

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No. ZC/CP 17-004
)	
Application of:)	Clerk's File No.
)	
Elizabeth Helms)	Zone Change/Comprehensive Plan
)	Amendment

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Elizabeth Helms (Applicant) to change the comprehensive plan designation from Primary Agriculture to Farm/Timber and the implementing zone from Exclusive Farm Use (EFU) to Farm/Timber (FT) on 53 acres of land located west of the 16,200 block of Emerald Green Lane, Jefferson (T1OS; R2W; Section 7B; tax lots 300, 399 and 400).

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 MCC 17.123.

III. Public Hearing

Marion County held a public hearing on November 29, 2017, on the application to change the designation and zoning of the land. At hearing, the Marion County Planning Division (MCPD) file was made part of the record. The following persons appeared and testified at hearing:

1. Joe Fennimore MCPD
2. Norman Bickell Applicant's representative

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

- Ex. 1 Aerial photo submitted by Norman Bickell

The parties did not object to notice, jurisdiction, conflict of interest, evidence or testimony.

IV. Findings of Fact

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

1. The 53-acre subject property consists of three tax lots containing 42.19 acres, 0.83 acres and 10 acres, respectively, and is designated Primary Agriculture in the M CCP and zoned EFU under MCC title 17.
2. The subject property is located approximately 500 feet west of the terminus of Emerald Green Lane SE. Aerial photos of the property from 1966 and 1992 show that the property is undeveloped and generally well-stocked in timber.
3. Surrounding land to the north, west, and south are zoned EFU and in various types of farm use. Land to the east is zoned AR (Acreage Residential) and contains rural residences on acreage homesites.
4. Applicant requests to change the acknowledged Comprehensive Plan (comp plan) designation from Primary Agriculture to Farm/Timber and change the zoning from EFU to FT.
5. Marion County Public Works Land Development Engineering and Permits commented on the application, noting the existing responsibility of Applicant "to preserve and protect the current Pavement Condition Index (or PCI) rating (as applicable) and the structural integrity of adjacent paved and graveled county roads to the satisfaction of Marion County Public Works during transport of timber harvest."
6. Other contacted agencies did not respond or object to the application.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met. Hearings Officer makes this recommendation to the Marion County Board of Commissioners (BOC), and the BOC will make a final decision on the application.
2. Pursuant to OAR 660-18-0020, a local government shall submit a proposed change to an acknowledged comprehensive plan to the Director of the Land Conservation and Development Department (DLCD) at least thirty-five (35) days before the first evidentiary hearing.
3. DLCD was notified October 6, 2017, of the public hearing on this application for a comp plan change, which was held November 29, 2017. DLCD did not comment on the proposed change.

MCCP I Introduction-Plan Amendments

4. Policy 1 provides that an affected owner may apply to revise the plan on an individual property at any time.
5. Policy 2 provides that a comp plan change directly involving five or fewer properties is a quasi-judicial amendment. A quasi-judicial comp plan amendment is reviewed by zone change procedure established in MCC title 17, and may be processed simultaneously with a zone change request.
6. Applicant is the owner of the subject property and has completed an application for the simultaneous processing of this quasi-judicial request for a comp plan amendment and zone change.
7. Pursuant to the Plan Amendments section of the MCCP, comp plan amendments must be consistent with statewide land use planning goals.

Statewide Land Use 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.

Goal 1 is satisfied. When considering a comp plan amendment, Marion County provides notice and a public hearings process before a hearings officer and the BOC that provides opportunity for citizen involvement.

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.

Goal 2 is satisfied. Marion County has established land use regulations and created a comprehensive plan that is acknowledged to be consistent with the statewide land use planning goals adopted by the DLCDC under Oregon law. Marion County's comp plan is coordinated with plans of 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 comprehensive plan amendment. MCPW notified DLCDC, the Jefferson Fire District, the Jefferson School District, various departments of Marion County and the Friends of Marion County of the proposed comp plan amendment.

Hearings Officer considered all comments submitted at or before the hearing. DLCD did not comment on the proposed comp plan change.

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

OAR 660, Division 33 governs agricultural lands. Under OAR 660-033-0145:

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

Goal 3 is satisfied. The Farm/Timber designation in the MCCP, and the implementing FT zone, is consistent with the agriculture/forest zoning described in OAR 660-033-0145 that DLCD deems to preserve and maintain agricultural land when applied pursuant to provisions of OAR 660, Division 6, specifically, OAR 660-06-0015, 660-006-0050 and 660-006-0057.

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.

Goal 4 is satisfied.

OAR 660-006-0015 provides:

- (1) Lands inventoried as forest lands must be designated in the comprehensive plan and implemented with a zone that conserves forest lands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732, the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is zoned with an Exclusive Farm Use Zone pursuant to ORS chapter 215 provided the zone qualifies for special assessment under ORS 308.370, or is an "abandoned mill site" zoned for industrial use as provided for by ORS 197.719. In areas of intermingled agricultural and forest lands, an agriculture/forest lands designation may also be

appropriate if it provides protection for forest lands consistent with the requirements of OAR chapter 660, Division 6. The plan shall describe the zoning designation(s) applied to forest lands and its purpose and shall contain criteria that clearly indicate where the zone(s) will be applied.

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

Currently the subject property is inventoried as agricultural land in the MCCP. However, the property is specially assessed for forest use under ORS chapter 308A. Applicant has submitted to the record invoices, receipts and check records dated from 1999 to 2015 that demonstrate consistent expenditures related to timber production activities conducted on the property. In areas of intermingled agricultural and forest land, the Farm/Timber designation in the MCCP, and the implementing FT zone, is an appropriate land designation, and implementing zone, to protect forest lands under OAR 660-006-0015. To approve the application, the BOC is not required to take an exception to Goal 3 because the land satisfies the definitions of agricultural land and forest land; however, the BOC must inventory the property as forest land and document in the plan the factors used to select the Farm/Timber designation.

Under the MCCP forest lands section:

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

* * *

Under the provisions of OAR 660-006-0050, a governing body may establish agricultural/forest zones in accordance with both Goals 3 and 4 and consistent with OAR Chapter 660, Divisions 6 and 33. The mixed nature of the farm and forest uses in this area justifies the

application of an agricultural/forest zone and both Goals 3 and 4. The Farm/Timber designation is discussed in the Forest Lands section of the Marion County Comprehensive Plan and policies pertaining to this designation are also included in the forest land goal and policies section.

The Farm and Timber designation has been applied to lands in Marion County that support a mixture of both agricultural and forestry activities. Designated areas were characterized by wide varieties in terrain, soil types and land use conditions. These areas are located in the foothills of the Cascade Mountains and are characterized by steep canyons, broad ridge tops and narrow alluvial river terraces. Soil types vary considerably in agricultural productivity from Class II to VI agricultural capability. The area is predominantly Class 2 and 3 timber soils which make a majority of the area highly productive forest land. Whenever the terrain is not too steep and the soils have agricultural capability, the land is typically in farm use. Otherwise, the land is managed as woodland. As a result of the mixed terrain and soils, this area consists of a very mixed pattern of farm and forest uses, frequently including both uses on a single tract. Therefore, both the agricultural lands and forest lands goals are applied, as authorized by OAR 660-006-0050.

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

A minimum parcel size of 80 acres is applied to the Farm/Timber land in Marion County. This minimum was chosen because it is consistent with the existing parcel sizes in this area being managed for timber and agriculture production on a commercial basis. Also, the minimum parcel size is consistent with both OAR 660-06-0026 and 660-33-0100, and it exceeds the recommendations of the State Department of Fish and Wildlife for the protection of significant deer and

elk habitats. This area is primarily located within the peripheral deer and elk habitat as identified by the State Department of Fish and Wildlife. With development limited to such low densities, the watershed, open space and other resource values found on forest lands will be protected.

We begin a Farm/Timber site evaluation by looking at the *Soil Survey of Marion County Area, Oregon*, which identifies county soil types and classifications. According to the *Survey*, the subject property contains the following soils:

Tax Lot	Soil name	Soil type	Acres	Parcel %	Farm soil class	High Value
400	HAZELAIR SILT LOAM, 6 to 20% slopes	HaD	6.3	14.9%	4	No
400	HAZELAIR SILTY CLAY LOAM, 2 to 15% slopes, eroded	HcD2	0.1	0.2%	6	No
400	SANTIAM SILT LOAM, 0 to 3% slopes	SnA	0.1	0.1%	2	Yes
400	SANTIAM SILT LOAM, 3 to 6% slopes	SnB	8.7	20.7%	2	Yes
400	SANTIAM SILT LOAM, 6 to 15% slopes	SnC	27.0	64.1%	2	Yes
300	SANTIAM SILT LOAM, 3 to 6% slopes	SnB	7.9	78.6%	2	Yes
300	SANTIAM SILT LOAM, 6 to 15% slopes	SnC	2.1	21.4%	2	Yes
399	SANTIAM SILT LOAM, 3 to 6% slopes	SnB	0.8	100%	2	Yes

TOTALS	52.8	100%
High Value	46.4	88%
Non High Value	6.4	12%

Soil Survey class II farm soils are high value soils, as defined in OAR 660-033-0020(8). Class VI soil types and the Class IV soil type that was identified on the subject property are not high value soils; however, non high value soils only constitute 12% of the soils on the subject property.

There are 15,000+ Farm/Timber designated acres in Marion County (MCCP, page I-14), most of it in the Silverton Hills, coexistent with the peripheral big game habitat area. In ZC/CP 11-002 and ZC/CP 03-5, the BOC recognized that land outside the Silverton Hills area may qualify for Farm/Timber designation if it has sufficient Farm/Timber characteristics. The Farm/Timber area is described as an area of stream canyons and broad ridge tops. This description describes the subject property well. The variable topography makes integration with neighboring farm parcels less likely. At 53 acres, the property is less than the minimum parcel size, but the three tax lots, if combined, would be closer to satisfying the minimum parcel size and slightly larger than the 20- to 40-acre common Farm/Timber parcel size.

Designated Farm/Timber areas contain mixed soils. Consistent with this, the subject property contains five different soil types, and a majority of the soils are good for farm and forest use. The property shares sufficient characteristics to allow Farm/Timber designation and zoning. **OAR 660-006-0015 is satisfied.**

OAR 660-006-0050 provides:

- (1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33.
- (2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.
- (3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.

Farm/Timber designation in the MCCP, and the implementing FT zone, is an agriculture/forest zone established in accordance with Goals 3 and 4 and with OAR chapter 660, divisions 6 and 33, consistent with the zoning described in OAR 660-006-0050. Currently, the subject property is inventoried as agricultural land in the acknowledged plan. However, the property is specially assessed for forest use under ORS chapter 308A. Applicant has submitted to the record invoices, receipts and check records dated from 1999 to 2015 that demonstrate

expenditures related to timber production activities conducted on the property over several decades. **OAR 660-006-0050 is satisfied.**

OAR 660-006-0057 provides:

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

The area to be considered for re-designation and rezoning consists solely of the subject property. According to the *Soil Survey*, 88% of the soils on the property are suitable for farm or forest use. Consistently, the property has been managed for forest use and, because the slopes extend to 20% on portions of the property, the property cannot be wholly productively managed solely for farm or forest use. **OAR 660-006-0057 is satisfied.**

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

Goal 5 is satisfied. Goal 5 natural resources, scenic and historic area and open spaces have been identified in the MCCP; however, Goal 5 resources have not been identified on the subject property or on nearby land.

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

Goal 6 is satisfied. The Farm/Timber designation serves to conserve and protect land for resource use. Forest use is regulated under the Forest Practices Act. The current and proposed land designations impose substantial limitations on the siting of dwellings on the subject property and the change in designation is unlikely to increase the emission of particulates or noise from residential use. Existing regulations serve to maintain or improve the quality of air, water and land resources.

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

Goal 7 is satisfied. Natural hazards have been identified in the MCCP; however, Goal 7 resources have not been identified on the subject property.

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.

Goal 8 is satisfied. Goal 8 recreational resources have been identified in the MCCP; however, Goal 8 resources have not been identified on the subject property.

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

Goal 9 is satisfied. Goal 9 addresses planning for economic development and growth, primarily in urban areas. OAR 660-009-0010 provides that: "This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth boundaries." The subject property is not located within an urban growth boundary.

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

Goal 10 is satisfied. OAR 660-008-0000 provides that "This division is intended to define standards for compliance with Goal 10." OAR 660, Division 8 ensures an opportunity to provide adequate numbers of needed housing units and efficient use of residential buildable land within urban growth boundaries. The subject property is not located within an urban growth boundary.

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.

Goal 11 is satisfied. Electric and telephone utilities are available in the area. Public water and sewer services are not required, or the need for those services is not increased, by the proposed change in the land use designation of the subject property. Though cycles of intensive management activities that generate traffic impacts differ between the two resource comp plan designations, the plan change is not likely to generate new or more intensive traffic impacts, because the property is currently managed for forest uses.

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

Goal 12 is satisfied. 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.

Applicant requests plan and zone changes that are consistent with the current management of the subject property. Approval of the request would apply a different set of standards to qualify the property for residential use and might allow one dwelling that would, if allowed, generate 10 potential traffic trips per day. Traffic use generated by forest management activities would

be minimal, except during harvest. Applicant does not propose changing the functional classification of the road or standards implementing them. LDEP did not express a concern about the plan and zone amendment significantly affecting the existing transportation facility by allowing uses or levels of development that would be inconsistent with roads serving the property.

Goal 13: Energy Conservation. To conserve energy.

Goal 13 is satisfied. If the plan change is approved, the subject property will continue to be managed for forest use. Significant limitations apply to residential uses in all resources zones. However, the plan change to Farm/Timber will change the approval standards for residential use and may allow the property to qualify for residential use that is not allowed under the current plan designation. Additional homesites for which the property is qualified to facilitate continued management of the property for forest use would not waste energy.

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.

Goal 14 is satisfied. Changing the MCCP designation to Farm/Timber and zoning to FT does not urbanize the subject property.

Goal 15: Willamette River Greenway. To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway

Goal 15 is satisfied. The subject property is not located within the Willamette River Greenway as established under ORS 390.310 to 390.368.

Goals 16-19: Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

Goals 16 to 19 are satisfied. The subject property is not located near ocean or coastal related resources.

8. Statewide planning goals are met.

MCCP II Goals and Policies-Forest Land and Farm/Timber Policies

9. The MCCP does not contain specific comp plan amendment review criteria, but a comp plan change must be consistent with applicable MCCP goals and policies. A request for Farm/Timber designation must be reviewed for consistency with the forest land and farm/timber policies.

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

Policy 1 is satisfied. Applicant seeks to have the subject property designated Farm/Timber and zoned FT. If the plan and zone changes are approved, Policy 1 will not apply to the property because the property will not be zoned TC.

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

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

Policies 2 and 3 are satisfied. Applicant requests to have the subject property designated Farm/Timber and zoned FT. The property contains high value soils. FT zoning recognizes the property's management for forest use while protecting it for agricultural use. If the plan and zone changes are approved, management of the property would be required to comply with OAR 660, Divisions 6 and 33.

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

Policy 4 is satisfied. Applicant does not request to conduct non-forest or non-farm use in this application. A request to conduct a use in OAR 660-06-0025 or 660-33-0120 would be required to comply with state land use laws and local land use regulations, including special fire protection standards.

Forest Land and Farm/Timber Land Policy 5: Subdivision development is prohibited and other land divisions creating new

dwelling sites are not compatible with the protection and efficient management of Forest Lands and Farm/Timber Lands and are discouraged.

Policy 5 is satisfied. Applicant does not request to divide the subject property in this application. Subdivision is not allowed under the proposed designation and zoning. The property consists of three tax lots that are, individually and collective, below the minimum parcel size of 80 acres applied to the Farm/Timber land in Marion County and deemed to be optimum for efficient resource management.

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

Policy 6 is satisfied. Applicant does not request to divide the subject property in this application. The minimum parcel size in the FT zone is 80 acres. The property consists of three tax lots that total 53 acres, less than the minimum parcel size deemed to be optimum for efficient resource management. Land division is not requested or allowed.

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

Policy 7 is satisfied. Applicant does not request a property line adjustment in this application. If the plan and zone changes are approved, a request to adjust a property line related to the subject proper would be required to comply with applicable MCCP policies and MCC criteria.

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

Policy 8 is satisfied. Applicant does not request to site a dwelling in this application. If the plan and zone changes are approved, a request to site a dwelling on the subject property would be reviewed for compliance with applicable MCC criteria.

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

Policy 9 is satisfied. Applicant does not request to site a dwelling in this application. MCC 17.139.070 contains special siting and fire hazard protection requirements for the FT zone. If the plan and zone changes are approved, a request to site a dwelling on the subject property would be required to meet any applicable requirements of OAR 660, Division 6 and MCC 17.139.

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

Policy 10 is satisfied. Applicant does not request to site a dwelling in this application. Aerial photos from 1966 and 1992 show the subject property predominantly stocked in timber, and the property continues to be managed for forest use and stocked in timber. Approval of the application does not require a finding of the predominant use of the property on January 1, 1993.

10. Approval of the comprehensive plan change is recommended.

ZONE CHANGE

11. 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.
12. **MCC 17.123.060(A) is satisfied.** Applicant asks to change the comprehensive plan designation from Primary Agriculture to Farm/Timber and change the zone from EFU to FT. As part of this review, Hearings Officer has evaluated the Forest Land and Farm/Timber Land policies and found the policies to be satisfied. If the BOC approves the comp plan change, the FT zone will be consistent with the Farm/Timber plan designation.
13. **MCC 17.123.060(B) is satisfied.** The area surrounding the subject property is zoned EFU and AR, and is in mixed farm and residential use. The property has been in forest use since at least 1966 without conflict with neighboring farm or residential uses. Resource uses are on three sides. At 53 acres, the property is similar in size to other Farm/Timber parcels in the area. FT zoning of the property is appropriate considering area uses, density and development in the area.
14. **MCC 17.123.060(C) is satisfied.** Electric and telephone utilities are available in the area. Public water and sewer services are not required, or the need for those services is not increased, by the proposed change in the land use designation of the subject property. Though cycles of intensive management activities that generate traffic impacts differ between the two resource comp plan designations, the plan change is not likely to generate new or more intensive traffic impacts, because the property is currently managed for forest uses.
15. **MCC 17.123.060(D) is satisfied.** Effectively, this criterion applies to, or merits increased scrutiny of, a request to convert resource land by development of a non-resource use because lands that were previously designated for proposed uses are unavailable or ill-suited to the use. In the land use planning system, the de facto aim is the conservation of resource lands. Through planning, land is made available for development of non-resource uses only in amounts necessary to

meet the anticipated need for the proposed uses. The BOC does not limit the amount of resource land that can be conserved, and a request to re-designate land from one resource designation to another results in the continuation of resource protection. The BOC considered this criterion in two similar cases. In a 2003 case, the BOC found the focus of that application was site-specific long-term resource management, and other FT zoned lands in the Silverton Hills equally did not address saving the specific site for timber production. The BOC applied an FT zone. In 2011, the BOC reconfirmed that interpretation using the site-specific approach, and again found MCC 17.123.060(D) satisfied. The approach is implicitly accepted by the DLCD and is consistent with the grant of authority to re-designate land from one resource designation to another without requiring an exception. The subject property contains sufficient characteristics of the FT zone, and FT zoning can be applied to protect the property for FT uses.

16. **MCC 17.123.060(E) is satisfied.** The FT zone is the only zone allowed under the Farm/Timber designation.

17. The proposed zone change is recommended.

VI. Recommendation

Hearings Officer finds that Applicant has met its burden of proving that applicable standards and criteria for approval of a comprehensive plan change and zone change are satisfied. Hearings Officer recommends that the BOC **GRANT** the comprehensive plan amendment and zone change applications.

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 6th day of March, 2018.


B Harrison Conley
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Elizabeth, Steven & Denise Helms 2874 Millersberg Drive NE Albany, OR 97321	<u>Agencies Notified</u> Planning Division (via email: gfennimore@co.marion.or.us) (via email: lmilliman@co.marion.or.us) Building Inspection (via email: twheeler@co.marion.or.us) Public Works Engineering (via email: jrasmussen@co.marion.or.us) Assessor (via email: assessor@co.marion.or.us) AAC Member No. 1
Norman Bickell 2232 42 nd Avenue SE #771 Salem, OR 97317	1000 Friends of Oregon (via email: meriel@friends.org)
Aileen Kaye 10095 Parrish Gap Rd. SE Turner, OR 97306	Oregon DLCD 635 Capitol St. NE, Ste. 150 Salem, OR 97301
Laurel Hines 10371 Lake Dr. SE Salem, OR 97306	Oregon Department of State Lands 777 Summer St. NE, Ste. 100 Salem, OR 97301

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 in the United States mail at Salem, Oregon, on the 6th day of March 2018, and that the postage thereon was prepaid.


Christi Klug
Secretary to Hearings Officer