in farm deferral, but both are specially assessed

for farm use, appear in aerial photographs as a single farm field, and may be farmed in conjunction with a large parcel outside of the subdivision. Two other lots in Mark IV Village are specially assessed, but applicant's table states they are not in resource deferral. Tax lot 93W01D02300 is 5.0 acres coded 551 for farm use. Tax lot 2400 is 5.0 acres coded 641 for forest use. Both lots are west of the subject property, front Ridgeway Drive, contain dwellings and neither show signs of apparent farm or forest use. The remaining Mark IV lots range in size from 5.0 to 9.44 acres, all contain dwellings and none are specially assessed for resource use.

SUNNYSIDE FRUIT FARMS NO. 5. Sunnyside Fruit Farms No. 5 properties examined by applicant include 18 tax lots ranging in size from about 1 acre to 40 acres, fifteen contain dwellings, and just five are not specially assessed for resource use. Lots are evaluated generally from west to east as viewed on assessor's maps:

--Tax lot 093W01D01300 is 22.09 acres, contains a dwelling built in 1988 and according to applicant is not in farm use or deferral, but supporting documentation shows the property coded 551, specially assessed for farm use. Aerial photographs of property in this part of Sunnyside Fruit Farms No. 5 are not highly detailed, but this lot appears to have a fairly large field similar to others in the area.

--Tax lot 093W01D01400 is 2.08 acres, contains a dwelling (construction date not available), and is not in farm use or deferral.

--Tax lot 093W01D01500 is 5.5 acres, contains a dwelling built in 1989 and is disqualified from resource special assessment.

--Tax lot 093W01D01600 is 20.98 acres, contains a dwelling built in 1910 and is in farm use and on farm deferral.

--Tax lot 093W01D01700 is 7.24 acres, contains a dwelling built in 1968 and is owned with tax lot 093W01D01900, a 3.03 acre tax lot with no dwelling. According to applicant, these tax lots are not in farm use and not on deferral, but supporting documentation shows they are coded 551 for special farm use assessment.

--Tax lots 093W01D01800, 2000 and 2100 are in one ownership and were discussed above. Tax lot 1800 is 2.69 acres, disqualified from special assessment and contains a dwelling built in 1946. Tax lot 2000 is 13.01 acres, contains no dwelling but is in multiple special assessment code 581. Tax lot 2100 is 0.96 acre, contains a dwelling built in 1972, and though applicant asserts it is not in deferral, it is in forest special assessment code 641.

--Tax lot 092W06C02000 is 28.30 acres, contains a dwelling built in 1920. According to applicant the property is not in farm use or deferral. Supporting documentation shows property coded 551, specially assessed for farm use. An aerial photograph shows property is mostly wooded and could be in woodlot deferral.

--Tax lot 092W06C01900 is 10.00 acres, contains a dwelling (construction date not available), and according to applicant is not in farm use or deferral. Supporting documentation shows a 551 property code, specially assessed for farm use. An aerial photograph shows the property is partially wooded and may be considered a woodlot.

--Tax lot 092W06C01800 is 20.00 acres, contains a dwelling built in 1973 and according to applicant is not in farm use or deferral. Supporting documentation shows property code 581, multiple specially assessed. The aerial photograph shows evenly spaced trees and an open field similar to other fields in the area.

--Tax lot 092W06C01700 is 20.00 acres, contains a dwelling built in 1901 and according to applicant is not in farm use or deferral. Supporting documentation shows the property coded 551, specially assessed for farm use. An aerial photograph shows a wooded area, an open field and an area along Ridgeway Drive that looks like it could be in agricultural use. The hearings officer would not rule out agricultural use of the property based on this record.

--Tax lot 092W06C01600 is 6.91 acres, contains a dwelling built 1920, and is disqualified from farm assessment.

--Tax lot 092W0700800 is 9.99 acres, contains a dwelling built in 1976 and according to applicant 6.24 acres is in forest use. Supporting documentation shows a 581 property, multiple special assessment. Photographs in the file show cleared fields that could be in farm use.

--Tax lot 092W0700700, just east of the subject property is discussed above. It is 8.01 acres, contains a dwelling built in 1925 and according to applicant is not in farm use or deferral. Supporting documentation shows property code 551, specially assessed for farm use. Photographs in the file show the property apparently in farm use with tax lot 092W0700500 (not 800 as the hearings officer mistakenly suggested at hearing). No property tax record was found for tax lot 500.

--Tax lot 092W0700600 is 2.00 acres, contains a dwelling (construction date not available), and is disqualified from special assessment.

--Tax lot 092W0700400 is 40.00 acres, contains a dwelling built in 1920 and according to applicant is in limited farm use but not farm deferral. Supporting documentation shows the property is coded 551, specially assessed for farm use. Photographs in the file show large, cleared farm fields.

Natural or man-made features or other impediments separating the exception area from adjacent resource land. Ridgeway Drive, the only abutting roadway, is to the north. There are no obvious severe topological features nearby. Trees grow along the entire property line but could be removed.

Physical development. The subject property contains a large agricultural shop building in the center of the property. A driveway connects the shop to Ridgeway Drive. A domestic well is on the property. The property is not physically developed to an extent that interferes with resource use of the property.

Additional factors:

Mark IV Village file. As a part of the Mark IV Village subdivision, the subject property was created for rural residential use. MCCP Appendix A, book 1, page 68 shows only one lot within the subdivision contained a dwelling at the time Marion County sought original comprehensive plan approval. The subdivision was not put forward as a proposed exception area, though abutting and nearby exception area proposals were put forward and approved. The Mark IV subdivision was fairly unexceptional. Concerns about septic viability were addressed with conditions of approval. Two photographs in the file show an area of rolling hills. A 1984 letter to a Marion County commissioner shows that when the last lots were going to auction, the owner discovered the property had been rezoned and conditional use permits would be required for new dwellings. The owner was concerned that new buyers, and previous buyers who had not yet built homes, would have trouble developing their lots. The BOC responded in part:

Mark IV subdivision had been platted and a few homes had been built on scattered parcels at the time we submitted our Plan to LCDC for review in 1980. The county could only justify goal exceptions where there were clusters of developed parcels. The level of development in the subdivision was not sufficient to make the necessary findings. Therefore, both developed and undeveloped lots were placed in farm zoning.

We expected that over time owners would apply for non-farm dwelling conditional use permits and in one case we even approved a farm dwelling on the basis of a highly intensive farm management program.

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In the future when a majority of the parcels are developed, and the undeveloped parcels are clearly committed to non-farm use, the entire subdivision could be proposed as a goal exception and be zoned AR (Acreage Residential).

Development occurred as predicted until the latest land use laws were enacted.

Prior nonfarm dwelling approval. In conditional use case 81-79, then-owners of the subject property, William and Janet Long, received planning director approval to place a nonfarm dwelling on the subject property:

In order to approve a non-farm dwelling in a SA zone, the applicant must demonstrate that 1) it is compatible with farm and forest use; 2) it does not materially alter the stability of the land use pattern of the area; [there is no number three listed in the paragraph] 4) adequate fire protection and other rural services are available; 5) it will not have a significant adverse impact on timber production, grazing land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, and outdoor recreation activities; and 6) is shall be situated upon land that is generally unsuitable for farm use.

[] The dwelling and probable use of the property will be consistent with the residences and hobby farms in the Subdivision and the land to the north of Ridgeway Drive. Based upon information available and comments received, adequate services can be provided and no conflicts with item 4.5) are evident. Though the property consists of Class I through IV soils, it does not represent a significant agricultural resource due to its small size and the small adjacent parcels and homesites that surround it.

Applicant states that none of the factors considered in this decision have changed, leaving the area almost entirely developed with residential dwellings.

Negley decision. Applicant argues that in the *Negley* decision the BOC concluded that the parcel being rezoned was "developed and committed to non-agricultural rural residential use when the subdivision was lawfully platted" and that the "decision acts as a precedent in like matters." The portion of the *Negley* decision dealing with a committed exception states:

As stated above, an exception may be taken when the land is irrevocably committed to uses not allowed by the goal because existing adjacent uses and other relevant factors make uses allowed by the goal impractical. As previously mentioned, the subject parcel was created as a part of a subdivision recorded in 1971. Legislative Amendment Case 02-7 (LA02-7) approved a Goal Exception, Comprehensive Plan Amendment, and a zone change for all other lots within the subdivision except the subject property, which was left out of the land use case at the owner's request. Lots within the subdivision were changed from EFU to AR-10 and the Comprehensive Plan designation from Primary Agriculture to Rural Residential. Most of the lots within the subdivision, and adjacent parcels to the west, are not large enough to support any type of significant agriculture activity. The EFU zone

currently establishes an 80-acre or more minimum lot size for new divisions of land, and subdivisions are not an allowed use in the zone. The characteristics of the exception area and adjacent lands is that of a developed rural subdivision and clustered small parcels bordering farmland to the north, south, and east. The different uses have coexisted as compatible since creation of the small lots took place. The Board finds that the subject parcel is irrevocably committed as part of the developed subdivision. That was approved in 1971 when the property was zoned RA (RESIDENTIAL AGRICULTURE) and meets the provisions for a goal 3 Exception.

The BOC does not reference platting as *per se* commitment to nonfarm use and, as stated in OAR 660-004-0028(6)(c)(A), "[p]ast land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area." (Emphasis added.) **The hearings officer recommends the BOC consider the prior subdivision as a factor in making its decision, but specifically reject applicant's argument that the Negley decision concludes that a parcel being rezoned was "developed and committed to non-agricultural rural residential use when the subdivision was lawfully platted."**

Water availability. Applicant points out that the subject property has no agricultural water right, that the on-site well was drilled for domestic use and that the property is within a groundwater limited area, making irrigation and stock watering impracticable. The subject property is also within the state-designated South Salem Hills Groundwater Limited Area. See OAR 690-502-1200, exhibit 11, though stock watering is an exempt use under ORS 537.545(1)(a).

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, LUBA 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.

Applicant emphasizes that the subject property, at five acres is too small for commercial agriculture but, as noted above, commercial agriculture is not the standard. In *Lovinger*, at 17, 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."

Five acres is small for a farm parcel on its own, and combination with adjacent parcels may not be realistic given the different ownerships of all adjacent properties, the mostly residential nature of adjacent Mark IV properties, and the apparent topographic and other differences with the ownership across Ridgeway. The subject property has no agricultural water right, which could make agricultural use more difficult. The property is not in resource deferral so the property is not likely producing farm income, though applicant's exhibit I shows the property was in agricultural use in 2010 or 2011. The property is not in trees except at its periphery so it is not currently in woodlot use. Applicant has shown impediments to

farm use of the property, but needs to provide enough evidence to show that the subject property cannot be managed for a profit in money from farm use. There are a number of possible farm uses set out in ORS 215.203, but it is difficult to judge practicability without information on all the types of uses. Applicant should further explain why ORS 215.203 uses are not workable here.

15. *Propagation or harvesting of a forest product.* OAR 660-004-0028 provides no forest products definition, but refers to OAR 660-033-0120. OAR 660-033-0120 works in tandem with OAR 660-033-0130, which provides specific requirements for uses listed in OAR 660-033-0120. OAR 660-033-0120 lists propagation or harvesting of a forest product as an allowed use on EFU land, but lists no OAR 660-033-0130 requirements for the use. But, OAR 660-033-0120 allows a county to conditionally permit a facility for the primary processing of forest products in the EFU zone, and at least provides a forest products definition in the land use context. OAR 660-033-0130(6), relating a processing facility states:

A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. *Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.* (Emphasis added.)

Timber is not defined in OAR 660-033-0130(6) or OAR 660-004-0028, but is defined in ORS 321.257(7) (forest special assessment in western Oregon): Timber means all logs which can be measured in board feet and other forest products as determined by department rule. Department of Revenue forest products harvest tax rules are in OAR 150, division 321. In OAR 150-321.005(12) (1), timber subject to the forest products harvest tax is the following:

- (a) All logs which can be measured in board feet and meet the requirements of utility cull or better.

* * *

- (b) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

- (c) Loads of logs measured in tons and sold by the weight that contain utility grade and better logs..

* * *

- (2) Timber not subject to forest products harvest tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood, and arrow bolts.

These seem a reasonable combination of definitions to rely on when evaluating whether a property can be used for propagation and harvest of timber products under

OAR 660-004-0028, but it is just one proposal for defining a term not apparently defined in land use statutes or rules. Applicant may find and explain why other definitions would be more suitable. This definition of timber is expansive and includes cull trees and basically everything but slash and fence posts. Even with this broad definition, the subject property's small size and proximity to housing does not lend itself to large-scale timber practices. The property contains no naturally occurring stands of timber or woodlot trees nor has it apparently been planted to trees, and it has never been designated for forest use. The hearings officer finds applicant has shown that timber use of the subject property is impracticable.

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. Applicant has demonstrated that timber use of the subject property is impracticable, which also makes forest management and practices inapplicable, and thus impracticable on the subject property.
17. Applicant has addressed several issues that make the subject property less than optimal for farm and forest use, but the biggest issue here is whether those difficulties result from or are influenced by neighboring property uses:

The "fundamental test" for an irrevocably committed exception is the relationship between the subject property and adjacent uses. *DLCD v. Curry County (Pigeon Point)*, 151 Or App 7, 11, 947 P2d 1123 (1997); OAR 660-004-0028(2). (*Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 at 768 (2004).)

While the county must evaluate "neighborhood and regional characteristics," the focus of OAR 660-004-0028 is the relationship between the subject property and adjacent uses. OAR 660-004-0028(2). (Emphasis in the original.) (*Id.* at 770.)

Rural residential designation and zoning are supported by many factors discussed above. The property was created for rural residential use and is similar to other properties with dwellings in the area. Most properties in the Mark IV subdivision are developed with or approved for dwellings. Of the other undeveloped properties in Mark IV, one lot is approved for a lot of record dwelling, and two lots in one ownership contain a farm field that may be used in conjunction with a larger farm operation outside of the subdivision. The subject property is in a single ownership and there are no vacant or large adjacent properties to combine with for a similar operation. In that sense, the BOC might view adjacent properties as developed to an extent that they commit the subject property to rural residential use. OAR 660-004-0028(6)(c)(B) points out that 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. This is an area of small developed parcels clustered around Ridgeway Drive and Continental Drive, and Continental Drive was specifically created for the Mark IV subdivision. The property was once approved for a nonfarm dwelling under prior laws and, like then, resource use of the subject property poses no threat to neighboring properties in farm use. The BOC 1984 letter shows intent to achieve full build out of the subdivision, or it at least forecasts that full build out would come to pass.

Under the specific circumstances of this case and with additional information, the hearings officer finds the BOC may find it more likely than not that the subject property is irrevocably committed to uses not allowed by goal 3 because existing adjacent uses and other relevant factors make farm use of the subject property impracticable.

PLANNING AND ZONING FOR EXCEPTION AREAS

OAR 660-004-0018

18. 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.)

19. 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. The adjacent roadway is a local road in good condition and operating at a level of service A, and police and fire/life safety services are provided by the Marion County Sheriff's Office and the Turner Fire District. No increases in public services are anticipated. Applicant is asking for one home on the subject five acres, which is consistent with area density, but technically changes the exception area density from zero to one. OAR 660-004-0018(2)(a) is not satisfied. OAR 660-004-0018(2)(b) must be evaluated.
20. 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 sparse settlement, small farms and acreage homesites. If a goal 3 exception is taken, an acreage homesite with no or minimal public services would result. The site is not near or subject to inclusion in an urban growth boundary and is not suitable, necessary or intended for urban use. With AR-10 zoning, the land would not be converted to an 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.

Adding one home to five acres in an area of similar rural settlement and small farms, where further land divisions are not allowed and where additional public services that might draw urban levels of settlement are not required, 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.

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

APPLICATION OF GOAL 14 TO RURAL RESIDENTIAL AREAS

OAR 660-004-0040

24. 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 applicant is requesting AR-10 zoning. OAR 660-004-0040 is satisfied.

GOAL 14 EXCEPTION

25. Applicant requests AR-10 zoning even though the subject property is only five acres. In *Negley*, the BOC allowed AR-10 zoning on a 0.77 acre parcel and found no

goal 14 exception was needed. The hearings officer sees no need for the BOC to alter this reasonable interpretation. If the designation amendment is granted and the AR-10 zone applied, the BOC need not take a goal 14 exception in this case.

STATEWIDE PLANNING GOALS

26. According to 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.

The notice and hearings process before the hearings officer and BOC provides 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.

Applicant proposes a site-specific MCCP amendment. The Planning Division notified the Turner Fire District, Cascade School District, DLCD, Oregon Water Resources Department and various county departments of the proposed comprehensive plan amendment. Marion County DPW LDEP comments are set out above for BOC consideration. DPW requested no conditions. DLCD provided no comment on the proposal.

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

Applicant's 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 MCCP adoption process. Forestry is allowed in the SA zone, but 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 MCCP-identified goal 5 resources. No MCCP-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 be one additional dwelling. Normal residential use should not emit excessive particulates or noise into the air. Excessive slopes are not identified on the property, reducing potential erosion and runoff issues. Septic permits are required for on-site sewage disposal. In-place regulations will maintain the level of air, water and land resources. Goal 6 is satisfied.

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

The subject property is not in an MCCP identified geologic hazard 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.

OAR 660-012-0060 was modified in August 2016 but the subject application was filed and determined to be complete in March 2016. The prior version of the OAR applies and is provided here. 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 Ridgeway Drive SE, an RTSP-identified local road in good condition operating at level of service A. Residential households generate an estimated ten traffic trips per day. Applicant does not propose changing nor will ten vehicle trips per day change the functional classification of Ridgeway Drive 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 Ridgeway Drive's functional classification that would degrade its performance standards, worsen its performance or otherwise not meet the performance standards. 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.

Applicant proposes 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.

If a goal 3 exception is taken by the BOC, applicant's proposal is consistent with statewide planning goals.

MCCP AMENDMENT

27. 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 proposal would add one homesite along Ridgeway Drive. Ridgeway Drive is already lined with rural residential uses. No perceivable strip-type residential development would result from the proposed comprehensive plan designation and ten-acre lot/parcel size restriction. 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 policy directs action by Marion County, not applicant. This policy is not applicable.

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 policy directs action by Marion County, not applicant. This policy is not applicable.

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.

This policy is aspirational and provides direction to Marion County, not applicant. This policy is not applicable.

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 policy does not mandate action by applicant. This policy is not applicable.

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.

Applicant should be required 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. Rural residential policy 5 would be met.

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 365' x 588' 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 and surrounding properties are zoned SA. Most properties in the area are developed with dwellings. If a goal 3 exception is taken, the subject property will be declared committed to residential use. The property is reasonably near (especially with nearby freeway access) the city of Salem, a major employment center. With a goal 3 exception, 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.

Applicant requests 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 is in an SGO zone but a domestic well is already on the property and a Marion County septic permit will be required upon development. 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 would 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 service district exists in the area. 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 community water supply system is proposed. 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 not within one mile of Salem or Turner. No redevelopment plan is required. This policy is not applicable.

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.

Applicant requests 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 sewage services will be provided on the site. Ridgeway Drive is an MCCP-identified local road that is in good condition and 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 to the site. 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 an increased need for rural 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 will not encourage 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 and rural services policy 4 is met.

28. If the goal 3 exception is taken, applicable MCCP policies are or can be met.

ZONE CHANGE

29. 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.
30. 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 MCC 17.123.060(A) would be satisfied.
31. The area surrounding the subject property is zoned SA and is primarily in residential and resident small farm uses. Changing the subject property to AR-10 zoning would only 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 and MCC 17.123.060(B) would be satisfied.
32. Electric, telephone and other utilities and services are available in the area. Ridgeway Drive 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.
33. 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. Applicant states that because the subject property is within a preexisting and now nonconforming subdivision, its location and size dictates that no other lands that are already designated AR-10 are available or as well suited as the subject property. The Planning Division stated:

There are other lands in the county that are already designated AR-10. The closest such zoning to the subject property is 4.6 miles to the west. There are two undeveloped lots there, but the soils on the properties are not high value for agriculture. There are other AR-10 zoned properties in the county that are further from the subject property that may be comparable to the subject property. There are many lots in the AR zone (two acre minimum) that area comparable to the subject property that could be used as a hobby farm with a residence. There are eight comparable undeveloped lots in the AR zone within approximately three miles of the subject property...

Planning staff provided a table of the eight properties, showing tax lot, acres, high value acres, percent of high value soils and distance from the subject property. The hearings officer agrees with the Planning Division that current properties sizes shown on the list as ranging from 4.4 to 9.69 acres

are comparable to the subject property, but finds the AR-2 zoning is not comparable because these properties can be further divided and will likely result in smaller parcel and a higher density. This site will not be further divided. And, if the closest AR-10 zoning is 4.6 miles away and contains only two undeveloped lots, the BOC might determine other AR-10 zoned lands are generally unavailable, and could find, if a goal 3 exception is taken and the MCCC amendment approved, that MCC 17.123.060(D) is satisfied.

34. 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.
35. If a goal 3 exception is taken and the MCCC amendment is approved, the BOC could approve the requested zone change.

VI. Recommendation

The hearings officer finds applicant has not proven that the subject property is physically developed to an extent that goal 3 use cannot be made of the property. **The hearings officer recommends denial of the proposed physically developed exception.** 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 24th day of October 2016.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

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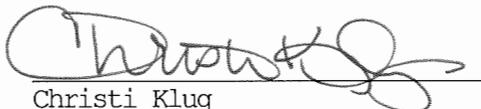
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Agencies Notified
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Building Inspection (via email)
Assessor's Office (via email)
Tax Office (via email)
Surveyor's Office (via email)
AAC Member No. 1

Aileen Kaye
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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 24th day of October 2016, and that the postage thereon was prepaid.



Christi Klug
Secretary to Hearings Officer