



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

May 14, 2007



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 005-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 31, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative
Jerry Sorte, Polk County

<paa> yal

FOR 2

DLCD

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DATE
STAMP

DEPT OF

MAY 10 2007

LAND CONSERVATION
AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: **Polk County, OR**

Local file number: **PA 06-02 / ZC 06-02**

Date of Adoption: **5/9/2007**

Date Mailed: **5/10/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **10/10/2006**

☒ Comprehensive Plan Text Amendment

☒ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Polk County Ordinance No. 07-03 adopts a Comprehensive Plan Amendment that changes the Comprehensive Plan Designation from Farm Forest to Rural Lands for the subject 26.28-acre parcel. This ordinance also changes the zoning designation from Farm Forest to Acreage Residential 5-Acre Minimum and adopts an exception to Goals 3, 4, and 14.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **Farm Forest**

to: **Rural Lands**

Zone Map Changed from: **Farm Forest**

to: **Acreage Residential 5-Acre**

Location: **One property E of 2525 Reuben Boise Road, Dallas**

Acres Involved: **26**

Specify Density: Previous: **40-acres (With few exceptions)** New: **5-acres**

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19
☐ ☐ ☒ ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒ ☐ ☐ ☐ ☐ ☐

Was an Exception Adopted? ☒ YES ☐ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD # 005-06 (15621)

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Jerry Sorte**

Phone: (503) 623-9237 Extension:

Address: **850 Main Street**

Fax Number: **503-623-6009**

City: **Dallas**

Zip: **97338-**

E-mail Address: **sorte.jerry@co.polk.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

RECEIVED
MAY 10 2007
POLK COUNTY
COMMUNITY DEVELOPMENT

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON**

In the matter of Plan Amendment PA 06-02)
and Zone Change ZC 06-02 on a 26.28-acre)
Farm Forest zoned property located at)
Township 7S, Range 6W, Section 11, Assessment)
Map tax lots 834, 832, 804, and 831.)

ORDINANCE NO. 07-03

WHEREAS, the Board of Commissioners held a public hearing on March 21, 2007, with due notice of all of such public hearings having been given, and provided an opportunity for public comments and testimony; and

WHEREAS, the Board of Commissioners received a recommendation of approval for Plan Amendment 06-02 and Zone Change 06-02 from the Polk County Hearings Officer based upon his public hearing and deliberations; and

WHEREAS, the record was left open for anyone to submit new evidence and testimony between March 21, 2007 and March 28, 2007; and

WHEREAS, Polk County Commissioners Tom Ritchey, Ron Dodge and Mike Propes conducted a site visit on April 2, 2007; and

WHEREAS, the record was reopened on April 4, 2007 for anyone to submit new evidence and testimony until April 11, 2007; during which period a second site visit was conducted on April 5, 2007; and

WHEREAS, the Board of Commissioners, on April 25, 2007, publicly deliberated and passed a motion unanimously to approve PA 06-02 and ZC 06-02; now, therefore,

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1 That Polk County adopts the findings in favor of PA 06-02 and ZC 06-02 located in the Record and the Hearings Officer Staff Report.

Sec. 2 That Polk County adopts the exception to Oregon Statewide Planning Goals 3, 4, and 14 in favor of PA 06-02 and ZC 06-02 located in the Record and the Hearings Officer Staff Report.

Sec. 3. That Polk County adopts the Polk County Comprehensive Plan Map that designates the 26.28-acre Farm Forest designated subject property, located one property east of 2525 Reuben Boise Road, Dallas, Oregon (Assessment Map T7S, R6W, Section 11, Tax Lots 834, 832, 804, 831), as Rural Lands in the Comprehensive Plan, as shown on Exhibit "A."

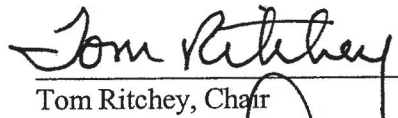
Sec. 4. That Polk County adopts the Polk County Zoning Map that designates the 26.28-acre Farm Forest (FF) zoned subject property, located one property east of 2525 Reuben Boise Road, Dallas, Oregon (Assessment Map T7S, R6W, Section 11, Tax Lots 834, 832, 804, 831), as Acreage Residential 5-Acre Minimum (AR-5), as shown on Exhibit "B."

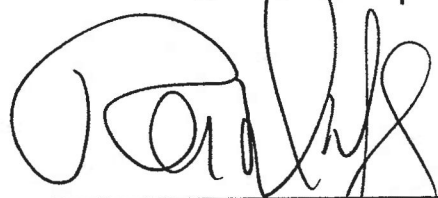
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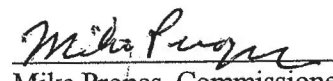
Sec. 5. An emergency is declared, and the provisions of this ordinance become effective upon its adoption.

DATED May 9, 2007 at Dallas, Oregon

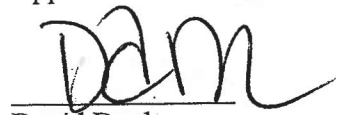
POLK COUNTY BOARD OF COMMISSIONERS


Tom Ritchey, Chair


Ron Dodge, Commissioner

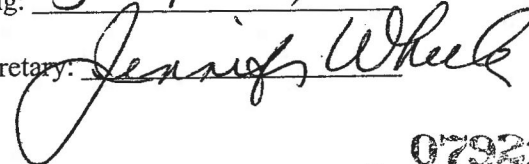

Mike Propes, Commissioner

Approved as to form:


David Doyle
County Counsel

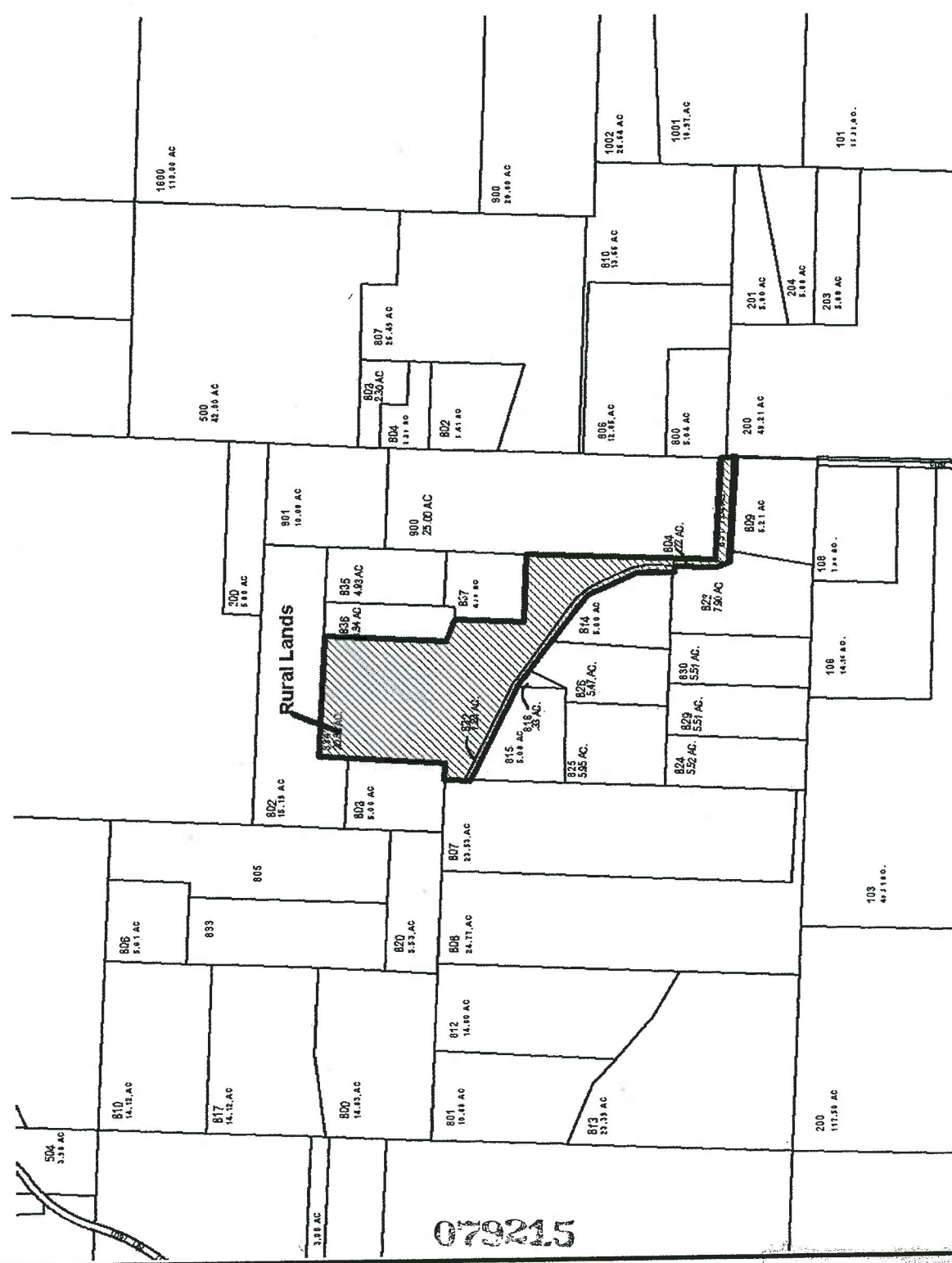
First Reading: 5-9-07

Second Reading: 5-9-07

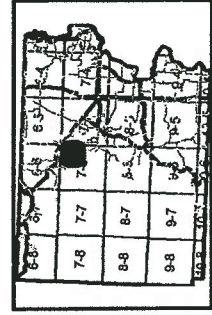
Recording Secretary: 

Community Development

taxlot07
Taxlot Arrows07
Taxlot Boundary3
taxlot07



This map was produced using the Polk County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.



3/12/2007

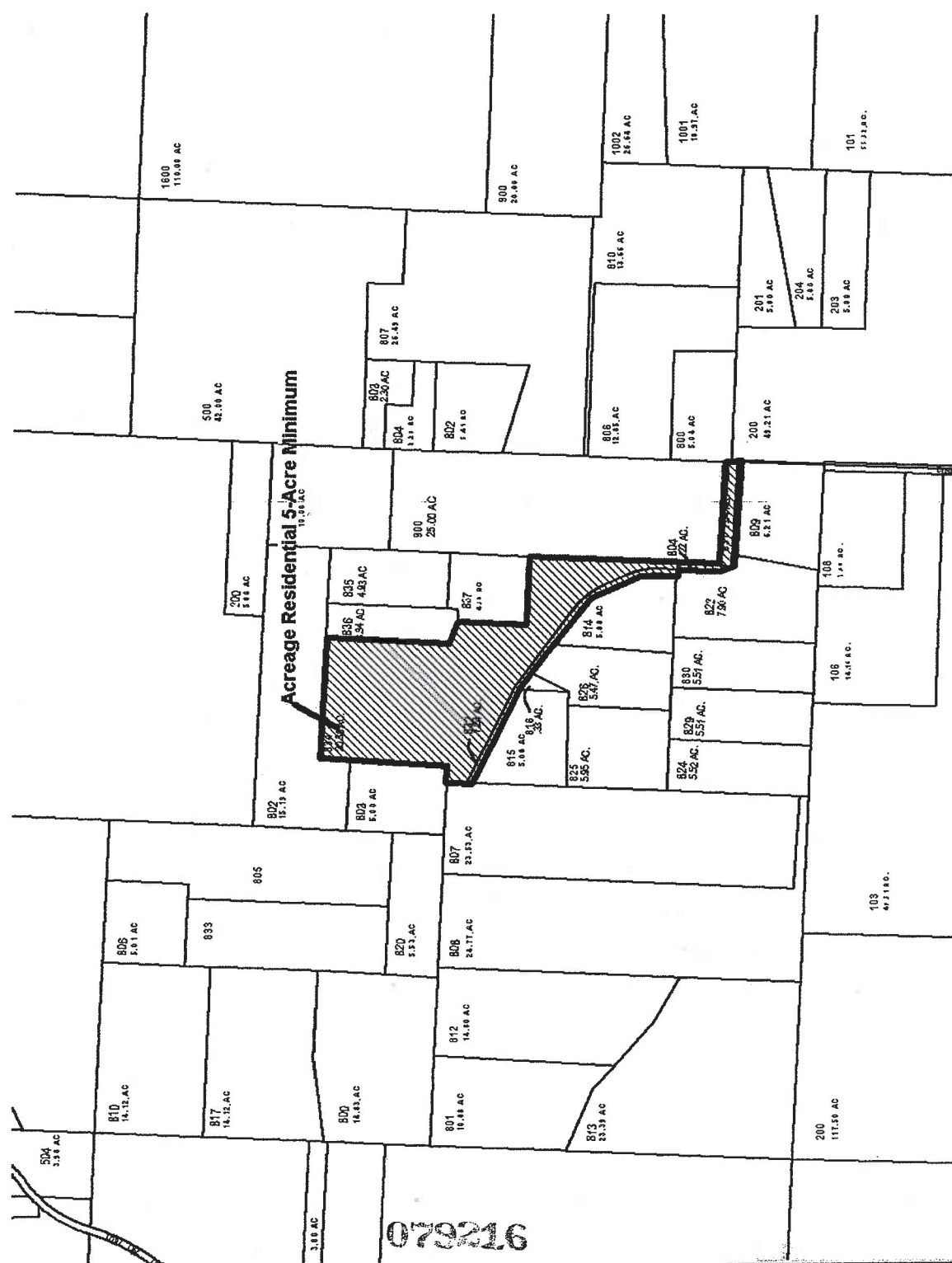


1 in. = 850 ft.

EXHIBIT A

Community Development

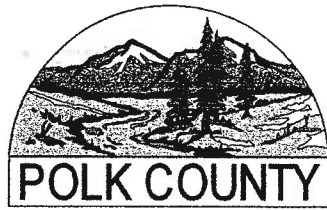
	Taxlot07
	Taxlot Arrows07
	Taxlot Boundary3
	taxlot07



This map was produced using the Polk County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

 $1 \text{ in.} = 850 \text{ ft}$

EXHIBIT B



BEFORE THE PLANNING DIVISION FOR POLK COUNTY, OREGON

In the Matter of the Application of	)	Plan Amendment 06-02
Alland Properties, LLC	)	Zone Change 06-02

SUMMARY OF PROCEEDINGS

This matter arose on the application of Alland Properties, LLC, for a Polk County Comprehensive Plan (PCCP) amendment from Farm Forest to Rural Lands, a zone change from Farm Forest (FF) to Acreage Residential 5-acre minimum (AR-5), and an exception to Statewide Planning Goals 3, 4 and 14, using the "irrevocably committed" criteria. The subject parcel contains approximately 26.28 acres and is east of 2525 Reuben Boise Road, Dallas, Polk County, Oregon, and is legally described as tax lots 804, 831, 832 and 834, section 11, T7S, R6W, WWM (see Attachment "A" of the staff report).

The application was submitted on September 27, 2006. The applicant submitted supplemental findings on November 22, 2006, and January 5, 2007.

The subject property and all surrounding properties are designated Farm Forest in the PCCP and zoned FF pursuant to the Polk County Zoning Ordinance (PCZO). The subject property currently is vacant.

The subject property is not located within the special flood hazard area identified on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) panel number 41053C0225F, dated December 19, 2006. There are no identified significant resources, historic sites, or Willamette River Greenway areas on the subject property. The subject property does not contain any identified wetlands as shown on the Socialist Valley Quadrangle of the National Wetlands Inventory.

The subject property was created in accordance with Polk County Subdivision and Partition Ordinance Section 91.950(b), pursuant to Polk County Planning Permits: LLA 04-07, LLA 04-08, and LLA 04-09; and County Survey 14806. The subject property is currently described in a Bargain and Sale Deed recorded in Polk County Clerk Document 2005-6073, on April 19, 2005.

Soil characteristics of the subject property, as identified in the Natural Resources Conservation Service *Soil Survey of Polk County, Oregon*, utilizing the Polk County Geographic Information System (GIS).

Type	Name	Class	High Value	Slope Percent	Soil Percent	Soil Acres	Forest Productivity
36D	Jory silty clay loam	IIIE	Yes	12-20	0.97%	0.24	122
36C	Jory silty clay loam	IIE	Yes	2-12	15.20%	3.77	122
52C	Nekia silty clay loam	IIE	Yes	2-12	15.03%	3.73	113
52D	Nekia silty clay loam	IIIE	Yes	12-20	0.16%	0.04	113
52F	Nekia silty clay loam	VIE	No	30-50	19.02%	4.72	113
52E	Nekia silty clay loam	IVE	No	20-30	48.09%	11.93	113
36D	Jory silty clay loam	IIE	Yes	12-20	1.53%	0.38	122
	Total:				100.00%	24.81	

	Percent High Value Soils	32.89%
	Percent Non High Value Soils	67.11%
	Total Annual Forest Productivity	2843.04 cubic feet per acre of wood fiber
	Average Annual Forest Productivity	114.59 cubic feet per acre of wood fiber

The subject property contains "high value farmland", as defined in Oregon Administrative Rule (OAR) 660-033-0020(8)(a)(A) in that 32.89% of the subject property is composed of Class II-III soils that are identified as high value pursuant to OAR 660-033-0020(8)(c)(D). The subject property has an average annual forest productivity of 114.59 cubic feet per acre of wood fiber. A map displaying the subject property's soil characteristics appears as Figure 3 in the staff report.

Notice of the January 23, 2007, public hearing before the Polk County Hearings Officer was provided as required by PCZO 111.340 to 111.370. Notice was mailed to property owners located within 750 feet of the outside perimeter of the subject property, on December 19, 2006. Notice was printed in the local *Itemizer-Observer* newspaper on December 20, 2006. Notice was posted on the subject property on January 3, 2007.

The subject property is accessed by way of a private road that connects to Reuben Boise Road, a local road as defined in the *Polk County Transportation Systems Plan*, Figure 3. The applicant states that water would be provided by on-site wells, and on-site sewage disposal systems would serve the subject property.

Prior to the public hearing, written comments were received from Thomas Bartel, 2583 Reuben Boise Road, Dallas, to the effect that "our only concern about this change is the access road from Reuben Boise. Currently this road is barely wide enough to accommodate two vehicles. If this road must be widened for emergency vehicles, construction vehicles or because of increased traffic due to the addition of several more families in the area, then I believe the developer should be held responsible for all costs of the road development."

No other comments were received prior to the public hearing.

PUBLIC HEARING

A public hearing was held in the Polk County Courthouse on January 23, 2007. There were no objections as to notice, jurisdiction or conflict of interest. Staff summarized its report and recited the applicable decision criteria. The Hearings Officer recited the admonitions required by law and ordinance. Mark Shipman, Esq., represented applicant and presented his case. The only member of the public who testified was Kelly Gordon, who expressed opposition and furnished a written statement. Gordon said applicant had failed to show specifically how neighboring residential development makes farm and forest use cost-prohibitive or impractical. He said that forest production is practical, and submitted a photograph (in the record), purporting to show trees growing on the subject property. He said neighboring residences must have been approved as forest template dwellings. He said the soil puts the subject property within good forest production standards. Finally, he asserted there is not enough parcelization within the area to be considered rural residential.

A request was made to leave the record open for additional submissions. The Hearings Officer announced that anyone could submit new evidence prior to 5:00 p.m. on January 30, 2007; anyone could submit evidence to rebut new evidence prior to 5:00 p.m. on February 6, 2007; and applicant could submit final written arguments prior to 5:00 p.m. on February 13, 2007. There was no objection to this schedule.

There being no further business, the hearing was adjourned. Robert W. Oliver, Polk County Hearings Officer, presided.

POST-HEARING SUBMISSIONS

On January 30, 2007, Kelly Gordon made timely submission of additional written testimony. Gordon restated his position that the subject parcel has been, and still is being, used as resource land. He noted a discrepancy between various reports of the subject parcel's acreage, ranging from 22.88 to 26.38 acres, and urged that proceedings be suspended until the true value is definitively established. He said the surrounding area is typified by "mostly forest production with dwellings on some of them." He said the AR-5 zoning is not suitable because, among other factors, the subject parcel is four or more miles from any urban area and services. He said applicants' assertion that there has been no use for timber production or related uses, hence there is no existing forest resource to conserve, fails to justify an exception to Goals 3 and 4. He said all 14 contiguous parcels are in commercial forest use, hence applicants in effect are seeking "spot zoning." Finally he said the soils and slopes are well suited to commercial timber production.

On February 7, 2007, applicant's attorney Shipman made timely submission of a written rebuttal, and waived the remaining time allowed for any further rebuttal by applicant. Shipman restated that the land currently is not in resource use, and said the site is not suitable for commercial forest purposes because of its small size and the surrounding land use pattern. He said applicant stated the size of the parcel correctly, using recorded survey data. He reiterated that applicant's proposed findings specifically indicate why forest operations and/or practices are impracticable on the subject parcel.

FINDINGS

Authorizations for a zone change and a PCCP amendment are under PCZO 111.275, and 115.050. Under these provisions, the Hearings Officer conducts a public hearing pursuant to PCZO 111.190 and 115.030, and makes a recommendation to the Polk County Board of Commissioners. The Board conducts a public hearing pursuant to PCZO 111.200 and 115.030 and makes a final local decision.

(Plan Amendment)

Amendments to the Comprehensive Plan Map must meet one or more of the following criteria: [PCZO 115.050(A)]

(A) The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error, or [PCZO 115.050(A)(1)]

Polk County began periodic review of the PCCP in February 1986. The PCCP designations were reviewed for several areas of the county in the course of periodic review. The region where the subject parcel is located was designated Rural Lands under Polk County's PCCP Periodic Review request for exceptions to Statewide Planning Goals 3, Agriculture Lands and 4, Forestry Lands.

Staff reports that 1,000 Friends of Oregon, a non-profit organization, successfully challenged the requested exception areas in *1,000 Friends of Oregon v. Department of Land Conservation and Development and Polk County*, Trial Court No. 126, 792, Case CA A33638, completed in 1986. Polk County then evaluated the requested areas for built and committed Goal exceptions. The county evaluated general conditions including tax lot size, and whether any improvements existed on properties. Because the subject property was of a larger size and did not contain a dwelling in 1988, a Goal exception was not granted for the subject property. As a result, the subject property was removed from the Rural Lands designation and AR-5 Zoning District and re-designated Farm Forest and zoned FF by Polk County Ordinance No. 87-27 in 1987. Whether surrounding land use patterns and uses irrevocably committed the subject property to uses other than farm or forest use was not considered at that time. The Farm Forest PCCP designation may have been erroneous at the time it was applied to the subject property. This optional criterion could also be addressed by findings showing compliance with PCZO 115.050(A)(2) and (3), as discussed below.

(B) The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and [PCZO 115.050(A)(2)]

Applicant states that the current Farm/Forest PCCP designation is no longer appropriate due to changing conditions in the surrounding area. These changing conditions include the approval of three partition applications and two property line adjustments in the direct vicinity of the subject property since 1990. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels have been created since the subject property was designated Farm/Forest in 1981.

Applicant argues that the surrounding residential development pattern results in farm and/or forest use of the site being cost prohibitive and impracticable. As such, it is appropriate to redesignate the property from a Farm Forest designation to a Rural Lands designation.

A Polk County staff review of surveys available through GIS data found one partition since 1990 on properties contiguous to the subject property. This partition is recorded as County Survey 12294, Partition Plat 1990-0018. Staff found an additional two partitions for properties within 500 feet of the subject property since 1990. These are recorded as 1) County Survey 12488, Partition Plat 1992-0001; and 2) County Survey 13065, Partition Plat 1995-0042. These partitions resulted in a total of seven parcels with parcel sizes ranging from 5.47 acres to 14.81 acres; with an average of 7.54 acres, and a median of 5.52 acres.

The subject property and three surrounding properties, identified as Tax Lots 835, 836, and 837 (T7S, R6W, Section 11), were approved for property line adjustments on March 15, 2004; pursuant to Polk County Planning file numbers LLA 04-07, LLA 04-08, and LLA 04-09. The resultant parcels, as configured after these property line adjustments, are depicted in County Survey 14806.

According to Polk County GIS and Planning Division records, there are 12 properties contiguous to the subject property. These properties range from 3.34 acres to 25 acres. The average size of these properties is 9.25 acres, and the median size of contiguous properties is 5.40 acres.

The subject property is designated Farm Forest under the PCCP. The applicant is proposing to change the designation to Rural Lands. Surrounding properties are designated Farm Forest in the PCCP. Based on the above-described factors and evidence, the Hearings Officer finds there have been changes that have occurred on surrounding lands that could justify changing the designation of the subject property.

(C) **The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following: [PCZO 115.050(A)(3)]**

(1) **Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation. [PCZO 115.050(A)(3)(a)]**

Applicant cites the following from the PCCP:

AGRICULTURE GOALS

1. *To preserve and protect agricultural lands within Polk County.*
2. *To diversify agriculture within Polk County.*
3. *To preserve and protect those resources considered essential for the continued stability of agriculture within Polk County.*

AGRICULTURE POLICIES

1. Agriculture

1.1 Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts.

Applicant urges that, as stated previously, the land subject to the exception is developed with two roadways that serve as the primary access point for a total of 27 parcels, 22 of which are already developed with single-family dwellings and three of which are being developed with single-family dwellings (FORD05-12, FORD 05-19 and FORD 06-19). Additionally, the subject property contains

Buzzard Spring, a tributary to the West Fork of Salt Creek, which serves as the domestic water source for at least six residential properties located in the Salt Creek basin. The site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by Statewide Planning Goals 3 & 4.

1.5 Polk County will discourage the development of nonfarm uses in agricultural areas.

Applicant says the surrounding area is not being used for agricultural resource purposes. Thus, the proposed exception area will not adversely impact any farm operations in the surrounding area.

FOREST GOALS

1. To conserve and protect, and encourage the management of forest lands for continued timber production, harvesting and related uses.

Applicant contends the proposed exception area has not been used for timber production or related uses, therefore, there is no existing forest resource in the proposed exception area to conserve or protect.

FOREST POLICIES

1. Resource Preservation

1.1 Polk County will provide for the protection of productive forest lands. Designated forest lands will be areas defined as one of the following:

- a. Predominately Forest Site Class I, II and III, for Douglas Fir as classified by the U.S. Soil Conservation Service;*
- b. Suitable for commercial forest use;*
- c. In predominately commercial forest use and predominately owned by public agencies and private timber companies;*
- d. Cohesive forest areas with large parcels;*
- e. Necessary for watershed protection;*
- f. Potential reforestation areas; and*
- g. Wildlife and fishery habitat areas, potential and existing recreation areas or those having scenic significance.*

Applicant maintains that the proposed exception area cannot be classified as productive forest land. As stated previously, the property has not been used for timber production or other related uses, it is not suitable for commercial forest use given the rural residential character of the surrounding area and it is not predominately owned by a public agency or private timber company.

PUBLIC FACILITIES AND SERVICES GOALS

1. To develop a timely, orderly and efficient arrangement of public facilities and services to serve as framework for urban and rural development.

2. To support the provision of needed public services for all residents of Polk County.

3. To plan the efficient and economic provision of public facilities and services for the people of Polk County.

Applicant says the proposed exception area is served with transportation facilities, rural fire protection and schools. Water and sewer facilities may be provided on-site in the form of private wells and septic systems. Adequate facilities exist to serve the proposed residential use of the property.

POLICIES

9. Rural Development and Services

9.1 Polk County will require that domestic water and sewage disposal systems for rural areas be provided or maintained at levels appropriate for rural use only. Rural Services are not to be developed to support urban uses.

Applicant says the proposed exception area will be served by existing rural facilities and services.

9.2 Polk County will establish standards for the minimum adequate level of public services in the unincorporated portions of the County. Such services will include, but not necessarily be limited to, educational facilities, police and fire protection, domestic water supply, sewage disposal and roadways. Such standards shall not be considered to be directives governing the operation of schools, community water districts or any other public service agency, but shall be used only to assure that new residential development in rural areas does not exceed the capacity of one or more public service agencies to serve the existing population. The standards shall not conflict with existing State laws regarding the roles, functions and operation of public facilities and services.

Applicant argues that, as stated previously, the proposed exception area will be served by existing rural facilities and services. These facilities and services have adequate capacity to accommodate five additional single-family dwellings.

HOUSING GOALS

- 1. To encourage the development and retention of housing, which provides a variety of choices in type, location, density and cost.*
- 2. To minimize adverse social, economic and environmental impacts resulting from residential development.*
- 3. To assist in the provision of housing to the elderly and poor.*

Applicant states the proposed exception area will add approximately five single-family dwellings to the rural housing stock. The placement of these dwellings on smaller acreages in an area with available services helps minimize any social, economic and environmental impacts.

POLICIES

1. Residential Development

1.1 Polk County will encourage residential development only in those areas where necessary public facilities and services can be economically provided and where conflicts with agricultural uses are minimized.

Applicant states that the necessary public facilities and services can be economically provided to the proposed exception area. Moreover, conflicts with agricultural areas should be non-existent since there are no adjacent agricultural resource uses.

1.3 Polk County will support development of housing which provides variety in location, type, density and cost where compatible with development on surrounding lands and consistent with the predominately rural character of the County.

Applicant urges that the proposed exception area will provide a great opportunity for rural residential development in an area currently characterized by non-resource dwellings.

LAND USE DESIGNATIONS

Rural Lands

The Rural Lands Plan designation applies to lands in the County which for the most part lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetated, and have low densities of residential development. It is the intent of the Rural Lands Plan designation to provide an opportunity for a segment of the population to obtain acreage homesites in a rural area, while at the same time encouraging and protecting agriculture and forestry.

In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4, but are not given an exception to Oregon Statewide Planning Urbanization Goal #14, implementation will be accomplished with the Acreage Residential 10-Acre (AR-10) Zone and

Agriculture and Forestry 10-Acre (AF-10) Zone. In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4 and Urbanization Goal #14, implementation will be accomplished with the Acreage Residential (AR-5) or Suburban Residential (SR) Zones.

Applicant maintains that the proposed exception area conforms to the intent of the Rural Lands Designation by providing an opportunity for acreage home sites in an area already characterized by rural residential development. As part of this application, the applicant is requesting exceptions from Statewide Planning Goals 3, 4, and 14.

Farm/Forest

The Farm/Forest designation applies to lands which, for the most part, lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetative, and have scattered areas of residential development. These lands had originally been designated Rural Lands. However, the Land Conservation and Development Commission (LCDC) did not grant a general exception to the Oregon Statewide Planning Goals, as requested by the County, for approximately 41,000-acres of Rural Lands designated properties. As a result, those properties converted to the Farm Forest Plan Designation. There are many full-time farms located in this area; however, more of the smaller part-time farms that exist in the area were created through the land division process when the area was designated Rural Lands. The Farm Forest Plan Designation recognizes those smaller properties.

These areas exhibit a predominance of agricultural soils and timber lands as defined by State statutes. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services. It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan.

Applicant urges that, as indicated previously, development of the proposed exception area will not adversely impact farm and/or forest uses in the surrounding area. The predominant land use pattern in the surrounding area is rural residential development, which inhibits the establishment of a resource use on the site. As such, it is appropriate to redesignate the subject property from Farm Forest to Rural Lands.

Staff noted that the purpose of the Rural Lands designation is to “provide an opportunity for a segment of the population to obtain acreage homesites in a rural area, while at the same time encouraging and protecting agriculture and forestry” (PCCP, Land Use Designations). The applicant’s proposal would allow for the creation of five new parcels. The proposal would meet the Rural Lands intent because implementation of this designation through the AR-5 zone would allow small farming and forestry operations while allowing homesites of five acres or more to be developed.

The applicant proposed applying the AR-5 Zoning District, if an approval of the proposed amendment to the PCCP designation to Rural Lands is granted. The AR-5 zoning district is designated as an implementing zone for the Rural Lands designation and would be appropriate for a PCCP land use designation of Rural Lands.

Staff concluded that the proposed PCCP amendment would be compatible with the character of the area and would meet the intent and purpose of the Rural Lands PCCP Designation. The Hearings Officer agrees.

- (2) Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4**

shall apply; and [PCZO 115.050(A)(3)(b)]

Applicant's response to statewide planning goal exception criteria are addressed below. An exception to Oregon Statewide Planning Goals 3 and 4 is necessary to exclude the subject property from the Farm Forest PCCP designation. The applicant is proposing the AR-5 Zoning District to implement the proposed Rural Lands PCCP Designation. As a result, a Statewide Planning Goal 14 exception is necessary to comply with Oregon Administrative Rule (OAR) and Goal 14 requirements established by DLCD in the year 2000 (OAR 660-004-0040 or 660-014-0030). The applicant submitted proposed findings regarding an exception to Statewide Planning Goals 3, 4, and 14. The Oregon Statewide Planning Goal 3, 4, and 14, are addressed in below.

**(3) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.
[PCZO 115.050(A)(3)(c)]**

There is no Urban Growth Boundary agreement affecting the subject parcel. This criterion is not applicable to the proposed amendment.

(Zone Change)

A map zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [PCZO 111.140]

Authorizations for a zone change and a PCCP amendment are under PCZO 111.275, and 115.050, subject to recommendation by the Hearings Officer after holding a public hearing pursuant to PCZO 111.190 and 115.030, and decision by the Polk County Board of Commissioners after holding a public hearing pursuant to PCZO 111.200 and 115.030. The Planning Department staff reviews the proposed zone change. Staff prepares a report and recommendation for the Hearings Officer and the Hearings Officer makes a recommendation to the Board for a final local decision. The application is following the proper review process and meets this criterion.

Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- (A) The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275 (A)]**
- (B) The proposal conforms with the purpose statement of the proposed zone; [PCZO 111.275 (B)]**

It is the purpose and function of the Acreage Residential - 5 acre (AR-5) zone to:

- (1) Provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area.**
- (2) Provide larger acreage homesites which will be a buffer area between farm zones and higher density urban and urbanizing areas, thus reducing the conflicts between residential use and usual and normal farming practices.**
- (3) Provide for the orderly growth of the urban areas so that as urbanization occurs, the supporting community will be able to afford the increased capital investments required for services to and within the new urban area and the costs of maintenance of utility facilities, rebuilding of arterial streets, protective services and desired social services.**

- (4) **To provide for the efficient, redivision of acreage subdivisions which may occur in the area.**
- (5) **To promote the pre-planning of future important streets in the area.**
- (6) **To meet the needs of a segment of the population for non-urban, non-farm acreage homesites.**
- (7) **To provide for the above, yet not adversely affect fish and wildlife resources and habitat areas, natural areas, and scenic areas.** [Amended by ordinance #256, dated September 19, 1979.] [PCZO 128.510(A-G)]

Applicant states that the proposed exception area conforms to the intent of the Rural Lands Designation by providing an opportunity for acreage home sites in an area already characterized by rural residential development. As part of this application, the applicant is requesting exceptions from Statewide Planning Goals 3, 4, and 14. The proposed exception area conforms to the AR-5 purpose statement by providing the best use of the subject property based on its site limitations and its location in an area characterized by rural residential development. The proposed exception area will also provide non-urban and non-farm acreage home sites.

Staff states that the applicant concurrently filed an application for a zone change, an application for a PCCP amendment, and an exception to Statewide Planning Goals 3, 4, and 14. The applicant is responsible for showing compliance with criteria for PCCP changes and Goal exceptions in order for the zoning change to be approved. The applicant proposes applying the AR-5 Zoning District, if an approval of the proposed amendment to the PCCP designation to Rural Lands is granted. The AR-5 zoning district is designated as an implementing zone for the Rural Lands designation and would be appropriate for a PCCP land use designation of Rural Lands. If approved, the subject area shall be designated Rural Lands in the PCCP as is proposed as part of PA 06-02. The AR-5 Zoning District for the subject area would be consistent with a Rural Lands PCCP designation.

The applicant is proposing the specific use of creating five new parcels containing at least five acres each which could be developed with single-family dwellings. The proposed Rural Lands PCCP designation would be implemented by the AR-5 Zoning District. The use and development of properties within the AR-5 zone are regulated under PCZO 128.500.

The proposed AR-5 zoning would allow for the creation of parcels that contain at least five acres. As a result, an exception to Oregon Statewide Planning Goal 14 under OAR 660-004-0040 criteria is required, and is addressed below. AR-5 zoning would allow for a single-family residence as an outright permitted use and agricultural and forestry uses could be permitted. The proposed zone change would allow for up to five acreage home sites that would be consistent with the sizes of many of the properties to the west, south, and east of the subject property.

The property owners intend to use water from on-site wells. A septic system and a drain field would be used for sewage disposal. The applicant has not identified any effects on local schools that would result from the proposed change. Southwest Polk Rural Fire Protection District and the Polk County Sheriff's Department provide emergency services at the subject property. The subject property gains access via a private road that is approximately 500 feet and connects the subject property to Reuben Boise Road, a local road as defined in the *Polk County Transportation Systems Plan*, Figure 3. The subject property is currently vacant. New parcels created from the subject property would obtain access via this private road. There are adequate public facilities, services, and transportation networks available at this time to accommodate residential development on the subject property.

The subject property is not located within the special flood hazard area identified on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) panel number 41053C0225F, dated December 19, 2006. There are no identified significant resources, historic sites, or Willamette River Greenway areas on the subject property. The subject property does not contain any identified wetlands as shown on the Socialist Valley Quadrangle of the National Wetlands Inventory.

The Hearings Officer finds that approval of this request would be consistent with the purpose and intent of the AR-5 zone. As stated above, the applicant requests that the subject property be designated Rural Lands in the PCCP as proposed in PA 06-02 and zoned AR-5 as part of ZC 06-02.

(C) The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275 (C)]

Applicant says the rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as it is defined in OAR 660-004-0028. The proposed use of the land will be consistent with what is occurring on the immediate adjacent lands. No new public facilities or services will be required or needed with the proposed dwellings. Therefore, such uses will not commit adjacent or nearby resource land to non-resource use.

Staff reports that all properties contiguous to the subject property are zoned FF. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the Timber Conservation (TC) zone. The AR-5 zone is a residential zone that has a five-acre minimum parcel size and permits one dwelling per parcel. The TC zone is a resource zone that has an 80-acre minimum parcel size and restricts the establishment of dwellings on properties in that zone. The subject property is located within an area where uses appear to be primarily residential acreage home sites to the south, west, and east, and resource based to the north of the subject property.

The parcels that the applicant indicates would be created if PA 06-02/ZC 06-02 is approved would be accessed via a private road that connects to Rueben Boise Road. Additional traffic that would result from the establishment of residential dwellings on the subject property could impact timber and agricultural uses in the area and may make it more difficult or costly to manage the land for timber or agriculture production, but to a minimal extent. According to the applicant, 27 properties (including the subject property) are accessed via an easement across the subject property that connects to Rueben Boise Road.

The proposed zone change would be consistent with the surrounding land uses and pattern of development in the area. Staff concluded that the proposed zone change and PCCP amendment are appropriate when taking into account surrounding land uses. The Hearings Officer agrees and finds that the application meets this criterion.

(D) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275 (D)]

Applicant says the proposed exception area is served with transportation facilities, rural fire protection and schools. Water and sewer facilities may be provided on-site in the form of private wells and septic systems. As such, adequate facilities exist to serve the proposed residential use of the property.

Staff reports that the applicant is proposing the specific use of five parcels, of at least five acres each, with the ability to establish a single family dwelling on each. The proposed Rural Lands PCCP designation would be implemented by the AR-5 Zoning District. The AR-5 zone allows the establishment of a single-family dwelling on each parcel that would require water and on-site sewer (septic tank and drainfield) services. The property owners would use water from on-site wells. The subject property is located within Dallas School District Number 2. A septic system and a drainfield would be used for sewage disposal. The applicant has not identified any effects on local schools that would result from the proposed change. Southwest Polk Rural Fire Protection District and the Polk County Sheriff's Department provide emergency services to the subject property. The subject property is accessed via a private road that connects to Rueben Boise Road, a local road, as defined in the *Polk County Transportation Systems Plan*, Figure 3.

Staff concluded there are adequate public facilities, services, and transportation networks

available at this time for water provision, sewer service, or transportation facilities. Approval of this proposed zone change and PCCP amendment would not authorize the applicant to establish a use that would exceed transportation, water and/or sewer services until such services are planned or available. The Hearings Officer finds that the application would meet this criterion.

(E) The proposed change is appropriate taking into consideration the following:

- (1) Surrounding land uses,**
- (2) The density and pattern of development in the area,**
- (3) Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275 (E) (1-3)]**

Applicant urges that the subject property is primarily surrounded by lands that are developed with non-resource single-family dwellings, of which 25 are served by a 60-foot roadway easement located on the subject property. The current zoning is no longer appropriate due to changing conditions in the surrounding area. These changing conditions include the approval of three partition applications and two property line adjustments in the direct vicinity of the subject property since 1990. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels have been created since the subject property was designated Farm/Forest in 1981.

Applicant contends the site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by the FF zone.

Staff reports that all properties contiguous to the subject property are zoned FF. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the TC zone. The AR-5 zone is a residential zone that has a five-acre minimum parcel size and permits one dwelling per parcel. The TC zone is a resource zone that has an 80-acre minimum parcel size and restricts the establishment of dwellings on properties in that zone. The subject property is located within an area where uses appear to be predominantly residential to the south, east, and west, and resource based to the north of the subject property. The surrounding rural residential and resource area is not served by a sanitary sewer system; so uses that require sewage disposal would require an on-site system.

The parcels that the applicant indicates would be created if PA 06-02/ZC 06-02 is approved would be accessed via a private road that connects to Rueben Boise Road. The additional traffic that would result from the establishment of dwellings on the subject property could impact timber and agricultural uses in the area that may make it more difficult or costly to manage the land for timber or agriculture production, but minimally. According to the applicant, 27 properties are accessed via Rueben Boise Road and an easement across the subject property.

A staff review of surveys available through Polk County GIS data found one partition since 1990 on properties contiguous to the subject property. This partition is recorded as County Survey 12294, Partition Plat 1990-0018. Staff found an additional two partitions for properties within 500 feet of the subject property since 1990. These are recorded as 1) County Survey 12488, Partition Plat 1992-0001; and 2) County Survey 13065, Partition Plat 1995-0042. These partitions resulted in a total of seven parcels with parcel sizes ranging from 5.47 acres to 14.81 acres; with an average of 7.54 acres, and a median of 5.52 acres. The subject property and three surrounding properties, identified as Tax Lots 835, 836, and 837 (T7S, R6W, Section 11), were approved for property line adjustments on March 15, 2004; pursuant to Polk County Planning file numbers LLA 04-07, LLA 04-08, and LLA 04-09. The resultant parcels, as configured after these property line adjustments, are depicted in County Survey 14806.

Limitations have been established in Oregon statutes and administrative rules and subsequently the PCZO for the establishment of dwellings in forest zoned areas due to potential impacts that residents and residences may have on commercial timber practices and costs. The majority of the dwellings in the

area are established on FF zoned properties that surround the subject property. There are 12 properties that are contiguous to the subject property. These properties range from 3.34 acres to 25 acres. The average size of these properties is 9.25 acres, and the median size of contiguous properties is 5.40 acres. According to Polk County Assessor and Planning records, seven of the 12 contiguous properties contain a residential dwelling (one parcel contains two dwellings), and two were approved for dwellings in 2005 pursuant to Polk County Planning Files FORD 05-11 and FORD 05-19. In respect to these properties, which appear to be largely used as residential home sites, partitioning of the subject property into five-acre parcels and establishing a dwelling on each, would have little identified impact. According to the 2004 Polk County Aerial Photograph, the property to the north of the subject property is 15.19 acres, undeveloped, and managed for forestry. The property two properties to the north contains 100.20 acres and appears to be primarily used for forestry. Additional dwellings on the subject property may have an incremental impact on timber and agricultural uses in the area that may make it more difficult or costly to manage the land for timber or agriculture production. However, because a majority of properties contiguous to the subject property to the west, south, and east, contain or have been approved for single family dwellings, staff concluded that a change of zoning of the subject property to AR-5 would not significantly adversely affect allowed uses on adjacent lands.

Staff concluded the proposed zone change would be consistent with the surrounding land uses and pattern of development in the area. Staff concluded that the proposed zone change and PCCP amendment are appropriate when taking into account surrounding land uses. The Hearings Officer agrees, and finds the application meets this criterion.

(F) The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275 (F)]

The applicant claims not to be aware of any intergovernmental agreements that would apply to the proposed exception area. Staff reports the subject property is not located within an urban growth boundary. The Hearings Officer therefore finds this criterion is therefore inapplicable.

(G) The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275 (G)]

Staff reports that an exception to Oregon Statewide Planning Goals 3 and 4 is necessary to exclude the subject property from the Farm Forest PCCP designation. The applicant is proposing the AR-5 Zoning District to implement the proposed Rural Lands PCCP Designation. As a result, a Statewide Planning Goal exception is necessary to comply with Oregon administrative rule and Goal 14 requirements established by the DLCD in the year 2000 (OAR 660-004-0040 or 660-014-0030). The applicant submitted proposed findings regarding an exception to Statewide Planning Goals 3, 4, and 14. The Oregon Statewide Planning Goal 3, 4, and 14 exceptions are addressed below.

(Goal Exception)

- (A) 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 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. [OAR 660-004-0018(1)]
- (B) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:**

(a) Which are the same as the existing land uses on the exception site; or

(b) Which meet the following requirements:

1) 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; and

2) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

3) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses. [OAR 660-004-0018(2)]

(C) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022. [OAR 660-004-0018(3)]

Applicant is proposing that the zoning be AR-5 consistent with a PCCP plan designation of Rural Lands. The applicant is proposing that the use of the property be rural residential, which is compatible and reflective of surrounding development patterns. Approval of this request will authorize the parcelization of the subject property, consistent with the intent of the AR-5 zone to allow rural residential dwellings on lawfully created parcels. No other uses, public facilities or services are needed or required with this request. Applicant argues that, as demonstrated below, the proposed use will be consistent with other applicable goal requirements.

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.

Goal 2: Land Use Planning. The subject application for goal exception is examined under the implementing regulations for this goal.

Goal 3: Agricultural Lands. Goal 3 applies to the subject site. Applicants are requesting an exception to this goal.

Goal 4: Forest Lands. Goal 4 applies to the subject site. Applicants are requesting an exception to this goal.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. No PCCP identified wetlands, aggregate sites or other goal 5 resources are identified on or near this site, therefore Goal 5 is not applicable.

Goal 6: Air, Water and Land Resources Quality. The subject site is not within an identified watershed area. Building a dwelling on the vacant parcel will require septic site evaluation to protect groundwater quality. State law, consistent with this goal, regulates air emissions and water discharges. Normal residential use of the property will not lead to significant air or water discharges.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject site is not within an identified floodplain area or a geologic hazard area, therefore Goal 7 is not applicable.

Goal 8: Recreational Needs. No recreational uses of the property are proposed or implicated by this application. This rule is not applicable.

Goal 9: Economic Development. This goal focuses on commercial and industrial development primarily within urban growth boundaries (UGBs). OAR chapter 660, division 9, the Goal 9 implementing regulation, applies only to comprehensive plans for areas within UGBs. Additional planning for industrial and commercial development outside UGBs is not required or restricted by the rule. The subject site is not within a UGB, and its development for commercial or industrial use is not proposed. This goal is not applicable.

Goal 10: Housing. This goal applies to buildable lands. Buildable lands, as defined in Goal 10, occur in urban and urbanizable areas. Urbanizable lands are, by Statewide Planning Goal definition, within urban growth boundaries. While housing would be provided under this proposal, the subject property is not currently considered buildable or urbanizable under this goal. Therefore Goal 10 is not applicable.

Goal 11: Public Facilities and Services. Water service is provided by on-site wells, and sewage disposal is by on-site subsurface disposal. A septic site evaluation is required prior to development. No public facilities are proposed, and no exception to Goal 11 is required.

Goal 12: Transportation. Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans that significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility. Under OAR 660-012-0060(1), a plan or land use regulation amendment significantly affects a transportation facility if it:

(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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Under OAR 660-012-0060(4), these determinations must be coordinated with affected transportation facility and service providers and other affected local governments.

The subject property is provided access via Reuben Boise Road, designated a local road in Polk County's adopted *Transportation System Plan*. The net effect of the subject application will be to allow approximately five additional dwellings on the subject property. This will result in an increase of approximately 47.85 vehicle trips per day onto Reuben Boise Road. Adding 47.85 vehicle trips will not change the functional classification of the roadways, change standards implementing the functional classification system, allow types or levels of land uses that result in levels of travel or access inconsistent with a local road, or reduce the performance standards of the roadway. The proposal will not significantly affect a transportation facility, therefore Goal 12 is satisfied.

Goal 13: Energy Conservation. Normal residential use of the property should not significantly impact energy consumption.

Goals 14: Urbanization. [Staff Note – The applicant's response to the criteria for a Goal 14 exception are listed below]

Goals 15-19: Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shore Lands), 18 (Beaches and Dunes), and 19 (Ocean Resources), are not applicable because the subject property is not within the Willamette River Greenway or near any ocean or coastal related resources.

Applicant contends that the rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as it is defined in OAR 660-004-0028. The proposed use of the land will be consistent with what is occurring on the immediate adjacent lands. No new public facilities or services will be required or needed with the proposed dwellings. Therefore, such uses will not commit adjacent or nearby resource land to non-resource use.

Applicant further contends that there are no adjacent resource uses that would be impacted by the rural uses being proposed within the exception area. The proposed use, density, public facilities and services will be compatible with adjacent and nearby resource uses. Staff reports that the applicant is proposing a PCCP Amendment, Zone Change, and Goal 3, 4, and 14 exceptions in order to create a total of five new parcels from the subject property with the ability to establish a residential dwelling on each. There are 12 properties that are contiguous to the subject property. These properties range from 3.34 acres to 25.00 acres. The average size of these properties is 9.25 acres, and the median size of surrounding properties is 5.40 acres. According to Polk County Assessor records, seven of these

contiguous properties contain a residential dwelling (one parcel contains two dwellings), and another two were approved for dwellings in 2005 pursuant to Polk County Planning Files FORD 05-11 and FORD 05-19.

All properties contiguous to the subject property are zoned Farm Forest. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the TC zone. The AR-5 zone is a residential zone that has a five-acre minimum parcel size and permits one dwelling per parcel. The TC zone is a resource zone that has an 80-acre minimum parcel size and restricts the establishment of dwellings on properties in that zone. The subject property is located within an area where uses tend to be predominantly residential to the south, east, and west, and resource based to the north of the subject property. The surrounding rural residential and resource area is not served by a sanitary sewer system; therefore uses that require sewage disposal would require an on-site system.

Staff concluded that the application meets these criteria, and the Hearings Officer so finds.

- (D) **A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:**
- (a) **A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;**
 - (b) **For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;**
 - (c) **An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.**
[OAR 660-004-0028(1)]

Applicant argues that the land subject to the exception is irrevocably committed because existing adjacent uses and other relevant factors make uses allowed by the applicable Goals impracticable. Existing adjacent uses consist of the following:

Assessor's Map and Tax Lot Number	Zoning	Parcel Size (acres)	Existing Use	Soil Types (majority)
7.6.11 TL 834 (Subject Property)	FF	26.28	Developed with two roadways	Nekia Silty Clay Loam-52E, 52F (Class IV, VI)
7.6.11 TL 809	FF	6.21	Single-Family Dwelling	Nekia Silty Clay Loam-52D (Class VI)
7.6.11 TL 822	FF	7.9	Single-Family dwelling	36C, 52C, 52D (Even Split)
7.6.11 TL 830	FF	5.51	Single-Family dwelling	Dupee Silt Loam – 27C (Class III)
7.6.11 TL 829	FF	5.51	Undeveloped	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 824	FF	5.52	Undeveloped	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 814	FF	5	Undeveloped	Nekia Silty Clay Loam-52C (Class II)
7.6.11 TL 826	FF	5.47	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 825	FF	5.95	Single-Family	Jory Silty Clay Loam

			dwelling	– 36C (Class II)
7.6.11 TL 815	FF	5	Single-Family dwelling	Nekia Silty Clay Loam-52D (Class III)
7.6.11 TL 807	FF	26.53	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 808	FF	24.77	Single-Family dwelling	Jory Silty Clay Loam – 36D (Class III)
7.6.11 TL 813	FF	23.39	Single-Family dwelling	Jory Silty Clay Loam – 37E (Class VI)
7.6.11 TL 812	FF	14.80	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 801	FF	10.88	Single-Family dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 800	FF	14.83	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 817	FF	14.12	Undeveloped	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 810	FF	14.12	Single-Family dwelling	Jory Silty Clay Loam – 37E (Class VI)
7.6.11 TL 820	FF	5.53	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 833	FF	10	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 806	FF	5.01	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 805	FF	14.81	Single-Family dwelling	Jory Silty Clay Loam – 36D (Class III)
7.6.11 TL 803	FF	5	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 802	FF	15.19	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 837	FF	4	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 835	FF	4.93	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 836	FF	3.34	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 900	FF	25	Single-Family dwelling	Nekia Silty Clay Loam-52C (Class II)

Staff Note - The applicant provided findings under the physically developed and reasons exceptions sections of ORS 197.732(1). These are not included in the staff report, but can be found in the applicant's statements included as Attachment "B" of the staff report. The above findings address ORS 197.732(1)(b).

A staff review of the presence of single family dwellings on the properties presented in the table above concluded that all but two of the applicant's findings concerning the presence of dwellings on the cited properties are correct. The applicant states that the properties located at T7S, R6W, Section 11, Tax Lots 836 and 837 are developed with single family dwellings. A review of Polk County Assessor,

Planning, and Building records indicates that those properties do not contain single family dwellings; however, they have been granted Planning approval for single family dwellings pursuant to Polk County Planning files FORD 05-11 and FORD 05-19.

(E) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

a) The characteristics of the exception area; [OAR 660-004-0028(2)(a)]

Applicant states that the proposed exception area contains one 26.28-acre parcel. According to the "Soil Survey of Marion County Area, Oregon, US Soil Conservation Service, 1972", the subject property contains primarily Nekia Silty Clay Loam, 20 to 30 percent slopes, which is classified as a Class IV soil and Nekia Silty Clay Loam, 30 to 50 percent slopes, which is classified as a Class VI soil. The property gently slopes to the south-east and contains various tree species and groundcover. It has not been actively used for a farm and/or forest operation.

The subject property is served by Reuben Boise Road, which is designated as a local road in Polk County's adopted *Transportation System Plan*. The property also contains a 60-foot roadway easement, which serves as the primary access point for 27 parcels in the surrounding area. Of the 27 parcels served by this roadway easement, 25 are developed with single-family dwellings. The subject property is also served by the Southwest Rural Fire Protection District and the Dallas School District-2.

Staff reports that the applicant cites the Soil Survey of Marion County Area, Oregon, US Soil Conservation Service, 1972. The applicant is undoubtedly referring to the *Natural Resources Conservation Service Soil Survey of Polk County, Oregon*. The soils located on the subject property are identified above. The applicant has identified 27 properties (including the subject property) that gain access via easements across the subject property. A staff review of Polk County Assessor and Planning Records indicates that 18 of those 27 parcels have established single family dwellings, and four (4) have been approved for dwellings pursuant to Polk County Planning Files FORD 05-11, FORD 05-19, FORD 06-13, and FORD 06-19. Figure 4 of the staff report illustrates which properties have established dwellings, these properties are labeled with a "y," and which properties do not have established dwellings or apparent planning approval to establish a dwelling, these properties are labeled with an "n." The properties that have valid planning approval for single family dwellings as of the writing of the staff report are labeled with their Polk County Planning authorizing file number. Therefore, staff concluded that 22 of 27 properties identified by the applicant as gaining access across the subject property, are either established with single family dwellings or already have gained planning approval to establish a single family dwelling on those parcels.

b) The characteristics of the adjacent lands; [OAR 660-004-0028(2)(b)]

As indicated in the table above, lands in the surrounding area are zoned FF and are developed primarily with non-resource single-family dwellings. Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. The Hearings Officer who decided those cases supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer who decided those cases found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

c) The relationship between the exception area and the lands adjacent to it; and [OAR 660-004-0028(2)(c)]

Applicant states that the subject property is primarily surrounded by lands that are developed with non-resource single-family dwellings. Twenty-seven parcels in the immediate surrounding area are served by a 60-foot roadway easement located on the subject property. A northward extension of this easement bisects the subject property and inhibits the establishment of any unified farm and/or forest operation. Additionally, the subject property contains Buzzard Spring, which serves as the domestic water source for at least six residential properties located in Salt Creek. The location of this spring in the northwest corner of property further inhibits a farm and/or forest operation from being established because of prohibitive costs associated with water quality protection.

Applicant contends it is apparent that the current relationship between the proposed exception area and the lands adjacent to it is one of service. The proposed exception area contains vital transportation facilities that serve as the primary access point for adjacent uses. It also contains a spring that serves as the domestic water source for properties located in Salt Creek. These site improvements and the surrounding residential development pattern make resource use of the property cost prohibitive and disruptive to neighboring uses.

Staff assumed that when referring to "properties located in Salt Creek" the applicant meant properties located in the "Salt Creek basin," which is cited in other sections of the applicant findings.

- d) The other relevant factors set forth in OAR 660-040-0028(6). [OAR 660-004-0028(2)(d)]**

The applicant did not specifically address this criterion.

- (F) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:**

- a) Farm use as defined in ORS 215.203;**
- b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and**
- c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a). [OAR 660-004-0028(3)]**

Applicant states that, as indicated in the Soil Survey of Polk County, the subject property is unfit for farm use. Propagation and harvest of forest products is not defined in OAR 660-033-0120. Under OAR 660-006-0025(2)(a), forest operations or forest practices include, but are not limited to, reforestation of forestland, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash. To determine whether forest product propagation and harvest, and forest operations or practices are practicable on the subject property or on a portion of the property, forest products need to be defined. OAR 660-033-0130(6) provides the following forest products definition in relation to a "facility for the primary processing of forest products":

The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

Timber, then, is the focus of forest products for land use purposes on forestland. Just as the farm use definition contemplates more than just growing crops, and includes a purpose of obtaining a profit in money, timber implies more than just growing trees, and imputes a purpose of obtaining a profit in money as well.

Applicant maintains that since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. The Hearings Officer who decided those cases supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer who decided those cases found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

Applicant notes that Polk County recognized the land use pattern and character of the surrounding area as being rural residential, rather than resource based. As such, the proposed exception area was not adequately protected from the adverse impacts of additional residential development in the surrounding

area. The safety measures needed to protect this residential development from landslide hazards, coupled with the site preparation needed to protect Buzzard Spring from contamination, result in forest use of the subject property being cost prohibitive and impracticable.

- (G) **A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area. [OAR 660-004-0028(4)]**

Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands. [OAR 660-004-0028(5)]

Findings of fact for a committed exception shall address the following factors:

- a) **Existing adjacent uses;**
- b) **Existing public facilities and services (water and sewer lines, etc.);**
- c) **Parcel size and ownership patterns of the exception area and adjacent lands:**
 - 1) **Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;**
 - 2) **Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.**
- d) **Neighborhood and regional characteristics;**
- e) **Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;**
- f) **Physical development according to OAR 660-040-0025; and**
- g) **Other relevant factors. [OAR 660-004-0028(6)]**

Applicant says that, as indicated in the table on page 3 of the applicant's proposal (Attachment B of the Staff Report), lands in the surrounding area are zoned FF and are developed primarily with non-resource single-family dwellings. Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. The

Hearings Officer who decided those cases supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer who decided those cases found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

The existing development in the surrounding area is served with on-site private wells and sewage disposal systems. Any future residential development of the subject property would also be served with on-site private wells and sewage disposal systems.

Of the 12 adjacent parcels, nine parcels are 10 acres or less in size while three parcels are 10 acres or greater in size. Additionally, of the 12 parcels, nine are developed with single-family dwellings and seven of these dwellings are served by the existing roadway located on the subject property.

In the immediate surrounding area, a total of 27 parcels are served by the existing roadway, of which 25 are developed with single-family dwellings. It is also important to note that nine of these parcels have been created since the proposed exception area was zoned FF in 1981. The parcels were created through the following land use actions: LD-90-002 & CU90-011, LD-91-10 & CU-91-34, LD-93-19 and PLA Survey #14806. The Hearings Officer who decided those cases supported approval of the non-resource land divisions because of the current parcelization and land use pattern of the surrounding area. Further, the Hearings Officer who decided those cases found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

Applicant contends that Polk County has continually recognized the land use pattern and character of the surrounding area as being rural residential, rather than resource based. As such, the proposed exception area has not been adequately protected from the adverse impacts of additional residential development in the surrounding area.

The region is characterized by FF, AR-5 and TC zoned property with the predominant development pattern being rural residential development on parcels ranging in size from five to 10 acres created on farm and forest lands. Lands located approximately 780 feet to the west and 500 feet north of the subject property are zoned AR-5 and developed with a mixture of non-resource and resource uses. Lands located approximately 370 feet to the north of the subject property are zoned TC and developed with forest resource uses.

The subject property is primarily surrounded by parcels 10 acres or less in size and developed with single-family dwellings. There is one adjacent 25-acre parcel located to the east of the subject property, but it is developed with a single-family dwelling and is not presently being used for farm and/or forest operations.

The subject property is physically developed with a 60-foot wide roadway easement serving 27 parcels in the surrounding area. An extension off of this roadway bisects the property and inhibits the establishment of a unified farm and/or forest operation. In accordance with Polk County FF Zoning District standards, roadways and other transportation facilities are conditionally permitted in the FF zone. There is no indication that a Conditional Use Permit was granted for this roadway located on the subject property, and therefore, there was no assessment of the roadway's impacts to farm and/or forest operations, considering the effects of traffic on the movement of farm and forest vehicles and equipment, and the effects of access to adjacent non-resource parcels created on farm and forest lands.

A staff analysis of Polk County Assessor, Planning, and GIS data, found that 18 of the 27 parcels identified by the applicant as being accessed across the subject property have established single family dwellings, and four have been approved for dwellings pursuant to Polk County Planning Files FORD 05-11, FORD 05-19, FORD 06-13, and FORD 06-19. There are 12 properties contiguous to the subject property. These properties range from 3.34 acres to 25 acres. The average size of these properties is 8.54 acres, and the median size of surrounding properties is 5.04 acres. Seven of these contiguous properties contain a residential dwelling (one parcel contains two dwellings), and another two were approved for dwellings in 2005 pursuant to Polk County Planning Files FORD 05-11 and FORD 05-19. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the Timber

Conservation zone.

- (H) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph. [OAR 660-004-0028(7)]

The applicant has adequately identified the subject property. Aerial photographs are available through the Polk County GIS and have been included in the record for the proceedings.

- (I) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:
- a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and
 - b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations. [OAR 660-004-0028(8)]

The record for the application includes an aerial photograph. Polk County is a jurisdiction with an acknowledged comprehensive plan and land use regulations.

Application of Goal 14 (Urbanization) to Rural Residential Areas [OAR 660-004-0040]

- (1) The purpose of this rule is to specify how Statewide Planning Goal 14, *Urbanization*, applies to rural lands in acknowledged exception areas planned for residential uses.
- (2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3, (*Agricultural Lands*), Goal 4 (*Forest Lands*), or both has been taken. Such lands are referred to in this rule as *rural residential areas*. [OAR 660-004-0040(1 and 2a)]

The subject property is located outside an urban growth boundary. An exception to Goal 3 is being requested as part of this application.

- (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Sections (1) to (8) of this rule.
- (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:
 - (A) land inside an acknowledged urban growth boundary;
 - (B) land inside an acknowledged unincorporated community boundary established pursuant to OAR Chapter 660, Division 022;
 - (C) land in an acknowledged urban reserve area established pursuant to OAR Chapter 660, Division 021;
 - (D) land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;
 - (E) resource land, as defined in OAR 660-004-0005(2);
 - (F) nonresource land, as defined in OAR 660-004-0005(3);
 - (G) marginal land, as defined in ORS 197.247, 1991 Edition;

(H) land planned and zoned primarily for rural industrial, commercial, or public use.
[OAR 660-004-0040(2b)]

Applicant argues that the subject property is not located within an urban growth boundary or an unincorporated community. There are no urban reserve areas, destination resorts, nonresource land, or marginal land areas designated within Polk County. The applicant is requesting an exception to Goal 3 to permit the requested PCCP Map Amendment and Zone Change to AR-5. The property is not zoned primarily for rural industrial, commercial, or public use.

Staff confirmed that the subject property is not located within an urban growth boundary or an unincorporated community. There are no urban reserve areas, destination resorts, nonresource land, or marginal land areas designated within Polk County. The applicant is requesting an exception to Goal 3 to permit the requested PCCP Map Amendment and Zone Change to AR-5. The property is not zoned primarily for rural industrial, commercial, or public use.

(3)(a) This rule shall take effect on the effective date of an amendment to Goal 14 to provide for development of all lawfully created lots and parcels created in rural residential areas prior to the effective date of the amendment to Goal 14.

- (b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in *1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County)*, and before the effective date of this rule. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule. [OAR 660-004-0040(3)]**

Applicant states that the cited OAR took effect on October 4, 2000. The application was submitted September 27, 2006 to the Polk County Community Development Department. Subsection (a) above requires application of the Goal 14 provisions to new applications after the adoption of the subject OAR. Subsection (b) further stipulates that currently acknowledged rural residential areas may continue at the current density of development already acknowledged to comply with Goal 14, but subsequent amendments must be completed consistent with the provisions of this rule. The subject application constitutes an amendment that is required to comply with the provisions of the above referenced rules. The application of rural residential zoning provisions will ensure compliance with these rules.

Staff reports that the subject property currently has a PCCP designation of Farm Forest. The subject property is not acknowledged as a rural residential area. The applicants are applying to change the designation of the subject property to Rural Lands.

(4) The rural residential areas described in Subsection (2)(a) of this rule are rural lands. Division and development of such lands are subject to Statewide Planning Goal 14, *Urbanization*, which prohibits urban use of rural lands. [OAR 660-004-0040(4)]

The subject property is located outside an urban growth boundary. The applicant is requesting an exception to Goal 3 to allow for the development of rural residential uses on the subject property.

(5)(a) A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.

- (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.
- (c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area, in effect on the effective date of this rule, and acknowledged to comply with the statewide planning goals. [OAR 660-004-0040(5)]

Applicant is requesting that the proposed exception area be zoned AR-5 to allow for the creation of approximately five parcels of five acres each. The proposed parcel sizes would be in character with parcel sizes in the surrounding area and would provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area. This proposal will not result in "urbanization" of the area as it is more than one mile from an urban growth boundary, serviced by unimproved roads and on-site private well and septic systems.

- (6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014. [OAR 660-004-0040(6)]

The proposal includes an Exception to Statewide Planning Goal 14 to allow for the development of five-acre rural residential parcels.

- (7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.
- (b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as the minimum lot size.
- (c) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.
- (d) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.
- (e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:
 - (A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10.
 - (B) The number of new lots or parcels to be created does not exceed 10.
 - (C) None of the new lots or parcels will be smaller than two acres.
 - (D) The development is not to be served by a new community sewer system.
 - (E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.

- (F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on the effective date of this rule as the *minimum lot size* for the area.
 - (G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there.
 - (H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.
- (f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.
 - (g) In rural residential areas, the establishment of a new mobile home park or manufactured dwelling park as defined in ORS 446.003(32) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.
 - (h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:
 - (A) The parcel to be divided has two or more permanent habitable dwellings on it;
 - (B) The permanent habitable dwellings on the parcel to be divided were established there before the effective date of this rule;
 - (C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and
 - (D) The partition would not create any vacant parcels on which a new dwelling could be established.
 - (E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.283(t)(A)-(t)(D).
 - (i) For rural residential areas designated after the effective date of this rule, the affected county shall either:
 - (A) Require that any new lot or parcel have an area of at least ten acres, or
 - (B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements for an exception to Goal 14 in OAR 660, Division 014. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas." [OAR 660-004-0040(7)]

Applicant states that the proposal would allow the creation of new parcels that could be as small as five acres. The proposal does not include a planned unit development. This application does not include specific requests for the establishment of multiple dwellings on a single parcel or the establishment of a manufactured dwelling park. There are no parcels that qualify for a reduction in the minimum size pursuant to OAR 660-004-0040(7)(h). The proposal is to establish a minimum lot size of at least five acres for new parcels in accordance with the requirements for an exception to Goal 14.

Staff concluded that the applicant's proposal does not appear to conflict with any of these criteria. The applicant is requesting authorization of a new exception area that would allow for the creation of parcels less than 10 acres, but more than five acres in size. Therefore, the procedures of OAR 660, Division 014 would apply,

(8)(a) Notwithstanding the provisions of Section 7 of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

- (A) Ashland;**
- (B) Central Point;**
- (C) Medford;**
- (D) Newberg;**
- (E) Sandy.**

(b) If a city or urban area listed in Subsection (8)(a):

- (A) has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021; or**
- (B) is part of a regional growth plan that contains at least a twenty-year regional reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658; then any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan.**

(c) Notwithstanding the provisions of Section 7 of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in Subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR 660, Division 021, or is not part of an acknowledged regional growth plan as described in Subsection (b), Paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of Section 7, if the Portland metropolitan service district has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance.

(e) Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if the Portland metropolitan area does not have an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of Section 7 and Subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in Subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at the densities set forth in the Metro

2040 plan. In no case shall the minimum area requirement set for such lands be smaller than 10 acres.

- (g) A local government may allow the creation of a new parcel, or parcels, smaller than a minimum lot size required under subsections (a) through (f) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (E) of this subsection exist:
- (A) The parcel to be divided has two or more permanent, habitable dwellings on it;
 - (B) The permanent, habitable dwellings on the parcel to be divided were established there before the effective date of OAR 660-004-0040;
 - (C) Each new parcel created by the partition would have at least one of those permanent, habitable dwellings on it;
 - (D) The partition would not create any vacant parcels on which new dwellings could be established; and
 - (E) The resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel.
- (F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.283(1)(t)(A) - (D). [OAR 660-004-0040(8)]

Staff confirms that the subject property is located more than one mile from all of the listed cities in subsection (8)(a) above. The subject property is not within an urban reserve area or part of a regional growth plan. The subject property is located more than one mile from the Portland metropolitan area. The proposal would not allow the creation of parcels smaller than the two-acre minimum lot size.

- (9) The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws. [OAR 660-004-0040(9)]

The applicant is requesting that the proposed exception area be zoned AR-5 to allow for the creation of approximately five parcels of five acres each.

The criteria below outline the method defined in Oregon administrative rule for determining that a use proposed for a rural area would not be an urban use. The structure of the OAR requires conclusions that would typically be considered "backward" for this type of proceeding because the applicant is actually showing how the proposal would not result in urban uses being established in a rural area.

- (1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

Applicant is requesting the proposed exception area be zoned AR-5 to allow for the creation of approximately five parcels of five acres each. The proposed parcel sizes would be in character with parcel sizes in the surrounding area and would provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area. This proposal will not result in "urbanization" of the area as it is more than one mile from an Urban Growth Boundary, serviced by unimproved roads and on-site private well and septic systems. The proposal will not commit the property to urban levels of development, requiring findings of support addressing OAR 660-004-0020(2).

- (2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that

is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

Applicant provided a map that identifies the subject property. The current level of development does not include urban services for sewer. The proposed development density would not include urban services for sewer. The property is located outside an Urban Growth Boundary and would not be allowed to connect to urban services due to limitations in law prohibiting extension of urban services outside an urban growth boundary. Therefore, the subject property is not currently committed to urban uses and would not be committed to urban uses by permitting the creation of five-acre rural residential parcels.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

- (a) Size and extent of commercial and industrial uses;**
- (b) Location, number and density of residential dwellings;**
- (c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and**
- (d) Parcel sizes and ownership patterns.**

There are no proposed commercial or industrial uses included with this proposal. The proposed development would provide for self-contained development having on-site wastewater disposal (sewage system) and wells for water service on five-acre rural residential. There are no urban services located within one mile of the subject property and the surrounding land use pattern is rural residential.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

The proposed change would allow for rural residential development is character with the surrounding land uses. It would not result in an urban level of development as contemplated under the above referenced rules.

(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

This proposal will not commit the land to an urban level of development; therefore, no additional findings are required.

CONCLUSIONS

The opponent noted an apparent discrepancy among sources in reporting the precise acreage of the subject property, ranging from 22.88 to 26.38. Conceivably, this could determine whether the subject property could be divided into four or five parcels of five acres each. The Hearings Officer does not believe it necessary to stall the progress of this case for resolution of that issue, because the difference is not material in granting the PCCP redesignation and rezoning of the subject parcel as a whole. Of course, prior to any division of the subject property, the total acreage would become in determining whether to allow four or five parcels. Given that the Board of Commissioners will conduct a *de novo* hearing upon this recommendation, the Hearings Officer sees nothing to be gained by further delay at this stage of proceedings.

Based on the Review and Decision Criteria identified above, the applications submitted for the proposed PCCP designation, zone change, and Statewide Planning Goal Exceptions;

- (a) are following the proper review process through a public hearing before the Polk County Hearings Officer for a recommendation to the Polk County Board of Commissioners,
- (b) have findings to support the proposed change to the comprehensive plan designation,
- (c) are compatible with the proposed zoning designation as stated in PCZO,
- (d) includes property that is served by adequate public facilities for transportation, emergency, school, and electric power services,
- (e) would allow the creation of additional five-acre parcels that would be consistent with the current land use pattern in the area, and
- (f) have addressed the required exception requirements to Statewide Planning Goals 3, 4, and 14, outlined in the Oregon Administrative Rules and required by the PCCP and PCZO.

The proposed PCCP change, zone change, and Statewide Planning Goal Exception applications comply with the provisions of law.

RECOMMENDATION

The Hearings Officer RECOMMENDS that, with respect to the subject property, the Board of Commissioners:

1. Change the PCCP designation from Farm Forest to Rural Lands;
2. Change the Zoning Designation from Farm Forest to Acreage Residential 5-acre minimum (AR-5).
3. Adopt an Exception to Statewide Planning Goals 3, 4, and 14 (PCCP amendment).

Dallas, Oregon, February 14, 2007.



Robert W. Oliver

Polk County Hearings Officer



POLK COUNTY

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338-3182
(503) 623-9237 ★ FAX (503) 623-6009

COMMUNITY DEVELOPMENT

GENE CLEMENS
DIRECTOR

AUSTIN MCGUIGAN
PLANNING DIRECTOR

Staff Report

OWNERS: Alland Properties, LLC.

APPLICANT: Mark Shipman, PC.

APPLICATIONS FOR:

1. A Comprehensive Plan Map amendment from Farm Forest to Rural Lands.
2. A Zone Change from Farm Forest to Acreage Residential 5-acre (AR-5).
3. Statewide Planning Goal Exception (Goals 3, 4, and 14) utilizing the "irrevocably committed" criteria.

LOCATION: The subject parcel is located one property east of 2525 Reuben Boise Road, Dallas, Oregon (Assessment Map T7S, R6W, Section 11, Tax Lots 834, 832, 804, 831).

REVIEW AND DECISION CRITERIA: Polk County Zoning Ordinance Sections:

1. 115.050
2. 111.275, 128.510

Oregon Administrative Rules 660-004-0000, 660-004-0018, 660-004-0020, 660-004-0022, 660-004-0028, 660-004-0040, 660-014-0030, 660-012-0060

STAFF CONTACT: Jerry Sorte

FILE NUMBERS:

1. PA 06-02
2. ZC 06-02

I. PROJECT AND PROPERTY DESCRIPTION

The applicant is proposing to change the Zoning Designation from Farm Forest (FF) to Acreage Residential 5-acre minimum (AR-5) and to change the Comprehensive Plan designation from Farm Forest to Rural Lands on a parcel containing approximately 26.28-acres. The applicant also proposes an Exception to Statewide Planning Goals 3, 4, and 14 for the property utilizing the "irrevocably committed" criteria. The applicant's plot plan is identified as Attachment A.

The application was submitted on September 27, 2006. The applicant submitted supplemental findings on November 22, 2006, and January 5, 2007.

Table 1. Comprehensive Plan Designations and Zoning Designations for the subject property and surrounding area properties.

Location	Comprehensive Plan Designation	Zoning Designation
Subject Property	Farm Forest	Farm Forest
Property North	Farm Forest	Farm Forest
Property South	Farm Forest	Farm Forest
Property East	Farm Forest	Farm Forest
Property West	Farm Forest	Farm Forest

Figure 1. Area zoning. The subject property is centrally located and identified.



PROPERTY DESCRIPTION:

The subject parcel is located one property east of 2525 Reuben Boise Road, Dallas, Oregon (Assessment Map T7S, R6W, Section 11, Tax Lots 834, 832, 804 & 831). The subject property consists of 26.28-acres. The subject property is currently vacant (Plot Plan, Attachment A).

The subject property is not located within the special flood hazard area identified on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) panel number 41053C0225F, dated December 19, 2006. There are no identified significant resources, historic sites, or Willamette River Greenway areas on the subject property. The subject property does not contain any identified wetlands as shown on the Socialist Valley Quadrangle of the National Wetlands Inventory.

PROPERTY HISTORY:

The subject property was created in accordance with Polk County Subdivision and Partition Ordinance Section 91.950(b), pursuant to Polk County Planning Permits: LLA 04-07, LLA 04-08, and LLA 04-09; and County Survey 14806. The subject property is currently described in a Bargain and Sale Deed recorded in Polk County Clerk Document 2005-6073, on April 19, 2005.

Figure 2. Aerial photograph of the subject property and surrounding area properties (2004).

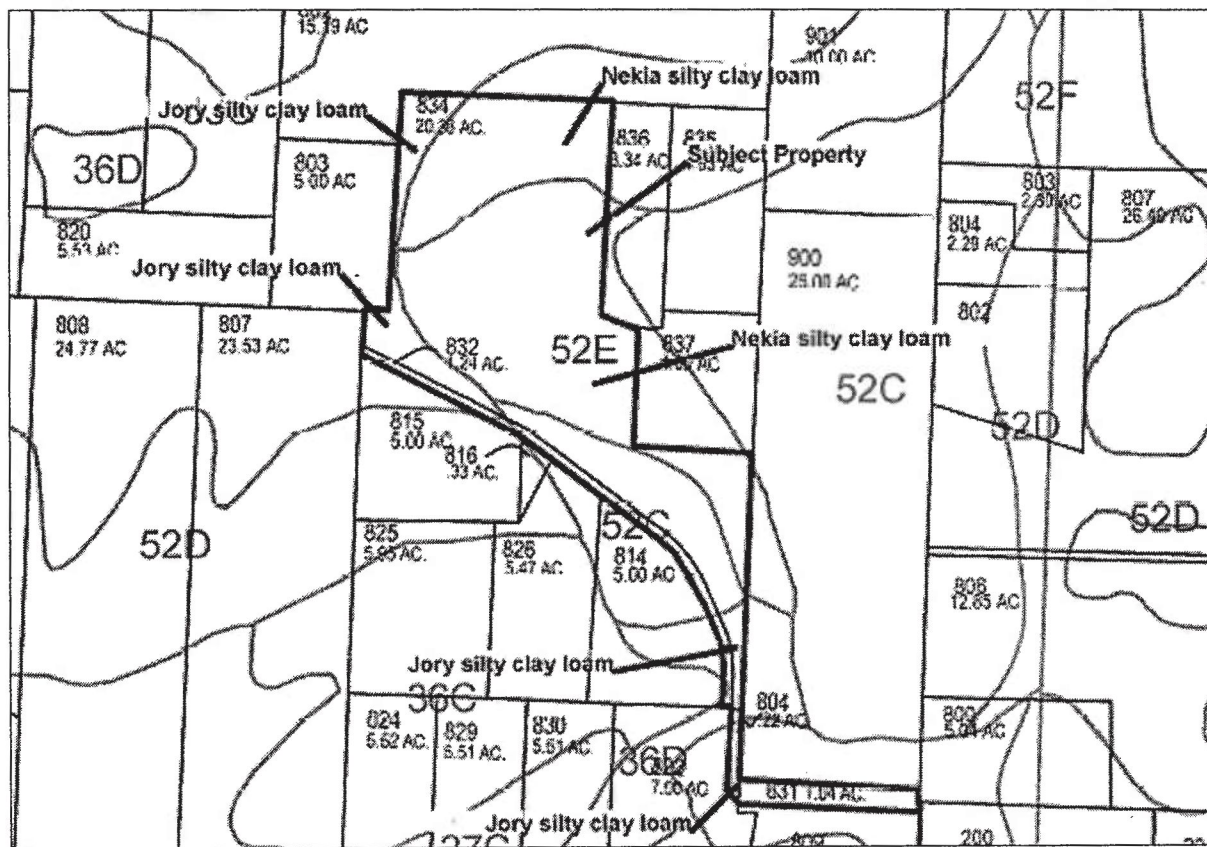


Table 2. Soil characteristics of the subject property, as identified in the Natural Resources Conservation Service Soil Survey of Polk County, Oregon utilizing the Polk County Geographic Information System (GIS).

Type	Name	Class	High Value	Slope Percent	Soil Percent	Soil Acres	Forest Productivity
36D	Jory silty clay loam	IIIE	Yes	12-20	0.97%	0.24	122
36C	Jory silty clay loam	IIE	Yes	2-12	15.20%	3.77	122
52C	Nekia silty clay loam	IIE	Yes	2-12	15.03%	3.73	113
52D	Nekia silty clay loam	IIIE	Yes	12-20	0.16%	0.04	113
52F	Nekia silty clay loam	VIE	No	30-50	19.02%	4.72	113
52E	Nekia silty clay loam	IVE	No	20-30	48.09%	11.93	113
36D	Jory silty clay loam	IIE	Yes	12-20	1.53%	0.38	122
Total:					100.00%	24.81	
Percent High Value Soils					32.89%		
Percent Non High Value Soils					67.11%		
Total Annual Forest Productivity					2843.04 cubic feet per acre of wood fiber		
Average Annual Forest Productivity					114.59 cubic feet per acre of wood fiber		

The subject property contains “high value farmland”, as defined in Oregon Administrative Rule 660-033-0020(8)(a)(A) in that 32.89% of the subject property is composed of Class II-III soils that are identified as high value pursuant to OAR 660-033-0020(8)(c)(D). The subject property has an average annual forest productivity of 114.59 cubic feet per acre of wood fiber.

Figure 3. Soil characteristics of the subject property, as identified in the Natural Resources Conservation Service Soil Survey of Polk County, Oregon map, from the Polk County GIS.



NOTIFICATION:

Notice of the January 23, 2007 public hearing before the Polk County Hearings Officer was provided as required by PCZO 111.340-111.370. Notice was mailed to property owners located within 750 feet of the outside perimeter of the subject property, on December 19, 2006. Notice was printed in the local Itemizer-Observer newspaper on December 20, 2006. Notice was posted on the subject property on January 3, 2007.

SERVICES:

Access: The subject property is accessed via a private road that connects to Rueben Boise Road, a local road, as defined in the Polk County Transportation Systems Plan, Figure 3.

Services: The applicant stated that water would be provided by on-site wells. The applicant stated that on site sewage disposal systems would serve the subject property.

School: Dallas School District 2.

Fire: Southwest Rural Fire Protection District.

Police: Polk County Sheriff

COMMENTS RECEIVED:

Thomas Bartel: Our only concern about this change is the access road from Reuben Boise. Currently this road is barely wide enough to accommodate two vehicles. If this road must be widened for emergency vehicles, construction vehicles or because of increased traffic due to the addition of several more families in the area, then I believe the developer should be held responsible for all costs of the road development.

[Thomas Bartel is a property owner at 2583 Rueben Boise Road, Dallas, OR]

No other comments were received by January 10, 2007.

II. REVIEW & DECISION CRITERIA

The authorizations for a zone change and a Comprehensive Plan amendment are under Polk County Zoning Ordinance (PCZO) Sections 111.275, and 115.050. Under these provisions, the Hearings Officer conducts a public hearing pursuant to PCZO 111.190, and 115.030 and makes a recommendation to the Polk County Board of Commissioners. The Polk County Board of Commissioners conducts a public hearing pursuant to PCZO 111.200 and 115.030 and makes a final local decision. Staff findings and analysis are as follows:

1) Findings for Plan Amendment file PA 06-02:

Amendments to the Comprehensive Plan Map must meet one or more of the following criteria:
[PCZO 115.050(A)]

- (A) The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error, or [PCZO 115.050(A)(1)]**

Applicant Findings: The applicant is not contending that the current Comprehensive Plan designation is erroneous. Rather, the intent is to amend the Comprehensive Plan designation to reflect changing conditions in the surrounding area.

Staff Findings: Polk County began periodic review of the Comprehensive Plan in February 1986. The Comprehensive Plan designations were reviewed for several areas of the county in the course of periodic review. The region where the subject parcel is located was designated Rural Lands under Polk County's Comprehensive Plan Periodic Review request for exceptions to Statewide Planning Goals 3, Agriculture Lands and 4, Forestry Lands.

1,000 Friends of Oregon, a non-profit organization, successfully challenged the requested exception areas in 1,000 Friends of Oregon v. Department of Land Conservation and Development and Polk County, Trial Court No. 126, 792, Case CA A33638, completed in 1986. Polk County then evaluated the requested areas for built and committed Goal exceptions. The County evaluated very general conditions including tax lot size, and whether any improvements existed on properties. Because the subject property was of a larger size and did not contain a dwelling in 1988, a Goal exception was not granted for the subject property. As a result, the subject property was removed from the Rural Lands designation and AR-5 Zoning District and re-designated Farm Forest and zoned Farm Forest (FF) by order of the Board of Commissioners, Ordinance No. 87-27, in 1987. Whether surrounding landuse patterns and uses irrevocably committed the subject property to uses other than farm or forest use was not considered at that time. The Farm Forest comprehensive plan designation may have been erroneous at the time it was applied to the subject property. This optional criterion could also be addressed by findings showing compliance with PCZO 115.050(A)(2) and (3), as discussed below in this Section II, Number (1), Subsections (B) and (C) of this report.

- (B) The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and [PCZO 115.050(A)(2)]**

Applicant Findings: The current Farm/Forest Comprehensive Plan designation is no longer appropriate due to changing conditions in the surrounding area. These changing conditions include the approval of three partition applications and two property line adjustments in the direct vicinity of the subject

property since 1990. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels have been created since the subject property was designated Farm/Forest in 1981.

The surrounding residential development pattern results in farm and/or forest use of the site being cost prohibitive and impracticable. As such, it is appropriate to redesignate the property from a Farm Forest Designation to a Rural Lands designation.

Staff Findings: A staff review of surveys available through Polk County GIS data found one (1) partition since 1990 on properties contiguous to the subject property. This partition is recorded as County Survey 12294, Partition Plat 1990-0018. Staff found an additional two (2) partitions for properties within 500 feet of the subject property since 1990. These are recorded as 1) County Survey 12488, Partition Plat 1992-0001; and 2) County Survey 13065, Partition Plat 1995-0042. These partitions resulted in a total of seven (7) parcels with parcel sizes ranging from 5.47-acres to 14.81-acres; with an average of 7.54-acres, and a median of 5.52-acres.

The subject property and three surrounding properties, identified as Tax Lots 835, 836, and 837 (T7S, R6W, Section 11), were approved for property line adjustments on March 15, 2004; pursuant to Polk County Planning file numbers LLA 04-07, LLA 04-08, and LLA 04-09. The resultant parcels, as configured after these property line adjustments, are depicted in County Survey 14806.

According to Polk County GIS and Planning records, there are 12 properties contiguous to the subject property. These properties range from 3.34-acres to 25.00-acres. The average size of these properties is 9.25-acres, and the median size of contiguous properties is 5.40-acres.

The subject property is located within the Farm Forest Comprehensive Plan designation. The applicant is proposing to change the Comprehensive Plan designation to Rural Lands. Surrounding properties are designated Farm Forest in the Comprehensive Plan. Based on the above-described factors and evidence, there have been changes that have occurred on surrounding lands that could constitute changing the Comprehensive Plan designation of the subject property.

(C) The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following: [PCZO 115.050(A)(3)]

(1) Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation. [PCZO 115.050(A)(3)(a)]

Applicant Findings:

The following relevant goals and policies have been excerpted from the Polk County Comprehensive Plan.

AGRICULTURE GOALS

- 1. To preserve and protect agricultural lands within Polk County.*
- 2. To diversify agriculture within Polk County.*
- 3. To preserve and protect those resources considered essential for the continued stability of agriculture within Polk County.*

Proposed [Applicant] Finding:

AGRICULTURE POLICIES

1. Agriculture

1.1 Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts.

Proposed [Applicant] Finding: As stated previously, the land subject to the exception is developed with two roadways that serve as the primary access point for a total of 27 parcels, 22 of which are

[Applicant Findings Continued...]

already developed with single-family dwellings and three of which are being developed with single-family dwellings (FORD05-12, FORD 05-19 and FORD 06-19). Additionally, the subject property contains Buzzard Spring, a tributary to the West Fork of Salt Creek, which serves as the domestic water source for at least six residential properties located in the Salt Creek basin. The site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by Statewide Planning Goals 3 & 4.

1.5 Polk County will discourage the development of nonfarm uses in agricultural areas.

Proposed [Applicant] Finding: The surrounding area is not being used for agricultural resource purposes. Thus, the proposed exception area will not adversely impact any farm operations in the surrounding area.

FOREST GOALS

1. To conserve and protect, and encourage the management of forest lands for continued timber production, harvesting and related uses.

Proposed [Applicant] Finding: The proposed exception area has not been used for timber production or related uses, therefore, there is no existing forest resource in the proposed exception area to conserve or protect.

FOREST POLICIES

1. Resource Preservation

1.1 Polk County will provide for the protection of productive forest lands. Designated forest lands will be areas defined as one of the following:

- a. Predominately Forest Site Class I, II and III, for Douglas Fir as classified by the U.S. Soil Conservation Service;*
- b. Suitable for commercial forest use;*
- c. In predominately commercial forest use and predominately owned by public agencies and private timber companies;*
- d. Cohesive forest areas with large parcels;*
- e. Necessary for watershed protection;*
- f. Potential reforestation areas; and*
- g. Wildlife and fishery habitat areas, potential and existing recreation areas or those having scenic significance.*

Proposed [Applicant] Finding: The proposed exception area can not be classified as productive forest land. As stated previously, the property has not been used for timber production or other related uses, it is not suitable for commercial forest use given the rural residential character of the surrounding area and it is not predominately owned by a public agency or private timber company.

PUBLIC FACILITIES AND SERVICES GOALS

- 1. To develop a timely, orderly and efficient arrangement of public facilities and services to serve as framework for urban and rural development.*
- 2. To support the provision of needed public services for all residents of Polk County.*
- 3. To plan the efficient and economic provision of public facilities and services for the people of Polk County.*

[Applicant Findings Continued...]

Proposed [Applicant] Finding: The proposed exception area is served with transportation facilities, rural fire protection and schools. Water and sewer facilities may be provided on-site in the form of private wells and septic systems. Adequate facilities exist to serve the proposed residential use of the property.

POLICIES

9. Rural Development and Services

9.1 Polk County will require that domestic water and sewage disposal systems for rural areas be provided or maintained at levels appropriate for rural use only. Rural Services are not to be developed to support urban uses.

Proposed [Applicant] Finding: The proposed exception area will be served by existing rural facilities and services.

9.2 Polk County will establish standards for the minimum adequate level of public services in the unincorporated portions of the County. Such services will include, but not necessarily be limited to, educational facilities, police and fire protection, domestic water supply, sewage disposal and roadways. Such standards shall not be considered to be directives governing the operation of schools, community water districts or any other public service agency, but shall be used only to assure that new residential development in rural areas does not exceed the capacity of one or more public service agencies to serve the existing population. The standards shall not conflict with existing State laws regarding the roles, functions and operation of public facilities and services.

Proposed [Applicant] Finding: As stated previously, the proposed exception area will be served by existing rural facilities and services. These facilities and services have adequate capacity to accommodate five additional single-family dwellings.

HOUSING GOALS

1. To encourage the development and retention of housing, which provides a variety of choices in type, location, density and cost.

2. To minimize adverse social, economic and environmental impacts resulting from residential development.

3. To assist in the provision of housing to the elderly and poor.

Proposed [Applicant] Finding: The proposed exception area will add approximately five single-family dwellings to the rural housing stock. The placement of these dwellings on smaller acreages in an area with available services helps minimize any social, economic and environmental impacts.

POLICIES

1. Residential Development

1.1 Polk County will encourage residential development only in those areas where necessary public facilities and services can be economically provided and where conflicts with agricultural uses are minimized.

Proposed [Applicant] Finding: The necessary public facilities and services can be economically provided to the proposed exception area. Moreover, conflicts with agricultural areas should be non-existent since there are no adjacent agricultural resource uses.

1.3 Polk County will support development of housing which provides variety in location, type, density and cost where compatible with development on surrounding lands and consistent with the predominately rural character of the County.

Proposed [Applicant] Finding: The proposed exception area provides a great opportunity for rural residential development in an area currently characterized by non-resource dwellings.

LAND USE DESIGNATIONS

[Applicant Findings Continued...]

Rural Lands

The Rural Lands Plan designation applies to lands in the County which for the most part lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetated, and have low densities of residential development. It is the intent of the Rural Lands Plan designation to provide an opportunity for a segment of the population to obtain acreage homesites in a rural area, while at the same time encouraging and protecting agriculture and forestry.

In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4, but are not given an exception to Oregon Statewide Planning Urbanization Goal #14, implementation will be accomplished with the Acreage Residential 10-Acre (AR-10) Zone and Agriculture and Forestry 10-Acre (AF-10) Zone. In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4 and Urbanization Goal #14, implementation will be accomplished with the Acreage Residential (AR-5) or Suburban Residential (SR) Zones.

Proposed [Applicant] Finding: The proposed exception area conforms to the intent of the Rural Lands Designation by providing an opportunity for acreage homesites in an area already characterized by rural residential development. As part of this application, the applicant is requesting exceptions from Statewide Planning Goals 3, 4, and 14.

Farm/Forest

The Farm/Forest designation applies to lands which, for the most part, lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetative, and have scattered areas of residential development. These lands had originally been designated Rural Lands. However, the Land Conservation and Development Commission (LCDC) did not grant a general exception to the Oregon Statewide Planning Goals, as requested by the County, for approximately 41,000-acres of Rural Lands designated properties. As a result, those properties converted to the Farm Forest Plan Designation. There are many full-time farms located in this area, however, more of the smaller part-time farms that exist in the area were created through the land division process when the area was designated Rural Lands. The Farm Forest Plan Designation recognizes those smaller properties.

These areas exhibit a predominance of agricultural soils and timber lands as defined by State statutes. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services. It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan.

Proposed [Applicant] Finding: As indicated previously, development of the proposed exception area will not adversely impact farm and/or forest uses in the surrounding area. The predominant land use pattern in the surrounding area is rural residential development, which inhibits the establishment of a resource use on the site. As such, it is appropriate to redesignate the subject property from Farm Forest to Rural Lands.

Staff Findings: The purpose of the Rural Lands designation is to "...provide an opportunity for a segment of the population to obtain acreage homesites in a rural area, while at the same time encouraging and protecting agriculture and forestry" (Polk County Comprehensive Plan, Land Use Designations). The applicant's proposal would allow for the creation of five new parcels. The proposal would meet the Rural Lands intent because implementation of this designation through the AR-5 zone would allow small farming and forestry operations while allowing homesites of 5-acres or more to be developed.

The applicant proposes applying the Acreage Residential 5-acre minimum (AR-5) Zoning District, if an

approval of the proposed amendment to the Comprehensive Plan designation to Rural Lands is granted. The AR-5 zoning district is designated as an implementing zone for the Rural Lands designation and would be appropriate for a Comprehensive Plan land use designation of Rural Lands.

Staff finds that the proposed Comprehensive Plan amendment would be compatible with the character of the area and would meet the intent and purpose of the Rural Lands Comprehensive Plan Designation.

- (2) **Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and [PCZO 115.050(A)(3)(b)]**

Staff Findings: The applicant's response to statewide planning goal exception criteria are addressed in Section II, Numbers 3 and 4, below. An exception to Oregon Statewide Planning Goals 3 and 4 is necessary to exclude the subject property from the Farm Forest Comprehensive Plan designation. The applicant is proposing the Acreage Residential 5-acre minimum (AR-5) Zoning District to implement the proposed Rural Lands Comprehensive Plan Designation. As a result, a Statewide Planning Goal 14 exception is necessary to comply with Oregon Administrative Rule (OAR) and Goal 14 requirements established by the Oregon Land Conservation and Development Commission in the year 2000 (OAR 660-004-0040 or 660-014-0030). The applicant submitted proposed findings regarding an exception to Statewide Planning Goals 3, 4, and 14. The Oregon Statewide Planning Goal 3, 4, and 14, are addressed in Section II, Numbers 3 and 4 of this staff report.

- (3) **Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.050(A)(3)(c)]**

Applicant Findings: The applicant is not aware of any intergovernmental agreements that would apply to the proposed exception area.

Staff Findings: The subject property is located within the Farm Forest Comprehensive Plan designation. The applicant is proposing to change the Comprehensive Plan designation to Rural Lands. Surrounding properties are designated Farm Forest in the Comprehensive Plan. The subject property is not located within an urban growth boundary or within an incorporated city. As a result, there is no Urban Growth Boundary agreement. This criterion is not applicable to the proposed amendment.

2) Findings for Zone Change file ZC 06-02:

A map zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [PCZO 111.140]

Staff Findings: The authorizations for a zone change and a Comprehensive Plan amendment are under Polk County Zoning Ordinance (PCZO) Sections 111.275, and 115.050, subject to recommendation by the Hearings Officer after holding a public hearing pursuant to PCZO 111.190, and 115.030, and decision by the Polk County Board of Commissioners after holding a public hearing pursuant to PCZO 111.200, and 115.030. The Planning Department staff reviews the proposed zone change. Staff prepares a report and recommendation for the Hearings Officer and the Hearings Officer makes a recommendation to the Polk County Board of Commissioners for a final local decision. The application is following the proper review process and meets this criterion.

Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

(A) **The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275 (A)]**

(B) **The proposal conforms with the purpose statement of the proposed zone; [PCZO 111.275 (B)]**

It is the purpose and function of the Acreage Residential - 5 acre (AR-5) zone to:

- (1) **Provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area.**
- (2) **Provide larger acreage homesites which will be a buffer area between farm zones and higher density urban and urbanizing areas, thus reducing the conflicts between residential use and usual and normal farming practices.**
- (3) **Provide for the orderly growth of the urban areas so that as urbanization occurs, the supporting community will be able to afford the increased capital investments required for services to and within the new urban area and the costs of maintenance of utility facilities, rebuilding of arterial streets, protective services and desired social services.**
- (4) **To provide for the efficient, redivision of acreage subdivisions which may occur in the area.**
- (5) **To promote the pre-planning of future important streets in the area.**
- (6) **To meet the needs of a segment of the population for non-urban, non-farm acreage homesites.**
- (7) **To provide for the above, yet not adversely affect fish and wildlife resources and habitat areas, natural areas, and scenic areas. [Amended by ordinance #256, dated September 19, 1979.] [PCZO 128.510(A-G)]**

Applicant Findings: The proposed exception area conforms to the intent of the Rural Lands Designation by providing an opportunity for acreage homesites in an area already characterized by rural residential development. As part of this application, the applicant is requesting exceptions from Statewide Planning Goals 3, 4, and 14.

The proposed exception area conforms to the AR-5 purpose statement by providing the best use of the subject property based on its site limitations and its location in an area characterized by rural residential development. The proposed exception area will also provide non-urban and non-farm acreage homesites.

Staff Findings: The applicant concurrently filed an application for a zone change, an application for a Comprehensive Plan amendment, and an exception to Statewide Planning Goals 3, 4, and 14. The applicant is responsible for showing compliance with criteria for Comprehensive Plan changes and Goal exceptions in order for the zoning change to be approved.

The applicant proposes applying the Acreage Residential 5-acre minimum (AR-5) Zoning District, if an approval of the proposed amendment to the Comprehensive Plan designation to Rural Lands is granted. The AR-5 zoning district is designated as an implementing zone for the Rural Lands designation and would be appropriate for a Comprehensive Plan land use designation of Rural Lands.

If approved, the subject area shall be designated Rural Lands in the Polk County Comprehensive Plan as is proposed as part of PA 06-02. The Acreage Residential 5-acre minimum Zoning District for the subject area would be consistent with a Rural Lands Comprehensive Plan designation.

The applicant is proposing the specific use of creating five new parcels containing at least 5.00-acres each which could be developed with single family dwellings. The proposed Rural Lands Comprehensive Plan designation would be implemented by the Acreage Residential 5-acre minimum (AR-5) Zoning District. The use and development of properties within the AR-5 zone are regulated under Chapter 128.500 of the PCZO.

The proposed AR-5 zoning would allow the creation of parcels that contain at least 5.00-acres. As a result, an exception to Oregon Statewide Planning Goal 14 under Oregon Administrative Rule (OAR) 660-004-0040 criteria is required, and is addressed in Section II, Number 4 of this staff report.

AR-5 zoning would allow for a single-family residence as an outright permitted use and agricultural and forestry uses could be permitted. Staff finds that the proposed zone change would allow for up to five acreage home sites that would be consistent with the sizes of many of the properties to the west, south, and east of the subject property.

The property owners intend to use water from on-site wells. A septic system and a drain field would be used for sewage disposal. The applicant has not identified any effects on local schools that would result from the proposed change. Southwest Polk Rural Fire Protection District and the Polk County Sheriff Department provide emergency services at the subject property. The subject property gains access via a private road that is approximately 500 feet and connects the subject property to Reuben Boise Road, a local road as defined in the Polk County Transportation Systems Plan, Figure 3. The subject property is currently vacant. New parcels created from the subject property would obtain access via this private road. Staff concludes that there are adequate public facilities, services, and transportation networks available at this time to accommodate residential development on the subject property.

The subject property is not located within the special flood hazard area identified on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) panel number 41053C0225F, dated December 19, 2006. There are no identified significant resources, historic sites, or Willamette River Greenway areas on the subject property. The subject property does not contain any identified wetlands as shown on the Socialist Valley Quadrangle of the National Wetlands Inventory.

Approval of this request would be consistent with the purpose and intent of the AR-5 zone. As stated above, the applicant requests that the subject property be designated Rural Lands in the Comprehensive Plan as proposed in PA 06-02 and zoned AR-5 as part of ZC 06-02.

(C) The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275 (C)]

Applicant Findings: As stated previously, the rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as it is defined in OAR 660-004-0028. The proposed use of the land will be consistent with what is occurring on the immediate adjacent lands. No new public facilities or services will be required or needed with the proposed dwellings. Therefore, such uses will not commit adjacent or nearby resource land to non-resource use.

Staff Findings: All properties contiguous to the subject property are zoned Farm Forest. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the Timber Conservation (TC) zone. The AR-5 zone is a residential zone that has a five (5) acre minimum parcel size and permits one dwelling per parcel. The TC zone is a resource zone that has an 80-acre minimum parcel size and restricts the establishment of dwellings on properties in that zone. The subject property is located within an area where uses appear to be primarily residential acreage homesites to the south, west, and east, and resource based to the north of the subject property.

The parcels that the applicant indicates would be created if PA 06-02/ZC 06-02 is approved would be accessed via a private road that connects to Rueben Boise Road. Additional traffic that would result from the establishment of residential dwellings on the subject property could impact timber and agricultural uses in the area and may make it more difficult or costly to manage the land for timber or agriculture production. According to the applicant, 27 properties (including the subject property) are accessed via an easement across the subject property that connects to Rueben Boise Road.

The proposed zone change would be consistent with the surrounding land uses and pattern of development in the area. Staff finds that the proposed zone change and Comprehensive Plan amendment are appropriate when taking into account surrounding land uses. As a result, staff finds that the application meets this criterion.

(D) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275 (D)]

Applicant Finding: The proposed exception area is served with transportation facilities, rural fire protection and schools. Water and sewer facilities may be provided on-site in the form of private wells and septic systems. As such, adequate facilities exist to serve the proposed residential use of the property.

Staff Findings: The applicant is proposing the specific use of five parcels, of at least 5.00-acres, with the ability to establish a single family dwelling on each. The proposed Rural Lands Comprehensive Plan designation would be implemented by the Acreage Residential 5-acre minimum (AR-5) Zoning District. The AR-5 zone allows the establishment of a single-family dwelling on each parcel that would require water and on-site sewer (septic tank and drainfield) services. The property owners intend to use water from on-site wells. The subject property is located within Dallas School District Number 2. A septic system and a drainfield would be used for sewage disposal. The applicant has not identified any effects on local schools that would result from the proposed change. Southwest Polk Rural Fire Protection District and the Polk County Sheriff Department provide emergency services to the subject property. The subject property is accessed via a private road that connects to Rueben Boise Road, a local road, as defined in the Polk County Transportation Systems Plan, Figure 3.

Staff concludes that there are adequate public facilities, services, and transportation networks available at this time for water provision, sewer service, or transportation facilities. Approval of this proposed zone change and Comprehensive Plan amendment would not authorize the applicant to establish a use that would exceed transportation, water and/or sewer services until such services are planned or available. The application would meet this criterion.

(E) The proposed change is appropriate taking into consideration the following:

- (1) Surrounding land uses,**
- (2) The density and pattern of development in the area,**
- (3) Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275 (E) (1-3)]**

Applicant Findings: The subject property is primarily surrounded by lands that are developed with non-resource single-family dwellings, of which 25 are served by a 60-foot roadway easement located on the subject property. The current zoning is no longer appropriate due to changing conditions in the surrounding area. These changing conditions include the approval of three partition applications and two property line adjustments in the direct vicinity of the subject property since 1990. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels have been created since the subject property was designated Farm/Forest in 1981.

The site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by the FF zone.

Staff Findings: All properties contiguous to the subject property are zoned Farm Forest. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the Timber Conservation (TC) zone. The AR-5 zone is a residential zone that has a five (5) acre minimum parcel size and permits one dwelling per parcel. The TC zone is a resource zone that has an 80-acre minimum parcel size and restricts the establishment of dwellings on properties in that zone. The subject property is located within an area where uses appear to be predominantly residential to the south, east, and west, and resource based to the north of the subject property. The surrounding rural residential and resource area is not served by a sanitary sewer system; therefore uses that require sewage disposal would require an on-site system.

The parcels that the applicant indicates would be created if PA 06-02/ZC 06-02 is approved would be accessed via a private road that connects to Rueben Boise Road. The additional traffic that would result from the establishment of dwellings on the subject property could impact timber and agricultural uses in the area that may make it more difficult or costly to manage the land for timber or agriculture production. According to the applicant, 27 properties are accessed via Rueben Boise Road and an easement across the subject property.

A staff review of surveys available through Polk County GIS data found one (1) partition since 1990 on properties contiguous to the subject property. This partition is recorded as County Survey 12294, Partition Plat 1990-0018. Staff found an additional two (2) partitions for properties within 500 feet of the subject property since 1990. These are recorded as 1) County Survey 12488, Partition Plat 1992-0001; and 2) County Survey 13065, Partition Plat 1995-0042. These partitions resulted in a total of seven (7) parcels with parcel sizes ranging from 5.47-acres to 14.81-acres; with an average of 7.54-acres, and a median of 5.52-acres. The subject property and three surrounding properties, identified as Tax Lots 835, 836, and 837 (T7S, R6W, Section 11), were approved for property line adjustments on March 15, 2004; pursuant to Polk County Planning file numbers LLA 04-07, LLA 04-08, and LLA 04-09. The resultant parcels, as configured after these property line adjustments, are depicted in County Survey 14806.

Limitations have been established in Oregon Statute, Administrative Rules and subsequently Polk County Zoning for the establishment of dwellings in forest zoned areas due to potential impacts that residents and residences may have on commercial timber practices and costs. The majority of the dwellings in the area are established on FF zoned properties that surround the subject property. There are 12 properties that are contiguous to the subject property. These properties range from 3.34-acres to 25.00-acres. The average size of these properties is 9.25-acres, and the median size of contiguous properties is 5.40-acres. According to Polk County Assessor and Planning records, seven (7) of the 12 contiguous properties contain a residential dwelling (one parcel contains two dwellings), and two (2) were approved for dwellings in 2005 pursuant to Polk County Planning Files FORD 05-11 and FORD 05-19. In respect to these properties, which appear to be largely used as residential home sites, partitioning of the subject property into 5.00-acre parcels and establishing a dwelling on each, would have little identified impact. According to the 2004 Polk County Aerial Photograph, the property to the north of the subject property is 15.19-acres, undeveloped, and managed for forestry. The property two properties to the north contains 100.20-acres and appears to be primarily used for forestry. Additional dwellings on the subject property may have an incremental impact on timber and agricultural uses in the area that may make it more difficult or costly to manage the land for timber or agriculture production. However, because a majority of properties contiguous to the subject property to the west, south, and east, contain or have been approved for single family dwellings, staff concludes that a change of zoning of the subject property to AR-5 would not significantly adversely affect allowed uses on adjacent lands.

The proposed zone change would be consistent with the surrounding land uses and pattern of development in the area. Staff finds that the proposed zone change and Comprehensive Plan amendment are appropriate when taking into account surrounding land uses. As a result, staff finds the application meets this criterion.

(F) The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275 (F)]

Applicant Findings: The applicant is not aware of any intergovernmental agreements that would apply to the proposed exception area.

Staff Findings: The subject property is not located within an urban growth boundary. This criterion is therefore inapplicable to this request.

(G) The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275 (G)]

Staff Findings: An exception to Oregon Statewide Planning Goals 3 and 4 is necessary to exclude the subject property from the Farm Forest Comprehensive Plan designation. The applicant is proposing the

Acreage Residential 5-acre minimum Zoning District to implement the proposed Rural Lands Comprehensive Plan Designation. As a result, a Statewide Planning Goal exception is necessary to comply with Oregon Administrative Rule (OAR) and Goal 14 requirements established by the Oregon Land Conservation and Development Commission in the year 2000 (OAR 660-004-0040 or 660-014-0030). The applicant submitted proposed findings regarding an exception to Statewide Planning Goals 3, 4, and 14. The Oregon Statewide Planning Goal 3, 4, and 14 exceptions are addressed in Section II, Numbers 3 and 4 of this staff report.

3) Findings for Statewide Planning Goal 3 Exception, file PA 06-02:

(A) 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 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. [OAR 660-004-0018(1)]

(B) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

(a) Which are the same as the existing land uses on the exception site; or

(b) Which meet the following requirements:

- 1) 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; and**
- 2) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and**
- 3) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses. [OAR 660-004-0018(2)]**

(C) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022. [OAR 660-004-0018(3)]

Applicant Findings in Response to (B)(b)(1) of This Section:

The Applicant is proposing that the zoning be AR-5 consistent with a PCCP plan designation of Rural Lands. The Applicant is proposing that the use of the property be rural residential, which is compatible and reflective of surrounding development patterns. Approval of this request will authorize the parcelization of the subject property, consistent with the intent of the AR-5 zone to allow rural residential dwellings on lawfully created parcels. No other uses, public facilities or services are needed or required with this request. As demonstrated below, the proposed use will be consistent with other applicable goal requirements.

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.

Goal 2: Land Use Planning. The subject application for goal exception is examined under the implementing regulations for this goal.

Goal 3: Agricultural Lands. Goal 3 applies to the subject site. Applicants are requesting an exception to this goal.

[Applicant Findings Continued...]

Goal 4: Forest Lands. Goal 4 applies to the subject site. Applicants are requesting an exception to this goal.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. No PCCP identified wetlands, aggregate sites or other goal 5 resources are identified on or near this site, therefore Goal 5 is not applicable.

Goal 6: Air, Water and Land Resources Quality. The subject site is not within an identified watershed area. Building a dwelling on the vacant parcel will require septic site evaluation to protect groundwater quality. State law, consistent with this goal, regulates air emissions and water discharges. Normal residential use of the property will not lead to significant air or water discharges.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject site is not within an identified floodplain area or a geologic hazard area, therefore Goal 7 is not applicable.

Goal 8: Recreational Needs. No recreational uses of the property are proposed or implicated by this application. This rule is not applicable.

Goal 9: Economic Development. This goal focuses on commercial and industrial development primarily within urban growth boundaries (UGBs). OAR chapter 660, division 9, the Goal 9 implementing regulation, applies only to comprehensive plans for areas within UGBs. Additional planning for industrial and commercial development outside UGBs is not required or restricted by the rule. The subject site is not within a UGB, and its development for commercial or industrial use is not proposed. This goal is not applicable.

Goal 10: Housing. This goal applies to buildable lands. Buildable lands, as defined in Goal 10, occur in urban and urbanizable areas. Urbanizable lands are, by Statewide Planning Goal definition, within urban growth boundaries. While housing would be provided under this proposal, the subject property is not currently considered buildable or urbanizable under this goal. Therefore Goal 10 is not applicable.

Goal 11: Public Facilities and Services. Water service is provided by on-site wells, and sewage disposal is by on-site subsurface disposal. A septic site evaluation is required prior to development. No public facilities are proposed, and no exception to Goal 11 is required.

Goal 12: Transportation. Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans that significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility. Under OAR 660-012-0060(1), a plan or land use regulation amendment significantly affects a transportation facility if it:

(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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan, or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Under OAR 660-012-0060(4), these determinations must be coordinated with affected transportation facility and service providers and other affected local governments.

The subject property is provided access via Reuben Boise Road, designated a local road in Polk

[Applicant Findings Continued...]

County's adopted Transportation System Plan. The net effect of the subject application will be to allow approximately five additional dwellings on the subject property. This will result in an increase of approximately 47.85 vehicle trips per day onto Reuben Boise Road. Adding 47.85 vehicle trips will not change the functional classification of the roadways, change standards implementing the functional classification system, allow types or levels of land uses that result in levels of travel or access inconsistent with a local road, or reduce the performance standards of the roadway. The proposal will not significantly affect a transportation facility, therefore Goal 12 is satisfied.

Goal 13: Energy Conservation. Normal residential use of the property should not significantly impact energy consumption.

Goals 14: Urbanization. [Staff Note – The applicant's response to the criteria for a Goal 14 exception are listed under Section II, Number 4, below]

Goals 15-19: Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shore Lands), 18 (Beaches and Dunes), and 19 (Ocean Resources), are not applicable because the subject property is not within the Willamette River Greenway or near any ocean or coastal related resources.

Applicant Findings in Response to (B)(b)(2) of This Section

The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as it is defined in OAR 660-004-0028. The proposed use of the land will be consistent with what is occurring on the immediate adjacent lands. No new public facilities or services will be required or needed with the proposed dwellings. Therefore, such uses will not commit adjacent or nearby resource land to non-resource use.

Applicant Findings in Response to (B)(b)(3) of This Section

There are no adjacent resource uses that would be impacted by the rural uses being proposed within the exception area. The proposed use, density, public facilities and services will be compatible with adjacent and nearby resource uses.

Staff Findings: The applicant is proposing a Comprehensive Plan Amendment, Zone Change, and Goal 3, 4, and 14 exceptions in order to create a total of five new parcels from the subject property with the ability to establish a residential dwelling on each.

There are 12 properties that are contiguous to the subject property. These properties range from 3.34-acres to 25.00-acres. The average size of these properties is 9.25-acres, and the median size of surrounding properties is 5.40-acres. According to Polk County Assessor records, seven (7) of these contiguous properties contain a residential dwelling (one parcel contains two dwellings), and another two (2) were approved for dwellings in 2005 pursuant to Polk County Planning Files FORD 05-11 and FORD 05-19.

All properties contiguous to the subject property are zoned Farm Forest. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the Timber Conservation (TC) zone. The AR-5 zone is a residential zone that has a five (5) acre minimum parcel size and permits one dwelling per parcel. The TC zone is a resource zone that has an 80-acre minimum parcel size and restricts the establishment of dwellings on properties in that zone. The subject property is located within an area where uses tend to be predominantly residential to the south, east, and west, and resource based to the north of the subject property. The surrounding rural residential and resource area is not served by a sanitary sewer system; therefore uses that require sewage disposal would require an on-site system.

Staff concludes that the application meets these criteria.

D) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b),

Goal 2, Part II(b), and with the provisions of this rule;

- (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;
- (c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.
[OAR 660-004-0028(1)]

Applicant Findings: As will be demonstrated herein, the land subject to the exception is irrevocably committed because existing adjacent uses and other relevant factors make uses allowed by the applicable Goals impracticable. Existing adjacent uses consist of the following:

Assessor's Map and Tax Lot Number	Zoning	Parcel Size (acres)	Existing Use	Soil Types (majority)
7.6.11 TL 834 (Subject Property)	FF	26.28	Developed with two roadways	Nekia Silty Clay Loam-52E, 52F (Class IV, VI)
7.6.11 TL 809	FF	6.21	Single-Family Dwelling	Nekia Silty Clay Loam-52D (Class VI)
7.6.11 TL 822	FF	7.9	Single-Family dwelling	36C, 52C, 52D (Even Split)
7.6.11 TL 830	FF	5.51	Single-Family dwelling	Dupee Silt Loam -- 27C (Class III)
7.6.11 TL 829	FF	5.51	Undeveloped	Jory Silty Clay Loam -- 36C (Class II)
7.6.11 TL 824	FF	5.52	Undeveloped	Jory Silty Clay Loam -- 36C (Class II)
7.6.11 TL 814	FF	5	Undeveloped	Nekia Silty Clay Loam-52C (Class II)
7.6.11 TL 826	FF	5.47	Single-Family dwelling	Jory Silty Clay Loam -- 36C (Class II)
7.6.11 TL 825	FF	5.95	Single-Family dwelling	Jory Silty Clay Loam -- 36C (Class II)
7.6.11 TL 815	FF	5	Single-Family dwelling	Nekia Silty Clay Loam-52D (Class III)
7.6.11 TL 807	FF	26.53	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 808	FF	24.77	Single-Family dwelling	Jory Silty Clay Loam -- 36D (Class III)
7.6.11 TL 813	FF	23.39	Single-Family dwelling	Jory Silty Clay Loam -- 37E (Class VI)
7.6.11 TL 812	FF	14.80	Single-Family dwelling	Jory Silty Clay Loam -- 36C (Class II)
7.6.11 TL 801	FF	10.88	Single-Family dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 800	FF	14.83	Single-Family dwelling	Jory Silty Clay Loam -- 36C (Class II)
7.6.11 TL 817	FF	14.12	Undeveloped	Jory Silty Clay Loam

				- 36C (Class II)
7.6.11 TL 810	FF	14.12	Single-Family dwelling	Jory Silty Clay Loam - 37E (Class VI)
7.6.11 TL 820	FF	5.53	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 833	FF	10	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 806	FF	5.01	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 805	FF	14.81	Single-Family dwelling	Jory Silty Clay Loam - 36D (Class III)
7.6.11 TL 803	FF	5	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 802	FF	15.19	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 837	FF	4	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 835	FF	4.93	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 836	FF	3.34	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 900	FF	25	Single-Family dwelling	Nekia Silty Clay Loam-52C (Class II)

Staff Note - The applicant provided findings under the physically developed and reasons exceptions sections of ORS 197.732(1). These are not included in the staff report, but can be found in the applicant's statements which are included as Attachment B. The above findings address ORS 197.732(1)(b).

Staff Findings: A staff review of the presence of single family dwellings on the properties presented in the table above under the "Applicant Findings" section of this criterion found that all but two of the applicant's findings concerning the presence of dwellings on the cited properties to be correct. The applicant states that the properties located at T7S, R6W, Section 11, Tax Lots 836 and 837 are developed with single family dwellings. A review of Polk County Assessor, Planning, and Building records indicates that those properties do not contain single family dwellings; however, they have been granted Planning approval for single family dwellings pursuant to Polk County Planning files FORD 05-11 and FORD 05-19.

E) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

a) The characteristics of the exception area; [OAR 660-004-0028(2)(a)]

Applicant Findings: The proposed exception area contains one 26.28 acre parcel. According to the Soil Survey of Marion County Area, Oregon, US Soil Conservation Service, 1972, the subject property contains primarily Nekia Silty Clay Loam, 20 to 30 percent slopes, which is classified as a Class IV soil and Nekia Silty Clay Loam, 30 to 50 percent slopes, which is classified as a Class VI soil. The property gently slopes to the south-east and contains various tree species and groundcover. It has not been actively used for a farm and/or forest operation.

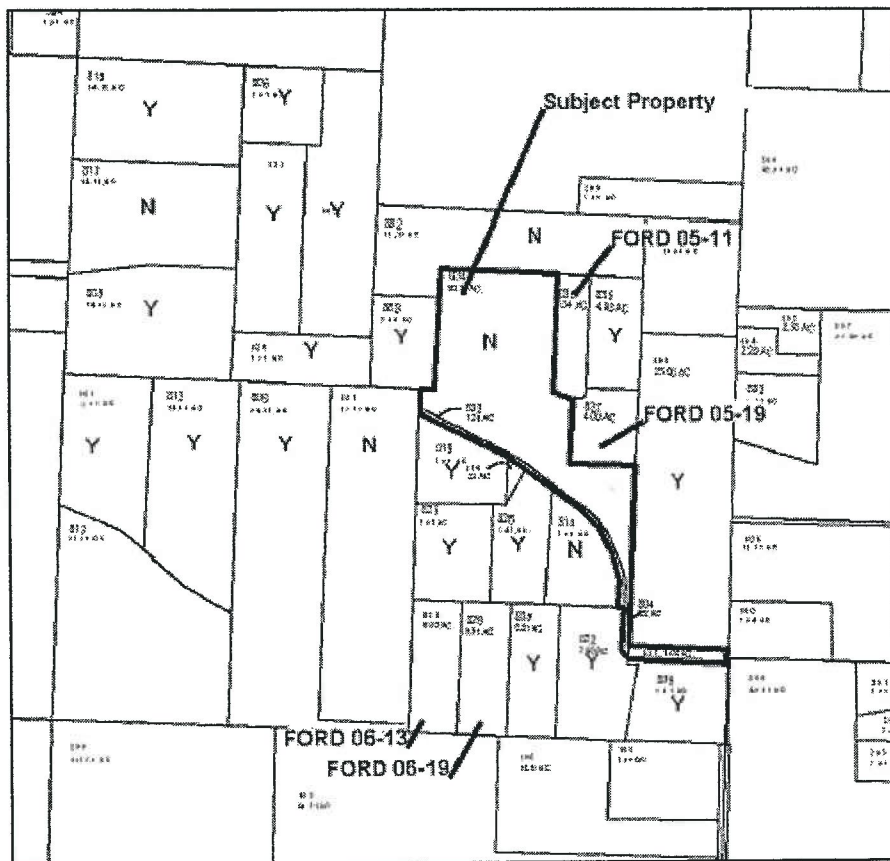
The subject property is served by Reuben Boise Road, which is designated as a local road in Polk County's adopted Transportation System Plan. The property also contains a 60-foot roadway easement, which serves as the primary access point for 27 parcels in the surrounding area. Of the 27 parcels served

by this roadway easement, 25 are developed with single-family dwellings.

The subject property is also served by the Southwest Rural Fire Protection District and the Dallas School District-2.

Staff Findings: The applicant cites the "Soil Survey of Marion County Area, Oregon, US Soil Conservation Service, 1972." The applicant is likely referring to the Natural Resources Conservation Service Soil Survey of Polk County, Oregon. The soils located on the subject property are identified in Table 2 and Figure 3 above. The applicant has identified 27 properties (including the subject property) that gain access via easements across the subject property. A staff review of Polk County Assessor and Planning Records indicates that 18 of those 27 parcels have established single family dwellings, and four (4) have been approved for dwellings pursuant to Polk County Planning Files FORD 05-11, FORD 05-19, FORD 06-13, and FORD 06-19. Figure 4 below illustrates which properties have established dwellings, these properties are labeled with a "y," and which properties do not have established dwellings or apparent planning approval to establish a dwelling, these properties are labeled with an "n." The properties that have valid Planning approval for single family dwellings as of the writing of this staff report are labeled with their Polk County Planning authorizing file number. Therefore, staff finds that 22 of 27 properties identified by the applicant as gaining access across the subject property, are either established with single family dwellings or have gained Planning approval to establish a single family dwelling on those parcels.

Figure 4. Dwellings on Properties Accessed Across the Subject Property.



b) The characteristics of the adjacent lands; [OAR 660-004-0028(2)(b)]

Applicant Findings: As indicated in the table on page 3 [Section II, Number 3, (D)] lands in the surrounding area are zoned FF and are developed primarily with non-resource single-family dwellings. Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use

actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

c) The relationship between the exception area and the lands adjacent to it; and [OAR 660-004-0028(2)(c)]

Applicant Findings: The subject property is primarily surrounded by lands that are developed with non-resource single-family dwellings. Twenty-seven parcels in the immediate surrounding area are served by a 60-foot roadway easement located on the subject property. A northward extension of this easement bisects the subject property and inhibits the establishment of any unified farm and/or forest operation. Additionally, the subject property contains Buzzard Spring, which serves as the domestic water source for at least six residential properties located in Salt Creek. The location of this spring in the northwest corner of property further inhibits a farm and/or forest operation from being established because of prohibitive costs associated with water quality protection.

It is apparent that the current relationship between the proposed exception area and the lands adjacent to it is one of service. The proposed exception area contains vital transportation facilities that serve as the primary access point for adjacent uses. It also contains a spring that serves as the domestic water source for properties located in Salt Creek. These site improvements and the surrounding residential development pattern make resource use of the property cost prohibitive and disruptive to neighboring uses.

Staff Findings: Staff assumes that when referring to "properties located in Salt Creek" that the applicant means properties located in the "Salt Creek basin," which is cited in other sections of the applicant findings.

d) The other relevant factors set forth in OAR 660-040-0028(6). [OAR 660-004-0028(2)(d)]

Staff Findings: The applicant did not specifically address this criterion.

F) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- a) Farm use as defined in ORS 215.203;**
- b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and**
- c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a). [OAR 660-004-0028(3)]**

Applicant Findings: As indicated in the Soil Survey of Polk County, the subject property is unfit for farm use. Propagation and harvest of forest products is not defined in OAR 660-033-0120. Under OAR 660-006-0025(2)(a), forest operations or forest practices include, but are not limited to, reforestation of forestland, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.

To determine whether forest product propagation and harvest, and forest operations or practices are practicable on the subject property or on a portion of the property, forest products need to be defined. OAR 660-033-0130(6) provides the following forest products definition in relation to a "facility for the primary processing of forest products":

The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to

enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

Timber, then, is the focus of forest products for land use purposes on forestland. Just as the farm use definition contemplates more than just growing crops, and includes a purpose of obtaining a profit in money, timber implies more than just growing trees, and imputes a purpose of obtaining a profit in money as well.

Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34 (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

The County recognized the land use pattern and character of the surrounding area as being rural residential, rather than resource based. As such, the proposed exception area was not adequately protected from the adverse impacts of additional residential development in the surrounding area. The safety measures needed to protect this residential development from landslide hazards, coupled with the site preparation needed to protect Buzzard Spring from contamination, result in forest use of the subject property being cost prohibitive and impracticable.

G) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area. [OAR 660-004-0028(4)]

Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands. [OAR 660-004-0028(5)]

Findings of fact for a committed exception shall address the following factors:

- a) Existing adjacent uses;
- b) Existing public facilities and services (water and sewer lines, etc.);
- c) Parcel size and ownership patterns of the exception area and adjacent lands:
 - 1) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;
 - 2) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road

designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

- d) Neighborhood and regional characteristics;**
- e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;**
- f) Physical development according to OAR 660-040-0025; and**
- g) Other relevant factors. [OAR 660-004-0028(6)]**

Applicant Findings: As indicated in the table on page 3 [Section II, Number 3(D) of this Staff Report], lands in the surrounding area are zoned FF and are developed primarily with non-resource single-family dwellings. Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34 (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

The existing development in the surrounding area is served with on-site private wells and sewage disposal systems. Any future residential development of the subject property would also be served with on-site private wells and sewage disposal systems.

Of the 12 adjacent parcels, nine parcels are 10-acres or less in size while three parcels are 10-acres or greater in size. Additionally, of the twelve parcels, nine are developed with single-family dwellings and seven of these dwellings are served by the existing roadway located on the subject property.

In the immediate surrounding area, a total of 27 parcels are served by the existing roadway, of which 25 are developed with single-family dwellings. It is also important to note that nine of these parcels have been created since the proposed exception area was zoned FF in 1981. The parcels were created through the following land use actions: LD-90-002 & CU90-011, LD-91-10 & CU-91-34, LD-93-19 and PLA Survey #14806 (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the current parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

The County has continually recognized the land use pattern and character of the surrounding area as being rural residential, rather than resource based. As such, the proposed exception area has not been adequately protected from the adverse impacts of additional residential development in the surrounding area.

The region is characterized by FF, AR-5 and TC zoned property with the predominant development pattern being rural residential development on parcels ranging in size from 5-10 acres created on farm and forest lands. Lands located approximately 780-feet to the west and 500-feet north of the subject property are zoned AR-5 and developed with a mixture of non-resource and resource uses. Lands located approximately 370-feet to the north of the subject property are zoned TC and developed with forest resource uses.

The subject property is primarily surrounded by parcels 10-acres or less in size and developed with single-family dwellings. There is one adjacent 25-acre parcel located to the east of the subject property, but it is developed with a single-family dwelling and is not presently being used for farm and/or forest operations.

The subject property is physically developed with a 60-foot wide roadway easement serving 27 parcels in the surrounding area. An extension off of this roadway bisects the property and inhibits the establishment of a unified farm and/or forest operation. In accordance with Polk County FF Zoning

District standards, roadways and other transportation facilities are conditionally permitted in the FF zone. There is no indication that a Conditional Use Permit was granted for this roadway located on the subject property, and therefore, there was no assessment of the roadway's impacts to farm and/or forest operations, considering the effects of traffic on the movement of farm and forest vehicles and equipment, and the effects of access to adjacent non-resource parcels created on farm and forest lands.

All relevant factors have been addressed in response to the Criteria listed above.

Staff Findings: A staff analysis of Polk County Assessor, Planning, and GIS data, found that 18 of the 27 parcels identified by the applicant as being accessed across the subject property have established single family dwellings, and four (4) have been approved for dwellings pursuant to Polk County Planning Files FORD 05-11, FORD 05-19, FORD 06-13, and FORD 06-19. There are 12 properties contiguous to the subject property. These properties range from 3.34-acres to 25.00-acres. The average size of these properties is 8.54-acres, and the median size of surrounding properties is 5.04-acres. Seven (7) of these contiguous properties contain a residential dwelling (one parcel contains two dwellings), and another two (2) were approved for dwellings in 2005 pursuant to Polk County Planning Files FORD 05-11 and FORD 05-19. Properties approximately 500 feet south and 760 feet east of the subject property are located within the AR-5 zone, and the property approximately 360 feet north of the subject property is located within the Timber Conservation (TC) zone.

H) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph. [OAR 660-004-0028(7)]

Staff Findings: The applicant has adequately identified the subject property. Aerial photographs are available through the Polk County GIS and have been included in the record for the proceedings.

D) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

- a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and
- b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations. [OAR 660-004-0028(8)]

Staff Findings: The record for the application includes an aerial photograph. Polk County is a jurisdiction with an acknowledged comprehensive plan and land use regulations.

4) Findings for Statewide Planning Goal 14 Exception, file PA 06-02:

Application of Goal 14 (Urbanization) to Rural Residential Areas [OAR 660-004-0040]

- (1) The purpose of this rule is to specify how Statewide Planning Goal 14, *Urbanization*, applies to rural lands in acknowledged exception areas planned for residential uses.**
- (2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3, (*Agricultural Lands*), Goal 4 (*Forest Lands*), or both has been taken. Such lands are referred to in this rule as *rural residential areas*. [OAR 660-004-0040(1 and 2a)]**

Applicant Finding: The subject property is located outside an urban growth boundary. An exception to Goal 3 is being requested as part of this application.

- (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Sections (1) to (8) of this rule.
- (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:
 - (A) land inside an acknowledged urban growth boundary;
 - (B) land inside an acknowledged unincorporated community boundary established pursuant to OAR Chapter 660, Division 022;
 - (C) land in an acknowledged urban reserve area established pursuant to OAR Chapter 660, Division 021;
 - (D) land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;
 - (E) resource land, as defined in OAR 660-004-0005(2);
 - (F) nonresource land, as defined in OAR 660-004-0005(3);
 - (G) marginal land, as defined in ORS 197.247, 1991 Edition;
 - (H) land planned and zoned primarily for rural industrial, commercial, or public use. [OAR 660-004-0040(2b)]

Applicant Findings: The subject property is not located within an urban growth boundary or an unincorporated community. There are no urban reserve areas, destination resorts, nonresource land, or marginal land areas designated within Polk County. The applicant is requesting an exception to Goal 3 to permit the requested Comprehensive Plan Map Amendment and Zone Change to AR-5. The property is not zoned primarily for rural industrial, commercial, or public use.

Staff Findings: Staff confirms that the subject property is not located within an urban growth boundary or an unincorporated community. There are no urban reserve areas, destination resorts, nonresource land, or marginal land areas designated within Polk County. The applicant is requesting an exception to Goal 3 to permit the requested Comprehensive Plan Map Amendment and Zone Change to AR-5. The property is not zoned primarily for rural industrial, commercial, or public use.

- (3)(a) This rule shall take effect on the effective date of an amendment to Goal 14 to provide for development of all lawfully created lots and parcels created in rural residential areas prior to the effective date of the amendment to Goal 14.
- (b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in *1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County)*, and before the effective date of this rule. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule. [OAR 660-004-0040(3)]

Applicant Findings: The Oregon Administrative Rule (OAR) took effect on October 4, 2000. The application was submitted September 27, 2006 to the Polk County Community Development Department. Subsection (a) above requires application of the Goal 14 provisions to new applications after the adoption of the OAR. Subsection (b) further stipulates that currently acknowledged rural residential areas may continue at the current density of development already acknowledged to comply

with Goal 14, but subsequent amendments must be completed consistent with the provisions of this rule. The subject application constitutes an amendment that is required to comply with the provisions of the above referenced rules. The application of rural residential zoning provisions will ensure compliance with these rules.

Staff Findings: The subject property currently has a Comprehensive Plan designation of Farm Forest. The subject property is not acknowledged as a rural residential area. The applicants are applying to change the Comprehensive Plan designation of the subject property to Rural Lands.

- (4) The rural residential areas described in Subsection (2)(a) of this rule are rural lands. Division and development of such lands are subject to Statewide Planning Goal 14, Urbanization, which prohibits urban use of rural lands. [OAR 660-004-0040(4)]**

Applicant Findings: The subject property is located outside an urban growth boundary. The applicant is requesting an exception to Goal 3 to allow for the development of rural residential uses on the subject property.

Staff Findings: Staff confirms that the subject property is located outside an urban growth boundary. The applicant is requesting an exception to Goal 3 to allow for the development of rural residential uses on the subject property.

- (5)(a) A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.**
- (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.**
- (c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area, in effect on the effective date of this rule, and acknowledged to comply with the statewide planning goals. [OAR 660-004-0040(5)]**

Applicant Findings: The applicant is requesting that the proposed exception area be zoned AR-5 to allow for the creation of approximately five 5-acre parcels. The proposed parcel sizes would be in character with parcel sizes in the surrounding area and would provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area. This proposal will not result in "urbanization" of the area as it is more than one mile from an urban growth boundary, serviced by unimproved roads and on-site private well and septic systems.

Staff Findings: The subject property is currently zoned Farm Forest, which is a resource zone. The applicant is requesting that the proposed exception area be zone AR-5, which has a minimum parcel size of five acres.

- (6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014. [OAR 660-004-0040(6)]**

Applicant Findings: The proposal includes an Exception to Statewide Planning Goal 14 to allow for the development of five-acre rural residential parcels.

Staff Findings: The proposal includes an Exception to Statewide Planning Goal 14.

- (7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.
- (b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as the minimum lot size.
 - (c) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.
 - (d) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.
 - (e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:
 - (A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10.
 - (B) The number of new lots or parcels to be created does not exceed 10.
 - (C) None of the new lots or parcels will be smaller than two acres.
 - (D) The development is not to be served by a new community sewer system.
 - (E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.
 - (F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on the effective date of this rule as the *minimum lot size* for the area.
 - (G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there.
 - (H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.
 - (f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.
 - (g) In rural residential areas, the establishment of a new mobile home park or manufactured dwelling park as defined in ORS 446.003(32) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.
 - (h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an

exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:

- (A) The parcel to be divided has two or more permanent habitable dwellings on it;
 - (B) The permanent habitable dwellings on the parcel to be divided were established there before the effective date of this rule;
 - (C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and
 - (D) The partition would not create any vacant parcels on which a new dwelling could be established.
 - (E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.283(t)(A)-(t)(D).
- (i) For rural residential areas designated after the effective date of this rule, the affected county shall either:
- (A) Require that any new lot or parcel have an area of at least ten acres, or
 - (B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements for an exception to Goal 14 in OAR 660, Division 014. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas." [OAR 660-004-0040(7)]

Applicant Findings: The proposal would allow the creation of new parcels that could be as small as five acres. The proposal does not include a planned unit development. This application does not include specific requests for the establishment of multiple dwellings on a single parcel or the establishment of a manufactured dwelling park. There are no parcels that qualify for a reduction in the minimum size pursuant to OAR 660-004-0040(7)(h). The proposal is to establish a minimum lot size of at least five acres for new parcels in accordance with the requirements for an exception to Goal 14.

Staff Findings: The applicant's proposal does not appear to conflict with any of these criteria. The applicant is requesting authorization of a new exception area that would allow for the creation of parcels less than 10.00-acres, but more than 5.00-acres in size. Therefore, the procedures of OAR 660, Division 014 would apply.

(8)(a) Notwithstanding the provisions of Section 7 of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

- (A) Ashland;
 - (B) Central Point;
 - (C) Medford;
 - (D) Newberg;
 - (E) Sandy.
- (b) If a city or urban area listed in Subsection (8)(a):
- (A) has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021; or
 - (B) is part of a regional growth plan that contains at least a twenty-year regional reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658; then any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan.

- (c) Notwithstanding the provisions of Section 7 of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in Subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR 660, Division 021, or is not part of an acknowledged regional growth plan as described in Subsection (b), Paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.
- (d) Notwithstanding the provisions of Section 7, if the Portland metropolitan service district has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance.
- (e) Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if the Portland metropolitan area does not have an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.
- (f) Notwithstanding the provisions of Section 7 and Subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in Subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at the densities set forth in the Metro 2040 plan. In no case shall the minimum area requirement set for such lands be smaller than 10 acres.
- (g) A local government may allow the creation of a new parcel, or parcels, smaller than a minimum lot size required under subsections (a) through (f) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (E) of this subsection exist:
 - (A) The parcel to be divided has two or more permanent, habitable dwellings on it;
 - (B) The permanent, habitable dwellings on the parcel to be divided were established there before the effective date of OAR 660-004-0040;
 - (C) Each new parcel created by the partition would have at least one of those permanent, habitable dwellings on it;
 - (D) The partition would not create any vacant parcels on which new dwellings could be established; and
 - (E) The resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel.
- (F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.283(1)(t)(A) - (D). [OAR 660-004-0040(8)]

Applicant Findings: The subject property is located more than one mile from all of the listed cities in subsection (8)(a) above. The subject property is not within an urban reserve area or part of a regional growth plan. The subject property is located more than one mile from the Portland metropolitan area. The proposal would not allow the creation of parcels smaller than the two-acre minimum lot size.

Staff Findings: Staff confirms that the subject property is located more than one mile from all of the listed cities in subsection (8)(a) above. The subject property is not within an urban reserve area or part of a regional growth plan. The subject property is located more than one mile from the Portland metropolitan area. The proposal would not allow the creation of parcels smaller than the two-acre minimum lot size.

- (9) **The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws. [OAR 660-004-0040(9)]**

Applicant Findings: The applicant is requesting that the proposed exception area be zoned AR-5 to allow for the creation of approximately five 5-acre parcels.

Rural Lands Irrevocably Committed to Urban Levels of Development [(OAR 660-014-0030)]

The criteria below outline the method defined in Oregon Administrative Rule (OAR) for determining that a use proposed for a rural area would not be an urban use. The structure of the OAR requires conclusions that would typically be considered “backward” for this type of proceeding because the applicant is actually showing how the proposal would not result in urban uses being established in a rural area.

- (1) **A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.**

Applicant Findings: The applicant is requesting the proposed exception area be zoned AR-5 to allow for the creation of approximately five 5-acre parcels. The proposed parcel sizes would be in character with parcel sizes in the surrounding area and would provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area. This proposal will not result in “urbanization” of the area as it is more than one mile from an Urban Growth Boundary, serviced by unimproved roads and on-site private well and septic systems. The proposal will not commit the property to urban levels of development, requiring findings of support addressing OAR 660-004-0020(2).

- (2) **A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.**

Applicant Findings: A map has been provided that identifies the subject property. The current level of development does not include urban services for sewer. The proposed development density would not include urban services for sewer. The property is located outside an Urban Growth Boundary and would not be allowed to connect to urban services due to limitations in law prohibiting extension of urban services outside an urban growth boundary. Therefore, the subject property is not currently committed to urban uses and would not be committed to urban uses by permitting the creation of five-acre rural residential parcels.

- (3) **A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:**
- (a) **Size and extent of commercial and industrial uses;**
 - (b) **Location, number and density of residential dwellings;**
 - (c) **Location of urban levels of facilities and services; including at least public water and sewer facilities; and**
 - (d) **Parcel sizes and ownership patterns.**

Applicant Findings: There are no proposed commercial or industrial uses included with this proposal. The proposed development would provide for self-contained development having on-site wastewater disposal (sewage system) and wells for water service on five-acre rural residential. There are no urban services located within one mile of the subject property and the surrounding land use pattern is rural residential.

- (4) **A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.**

Applicant Findings: The proposed change would allow for rural residential development is character with the surrounding land uses. It would not result in an urban level of development as contemplated under the above referenced rules.

- (5) **More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.**

Applicant Findings: This proposal will not commit the land to an urban level of development; therefore, no additional findings are required.

III. CONCLUSIONS

Based on the Review and Decision Criteria identified above, the applications submitted for the proposed Comprehensive Plan designation, zone change, and Statewide Planning Goal Exceptions;

- (a) are following the proper review process through a public hearing before the Polk County Hearings Officer for a recommendation to the Polk County Board of Commissioners,
- (b) have findings to support the proposed change to the comprehensive plan designation,
- (c) are compatible with the proposed zoning designation as stated in PCZO,
- (d) includes property that is served by adequate public facilities for transportation, emergency, school, and electric power services,
- (e) would allow the creation of additional (5.00-acre) parcels that would be consistent with the current land use pattern in the area, and
- (f) have addressed the required exception requirements to Statewide Planning Goals 3, 4, and 14, outlined in the Oregon Administrative Rules and required by the Polk County Zoning Ordinance and Comprehensive Plan.

The proposed Comprehensive Plan change, zone change, and Statewide Planning Goal Exception applications could comply with the provisions of law by the implementation of conditions. The Planning Division staff recommendation is that the Hearings Officer conduct a public hearing to receive testimony and evidence at the public hearing regarding the applications.

IV. RECOMMENDATIONS

Staff recommends that the Hearings Officer conduct a public hearing to receive testimony and evidence regarding the applications to:

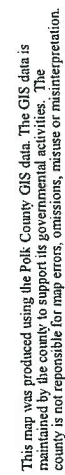
1. Change the Comprehensive Plan designation from Farm Forest to Rural Lands;
2. Change the Zoning Designation from Farm Forest to Acreage Residential 5-acre minimum (AR-5).
3. Adopt an Exception to Statewide Planning Goals 3, 4, and 14 (Comprehensive Plan

amendment).

V. EXHIBITS

Attachment A Plot Plan.

Attachment B Application form and Applicant's Proposal –January 5, 2007 [The applicant amended their proposal twice since they submitted the application on September 27, 2006. This attachment contains their updated proposal].



This is not the Polk County Planning Staff
Report
These are applicant findings (32 pages)

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COMMUNITY DEVELOPMENT

I. BACKGROUND INFORMATION

APPLICANT/OWNER: Chris Wright
Operating Manager, Alland Properties LLC
333 South State Street, #161
Lake Oswego, OR 97034

APPLICANT'S REPRESENTATIVE: Mark Shipman
Attorney at Saalfeld Griggs PC
250 Church Street SE, Suite 400
PO Box 470
Salem, OR 97308

TYPE OF APPLICATION: The applicant is requesting exceptions from the requirements of Statewide Planning Goals 3, 4 and 14 to redesignate the subject property from Farm Forest to Rural Residential and concurrently rezone the subject property from Farm Forest to AR-5 for the purposes of creating parcels for residential dwellings.

LOCATION: 2500 Block of Reuben Boise Road, Polk County Tax Assessor's Map and Tax Lot Number 7.6.11 TL 834.

APPLICABLE REVIEW & DECISION CRITERIA: PCZO Sections 111.150, 111.160, 111.275, 115.050, 115.060, and Oregon Administrative Rules Chapter 660, Division 4, Rules 20.

II. PROJECT AND PROPERTY DESCRIPTION

REQUEST:

The applicant is requesting exceptions from the requirements of Statewide Planning Goals 3, 4 and 14 to redesignate the subject property from Farm Forest to Rural Residential and concurrently rezone the subject property from Farm Forest to AR-5 for the purposes of creating parcels for residential dwellings.

Attachment A contains the deed and subject property description, Attachment B contains the assessor's map and Attachment C contains Hearings Officer Staff Reports for LD90-002/CU90-011 and LD91-10/CU91-34.

BACKGROUND:

The application was submitted on September ____, 2006.

SUBJECT PROPERTY SIZE:

The subject property is a single legally created parcel containing 32.5-acres consisting of one tax lot; Tax Lot 1703.

SURROUNDING ZONING AND LAND USES:

The subject property and surrounding properties are all designated and zoned Farm Forest.

PREVIOUS APPLICATIONS:

The subject property has been included in two recent property line adjustments, LLA04-07 and LLA04-08.

PROPERTY DESCRIPTION:

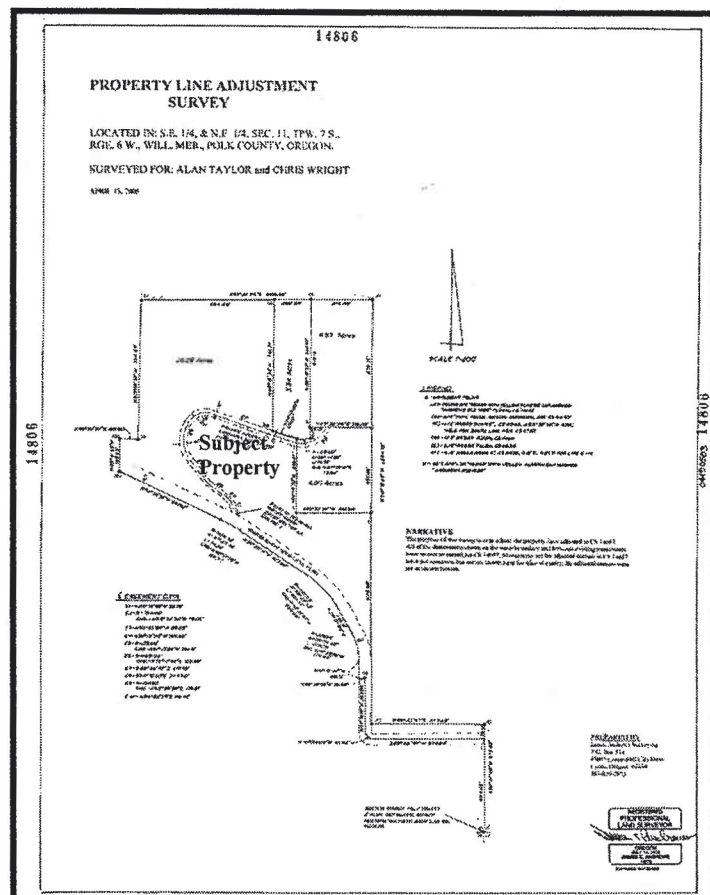
The subject property is approximately 26.28 acres in size, as shown on the attached Property Line Adjustment Survey (Polk County Survey Recording Number 14806). The land subject to this application is developed with two roadways that serve as the primary access point for a total of 27 parcels in the surrounding area, 22 of which are already developed with single-family dwellings and three of which are being developed with single-family dwellings (FORD05-12, FORD 05-19 and FORD 06-19). Additionally, the subject property contains Buzzard Spring, a tributary to the West Fork of Salt Creek, which serves as the domestic water source for at least six residential properties located in the Salt Creek basin.

The subject property contains primarily Class IV and VI soils and slopes ranging from 20%-50%. The Soil Survey of Polk County indicates these soils are poorly suited for crop cultivation and are more appropriately suited to forest production. The soils are also susceptible to rapid runoff and high erosion hazards. These soil characteristics create substantial downslope safety risks and water quality issues for Buzzard Spring.

The surrounding area has historically been characterized by rural residential development. In more recent years Polk County has approved three partition applications and two property line adjustments in the direct vicinity of the subject property. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels were created after the subject property was designated Farm/Forest in 1981.

PROPOSED USE:

The applicant intends to create parcels for residential development.



SERVICES:

Access: The property contains a 60-foot roadway that extends out to Reuben Boise Road, classified as a local street in the adopted Polk County Transportation System Plan.

Utilities: The property contains a private roadway, Buzzard Spring and private utilities.

School: Dallas School District #2

Fire: Southwestern RFPD

Police: Polk County Sheriff

III. PROPOSED EXCEPTIONS TO STATEWIDE PLANNING GOALS 3, 4 & 14

OAR 660-004-0028

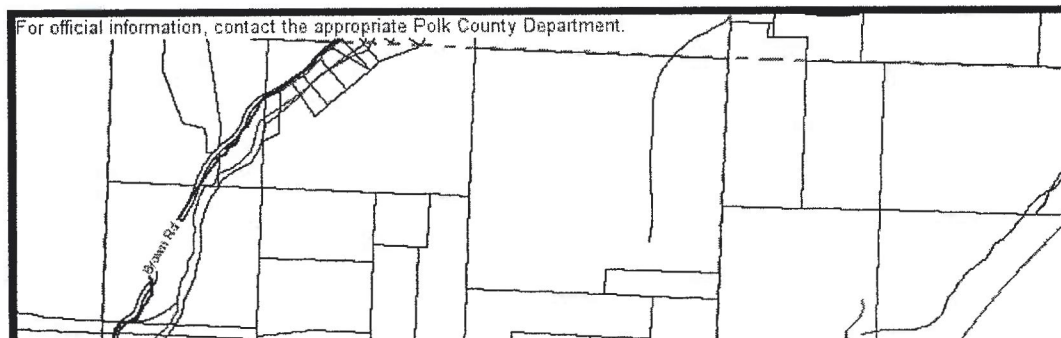
Exception Requirements for Land Irrevocably Committed to Other Uses

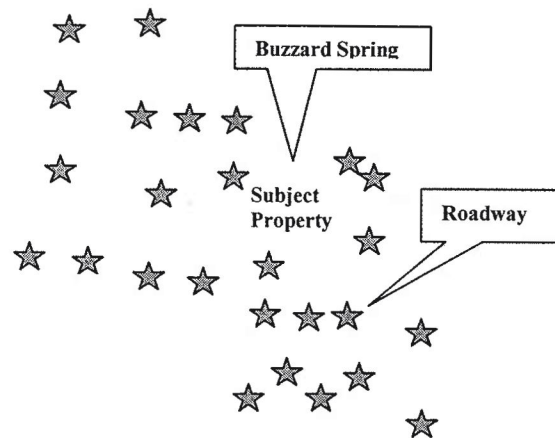
(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;

197.732 Goal exceptions; criteria; rules; review. (1) 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;

Proposed Finding: As illustrated in the below diagram, the land subject to the exception is developed with two roadways that serve as the primary access point for a total of 27 parcels, 22 of which are already developed with single-family dwellings and three of which are being developed with single-family dwellings (FORD05-12, FORD 05-19 and FORD 06-19). Additionally, the subject property contains Buzzard Spring, a tributary to the West Fork of Salt Creek, which serves as the domestic water source for at least six residential properties located in the Salt Creek basin. The site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by Statewide Planning Goals 3 & 4.





★ - Identifies properties that utilize the 60-foot roadway easement as their primary access point.

(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: As will be demonstrated herein, the land subject to the exception is irrevocably committed because existing adjacent uses and other relevant factors make uses allowed by the applicable Goals impracticable.

Existing adjacent uses consist of the following:

Assessor's Map and Tax Lot Number	Zoning	Parcel Size (acres)	Existing/Proposed Use	Soil Types (majority)
7.6.11 TL 834 (Subject Property)	FF	26.28	Developed with two roadways	Nekia Silty Clay Loam-52E, 52F (Class IV, VI)
7.6.11 TL 809	FF	6.21	Single-Family Dwelling	Nekia Silty Clay Loam-52D (Class VI)
7.6.11 TL 822	FF	7.9	Single-Family dwelling	36C, 52C, 52D (Even Split)
7.6.11 TL 830	FF	5.51	Single-Family dwelling	Dupee Silt Loam – 27C (Class III)
7.6.11 TL 829	FF	5.51	Undeveloped	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 824	FF	5.52	Undeveloped	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 814	FF	5	Undeveloped	Nekia Silty Clay Loam-52C (Class II)
7.6.11 TL 826	FF	5.47	Single-Family dwelling	Jory Silty Clay Loam – 36C (Class II)
7.6.11 TL 825	FF	5.95	Single-Family	Jory Silty Clay Loam –

			dwelling	36C (Class II)
7.6.11 TL 815	FF	5	Single-Family dwelling	Nekia Silty Clay Loam-52D (Class III)
7.6.11 TL 807	FF	26.53	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 808	FF	24.77	Single-Family dwelling	Jory Silty Clay Loam - 36D (Class III)
7.6.11 TL 813	FF	23.39	Single-Family dwelling	Jory Silty Clay Loam - 37E (Class VI)
7.6.11 TL 812	FF	14.80	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 801	FF	10.88	Single-Family dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 800	FF	14.83	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 817	FF	14.12	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 810	FF	14.12	Single-Family dwelling	Jory Silty Clay Loam - 37E (Class VI)
7.6.11 TL 820	FF	5.53	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 833	FF	10	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 806	FF	5.01	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 805	FF	14.81	Single-Family dwelling	Jory Silty Clay Loam - 36D (Class III)
7.6.11 TL 803	FF	5	Single-Family dwelling	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 802	FF	15.19	Undeveloped	Jory Silty Clay Loam - 36C (Class II)
7.6.11 TL 837	FF	4	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 835	FF	4.93	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 836	FF	3.34	Single-Family Dwelling	Nekia Silty Clay Loam-52F (Class VI)
7.6.11 TL 900	FF	25	Single-Family dwelling	Nekia Silty Clay Loam-52C (Class II)

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

Proposed Finding: Statewide Planning Goals 3 and 4 are intended to protect and conserve land for commercial farm and forest operations. The subject property is not conducive to farm and/or forest operations. As indicated in the above table, the subject property contains primarily Class IV and VI soils and slopes ranging from 20%-50%. The Soil Survey of Polk County indicates these soils are poorly suited for crop cultivation

and are more appropriately suited to forest production. The soils are also susceptible to rapid runoff and high erosion hazards. These soil characteristics create substantial downslope safety risks and water quality issues for Buzzard Spring. A person wishing to establish a forest operation on the subject property would have to implement a number of safety measures to address the potential risks, including extensive erosion control, cut and fill slopes for roadways, construction of wet bars, and stringent site preparation around Buzzard Spring. These safety measures make forest operation on the 26.28 acre subject property cost prohibitive.

Protecting and conserving the subject property for farm and/or forest use is impracticable given the site characteristics and surrounding residential development patterns.

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

Proposed Finding: There are limited opportunities for the development of residential uses in the surrounding area, since surrounding properties are already developed with single-family dwellings. It is the current residential development pattern that has irrevocably committed the subject property to a non-resource use.

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

Proposed Finding: The long term environmental, economic, social and energy consequences resulting from residential development at the proposed site are not significantly more adverse than would result from the same proposal being located in other areas requiring a goal exception. Residential development of the subject property would create fewer conflicts with surrounding properties than the establishment of a farm and/or forest operation and it would contribute to the County's tax base

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Proposed Finding: The proposed use of the exception area would be the creation of 5-acre parcels for residential development. The prevalent development pattern in the surrounding area consists of rural residential dwellings on parcels ranging in size from 3.34 acres to 25 acres in size and the existing roadway located on the subject property serves as the primary access point for 25 of these dwellings. As such, the proposed use of the exception area would be compatible with surrounding development.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

Proposed Finding: The proposed exception area contains one 26.28 acre parcel. According to the *Soil Survey of Marion County Area, Oregon*, US Soil Conservation

Service, 1972, the subject property contains primarily Nekia Silty Clay Loam, 20 to 30 percent slopes, which is classified as a Class IV soil and Nekia Silty Clay Loam, 30 to 50 percent slopes, which is classified as a Class VI soil. The property gently slopes to the south-east and contains various tree species and groundcover. It has not been actively used for a farm and/or forest operation.

The subject property is served by Reuben Boise Road, which is designated as a local road in Polk County's adopted Transportation System Plan. The property also contains a 60-foot roadway easement, which serves as the primary access point for 27 parcels in the surrounding area. Of the 27 parcels served by this roadway easement, 25 are developed with single-family dwellings.

The subject property is also served by the Southwest Rural Fire Protection District and the Dallas School District-2.

(b) The characteristics of the adjacent lands;

Proposed Finding: As indicated in the table on page 3, lands in the surrounding area are zoned FF and are developed primarily with non-resource single-family dwellings. Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

(c) The relationship between the exception area and the lands adjacent to it; and

Proposed Finding: The subject property is primarily surrounded by lands that are developed with non-resource single-family dwellings. Twenty-seven parcels in the immediate surrounding area are served by a 60-foot roadway easement located on the subject property. A northward extension of this easement bisects the subject property and inhibits the establishment of any unified farm and/or forest operation.

Additionally, the subject property contains Buzzard Spring, which serves as the domestic water source for at least six residential properties located in Salt Creek. The location of this spring in the northwest corner of property further inhibits a farm and/or forest operation from being established because of prohibitive costs associated with water quality protection.

It is apparent that the current relationship between the proposed exception area and the lands adjacent to it is one of service. The proposed exception area contains vital transportation facilities that serve as the primary access point for adjacent uses. It also contains a spring that serves as the domestic water source for properties located in Salt Creek. These site improvements and the surrounding residential development pattern make resource use of the property cost prohibitive and disruptive to neighboring uses.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

(3) *Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*

(a) Farm use as defined in ORS 215.203;

Farm use is defined under ORS 215.203(2)(a):

As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (1)(e) or 321.415 (5).

Proposed Finding: As indicated in the Soil Survey of Polk County, the subject property is unfit for farm use.

*(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120;
and*

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

Proposed Finding: Propagation and harvest of forest products is not defined in OAR 660-033-0120. Under OAR 660-006-0025(2)(a), forest operations or forest practices include, but are not limited to, reforestation of forestland, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.

To determine whether forest product propagation and harvest, and forest operations or practices are practicable on the subject property or on a portion of the property, forest products need to be defined. OAR 660-033-0130(6) provides the following forest products definition in relation to a "facility for the primary processing of forest products":

The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

Timber, then, is the focus of forest products for land use purposes on forestland. Just as the farm use definition contemplates more than just growing crops, and includes a purpose of obtaining a profit in money, timber implies more than just growing trees, and imputes a purpose of obtaining a profit in money as well.

Since the area was zoned FF in 1981, six additional parcels located directly downslope of the subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

The County recognized the land use pattern and character of the surrounding area as being rural residential, rather than resource based. As such, the proposed exception area was not adequately protected from the adverse impacts of additional residential development in the surrounding area. The safety measures needed to protect this residential development from landslide hazards, coupled with the site preparation needed to protect Buzzard Spring from contamination, result in forest use of the subject property being cost prohibitive and impracticable.

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

Proposed Finding: As indicated in the table on page 3, lands in the surrounding area are zoned FF and are developed primarily with non-resource single-family dwellings. Since the area was zoned FF in 1981, six additional parcels located directly downslope of the

subject property were created for non-resource use. The parcels were created through the following land use actions: LD-90-002 & CU90-011 and LD-91-10 & CU-91-34. (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

(b) Existing public facilities and services (water and sewer lines, etc.)

Proposed Finding: The existing development in the surrounding area is served with on-site private wells and sewage disposal systems. Any future residential development of the subject property would also be served with on-site private wells and sewage disposal systems.

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

*(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. **Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels (emphasis added).** Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.*

Proposed Finding: Of the 12 adjacent parcels, nine parcels are 10-acres or less in size while three parcels are 10-acres or greater in size. Additionally, of the twelve parcels, nine are developed with single-family dwellings and seven of these dwellings are served by the existing roadway located on the subject property.

In the immediate surrounding area, a total of 27 parcels are served by the existing roadway, of which 25 are developed with single-family dwellings. It is also important to note that nine of these parcels have been created since the proposed exception area was zoned FF in 1981. The parcels were created through the following land use actions: LD-90-002 & CU90-011, LD-91-10 & CU-91-34, LD-93-19 and PLA Survey #14806 (Decisions for which are enclosed as Attachment C). The Hearings Officer supported approval of the non-resource land divisions because of the current parcelization and land use pattern of the surrounding area. Further, the Hearings Officer found that the subject land division applications would not interfere with accepted resource uses on adjoining lands because of the lack of commercial scale resource operations in the surrounding area.

The County has continually recognized the land use pattern and character of the surrounding area as being rural residential, rather than resource based. As such, the proposed exception area has not been adequately protected from the adverse impacts of additional residential development in the surrounding area.

(d) Neighborhood and regional characteristics;

Proposed Finding: The region is characterized by FF, AR-5 and TC zoned property with the predominant development pattern being rural residential development on parcels ranging in size from 5-10 acres created on farm and forest lands. Lands located approximately 780-feet to the west and 500-feet north of the subject property are zoned AR-5 and developed with a mixture of non-resource and resource uses. Lands located approximately 370-feet to the north of the subject property are zoned TC and developed with forest resource uses.

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

Proposed Finding: The subject property is primarily surrounded by parcels 10-acres or less in size and developed with single-family dwellings. There is one adjacent 25-acre parcel located to the east of the subject property, but it is developed with a single-family dwelling and is not presently being used for farm and/or forest operations.

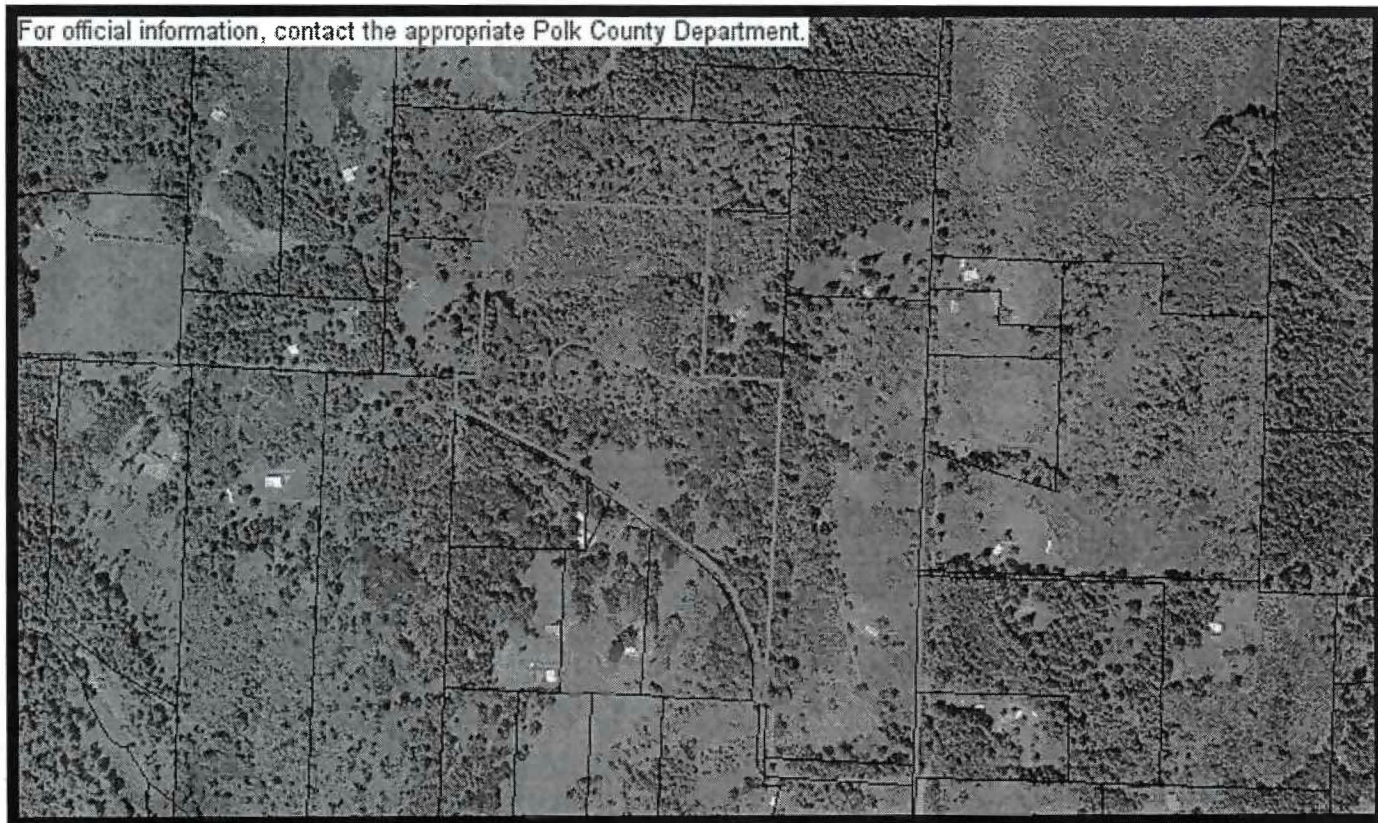
(f) Physical development according to OAR 660-004-0025; and

Proposed Finding: The subject property is physically developed with a 60-foot wide roadway easement serving 27 parcels in the surrounding area. An extension off of this roadway bisects the property and inhibits the establishment of a unified farm and/or forest operation. In accordance with Polk County FF Zoning District standards, roadways and other transportation facilities are conditionally permitted in the FF zone. There is no indication that a Conditional Use Permit was granted for this roadway located on the subject property, and therefore, there was no assessment of the roadway's impacts to farm and/or forest operations, considering the effects of traffic on the movement of farm and forest vehicles and equipment, and the effects of access to adjacent non-resource parcels created on farm and forest lands.

(g) *Other relevant factors.*

Proposed Finding: All relevant factors have been addressed in response to the Criteria listed above.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.



OAR 660-004-0018

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 and irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions which would allow changes in existing types of uses, densities, or services requires application of standards outlined in this rule.

For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations, the County shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

- (a) *Which are the same as the existing land uses on the exception site; or*
- (b) *Which meet the following requirements:*
 - (A) *The rural uses, density, and public facilities and services will maintain the land as Rural Land as defined by goals and are consistent with all other applicable Goal requirements; and*

Proposed Finding: The Applicant is proposing that the zoning be AR-5 consistent with a PCCP plan designation of Rural Lands. The Applicant is proposing that the use of the property be rural residential, which is compatible and reflective of surrounding development patterns. Approval of this request will authorize the parcelization of the subject property, consistent with the intent of the AR-5 zone to allow rural residential dwellings on lawfully created parcels. No other uses, public facilities or services are needed or required with this request. As demonstrated below, the proposed use will be consistent with other applicable goal requirements.

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.

Goal 2: Land Use Planning. The subject application for goal exception is examined under the implementing regulations for this goal.

Goal 3: Agricultural Lands. Goal 3 applies to the subject site. Applicants are requesting an exception to this goal.

Goal 4: Forest Lands. Goal 4 applies to the subject site. Applicants are requesting an exception to this goal.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. No PCCP identified wetlands, aggregate sites or other goal 5 resources are identified on or near this site, therefore Goal 5 is not applicable.

Goal 6: Air, Water and Land Resources Quality. The subject site is not within an identified watershed area. Building a dwelling on the vacant parcel will require septic site evaluation to protect groundwater quality. State law, consistent with this goal, regulates air emissions and water discharges. Normal residential use of the property will not lead to significant air or water discharges.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject site is not within an identified floodplain area or a geologic hazard area, therefore Goal 7 is not applicable.

Goal 8: Recreational Needs. No recreational uses of the property are proposed or implicated by this application. This rule is not applicable.

Goal 9: Economic Development. This goal focuses on commercial and industrial development primarily within urban growth boundaries (UGBs). OAR chapter 660, division 9, the Goal 9 implementing regulation, applies only to comprehensive plans for areas within UGBs. Additional planning for industrial and commercial development outside UGBs is not required or restricted by the rule. The subject site is not within a UGB, and its development for commercial or industrial use is not proposed. This goal is not applicable.

Goal 10: Housing. This goal applies to buildable lands. Buildable lands, as defined in Goal 10, occur in urban and urbanizable areas. Urbanizable lands are, by Statewide Planning Goal definition, within urban growth boundaries. While housing would be provided under this proposal, the subject property is not currently considered buildable or urbanizable under this goal. Therefore Goal 10 is not applicable.

Goal 11: Public Facilities and Services. Water service is provided by on-site wells, and sewage disposal is by on-site subsurface disposal. A septic site evaluation is required prior to development. No public facilities are proposed, and no exception to Goal 11 is required.

Goal 12: Transportation. Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans that significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility. Under OAR 660-012-0060(1), a plan or land use regulation amendment significantly affects a transportation facility if it:

(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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Under OAR 660-012-0060(4), these determinations must be coordinated with affected transportation facility and service providers and other affected local governments.

The County has an adopted Transportation System Plan (PCTSP) and a Functional Classification Map. Reuben Boise Road, the abutting street to the east, is designated as a local street on the Functional Classification Map. Vehicular access to the subject property will be from Reuben Boise Road. As a local street, Reuben Boise Road is intended to carry lower traffic volumes and provide adequate access to nearby collector and arterial streets like Ellendale Road.

The number of average daily trips that would be generated by this proposal will not be significantly more than the number of average daily trips that would be generated by uses currently permitted in the FF zone. For instance, forest related uses that involve the harvesting and/or processing of forest products would generate a significant number of average daily trips from distribution and employees. The net effect of the subject application will be to allow approximately five additional dwellings on the subject property. This will result in an increase of approximately 47.85 vehicle trips per day onto Reuben Boise Road. Adding 47.85 vehicle trips will not change the functional classification of the roadways, change standards implementing the functional classification system, allow types or levels of land uses that result in levels of travel or access inconsistent with a local road, or reduce the performance standards of the roadway. As such the proposed change will not adversely impact the functional classification of the surrounding transportation facilities.

Goal 13: Energy Conservation. Normal residential use of the property should not significantly impact energy consumption.

Goals 14: Urbanization, OAR 660-004-0040.

(1) The purpose of this rule is to specify how Statewide Planning Goal 14, Urbanization, applies to rural lands in acknowledged exception areas planned for residential uses.

(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3, (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this rule as rural residential areas. [OAR 660-004-0040(1 and 2a)]

The subject property is located outside an urban growth boundary. An exception to Goal 3 is being requested as part of this application.

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Sections (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

(A) land inside an acknowledged urban growth boundary;

(B) land inside an acknowledged unincorporated community boundary established pursuant to OAR Chapter 660, Division 022;

(C) land in an acknowledged urban reserve area established pursuant to OAR Chapter 660, Division 021;

(D) land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;

(E) resource land, as defined in OAR 660-004-0005(2);

(F) nonresource land, as defined in OAR 660-004-0005(3);

(G) marginal land, as defined in ORS 197.247, 1991 Edition;

(H) land planned and zoned primarily for rural industrial, commercial, or public use. [OAR 660-004-0040(2b)]

The subject property is not located within an Urban Growth Boundary or an unincorporated community. There are no urban reserve areas, destination resorts, nonresource land, or marginal land areas designated within Polk County. The applicant is requesting an exception to Goal 3 to permit the requested Comprehensive Plan Map Amendment and Zone Change to AR-5. The property is not zoned primarily for rural industrial, commercial, or public use.

3)(a) This rule shall take effect on the effective date of an amendment to Goal 14 to provide for development of all lawfully created lots and parcels created in rural residential areas prior to the effective date of the amendment to Goal 14.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCD, 301 Or 447 (Curry County), and before the effective date of this rule. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule. [OAR 660-004-0040(3)]

The Oregon Administrative Rule (OAR) took effect on October 4, 2000. The application was submitted September 27, 2006 to the Polk County Community Development Department. Subsection (a) above requires application of the Goal

14 provisions to new applications after the adoption of the OAR. Subsection (b) further stipulates that currently acknowledged rural residential areas may continue at the current density of development already acknowledged to comply with Goal 14, but subsequent amendments must be completed consistent with the provisions of this rule. The subject application constitutes an amendment that is required to comply with the provisions of the above referenced rules. The application of rural residential zoning provisions will ensure compliance with these rules.

(4) The rural residential areas described in Subsection (2)(a) of this rule are rural lands. Division and development of such lands are subject to Statewide Planning Goal 14, Urbanization, which prohibits urban use of rural lands. [OAR 660-004-0040(4)]

The subject property is located outside an urban growth boundary. The applicant is requesting an exception to Goal 3 to allow for the development of rural residential uses on the subject property.

(5)(a) A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area, in effect on the effective date of this rule, and acknowledged to comply with the statewide planning goals. [OAR 660-004-0040(5)]

The applicant is requesting that the proposed exception area be zoned AR-5 to allow for the creation of approximately five 5-acre parcels. The proposed parcel sizes would be in character with parcel sizes in the surrounding area and would provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area. This proposal will not result in "urbanization" of the area as it is more than one mile from an Urban Growth Boundary, serviced by unimproved roads and on-site private well and septic systems.

(6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014. [OAR 660-004-0040(6)]

The proposal includes an Exception to Statewide Planning Goal 14 to allow for the development of five-acre rural residential parcels.

7)(a) *The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.*

(b) *Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as the minimum lot size.*

(c) *If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.*

(d) *If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.*

(e) *A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:*

(A) *The number of new dwelling units to be clustered or developed as a PUD does not exceed 10.*

(B) *The number of new lots or parcels to be created does not exceed 10.*

(C) *None of the new lots or parcels will be smaller than two acres.*

(D) *The development is not to be served by a new community sewer system.*

(E) *The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.*

(F) *The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on the effective date of this rule as the minimum lot size for the area.*

(G) *Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there.*

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

(g) In rural residential areas, the establishment of a new mobile home park or manufactured dwelling park as defined in ORS 446.003(32) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

(h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:

(A) The parcel to be divided has two or more permanent habitable dwellings on it;

(B) The permanent habitable dwellings on the parcel to be divided were established there before the effective date of this rule;

(C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and

(D) The partition would not create any vacant parcels on which a new dwelling could be established.

(E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.283(t)(A)-(t)(D).

(i) For rural residential areas designated after the effective date of this rule, the affected county shall either:

(A) Require that any new lot or parcel have an area of at least ten acres, or

(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements for an exception to Goal 14 in OAR

660, Division 014. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas." [OAR 660-004-0040(7)]

The proposal would allow the creation of new parcels that could be as small as five acres. The proposal does not include a planned unit development. This application does not include specific requests for the establishment of multiple dwellings on a single parcel or the establishment of a manufactured dwelling park. There are no parcels that qualify for a reduction in the minimum size pursuant to OAR 660-004-0040(7)(h). The proposal is to establish a minimum lot size of at least five acres for new parcels in accordance with the requirements for an exception to Goal 14.

(8)(a) Notwithstanding the provisions of Section 7 of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

(A) Ashland;

(B) Central Point;

(C) Medford;

(D) Newberg;

(E) Sandy.

(b) If a city or urban area listed in Subsection (8)(a):

(A) has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021; or

(B) is part of a regional growth plan that contains at least a twenty-year regional reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658; then any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan.

(c) Notwithstanding the provisions of Section 7 of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in Subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR 660, Division 021, or is not part of an acknowledged regional growth plan as described in Subsection (b), Paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of Section 7, if the Portland metropolitan service district has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance.

(e) Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if the Portland metropolitan area does not have an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of Section 7 and Subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in Subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at the densities set forth in the Metro 2040 plan. In no case shall the minimum area requirement set for such lands be smaller than 10 acres.

(g) A local government may allow the creation of a new parcel, or parcels, smaller than a minimum lot size required under subsections (a) through (f) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (E) of this subsection exist:

(A) The parcel to be divided has two or more permanent, habitable dwellings on it;

(B) The permanent, habitable dwellings on the parcel to be divided were established there before the effective date of OAR 660-004-0040;

(C) Each new parcel created by the partition would have at least one of those permanent, habitable dwellings on it;

(D) The partition would not create any vacant parcels on which new dwellings could be established; and

(E) The resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel.

(F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.283(1)(t)(A) - (D). [OAR 660-004-0040(8)]

The subject property is located more than one mile from all of the listed cities in subsection (8)(a) above. The subject property is not within an urban reserve area or part of a regional growth plan. The subject property is located more than one mile from the Portland metropolitan area. The proposal would not allow the creation of parcels smaller than the two-acre minimum lot size.

(9) The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws. [OAR 660-004-0040(9)]

The applicant is requesting that the proposed exception area be zoned AR-5 to allow for the creation of approximately five 5-acre parcels.

(OAR 660-014-0030), The criteria below outline the method defined in Oregon Administrative Rule (OAR) for determining a use proposed for a rural area would not be an urban use

1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

The applicant is requesting the proposed exception area be zoned AR-5 to allow for the creation of approximately five 5-acre parcels. The proposed parcel sizes would be in character with parcel sizes in the surrounding area and would provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area. This proposal will not result in "urbanization" of the area as it is more than one mile from an Urban Growth Boundary, serviced by unimproved roads and on-site private well and septic systems. The proposal will not commit the property to urban levels of development, requiring findings of support addressing OAR 660-004-0020(2).

(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

A map has been provided that identifies the subject property. The current level of development does not include urban services for sewer. The proposed development density would not include urban services for sewer. The property is located outside an Urban Growth Boundary and would not be allowed to connect to urban services due to limitations in law prohibiting extension of urban services outside an urban growth boundary. Therefore, the subject property is not

currently committed to urban uses and would not be committed to urban uses by permitting the creation of five-acre rural residential parcels.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

(b) Location, number and density of residential dwellings;

(c) Location of urban levels of facilities and services, including at least public water and sewer facilities; and

(d) Parcel sizes and ownership patterns.

There are no proposed commercial or industrial uses included with this proposal. The proposed development would provide for self-contained development having on-site wastewater disposal (sewage system) and wells for water service on five-acre rural residential. There are no urban services located within one mile of the subject property and the surrounding land use pattern is rural residential.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

The proposed change would allow for rural residential development is character with the surrounding land uses. It would not result in an urban level of development as contemplated under the above referenced rules

(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

This proposal will not commit the land to an urban level of development; therefore, no additional findings are required.

Goals 15-19: Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shore Lands), 18 (Beaches and Dunes), and 19 (Ocean Resources), are not applicable because the subject property is not within the Willamette River Greenway or near any ocean or coastal related resources.

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as defined in OAR 660-004-0028; and

Proposed Finding: The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as it is defined in OAR 660-004-0028. The proposed use of the land will be consistent with what is

occurring on the immediate adjacent lands. No new public facilities or services will be required or needed with the proposed dwellings. Therefore, such uses will not commit adjacent or nearby resource land to non-resource use.

(C) *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource use.*

Proposed Finding: There are no adjacent resource uses that would be impacted by the rural uses being proposed within the exception area. The proposed use, density, public facilities and services will be compatible with adjacent and nearby resource uses.

Conclusion: As indicated in Section III, the subject property is irrevocably committed to non-resource use and, therefore, exceptions to Statewide Planning Goals 3, 4 and 14 are justified.

IV. COMPREHENSIVE PLAN AMENDMENT

115.010. PURPOSE. *To provide clear and objective criteria and procedures to receive and process a request for a comprehensive plan amendment.*

115.050. CRITERIA FOR NON-LEGISLATIVE PLAN AMENDMENTS. *A non-legislative plan amendment may be approved provided that the request is based on substantive information providing a factual basis to support the change. It is the applicant's responsibility to provide the information necessary to determine if the request meets the pertinent criteria.*

(A) Amendments to the Comprehensive Plan Map must meet one or more of the following criteria:

(1) The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error; or

Proposed Finding: The applicant is not contending that the current Comprehensive Plan designation is erroneous. Rather, the intent is to amend the Comprehensive Plan designation to reflect changing conditions in the surrounding area.

(2) The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and

Proposed Finding: The current Farm/Forest Comprehensive Plan designation is no longer appropriate due to changing conditions in the surrounding area. These changing conditions include the approval of three partition applications and two property line adjustments in the direct vicinity of the subject property since 1990. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels have been created since the subject property was designated Farm/Forest in 1981.

The surrounding residential development pattern results in farm and/or forest use of the site being cost prohibitive and impracticable. As such, it is appropriate to redesignate the property from a Farm Forest Designation to a Rural Lands designation.

(3) The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following:

(a) Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation.

The following relevant goals and policies have been excerpted from the Polk County Comprehensive Plan.

AGRICULTURE GOALS

- 1. To preserve and protect agricultural lands within Polk County.*
- 2. To diversify agriculture within Polk County.*
- 3. To preserve and protect those resources considered essential for the continued stability of agriculture within Polk County.*

Proposed Finding:

AGRICULTURE POLICIES

1. Agriculture

1.1 Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts.

Proposed Finding: As stated previously, the land subject to the exception is developed with two roadways that serve as the primary access point for a total of 27 parcels, 22 of which are already developed with single-family dwellings and three of which are being developed with single-family dwellings (FORD05-12, FORD 05-19 and FORD 06-19). Additionally, the subject property contains Buzzard Spring, a tributary to the West Fork of Salt Creek, which serves as the domestic water source for at least six residential properties located in the Salt Creek basin. The site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by Statewide Planning Goals 3 & 4.

1.5 Polk County will discourage the development of nonfarm uses in agricultural areas.

Proposed Finding: The surrounding area is not being used for agricultural resource purposes. Thus, the proposed exception area will not adversely impact any farm operations in the surrounding area.

FOREST GOALS

1. To conserve and protect, and encourage the management of forest lands for continued timber production, harvesting and related uses.

Proposed Finding: The proposed exception area has not been used for timber production or related uses, therefore, there is no existing forest resource in the proposed exception area to conserve or protect.

FOREST POLICIES

1. Resource Preservation

1.1 Polk County will provide for the protection of productive forest lands. Designated forest lands will be areas defined as one of the following:

- a. Predominately Forest Site Class I, II and III, for Douglas Fir as classified by the U.S. Soil Conservation Service;*
 - b. Suitable for commercial forest use;*
 - c. In predominately commercial forest use and predominately owned by public agencies and private timber companies;*
 - d. Cohesive forest areas with large parcels;*
 - e. Necessary for watershed protection;*
 - f. Potential reforestation areas; and*
 - g. Wildlife and fishery habitat areas, potential and existing recreation areas or those having scenic significance.*
-

Proposed Finding: The proposed exception area can not be classified as productive forest land. As stated previously, the property has not been used for timber production or other related uses, it is not suitable for commercial forest use given the rural residential character of the surrounding area and it is not predominately owned by a public agency or private timber company.

PUBLIC FACILITIES AND SERVICES GOALS

- 1. To develop a timely, orderly and efficient arrangement of public facilities and services to serve as framework for urban and rural development.*
- 2. To support the provision of needed public services for all residents of Polk County.*
- 3. To plan the efficient and economic provision of public facilities and services for the people of Polk County.*

Proposed Finding: The proposed exception area is served with transportation facilities, rural fire protection and schools. Water and sewer facilities may be provided on-site in the form of private wells and septic systems. Adequate facilities exist to serve the proposed residential use of the property.

POLICIES

9. Rural Development and Services

9.1 Polk County will require that domestic water and sewage disposal systems for rural areas be provided or maintained at levels appropriate for rural use only. Rural Services are not to be developed to support urban uses.

Proposed Finding: The proposed exception area will be served by existing rural facilities and services.

9.2 Polk County will establish standards for the minimum adequate level of public services in the unincorporated portions of the County. Such services will include, but not necessarily be limited to, educational facilities, police and fire protection, domestic water supply, sewage disposal and roadways. Such standards shall not be considered to be directives governing the operation of schools, community water districts or any other public service agency, but shall be used only to assure that new residential development in rural areas does not exceed the capacity of one or more public service agencies to serve the existing population. The standards shall not conflict with existing State laws regarding the roles, functions and operation of public facilities and services.

Proposed Finding: As stated previously, the proposed exception area will be served by existing rural facilities and services. These facilities and services have adequate capacity to accommodate five additional single-family dwellings.

HOUSING GOALS

- 1. To encourage the development and retention of housing, which provides a variety of choices in type, location, density and cost.*
- 2. To minimize adverse social, economic and environmental impacts resulting from residential development.*
- 3. To assist in the provision of housing to the elderly and poor.*

Proposed Finding: The proposed exception area will add approximately five single-family dwellings to the rural housing stock. The placement of these dwellings on smaller

acreages in an area with available services helps minimize any social, economic and environmental impacts.

POLICIES

1. Residential Development

1.1 Polk County will encourage residential development only in those areas where necessary public facilities and services can be economically provided and where conflicts with agricultural uses are minimized.

Proposed Finding: The necessary public facilities and services can be economically provided to the proposed exception area. Moreover, conflicts with agricultural areas should be non-existent since there are no adjacent agricultural resource uses.

1.3 Polk County will support development of housing which provides variety in location, type, density and cost where compatible with development on surrounding lands and consistent with the predominately rural character of the County.

Proposed Finding: The proposed exception area provides a great opportunity for rural residential development in an area currently characterized by non-resource dwellings.

LAND USE DESIGNATIONS

Rural Lands

The Rural Lands Plan designation applies to lands in the County which for the most part lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetated, and have low densities of residential development. It is the intent of the Rural Lands Plan designation to provide an opportunity for a segment of the population to obtain acreage homesites in a rural area, while at the same time encouraging and protecting agriculture and forestry.

In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4, but are not given an exception to Oregon Statewide Planning Urbanization Goal #14, implementation will be accomplished with the Acreage Residential 10-Acre (AR-10) Zone and Agriculture and Forestry 10-Acre (AF-10) Zone. In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4 and Urbanization Goal #14, implementation will be accomplished with the Acreage Residential (AR-5) or Suburban Residential (SR) Zones.

Proposed Finding: The proposed exception area conforms to the intent of the Rural Lands Designation by providing an opportunity for acreage homesites in an area already characterized by rural residential development. As part of this application, the applicant is requesting exceptions from Statewide Planning Goals 3, 4, and 14.

Farm/Forest

The Farm/Forest designation applies to lands which, for the most part, lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetative, and have scattered areas of residential development. These lands had originally been designated Rural Lands. However, the Land Conservation and Development Commission (LCDC) did not grant a general exception

to the Oregon Statewide Planning Goals, as requested by the County, for approximately 41,000-acres of Rural Lands designated properties. As a result, those properties converted to the Farm Forest Plan Designation. There are many full-time farms located in this area; however, more of the smaller part-time farms that exist in the area were created through the land division process when the area was designated Rural Lands. The Farm Forest Plan Designation recognizes those smaller properties.

These areas exhibit a predominance of agricultural soils and timber lands as defined by State statutes. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services. It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan.

Proposed Finding: As indicated previously, development of the proposed exception area will not adversely impact farm and/or forest uses in the surrounding area. The predominant land use pattern in the surrounding area is rural residential development, which inhibits the establishment of a resource use on the site. As such, it is appropriate to redesignate the subject property from Farm Forest to Rural Lands.

(b) Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and

Proposed Finding: Please refer to Section III above for the applicant's response to statewide planning goals and the goal exception criteria.

(c) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.

Proposed Finding: The applicant is not aware of any intergovernmental agreements that would apply to the proposed exception area.

V. ZONE CHANGE CRITERIA

Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- (A) *The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification;*

Proposed Finding: Please refer to Section IV above for the applicant's response to the proposal's compliance with the purpose and policies for the Rural Lands comprehensive plan designation.

- (B) *The proposal conforms with the purpose statement of the proposed zone;*

Proposed Finding: Per PCZO Section 128.51, "It is the purpose and function of the Acreage Residential - 5 acre (AR-5) zone to:

- (A) Provide for the best use of the land based on the location, inherent limitations and ability to serve the functional needs of the area.
- (B) Provide larger acreage homesites which will be a buffer area between farm zones and higher density urban and urbanizing areas, thus reducing the conflicts between residential use and usual and normal farming practices.
- (C) Provide for the orderly growth of the urban areas so that as urbanization occurs, the supporting community will be able to afford the increased capital investments required for services to and within the new urban area and the costs of maintenance of utility facilities, rebuilding of arterial streets, protective services and desired social services.
- (D) To provide for the efficient, redivision of acreage subdivisions which may occur in the area.
- (E) To promote the pre-planning of future important streets in the area.
- (F) To meet the needs of a segment of the population for non-urban, non-farm acreage homesites.
- (G) To provide for the above, yet not adversely affect fish and wildlife resources and habitat areas, natural areas, and scenic areas. "

The proposed exception area conforms to the AR-5 purpose statement by providing the best use of the subject property based on its site limitations and its location in an area characterized by rural residential development. The proposed exception area will also provide non-urban and non-farm acreage homesites.

- (C) *The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands;*

Proposed Finding: As stated previously, the rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to non-resource use as it is defined in OAR 660-004-0028. The proposed use of the land will be consistent with what is occurring on the immediate adjacent lands. No new public facilities or services will be required or needed with the proposed dwellings. Therefore, such uses will not commit adjacent or nearby resource land to non-resource use.

- (D) *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property;*

Proposed Finding: The proposed exception area is served with transportation facilities, rural fire protection and schools. Water and sewer facilities may be provided on-site in the form of private wells and septic systems. As such, adequate facilities exist to serve the proposed residential use of the property.

- (E) *The proposed change is appropriate taking into consideration the following:*

- (1) Surrounding land uses,*
- (2) The density and pattern of development in the area,*
- (3) Any changes which may have occurred in the vicinity to support the proposed amendment;*

Proposed Finding: The subject property is primarily surrounded by lands that are developed with non-resource single-family dwellings, of which 25 are served by a 60-foot roadway easement located on the subject property. The current zoning is no longer appropriate due to changing conditions in the surrounding area. These changing conditions include the approval of three partition applications and two property line adjustments in the direct vicinity of the subject property since 1990. These applications created a total of nine parcels ranging in size from five acres to 15 acres, with the average size being approximately 10 acres and the median size being approximately 5.5 acres. All of these parcels have been created since the subject property was designated Farm/Forest in 1981.

The site improvements and the surrounding residential development make it impracticable for a farm and/or forest operation to be established on the subject property. In accordance with Oregon Forest Practices Rules, the implementation of protection measures to adequately address substantial downslope safety risks and the water quality of Buzzard Spring make resource use of the property cost prohibitive. As such, the subject property is no longer available for the uses allowed by the FF zone.

- (F) *The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and*

Proposed Finding: The applicant is not aware of any intergovernmental agreements that would apply to the proposed exception area.

- (G) *The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply.*

Proposed Finding: Please refer to Section III above for the applicant's response to statewide planning goals and the goal exception criteria.
