



**Marion County**  
OREGON

## ZONE CHANGE/COMPREHENSIVE PLAN CHANGE APPLICATION

**Do not double-side or spiral bind any documents being submitted**

**Fee: Please check the appropriate box:**

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|--|--|
| <input type="checkbox"/> Zone Change - \$2500+\$40/acre<br><input type="checkbox"/> Comprehensive Plan Change - \$3755+\$70/acre<br><input type="checkbox"/> Zone Change/Comprehensive Plan Change - \$4510+\$70/acre<br><input checked="" type="checkbox"/> Zone Change/Comprehensive Plan Change -<br>with goal exception \$6010+\$70/acre | <input type="checkbox"/> Mineral Aggregate Site - \$6360 base fee +<br>\$30/acre – 0-100 acres<br>\$90/acre – 101-200 acres<br>\$120/acre – 201-399 acres<br>\$180/acre – 400+ acres |
|--|--|

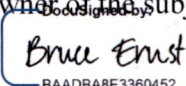
PROPERTY OWNER(S): Bruce Ernst	ADDRESS, CITY, STATE, AND ZIP: P.O. Box 460, St. Paul, Oregon 97137
PROPERTY OWNER(S) (if more than one):	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Matthew Borghard	ADDRESS, CITY, STATE, ZIP 5300 Meadows Road, Suite 200, Lake Oswego 97035
DAYTIME PHONE (if staff has questions about this application): 503-620-8900	E-MAIL: mbo@buckley-law.com
ADDRESS OF SUBJECT PROPERTY: 19937 Highway 99E, Aurora, Oregon 97002	SIZE OF SUBJECT PROPERTY: 13.85 total; 1.6 acres subject to comp. plan and zone change
The property owners request to change the zone from (current) <u>EFU</u> to (proposed) <u>Commercial</u> and/or change the Comprehensive Plan designation from <u>Primary Agriculture</u> to (rural code) <u>Commercial</u> . Provide detailed information on the attached "Applicant Statement" page.	
Will a railroad highway crossing provide the only access to the subject property? ( ) Yes (X) No If yes, which railroad:	

FOR OFFICE USE ONLY:			
Township <u>4S</u>	Range <u>1W</u>	Section <u>23C</u>	<u>Application elements submitted:</u>
Tax lot number(s) <u>200</u>			<input checked="" type="checkbox"/> Title transfer instrument
Zone: <u>EFU</u>   Comp Plan:			<input checked="" type="checkbox"/> 2 Site plans showing existing/proposed zoning
Zone map number: <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural			<input checked="" type="checkbox"/> Applicant statement
<input type="checkbox"/> TPA/header			<input type="checkbox"/> GeoHazard Peer Review (if applicable)
Case Number: <del>200</del> <u>ZC/CP24-007</u>			<input checked="" type="checkbox"/> Filing fee
Signs given (min. agg. only):			Application accepted by: <u>GP</u> Set up by:
Date determined complete:			Date: <u>12/23/24</u>

**THE APPLICANT(S) SHALL CERTIFY THAT:**

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

**PRINTED NAME AND SIGNATURE** of each owner of the subject property.

Bruce Ernst	
Print Name	Signature
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Print Name	Signature
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Print Name	Signature
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Print Name	Signature
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**DATED** this 23rd day of December, 2024



**CONSOLIDATED ZONE CHANGE/COMPREHENSIVE PLAN AMENDMENT/GOAL  
EXCEPTION WRITTEN STATEMENT**

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**Applicant/Owner:**

**Bruce Ernst**

**PO Box 460**

**St. Paul, OR 97137**

**Applicant's Representative**

**Matthew Borghard, Attorney**

**Buckley Law, PC**

**5300 Meadows Road, Suite 200**

**Lake Oswego, OR 97035**

**Subject Property Information**

The subject property is located at 19937 Highway 99E, in unincorporated Marion County, with an Aurora mailing address (Marion County Assessor's Map Number 04-1W-23C, Tax Lot 200) (herein the "Subject Property" or "Property"). The total acreage of the Subject Property is approximately 13.85 acres, with the portion to be rezoned comprising 1.6 acres of the 13.85 total. The owner of the Subject Property is Bruce Ernst (herein the "Owner" or "Applicant"), as evidenced by the Personal Representative's Deed dated December 29, 2016, and recorded in the Marion County Records at Reel 3906, Page 408, a copy of which is attached as **Exhibit A**. The Subject Property is designated as Primary Agriculture in the Marion County Comprehensive Plan and is currently zoned Exclusive Farm Use (EFU) in the Marion County Rural Zoning Ordinance, as shown on the Zoning Map which is attached hereto as **Exhibit B**. The Subject Property is divided into two parts by a railroad right-of-way, granted to the Oregon & California Railroad in 1870, and held since by a railroad, currently by the Southern Pacific Railroad, the recording document of which is attached hereto as **Exhibit C**. The portion of the Subject Property to be rezoned and to which the Comprehensive Plan Amendment shall apply is located on the easterly side of this railroad right-of-way and comprising 1.6 acres (herein the "Easterly Portion"), and the larger portion of the Subject Property located on the westerly side of the railroad right-of-way and comprising 12.25 acres (herein the "Westerly Portion"). The Tax Lot Map for this Subject Property is attached hereto as **Exhibit D**.

The Subject Property is currently developed as a nursery in the Westerly Portion, in-line with the holistic zoning of EFU. The Easterly Portion, fronting Highway 99E, is currently not

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developed, and is instead vacant land designated by the County Assessor's Office as "Rural WASTELAND", and therefore subject to a very low property tax rate. There are no identified sensitive groundwater areas, floodplain hazards, or geologic hazards located on or near either portion of the Subject Property. Access to the Westerly Portion of the Subject Property is provided by the Hubbard Cutoff Road NE, also known as Oregon Highway 551, and access to the Easterly Portion is provided by Highway 99E. There is no way to access one portion of the Subject Property from the other without an unauthorized crossing of the railroad right-of-way (for which there is no crossing built) or by exiting the property and having to travel on the Hubbard Cutoff and Highway 99E. Both of these roads are subject to the jurisdiction of the Oregon Department of Transportation (ODOT).

### **Review Procedure**

The Marion County Comprehensive Plan establishes procedures to be used when considering plan amendments. Plan changes directly involving five or fewer property owners will be considered a quasi-judicial amendment. Quasi-judicial amendments may be initiated by the subject property owner(s) with an application form supplied by the Marion County Planning Division. The proposed amendment is reviewed by the zone change procedure established in the Marion County Zoning Ordinance. A Plan amendment application of this type may be processed simultaneously with a zone change request.

As permitted, the Applicant is requesting this Plan and zone change simultaneously, together with a Statewide Goal 3 (Agriculture) exception, through the quasi-judicial review process.

The County's Rural Zoning Code defines "Quasi-judicial" as "[...]any land use action not meeting the definition of a legislative action (Marion County Code 17.110.464). Legislative action is defined in the Code at MCC 17.110.304: "Legislative actions means a land use action involving amendments to the applicable comprehensive plan, the text of this title, or an amendment to the zoning map involving six or more lots in separate ownership.

### **Background and Proposal**

The Applicant purchased the Subject Property with the purpose of operating the nursery which is extant on the Westerly Portion of the property. At the time of his purchase in 2016, the Easterly Portion was in the same state as it is now, vacant and emplaced with undergrowth. This portion of the Subject Property, being inaccessible from the primary portion of the property, and being too small to be properly farmed, would continue to lay vacant if its uses continue to be restricted to those allowed in the Exclusive Farm Use zone. The Applicant would like to change the zoning designation from Exclusive Farm Use to

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Commercial, and to amend the Marion County Comprehensive Plan designation from Primary Agriculture to Commercial (Rural Code), in order to either allow him to develop the land himself, or to complete a lot partition and sell the land to an interested buyer (the "Proposed Use"). Under the Marion County Code, the permitted uses of a Commercially-zoned property can include, subject to scaling for appropriateness for the rural area they are sited upon, subject to MCC 17.145.050:

- A. Agricultural services and Forestry (SIC 07 and 08, except 0752 kennels);
- B. Offices for building construction contractors, heavy construction contractors and special trade contractors (SIC 15, 16, and 17);
- C. Glass products made of purchased glass (SIC 323);
- D. Transportation and warehousing (SIC 40, 41, 4212, 4225, 43, 4491, 4492, 45, 47);
- E. Communication (SIC 48, except 4812 cellular telephone communications, see subsection (W)(2) of this section);
- F. Motor vehicle wholesale (SIC 5012);
- G. Retail sales (SIC 52, 53, 54, 56, 57, 58, 59, except 598 fuel dealers, see subsection (W)(3) of this section);
- H. Financial, insurance and real estate offices (SIC 60, 61, 62, 63, 64, 65 and 67);
- I. Recreation vehicle parks and campsites (SIC 7033);
- J Services (SIC 72, 73, except crematories and heavy construction equipment rental and leasing);
- K. Automotive repair, services, and parking (SIC 75, except 7521 automobile parking);
- L. Retail and service (SIC 76, except 7692 welding shop and 7699 blacksmith);
- M. Amusement and recreation (SIC 79, except 7948 racing facilities);
- N. Professional offices (SIC 80, 81, 87);
- O. Career, trade or commercial schools (SIC 824 and 829 and as defined in Chapter 17.110 MCC);
- P. Schools, elementary and secondary (as defined in Chapter 17.110MCC);
- Q. Non-profit membership organizations (SIC 86);
- R. Sheet metal shop;
- S. Caretaker's dwelling;
- T. Fire station;
- U. Public and private utility facilities and buildings including cooperatives necessary for public service;
- V. Laboratory seed and soil testing, research;
- W. The following uses are subject to special standards:
  - 1. Mobile home towing service (see limited use, MCC 17.125.070);

2. Wireless communication facilities attached subject to MCC 17.125.110 and pursuant to 17.115.110.
3. Fuel oil distribution firm (see limited use, MCC 17.125.060);
4. Automobile parking lot when developed as described in Chapter 17.118 MCC (SIC 7521);

While some uses that are only indirectly-related to agriculture are allowed in the EFU zone, none are allowed that would put the Easterly Portion of the Subject Property to its best and highest use, while simultaneously balancing the interests of the neighboring property owners and users. Therefore, Applicant is requesting a Comprehensive Plan Amendment from “Primary Agriculture” to “Commercial”, a zone change from “Exclusive Farm Use” to “Commercial”, and a Goal 3 exception pursuant to Section 123.020 of the Marion County Rural Zoning Code (“MCC” or the “Code”). Applicant is filing this application as a consolidated application (the “Application”).

#### **Surrounding Property Information**

The properties that immediately surround the Easterly Portion of the Subject Property are zoned, designated, and used as follows:

<b>Property</b>	<b>Zoning</b>	<b>Use</b>
North – Tax Lot 800	EFU	Residential
South – Tax Lot 400	EFU	Commercial
East – Tax Lot 300	EFU	Agricultural/Residential
West – Tax Lot 200	EFU	Agricultural

The property to the north of the Easterly Portion of the Subject Property, though zoned for EFU, appears to be residential in nature, with a home and several outbuildings, but without visible agricultural activity. It is also similarly bisected by the railroad right-of-way, with the main portion of the property situated to the northwest of the lesser portion that is contiguous with the Subject Property as a whole and the Easterly Portion in particular. The North neighboring property directly north of the Subject Property is approximately 12.87 acres in size, with .55 acres directly contiguous to the Easterly Portion of the Subject Property. This contiguous portion of the North neighboring property is currently vacant similarly to the Easterly Portion of the Subject Property.

The property to the east of the Easterly Portion of the Subject Property is zoned for EFU and is approximately 6.92 acres. It has a home and two outbuildings, and appears to be under cultivation.

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The property to the west of the Easterly Portion of the Subject Property across the railroad right-of-way is the Westerly Portion of the Subject Property, comprising 12.25 acres under cultivation as supply for a nursery located offsite.

The property to the south of the Easterly Portion of the Subject Property is zoned Commercial and is approximately 3.89 acres in size. It is currently utilized as a U-Haul transportation rental and self-storage facility. It occupies all of the land to the east of the railroad right-of-way between the right-of-way and Highway 99E. It is highly developed, with 11 large buildings and dozens of vehicles on the property at any given time. This parcel's use is similar to the likely proposed use of the Easterly Portion of the Subject Property, or more likely more intense than the eventual use of the Easterly Portion of the Subject Property if it is rezoned to Commercial.

There are three properties located close to the Easterly Portion of the Subject Property to the northeast and southeast, as well, and all three are highly developed. The property to the northeast is an agricultural processing facility zoned EFU located on a 3.51 acre parcel of land, of which almost all is developed. To the southeast is a manufactured home park with at least 40 units on 4.16 acres zoned EFU, and south of that property is another agricultural processing facility on 8.49 acres zoned EFU and almost wholly developed.

The land around the Easterly Portion is effectively either light industrial/agricultural-industrial, commercial, or residential.

### **County Comprehensive Plan Amendment**

Two of the three general development policies under the County's Comprehensive Plan for Rural Development are applicable to this site; the third pertains to land divisions, and so is not applicable to this Application.

*(2) "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.*

**Response:** The Commercial (Rural Code) designation sought for this site will not constitute a "strip-type" of commercial development; though the land itself is shaped as a rectangle, the small size of the site as well as the zoning code itself prevent the development of this site into a strip mall or strip-type of commercial development. It is most likely that one or two buildings would eventually be sited on the parcel, rather than a strip-type

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development. It will operate as an extension of the existing, adjacent Commercial (rural code) zoned land directly to the south of the site. This will be a “node” of commercial activity at the intersection of two significant state highways. The expanded Commercial area (as proposed) will act as a (rural code) Commercial center as envisioned by the Commercial designation of the County’s Comprehensive Plan and zoning code. The Commercial zone designation will enable a small expansion of uses allowed on the site, but with the individual business size restrictions of the rural Commercial zone and accompanying regulatory use limitations and no request for expansion of public services to the site, the impact on the character of the surrounding area will be minimal.

*(3) Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.*

**Response:** The rural code’s Commercial zone that will implement the requested Comprehensive Plan change is relatively limited in the scope of allowed uses. This zone also limits the maximum size of individual commercial buildings in a rural community to 4,000 square feet per new building, and a maximum of 60% lot coverage per lot. Any possible Commercial use at this site will serve the surrounding rural zoned areas, which have a relatively high number of residents both in the immediate vicinity and in the general area. The standards built into the (rural code) Commercial zone regulations will make future uses here best suited to this location in between Hubbard and Aurora at the intersection of two state highways, but oriented towards rural economic needs in a way that is fully compatible with existing and future rural development. This policy is satisfied.

### **General Development Policies of the Marion County Comprehensive Plan**

#### **Rural Development Policies**

*New development shall be reviewed to ensure that it will not result in the capacity of the transportation system within the community being exceeded.*

**Response:** The very small scale of the proposed zoning change and allowed use on this site per the regulations of the (rural code) Commercial zone, combined with the frontage of this site to Highway 99E, will make the transportation impact minimal in both relative and absolute terms.

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#### *Utilities Policies*

**Response:** The Applicant is not requesting any extension of utilities nor is he contemplating such an extension in the future. Water is anticipated to be provided by a well, and sewer would be handled by septic, but neither would need to be installed at this time, as there are no immediate proposed specific uses. Therefore, this Application will not impact any of the Rural Plan Utility Policies, as they pertain to expansion/extension, rather than independent procurement of water and sewer utilities.

#### **Rural Service Policies of Comprehensive Plan**

##### *A. General Policies*

- a. The impact on existing services and the potential need for additional facilities should be evaluated when the rural development is proposed.*

**Response:** Given the much larger scale of the residential and agricultural-industrial development surrounding this proposed extension of the (rural code) Commercial zone, it is highly unlikely that the additional development enabled by this proposed extension will have anything other than a trivial impact on the services required by a future commercial development.

- b. 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.*

**Response:** As noted, no additional urban services are requested or needed. The existing roadway system will not be burdened by the small development allowed by-right as a Commercial zone in a rural area. This policy is satisfied.

- c. 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.*

**Response:** There is no indication that there is a need for any additional facilities or services. The current improvements of Highway 99E are adequate for Commercial zone uses on a lot of this size. This policy is satisfied.

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- d. *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.*

**Response:** This is more of an aspirational goal than a criterion and also pertains to government coordination rather than a responsibility of individual property owners or applicants and is therefore is not applicable to this Application. In any case, no additional utilities or utility capacity is needed or contemplated at this time. This policy is satisfied.

- e. *Marion County shall participate in a regional solid waste program and shall develop a program providing adequate solid waste disposal service for rural areas.*

**Response:** This policy is not directly applicable, though the North Marion Recycling and Transfer Station as well as the Woodburn Refuse Disposal Site are located nearby to the Subject Property.

*B. Special District Policies*

- a. *Marion County shall coordinate with the special service district in the County in planning for growth and development which will occur within the districts. A joint review process established through coordination agreements will be used to facilitate this coordinated planning.*

**Response:** There are no County special service districts that serve this area, so this policy is not applicable.

- b. *Marion County shall encourage close cooperation between cities, public and private schools and the County in the matter of school site selection, acquisition, and planning and joint use.*

**Response:** This policy is not directly applicable to this Application as no new residential uses are proposed, but all districts including the Salem-Keiser School District will have the opportunity to comment on this Application.



- c. *The County shall be guided by the policies of the coordinated plan of local school districts in approving development proposals within each district. The County shall also provide notice of land use action to districts that have not yet developed coordinated plans. Comments received from these districts shall be considered in the review of development proposals.*

**Response:** This policy is not applicable to this Application, except as these entities are notified and consulted during this land use application process. The (rural code) Commercial zone uses contribute property taxes to school districts but do not burden the capacities of local school districts. Residential uses are not permitted in (rural code) Commercial zones.

- d. *Marion County shall require evidence that the level of fire protection provided by a fire district is adequate to service proposed land development. If service is not adequate the development shall be denied or be conditioned so that adequate facilities are provided.*

**Response:** This site is located in the Aurora Fire District, with its main headquarters 2 miles down Highway 99E from the site. The small scale of any future development at this site will not burden the resources of the fire district. This district will be notified during the Plan and zone change review process. Therefore, this policy is satisfied.

- e. *In those areas not served by fire districts, Marion County shall require evidence of fire protection by private means prior to approval of future rural subdivisions, commercial, or industrial development.*

**Response:** This site is served by the Aurora Fire District, so this policy is not applicable.

- f. *The creation or expansion of any sewer district as well as the extension of sewer services to lands outside an existing service district's boundaries, unincorporated communities' boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable, however, cost shall not be the only factor or even the primary factor. Any*

*extension shall require the approval of the Marion County Board of Commissioners.*

**Response:** No public sewer service now exists at this site nor is proposed by this application. The scale of allowed uses under the (rural code) Commercial zone at this site is such that no future service is contemplated. There is enough room for a septic system that can support a (rural code) Commercial use. This policy is satisfied.

*g. The creation of expansion of any water district as well as the extension of water services to lands outside an existing service district's boundaries, unincorporated communities' boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable, however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners.*

**Response:** This Application is not seeking the creation or expansion of any water district. The site is not mapped as a sensitive groundwater overlay area. This policy is satisfied.

**Summary:** The Marion County Comprehensive Plan Amendment to (rural code) Commercial approval standards have been satisfied.

### **Zone Change**

Concurrent with the County Comprehensive Plan Amendment Application is a request to change the zoning from Exclusive Farm Use ("EFU") to (rural zoning code) Commercial ("C") (17.145).

The Marion County Zoning Ordinance, Section 1223.060 contains the following zone change 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*

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**Response:** The proposed Commercial zone is consistent with the Comprehensive Plan designation of Commercial as proposed post-amendment. Assuming the goals and policies of the Plan relation to the concurrent and companion Plan Amendment Application are approved as proposed in this application, then the Commercial zone is appropriate to implement the Commercial Plan designation, and this policy is met.

- b. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*

**Response:** The surrounding land uses, densities, and pattern of development to this site make the (rural code) Commercial zone designation appropriate for this site. This 1.6 acre site will operate along with the existing commercial area as a support for the surrounding rural community, and its location at the intersection of two state highways will facilitate retail, wholesale, or services provided to the community with minimal impact on public capacities. The surrounding parcels not owned by the Applicant are currently being utilized for commercial, agricultural processing/light industrial, and residential uses, aside from one farm which will not be impacted by the limited development allowed by the Commercial zoning designation on a rural lot of this size. This policy is satisfied.

- 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*

**Response:** No utilities are required for this zone nor are being requested. The restricted size of future development allowed by the (rural code) Commercial zone and the relatively large size of the lot that will be required to be left vacant following development per the Commercial zone requirements will make it appropriate for an on-site septic system. The proximity of the Fire District Headquarters and the Waste Transfer facilities ensures that a small commercial development will not burden these systems nor the local transportation system. This criterion is satisfied.

- d. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated use due to location, size, or other factors; and*

**Response:** there is no other vacant commercially-zoned land in the vicinity of the site, and there is a low capacity of vacant commercially-zoned land in the County generally. This criterion is satisfied.

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- e. *If the proposed zone allow uses more intensive than uses in other zones appropriate for land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on the adjacent properties zoned for less intensive uses.*

**Response:** This site is unlikely to have noticeable impacts on the surrounding properties with less intensive uses, as it is buffered from the adjacent low-density residential properties by their own vacant land, the railroad right-of-way, and Highway 99E. The other surrounding uses are more intense than the possible uses allowed under the (rural code) Commercial designation for a lot of this size. This criterion is met.

**Summary:** This proposal meets the zone change approval criteria of the Marion County Code.

#### **Applicant's Proposed Findings**

#### **Exception to State Planning Goal 3**

The purpose of Statewide Planning Goal 3 (herein "Goal 3") is to preserve and maintain agricultural lands. The mechanism for excusing application of Goal 3 is through the goal exception process under one or more of the three exceptions to the Statewide Goals. The first type of exception is that the property itself is "physically developed" and not available for resource use. The second type of exception is based on the concept that the land surrounding the subject property is developed to such an extent that the land is "irrevocably committed" to uses other than resource use. The third type of exception, a "reasons exception", requires a demonstrated reasonable need for the proposed use or activity. As discussed above, the Easterly Portion of the Subject Property is currently surrounded by residential, agricultural-industrial, or commercial uses to the north, south, northeast, and southeast, as well as railroad to the west and an Oregon state highway to the east. The parcel itself is too small to economically utilize for its designated resource purpose. The Applicant therefore submits this Application for an "irrevocably committed" exception.

ORS 197.7232 provides in relevant part:

(2) A local government may adopt an exception to a goal if:

- (a) 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;

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**Proposed Finding:** This land is undeveloped, and so this criterion does not apply.

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

**Proposed Finding:** The site is too small to economically farm per the definition supplied in ORS 215.203, and the surrounding uses are too intense to allow economically-sound farming to take place there. The site is bounded by a railroad to the west, a state highway to the east, a commercial development to the south, and has two agricultural processing facilities and a dense manufactured home development across the highway to the east. It is physically impossible to expand this parcel to make it appropriate for farming. Notably, the minimum lot size for a new EFU parcel under the Code is 40 acres, and the site is 1.6 acres. Per OAR 660-004-028, it is not required that all possible uses in an EFU zone be determined to be impossible, but just that farming under ORS 215.203 is impossible. Therefore, this criterion is satisfied.

OAR 660-004-0018(2) provides:

(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;

**Proposed Finding:** The Subject Property has not been used for commercial purposes previously, and so this criterion does not apply.

(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;

**Proposed Finding:** The proposed possible uses of the (rural code) Commercial designation are designed by the Marion County zoning code to maintain the rural character of lands so designated and zoned by the County. As discussed below in the following section, this proposed zoning change necessitating the an exception to Goal three in order to implement an amendment of the Comprehensive Plan comports with all other applicable Statewide Goal requirements. The small impact of a (rural code) Commercial development on a 1.6 acre parcel will not impact the surrounding parcels, some of which have more intense uses than proposed here, even though they are zoned EFU. The Easterly Portion of the Subject Property that is being proposed to be rezoned to (rural code) Commercial is on directly contiguous to vacant land to the north, and a (rural code) Commercial zone that is fully developed to the south. All other surrounding properties are either across the railroad right-of-way or Highway 99E, and therefore are buffered from any negative externalities generated by any of the possible uses allowed under the (rural code) Commercial zone. No new public services are being requested by the Applicant, such as sewer or water service, nor would the small commercial development that may take place in the future be incompatible with the current level of public services such as fire protection and law enforcement. Given that most of the surrounding uses are commercial, agricultural-industrial, or residential in nature, the development of vacant land into a small commercial development that is contiguous with a parcel of the same zoning designation will not disrupt the rural character of the area nor the already-established uses of neighboring properties.

Additionally, the level of development of these surrounding properties is such that the possibility of employing the land as-is under its EFU designation for agricultural cultivation or other EFU uses is economically and practically impossible. The parcel is

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hemmed in by an active railway to the west, a highway to the east, and commercial development to the south, as well as two large agricultural processing facilities and a dense manufactured home development across the highway. These factors have irrevocably committed the parcel to another more appropriate use than EFU provides, unless the railroad and state were to surrender the surrounding land, and the County were to shut down the contiguous commercial development and nearby agricultural processing facilities. Therefore, these criteria are satisfied.

(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;

**Proposed Finding:** The Subject Property is not located within an unincorporated community. This criterion is not applicable.

(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.

**Proposed Finding:** This Application is not requesting that any portion of the Subject Property be designated as appropriate for industrial use. This criterion is not applicable.

Subsections (3) and (4) apply to "Reasons" exceptions, and therefore are not applicable to this Application.

### **Statewide Planning Goals**

*Goal 1: Citizen Involvement. To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

**Response:** The notice to property owners, agencies, and special interest groups, as appropriate, as well as the hearing process before the hearings officer and Board of Commissioners provides the opportunity for citizen involvement. Goal 1 is met for this requested decision and action.

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.

**Response:** 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 which have programs, land ownership, or responsibility within the area included in the plan. Implementation measures can be site specific. Applicant proposes a site-specific Comprehensive Plan amendment. Marion County will notify the affected government units, including the Oregon Department of Land Conservation and Development, of the proposed Comprehensive Plan amendment. Review of this proposed Plan amendment through the County's process will satisfy Goal 2.

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

**Response:** This Goal and its allowed and applicable exceptions are the main substance of the application. Our proposed findings demonstrate that useable and utilized agricultural lands will be preserved and maintained as required under this Goal, and therefore Goal 3 is satisfied.

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 species as the leading use on forest land consistent with sound management practices of soil, air, water, fish, and wildlife resources and for recreational opportunities and agriculture.

**Response:** The Subject Property is not in a forest zone and has no known forestland capability. This Goal is not applicable.

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

**Response:** No Goal 5 resources are mapped or otherwise identified on or near the subject site. This Goal 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.

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**Response:** Normal commercial use of this property will not generate significant particulate discharges. The subject site is not in an identified sensitive groundwater overlay zone.

Goal 7: Area Subject to Natural Disaster and Hazards. *To protect life and property from natural disaster and hazards.*

**Response:** The Subject Property is not in an identified floodplain or a geologically hazardous area. The site has manageable topography. Therefore, 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.*

**Response:** No Goal 8 resources are identified on the subject site or impacted 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.*

**Response:** This Goal addresses commercial and industrial development, primarily in urban areas. Under OAR 660-009-0010(1), OAR Chapter 660, Division 9 applies only to Comprehensive Plans for areas within urban growth boundaries. Additional planning for commercial development outside urban growth boundaries is not required or restricted by this Rule. The Subject Property is not inside an urban growth boundary, therefore Goal 9 is not applicable.

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

**Response:** OAR 660-08-000 is intended to define standards for compliance with Goal 10. OAR 660-08 deals with the provision of adequate numbers of needed housing units, and the efficient use of buildable land within urban growth boundaries. The Subject Property is not within an urban growth boundary, and therefore 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.*

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**Response:** The Applicant has not proposed nor will need an extension of any existing public facilities or services. Water service is anticipated to be provided by groundwater sources, and the ultimate commercial use of the site will not likely require large-scale water utilization. Since development of the site with C-zone uses will require no extension of any new services, Goal 11 is met.

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

*Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.*

The Commercial Rural zoning designation that is sought by the Applicant limits the density of a possible development by regulating the size of buildings and their possible uses. Given the small size of the site in question, and its location fronting Highway 99E near its intersection with the Hubbard Cutoff Road, there will not be a significant impact on local transportation facilities, and Goal 12 does not apply.

Goal 13: Energy Conservation. *To conserve energy.*

**Response:** There is no indication that the granting of this application would significantly increase energy use in the County. Energy may in fact be conserved by allowing commercial uses here that would be in a geographically efficient location at the intersection of two major rural roads and a state highway interchange. Therefore, Goal 13 is satisfied.

Goal 14: Urbanization. *To provide for an orderly and efficient transition from rural to urban land use.*

**Response:** This Goal does not apply, as the site is outside of an urban growth boundary and no urban land uses are proposed; only (rural code) Commercial uses are proposed.

Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and Dunes), and 19 (Ocean Resources), are not applicable because the site is not within the Willamette River Greenway nor nearby to any ocean or coastal resources.

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This Application satisfies all pertinent Statewide Planning Goals.

**Conclusion**

The Applicant has shown compliance with all applicable regulations which would permit a Comprehensive Plan change, a zone change, and an exception to Goal 3. The Applicant has also shown that all aspects of this request are in conformance with applicable goals and policies of the Statewide Planning Goals, the Marion County Comprehensive Plan, and the Marion County Rural Zoning Ordinance. As such, the Applicant respectfully requests that the proposed request be APPROVED as submitted.

**Exhibit List**

Exhibit A – Vesting Deed for the Subject Property

Exhibit B – Zoning Map

Exhibit C – Railroad Right-of-Way Document

Exhibit D – Tax Lot Map