



# **Marion County**

## **OREGON**

### **PUBLIC WORKS**

(503) 588-5036

#### **MEMORANDUM**

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#### **PLANNING**

#### **SURVEY**

**TO:** Marion County Hearings Officer

**FROM:** Marion County Planning Division/Alyssa Schrems

**SUBJECT:** Comprehensive Plan Amendment/Zone Change/ Allied Rock LLC

**DATE:** June 1, 2020

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

#### **FACTS:**

1. Application of Allied Rock LLC, tenant of the Estate of Lois M. Stuart, to change the zone from EFU (Exclusive Farm Use) to TC (Timber Conservation) and change the Comprehensive Plan Designation from Primary Agriculture to Forest Land on a 187 acre property located in the 18800 block of Old Mehama Rd, Stayton (T9S; R1E; Section 15; tax lot 100).
2. The property is located on the north side of Old Mehama Road, approximately 495 feet east of the intersection of Old Mehama Road and Dusty Place SE. The property is improved with one general purpose building. The property is currently being operated as a quarry, and is not specially assessed for agriculture or forest use by the Marion County Tax Assessor's Office. The property was approved for a comprehensive plan text and map amendment in 1993 to add the aggregate site on the property to the County's "Other Sites" inventory, and approved for a conditional use permit to establish a quarry and rock crusher (CP93-4). In 1997, Marion County Board of Commissioners modified the conditions of approval relating to accessing the property for quarry use (CU96-81).
3. Surrounding properties in all directions are zoned EFU. Properties to the north and east are large tract forest and farm land. Properties to the south and west are small to medium sized farm parcels developed with residences.
4. The applicant states that the intent of the Comprehensive Plan Amendment and the Zone Map Amendment is to have the designation of the land match the historical land use of the property.
5. Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use case:

#### **ENGINEERING CONDITION**

**Condition A - Similar to haul route related Conditions in #CU96-81 that modified #CP93-4 for aggregate extraction on the subject property, no heavy truck traffic entering or leaving the subject property shall utilize Kingdom Lane between SR22 and Old Mehama Road. Applicant shall endeavor to ensure that heavy truck traffic, including third party haulers, continue to be directed with sufficient advance notice, as necessary, to the east/west connections of Old Mehama Road at SR 22.**

Oregon Department of Transportation commented that the site is near both the North Santiam Highway, no. 162 (OR-22) and Kingdom Lane Frontage Road, No. 162BR. Both are subject to state laws administered by ODOT. While the site has frontage on Old Mehama Road (Marion County jurisdiction), ODOT and Marion County have previously set restrictions on heavy vehicle usage on Kingdom Lane. The new use of the property must ensure that heavy vehicles use Old Mehama Road to connect with OR-22 directly (to the east or west) rather than cutting through Kingdom Lane. Otherwise, ODOT has no objections to the zone change proposal.

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

### **STAFF FINDINGS AND ANALYSIS**

6. In land use actions of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized.
7. The MCCP plan amendments section states that 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 Board of Commissioners (BOC) provides 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 decision and actions related to use of land and to assure an adequate factual basis for such decision and actions.*

Applicant proposes a site-specific comprehensive plan amendment. The Planning Division notified local and state agencies, including the Oregon Department of Land Conservation and Development (DLCD), for comments. Goal 2 is satisfied.

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

*OAR 660-33 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.*

Applicant's request to re-designate and rezone the subject property for forest use is evaluated under OAR 660-006, specifically OARs 660-006-0015 and 660-006-0050. Goal 3 is met.

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 lands consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

OAR 660-006-0015:

(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 agricultural/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*

The subject property is not inventoried, designated, or zoned as forest land. No goal 4 exception applies. Marion County is not a marginal lands county. The subject property is not an abandoned mill site. The property is zoned EFU under ORS Chapter 215. ORS 308.370, a farm use special assessment provision, was repealed in 1999. ORS 308A now governs farm use special assessment. EFU zoned land in farm use may receive special farm assessment but the farm use definition does not include land subject to forest use special assessment (ORS 308A.056 (2)). The subject property is not specially assessed for farm or forest use. To approve the subject application, the BOC must inventory the property, apply a farm/forest designation consistent with OAR 660-006, and explain the factors used to select the farm/forest designation. Under the MCCP forest lands section:

*The lands intended and designated for forest land uses are shown on the Comprehensive Land Use Plan Map. The boundary between the agricultural areas and the forest land areas was drawn based upon soil type and suitability and existing timber growth. There is a transition area between lands used exclusively for farming and those lands dominated by forest use. There are forest lands that extend beyond the designated forest area as there are farm lands that are present within the forest designated lands. The separation between the lands designated as farmland and forest land is based on the transition in soil types and existing dominant land uses. In this transition area the Farm/Timber designation and zone are applied.*

*As seen in the Background and Inventory Report, National Forest lands, large public and private timber company holdings and small woodlot ownership including farm woodlots dominate forest production in Marion County. Approximately 206,000 acres of National Forest lands are owned and managed by the U.S. Forest Service subject to a multiple-use plan. This area provides the majority of the public recreational, wildlife habitat and watershed opportunities within Marion County.*

*Additionally, a large area of public lands and private timber company properties is located between the National Forest and approximately the north-south township line which extends through Silver Creek Falls State Park. It is made up of large ownerships of from about 80 to several thousand acres and used almost exclusively for timber production, wildlife habitat and watershed protection.*

*The Forest Lands designation is applied to these areas consisting primarily of large commercial timber tracts with a minimum of agricultural mix. The area of the County designation for forest land is intended primarily for the management of timber resources. However, the other values noted above are protected as well. The management of timber resources requires large parcels and minimal amounts of non-timber-*

*related development and conflicting uses. These requirements are compatible with the protection of the other forest land values.*

*A minimum parcel size of 80 acres is applied to the forest land in Marion County. This minimum was chosen because it is consistent with the existing parcel sizes in this area being managed for timber production on a commercial basis. Also, this parcel size is consistent with OAR 660-06-026 and exceeds the recommendations of the State Department of Fish and Wildlife for the protection of significant deer and elk habitat. With development limited to such low densities, the watershed, open space and other resource values found on forest lands will be protected.*

There are 320,000+ Forest Land designated acres in Marion County (MCCP, page I-14), most of them in the eastern portion of the county, including the North Santiam Canyon and the Little North Fork Canyon. In ZC/CP 15-01, ZC/CP 11-002, ZC/CP 03-5, and ZC/CP 17-004, the BOC recognized that land outside the Silverton Hills area may qualify for Farm/Timber designation if it has sufficient Farm/timber characteristics. In this application, the applicant is proposing to recognize land outside the eastern portion of the county as Timber Conservation with a forest lands designation. The Board has previously held that land outside of identified areas may qualify for a different designation if it has sufficient characteristics of the zone. The Forest Land area is described as covering the eastern half of the County, and being comprised of four distinct zones on the basis of ecology, climate, and pattern of land ownership: the Willamette Valley zone, the principle forest zone, the upper slope forest zone, and the subalpine forest zone. The Willamette Valley zone is further defined as lying below 1,000 feet in elevation, existing in blocks of less than 500 acres intermingled with agricultural land, with both deciduous and coniferous stands. The deciduous stands—cottonwoods, Oregon ash, big leaf maple, and willows—occur on bottomlands subject to flooding and on dry sites. Douglas fir is the most common coniferous species, and occurs on a variety of sites. This definition fits the subject property somewhat. The subject property exists below 500 acres at a current size of 187 acres. Aerial images of the subject property from 2019 show a mix of deciduous and coniferous stands present on the property. The subject property has a steep rock formation located on the north and western portions of the property, with elevations on the site ranging from approximately 600 feet in elevation to approximately 1,380, which exceeds the typical elevation of the Willamette Valley zone.

The property has historically been passively used for timber and is currently used as an active quarry. The Timber Conservation designation better suits the subject property than a Farm/Timber designation as the property has steep slopes that are not conducive to farming. The site shares sufficient characteristics to allow Forest Land designation and Timber Conservation zoning. OAR 660-006-0015 is satisfied. Goal 4 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.*

There are no scenic or historic resources identified in the MCCP on the subject or nearby properties. The subject property and neighboring property to the east are identified as part of the Stout Mountain Rattlesnake Dens. The Stout Mountain Rattlesnake Dens are “located two miles west of Mehama and one mile north of Highway 22. The dens are considered by the Nature Conservancy to be among the best rattlesnake dens in the Willamette Valley.” “The Stout Mountain Rattlesnake Dens are primarily protected from incompatible uses by the EFU zone. The dens are located in an area of poor agricultural soil and rock outcroppings and therefore farming activity in and around the dens is not feasible. The dens are adequately safeguarded by the zoning, the soils and terrain and the nature of the animal”. Under the natural area policies, the first policy states “when land use changes are proposed in the vicinity of the identified natural areas, possible conflicts shall be identified and evaluated as to their social, economic, environmental, and energy consequences. Significant conflicts shall be resolved in accordance with State Land Use Goal 5 requirements”.

The applicant states that the applicant will continue to manage the aggregate site in compliance with all conditions of approval and other applicable state and local laws. Potential impacts of the existing aggregate use on the rattlesnake dens were examined in the 1993 CUP and comprehensive plan amendment decision, and the County reviewed comments from ODFW and found there were no significant impacts on wildlife. Applicant is not proposing any changes to the aggregate site concurrent with requested zone change. Applicant will be required to complete an ESEE evaluation at the time any land use changes are proposed.

Goal 5 is satisfied.

*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 forest land designation and Timber Conservation zoning will allow forest uses and perhaps a future dwelling. The MCC contains development standards related to septic system requirements that will have to be met if development occurs. Normal residential use would not emit excessive particulates or noise. In-place regulations will maintain the level of air, water and land resources. Goal 6 is met.

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

The property is not in an identified floodplain. Portions of the subject property include MCCP-identified excessive slope areas. No development is proposed concurrently with the zone change and Comprehensive Plan amendment proposal. Goal 7 is met.

*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.*

Goal 9 addresses commercial and industrial development, primarily in urban areas. OAR Chapter 660, Division 009 applies only to comprehensive plans 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 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 will be required. No changes in daily trips are proposed as no development is proposed concurrent with the zone change and comprehensive plan amendment. Goal 11 is satisfied.

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

*Under OAR 660-012-0060(1) if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9), or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP [transportation system plan]. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
  - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
  - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
  - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

The proposal might allow one dwelling that would potentially generate 10 traffic trips a day and quarry traffic is proposed to remain unchanged. Applicant does not propose changing the functional classification of the road or standards implementing them. LDEP expressed no 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. ODOT and MCPW-LDEP both submitted comments that reiterated that heavy truck traffic from the property cannot utilize Kingdom Lane between OR-22 and Old Mehama Road pursuant to conditions imposed in Marion County Planning File CU96-81. Goal 12 is satisfied.

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

An additional home site and continued quarry use would 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.*

Changing the MCCC designation to Forest land and the zoning to Timber Conservation (TC) will not urbanize the subject property. Goal 14 does not apply.

*Goals 15-19: Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.*

The subject property is not within the Willamette River Greenway, or near ocean or coastal related resources. These goals do not apply.

COMPREHENSIVE PLAN AMENDMENT

8. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The policies that need to be addressed by applicant include:

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

The applicant proposes Forest Land designation and TC zoning. The subject property contains woodland and is comprised 66.6% of non-High Value soils. TC zoning will recognize the parcel's current forest use. If re-designated Forest Land, OAR Division 6 will be applied as required, and policy 1 will be met.

*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.*

The applicant asks for Forest Land rather than Farm/Timber designation. Farm/Timber Land designation, F/T zoning, and Forest Land and Farm/Timber Land Policies 2 and 3 do not apply.

*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.*

Any requested OAR 660-06-0025 or 660-33-0120 uses will be reviewed and required to comply with all state and local criteria, including special fire protection standards. Policy 4 is met.

*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.*

Subdivision is not requested or allowed under the proposed designation and zoning. Policy 5 is met.

*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.*

The minimum parcel size in the TC zone is 80 acres. The subject 187 acre property is above that standard. Land division is not requested, but could be allowed as there are more than 160 acres comprising the subject property. Policy 6 is met.

*Forest Land and Farm/Timber Land Policy 7: Lot line adjustment 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.*

No property line adjustments are requested, and any future property line adjustment requested will be reviewed for compliance with applicable MCCC policies and MCC criteria. Policy 7 is met.

*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.*

No dwelling is requested at this time, but any future dwelling proposal will be reviewed for compliance with applicable MCC criteria. Policy 8 is met.

*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.*

MCC 17.138.060 contains special siting and fire hazard protection requirements for the TC zone. If a dwelling is allowed on the subject property, it would have to meet any applicable OAR 660-006 and MCC chapter 17.138 requirements. Policy 9 is met.

*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.*

The applicant is not requesting to designate and zone the property Farm/Timber. Policy 10 is not applicable.

9. The proposal is consistent with statewide planning goals and the applicable goals and policies in the MCCP. The comprehensive plan amendment is recommended.

#### ZONE CHANGE

10. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:
  - A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
  - B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
  - C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
  - D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
  - E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*
11. Applicant asks to change the comprehensive plan designation from Primary Agriculture to Forest Lands. As part of that process, Forest Land and Farm/Timber Land policies were evaluated. Staff found that the policies are satisfied and, if the Board of Commissioners (BOC) approves the comprehensive plan amendment, the proposed TC zone will be consistent with the Forest Lands plan designation. MCC 17.123.060(A) is satisfied.
12. The area surrounding the subject property is zoned EFU and is in mixed farm, forest, and residential use. The access leading to the property is Old Mehama Road, which is predominantly small EFU parcels that



contain dwellings. To the west are several Public zoned properties that support an electrical substation. Based on aerial photographs, the subject property has been in forest use since 1976 without conflict with neighboring farm or residential uses. With resource uses on all sides, the proposed TC zoning of the subject property is appropriate considering area uses and density and development in the area. MCC 17.123.060(B) is satisfied.

13. Electric, telephone, and other utilities and services are available in the area. The property has an approved approach for access onto Old Mehama Road. No water or sewer services are required. Adequate public facilities, services, and transportation networks are in place, or will be provided concurrently with development of the property. MCC 17.123.060(C) is satisfied.
14. This criterion is difficult to apply in the context of this proposal. The BOC considered this criterion in four 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, 2015, and in 2017, the BOC reconfirmed that interpretation using the site specific approach, and again found MCC 17.123.060(D) satisfied. This approach is implicitly accepted by the state because it does not require an exception to re-designated from one resource use to another because both designations result in resource protection. Greater scrutiny is required when changing from resource to non-resource designation, thus the exception requirement in those circumstances.

The subject property contains sufficient TC zone characteristics and TC zoning can be applied here to protect this site for TC uses. MCC 17.123.060(D) is satisfied.

15. The TC zone is the only zone allowed under the Forest Lands designations. MCC 17.123.060(E) is not applicable.
16. The proposed zone change is recommended.