



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

June 6, 2007



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment
DLCD File Number 004-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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: June 19, 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
Ron Eber, DLCD Farm/Forest Specialist
Sterling Anderson, Marion County

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FORM 2

DLCD NOTICE OF ADOPTION

DEPT OF

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

MAY 30 2007

(See second page for submittal requirements)

**LAND CONSERVATION
AND DEVELOPMENT**

Jurisdiction: Marion County

Local File No.: ZC/CP05-03

number, use none)

(If no

Date of Adoption: May 16, 2007
(Must be filled in)

Date Mailed: May 24, 2007
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 09/19/05

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

(Please Specify Type of Action)

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

Same

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same". If you did not give notice for the proposed amendment, write "N/A".

Plan Map Changed from: Special Ag

to: Rural Residential

Zone Map Changed from: Special Ag

to: AR-10

Location: 2741 Bunker Hill Rd. Salem
94.52

Acres Involved:

Specify Density: Previous:

New:

Applicable Statewide Planning Goals:

Was an Exception Adopted? Yes: No:

Does Adopted Amendment affect the areas in unincorporated Marion County where the

Zoning Code applies? Yes No

DLCD File No.: 004-05 (14695)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Sterling Anderson

Area Code + Phone Number: (503) 588-

5038

Address: PO Box 14500

City: Salem Oregon

Zip Code+4: 97309

Email Address: smanderson@co.marion.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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 ANotice of Adoption≅ is sent to DLCD.
6. In addition to sending the ANotice 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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your

BEFORE THE BOARD OF COMMISSIONERS FOR MARION COUNTY, OREGON

In the Matter of the) Case No. ZC/CP05-3
Application of) Clerk's File No. 5108
Victor and Pamela Cobos) Zone Change/Comprehensive Plan Change Amendment

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1247

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Victor and Pamela Cobos to change the zone from SA (Special Agriculture) to AR-10 (Acreage Residential-10 Acre Minimum), and to amend the Comprehensive Plan designation from Special Agriculture to Rural Residential, with exceptions to Statewide Planning Goals 3 (Agriculture) and 4 (Forest), on a 94.52-acre parcel located at 2741 Bunker Hill Road, Salem.

SECTION II. Procedural History

The Marion County Hearings Officer held a public hearing on this application on January 11, 2006. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On April 26, 2006, the Hearings Officer issued a report recommending that the Board deny the requested changes. The Board held a duly noticed public hearing on the application on August 9, 2006. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested zone change from Special Agriculture to Rural Residential is hereby GRANTED.

The requested zone change from SA (Special Agriculture) to AR-10 (Acreage Residential 10 acre minimum lot side) is hereby **GRANTED**.

The property rezoned by this Ordinance is described in Exhibit B, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Rural Zoning Ordinance Section 110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 16th day of May, 20076, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Janet Carlson
Chair

D. Kern Hullett
Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

FINDINGS OF FACT AND CONCLUSIONS

The Marion County Board of Commissioners after careful consideration of all the testimony and evidence in the record makes the following findings of fact and conclusions.

A. General Findings:

1. The subject property is zoned Special Agriculture (SA) and designated Special Agriculture in the Marion County Comprehensive Plan.
2. The subject property is 94.52 acres in size, and is a combination of Tax Lot 100 and 200 on Map 83W32C.
3. The site is located on Bunker Hill Road near Royer Road S., south of Salem. The site adjoins the Chinook Estates subdivision to the north and northwest. This adjoining area is zoned and designated for Acreage Residential uses. Land to the east and south are zoned SA and consist of a mixture of farm and non-farm uses on parcels ranging from small acreage residential tracts to larger farm tracts. Many tracts, regardless of the size, are idle.
4. The property currently has one house in which the applicants live. There are accessory structures on the site and the home is served by a well and septic system. A second home has been approved (to be located on Tax Lot 100) but not yet constructed.
5. A soil analysis, conducted on-site in 1981 and 1985 by Dr. G. H. Simonson, soil scientist, provides expert site specific soil data that is credible and hereby adopted as the findings of this board. These site specific findings based on field investigations are more reliable and informative of the actual soil conditions than the more generic soil classification done by the SCS. In summary, those findings indicate that no less than 47 acres (about 50%) of the property is in Class VI soils and intermingled with Class I-IV soils so as to be the dominate soil type on the property. The soils are a marbled mix of Class III and IV farmland with large amounts of unproductive Class VI agricultural soils interspersed on the site. The Class VI soils dominate the other soils and effectively diminish the agricultural viability of those other Class III and Class IV soils. Thus, the agricultural soils are not configured suitably for farm use. Clearing of any of the wooded areas on the property would destabilize the soils and worsen erosion that would make the cleared soil unfit for agricultural production. In the past such clearing activities have done great harm to the soil. Although sodding might prevent some erosion, the rainfall and adverse growing conditions due to low fertility would, in the interim, create a considerable hazard and severely hamper the already limited agricultural potential of the Class IV soil, and in effect create a Class VI soil condition. With the combination of 9 different soil types that are so dispersed as to have an overall marble pattern with a predominance of Class VI soils, which taken with the lack of stability due to erosional pressures, creates a tract with

severely limited agricultural potential. A soil scientist, Dale McGhee, concurred that the predominate soil on the subject property is Class VI as they dominate the other soils so as to interdict with the agricultural viability of those other soils. He concluded that the overall SCS soil classification could not be sustained.

6. A high percentage of the land has severe erosion potential. The surrounding area to the subject property coincides with the escarpment slope of the South Salem Hills. The slopes in this area have been overly steepened by erosion caused by the Willamette River and are unstable due to the landslide potential. Also, there is a steep, dissected area along a drainage way that begins below the northeast corner and parallels the road down slope past the home. The drainage way is bordered by slopes in excess of 30 percent for most of this distance. In addition, the soils at the bottom of the draw show effects of excess wetness, and surface stones are abundant on portions of the steep, bounding slopes. Because of the steep slopes, this soil area is considered as Class VI land.
7. Further, the Class VI soils are very shallow and surface stones are common. These shallow, stony areas interfere with the continuity of potentially tillable acreage. Other soils on the property have severe moisture limitations imposed by southerly exposure and moderate soil depth to bedrock. The slopes of 20-30 percent represent a severe limitation for tillage and would be very difficult to carefully manage in order to limit erosion. Cutting trees or removing vegetation would promote erosion and destabilize the soil and hillside. Taken together, these conditions severely limit the properties agricultural potential. The soil depth is generally less than 36 inches to bedrock, and in many cases are only 10 inches deep. There is a high percentage of the land with severe erosion potential and low to moderate fertility. The severe slopes are shown by the elevation drop from 825 feet in the northeast corner of the site to 275 feet in the southwest corner.
8. The poor suitability of the site for agriculture is reflected in the variety of unsuccessful farming activities that have been attempted since 1941, including growing oats, strawberries, orchards, grass seed, wheat, grapes, Christmas trees, grazing cattle, horses, sheep, and raising turkeys. All of these agricultural operations proved impractical due to a wide variety and unique mix of conditions on the site including the steep slopes, low moisture retention of the soils, low fertility, shallow bedrock, an existing drainage, existing residential development, and the high-voltage BPA transmission line running through the center of the subject property. A history of the farming attempts on the property follows:
 - A. James Heltzel, predecessor in interest, received a total return of 60 bushels of oats farming the subject property together with additional lands (157 acres total) during the years 1941 and 1942. That is a total of only 5 bushels per acre, which is understood to be well below the normal production.
 - B. Francis Crawford rented the property for the purpose of pasturing two horses and paid a total of \$150 rent for the entire year of 1944

- C. In 1948 the President of the Oregon Turkey Growers Assoc. investigated the subject property for its suitability for growing turkeys and determined that the site was not acceptable due to water and terrain issues.
- D. In 1949 approximately five (5) acres of the site was planted to strawberries. Despite continued agricultural attention the plants died due to unsuitable soil and lack of available water.
- E. In 1951/52 the site was investigated for the suitability of planting orchard crops. Based on projected yields from the soil conditions, presence of rock and water conditions the site was determined not to produce enough crop to make the site feasible given market conditions at the time.
- F. In 1954 a share crop agreement for the subject property provided for an attempt to plant chewing fescue and bent grass for seed production. Due to soil conditions the land was unable to produce mature grass seed heads. The grass seed crop having failed the resultant grass was only used as mushroom mulch. During the first 3 years of this attempt the property owner only received a total of \$246, for a 3 year average return of \$82. Although the original agreement was for 8 years, the crop failure led to the termination of this venture after only 3 years.
- G. In 1956 a sheep ranch was attempted on the subject property. During portions of two winters such a high proportion of the sheep were lost due to the steep slopes and limited moisture retention in the pasture areas that the operation was discontinued. The property owner received a total of \$60 in rent for this sheep operation.
- H. Another sheep operation was attempted in 1957, and it too failed due to lack of forage and unsuitable terrain. The total rent paid by another farmer for this operation was only \$4 per month over a period of 4 months that is understood to be well below normal expectations.
- I. In 1958 the lower portion of the subject property was used for a small cattle operation. During a 3 month period only 12 cows could be sustained and one of those was killed when it fell over a steep embankment on the property. This farming attempt lasted only that 3 months and returned a total of \$13.50 for that period to the property owner.
- J. In 1966 6,000 Douglas Fir seedlings and 800 Norway Pine and Scotch Pines were planted on the site. The ground was first prepared by rototilling. Despite good agricultural practices, none of the Norway survived and only 125 of Douglas Fir lived.
- K. During 1970-1973, based on advice from the Marion County Extension Service, Hyslope and Yamhill Winter wheat varieties were planted. Nearly \$5,000 in

fertilizers and chemical amendments were applied to the land, some by helicopter. An experienced farmer was hired to attempt to harvest the wheat. During harvest even the special side-hill combines sustained accidents, leaving the total yield at less than 40 bushels per acre. During this 3 year period, a total loss of over \$8,000 was sustained in the attempt to farm wheat on the subject property.

- L. Wheat was attempted again in 1974 and 1975, this time on a share crop arrangement. This wheat crop also could not mature, and was ultimately sold as straw. The property owner obtained a return of \$151 for this effort.
- M. In 1975 an attempt was made to create a vineyard. The soil scientist concluded that the property was unsuitable for grape production due to low moisture retention in the soil. Between 1975 and 1998 the property was idle and not in any attempted agricultural production.
- N. In 1998/1999 approximately 45 acres of Christmas trees were planted on the site. Some old growth oak, maple, ash, and fir trees had to be removed. Clearing the land and preparing the soil for planting was very costly due to the previously described conditions. The subject property was mortgaged to finance the establishment of the tree farm. The southwest slope limits sunlight, and the hill's steepness makes it more difficult to spray and culture the crop. The first summer, 20,000 seedlings died due to drought. Because of the type and depth of soils, 20 percent of the trees planted are expected to die or be unmarketable due to stunted growth. There is limited potential for aerial spraying of the trees due to the presence of houses in the adjacent subdivision. Similarly, there is limited ability for commercial harvesting of the trees that do survive because of the limited landing sites for helicopters especially because of the power line that spans the property. Based on the current attempt at Christmas trees, and that the cost of accepted farming practices will exceed any expected revenues, the business banker at Wells Fargo indicated that no loan could be extended to fund continued agricultural operations on the property.

During all other periods of time when farming options were not being explored or attempted the subject property was idle. This pattern of failed agricultural activities verifies and confirms the expert soil scientist opinions as to the quality of the soil for agricultural use on this property.

- 12. Once it was determined, after the long history of failed farming attempts, that the site could not support a farm use, the property owner began a 30 year process of converting the land to rural residential uses. The following is a summary of these activities:
 - 1. In 1976 the property owner obtained approval from Marion County for a 30 lot subdivision on the subject property. This approval was successfully appealed and the development was stopped.

2. In 1979 the property owner again obtained approval from Marion County, this time for a 54 lot PUD. This approval was also successfully appealed and the development was stopped.
 3. Between 1980 and 1983 Marion County attempted to include the subject property in an Exception Area to allow rural residential development on acreage lots. Both attempts were rejected by DLCD.
 4. In 1990 Marion County approved a partitioning of the subject property to create two tax lots and to allow a dwelling on each parcel. Conditions of approval were imposed included planting of Christmas trees.
 5. In 2001 Marion County determined that all conditions of approval for the partitioning and second dwelling approved in 1990 had been met. However, this dwelling has not been constructed.
 6. In 2004 the property owner filed a Measure 37 Claim with Marion County. The claim was denied based on the acquisition date of the present owner. This case is currently on appeal to the Oregon Court of Appeals. Note that the state did not deny.
13. A Bonneville Power Administration (BPA) transmission line right-of-way bisects the subject property north to south. A drainage way runs from north to south, close to the western edge of the subject property. There is a spring-fed pond in the southwest corner of the subject property, and another pond is located in the transmission line right-of-way near the center of the subject property. All domestic water is obtained from deep wells, and there is no use of surface water for irrigation purposes.
 14. The area surrounding the subject property presents a mixture of acreage tracts from one acre to over 100 acres. Three of the four sides of the subject property are bordered by residential home sites. To the north, the Chinook Subdivision consists of 73 lots, which range from two to seven acres in size. Ten lots in this subdivision border the property to the north. These lots range in size from approximately 13 acres to 2.2 acres. To the east there are two lots: Tax Lot 900 with 4.31 acres, and Tax Lot 600 with 24.99 acres. To the southeast there are acreage residential properties: Tax Lot 300 has 16.40 acres; Tax Lot 600 has 2.70 acres; and Tax Lot 700 has 13.77 acres. To the west is Tax Lot 100 that consists of 111.85 acres. To the south is Tax Lot 400 with 45.23 acres. In total there are 18 lots for a total of 261.16 acres, with an average lot size of 14.5 acres.

B. Nature of the Application:

This is an application to change the comprehensive plan designation from Special Agriculture (SA) to Rural Residential (RR), a corresponding zone change from Special Agriculture (SA) to

Acreage Residential with a 10 acre minimum lot size (AR-10)¹, to allow the development of a rural subdivision with up to nine lots.

C. Goal 3 Does Not Apply to the Subject Property:

Before addressing any comprehensive plan or zone change criteria, it must be determined if Goal 3 applies to the subject property. If it does then an Exception to Statewide Goal 3 "Agricultural Lands" is required. If it does not, and the proposed development of the property is not for an "urban use" not allowed outside an urban growth boundary without an exception to Statewide Goal 14 "Urbanization", then the criteria for approval lie exclusively in Marion County land use regulations.

Based on the findings and conclusions set forth herein, it is the determination of Marion County that Goal 3 does not apply to the subject property because the land is not "agricultural land" as defined by Goal 3. It is not "agricultural land" because the property is not predominately composed of Class I-IV soil, is not land in other soil classes "suitable for farm use," or land necessary to permit farm practices on adjacent lands under Goal 3 or OAR 660 division 33.

1. Site is Not Predominately Class I-IV Soils - The site has been investigated by several different soil scientists on a number of occasions, including the 1981 and 1985 investigations by Dr. G. H. Simonson, and Marion County finds those reports credible and accurate.

These reports consistently determine that the land is not predominantly composed of Class I-IV soils. While the tract contains a mixture of soil types, it is determined that the dominate soil classification for subject property is Class VI because of how they are intermingled with the Class I-IV soils and affect their suitability for farm use. Thus, the Class I-IV agricultural soils do not occur in a configuration suited to farm use. It is hereby determined, with regard to site's dominant soils, that it is not "agricultural land" under Goal 3, in part, because the land is not predominately Class I-IV soils.

2. Site is Not "Other Lands" Suitable for Farm Use - In addition to the subject property not being predominately Class I-IV soils, it does not qualify as "agricultural lands" because it is not suitable for farm use. Besides the evidence with regard to the intermingled soils and how this diminishes their fertility and suitability for farm use, the slopes, erosion potential, depth of soil to rock, and the lack of the soils' ability for water retention all make the soil unsuitable for agricultural use. The findings with regard to the site's soil characteristics and the longstanding and unique history of failed agricultural attempts all confirm that the property is not suitable for farm use based on many factors as explained as follows.

¹The original application was for the Acreage Residential zone, but was modified during the course of the hearings process to consent to the AR-10 designation.

In addition to the many attempts to grow crops on the property, the site is not suitable for grazing either. There have been three failed attempts at grazing animals on the site. In the late 1950's two different sheep and one cattle grazing operations were attempted. All three grazing attempts failed due to the steep slopes and limited moisture retention in the grass and a lack of natural forage.

The site is located in an identified Sensitive Ground Water Area. While this designation is primarily applied as a density limitation for rural residential uses, it is also an indicator that water would be difficult if not impossible to obtain for irrigation purposes. It is appropriate to assume that if irrigation were available, given the decades long attempts by the property owner to farm the ground, irrigation would have been found and used on the land. Given the steep slopes of the property and the soil sensitivity to erosion, irrigation even if available could do more harm to the land than good in erosion since the water retention capability of the soil is minimal.

The area surrounding the subject property presents a mixture of acreage tracts from one acre to over 100 acres in size. The uses of the tracts are a mix of large and small acreage home sites and tree and brush covered steep slopes with virtually no farming activities present. Large areas of subdivision platting approved by the county are also present.

The Chinook Subdivision to the north is 227 acres in size and consists of 73 lots. The lots range in size from 2.10 acres to 7.34 acres, averaging 3.12 acres in size. There are 14 acreage residential home sites on the other side of Bunker Hill Road on land that was sold and divided in the early 1970s. These 14 home sites range in size from one to approximately 25 acres. The only exception to this is the land to the southwest that is not subdivided. There is a small 30-acre Christmas tree farm operation to the southwest on Tax Lot 100. Applicants report that this grower will barely break even this year and will not replant next year. Therefore, the subject property is bordered by residential home sites on three sides with vacant land to the southwest that has one small Christmas tree farming operation.

The prevalent land use pattern in the area is a rural residential homesite on a tract of land that is less than 10 acres in size. While Chinook Subdivision is the primary example of this, there are many other small tracts in residential use only in this area. The characterization of this area as predominately rural residential is important for two purposes. The first is that the adjacent lots, with housing sitting in close proximity to the boundary line of the subject property adversely affect farming practices (see below), and second that the proposed 10 acre lot subdivision to be built on the subject property would be very compatible with the land use pattern in the area.

The only technological/energy inputs affected in this case is the use of a helicopter in the current Christmas tree operation. Because of the houses being so close to the Chinook Subdivision development and the BPA power line, the use of a helicopter, which is the most economical way of spray application and harvest of Christmas trees, is severely limited. Most spray has to be applied by backpack sprayer and high cost of labor.

Similarly, harvesting will have to be by hand and the use of a helicopter cannot be taken advantage here. While this may save fuel (i.e. energy inputs), this savings is more than offset by the high cost of hand spraying and harvesting.

There are few normal accepted farm practices that can be done on the subject property because of the steep slopes and poor soil conditions. Irrigation and tilling the soil are not available because of the high potential for erosion and soil destabilization. Most modern machinery for planting, spraying and harvesting are not equipped to handle the majority of the property where the slopes and terrain are so severe. Spraying and fertilizing are not economical as it all has to be done by hand.

These poor agricultural conditions have been reflected in the variety of unsuccessful farming activities that have been attempted since 1941, including growing oats, strawberries, orchards, grass seed, wheat, grapes, Christmas trees, and grazing cattle, horses, sheep, and raising turkeys. All of these agricultural operations proved impractical due to the steep slopes, low moisture retention of the soils, low fertility, shallow bedrock, an existing drainage, existing residential development, and the high-voltage BPA transmission line running through the center of the subject property.

3. Site Not Necessary to Permit Farm Practices on Nearby lands - The subject property is not necessary to permit farm practices to be undertaken on adjacent or nearby lands. As determined above, the dominate land pattern in the area is for rural residential uses. There is one small vineyard nearby, but there is nothing about that farm use that would be adversely affected by the use of the subject property for rural residential use. The Chinook Subdivision lies immediately adjacent to the subject property and, therefore, is within the same classification of "nearby" lands to the small vineyard, and those two uses have existed over the years without interference.

In summary, the subject property is not predominately composed of Class I - IV soils; is not "other lands" suitable for farm use because of the poor quality soil, severe terrain and long and unique history of unsuccessful farming; and is not land that is necessary to permit farming practices to be undertaken on adjacent or nearby lands because there are none. Therefore, the subject property is not agricultural land as defined in Goal 3. It is only agricultural land that is subject to preservation under Goal 3. Where the tract does not meet the definition of agricultural land, Goal 3 does not apply and no Exception is required.

D. Goal 4 Does Not Apply to the Subject Property:

As with Goal 3, the forest lands goal (Goal 4) does not apply to the subject property. Goal 4 applies only what is legally defined as forest lands. To be forest lands a site has to be acknowledged as forest lands as of the date of adoption of a goal amendment. At no time during the application of the statewide planning goals has the subject property been acknowledged as forest lands. Where Goal 4 does not apply, no Exception process for forest lands is required.

E. Goal 14 Does Not Apply to the Subject Property:

As currently submitted, the application is for the establishment of an AR-10 zone on the subject property. Goal 14 does not permit urban uses on land outside of urban growth boundaries [1000 Friends of Oregon v. LCDC (Curry Co.), 301 Or. 447, 724 P2d 268 (1986)] and does not apply in situations where rural residential uses are being proposed. However, in this case, the proposed zone has a 10 acre minimum lot size which is not an urban level of use and thus, Goal 14 does not apply and no Exception needs to be taken.

The Marion County Comprehensive Plan, which has been acknowledged by DLCD, provides that conversion of land to Rural Residential use be allowed without consideration of an Exception to Goal 14 only where a minimum lot size of 10 acres is proposed. See Marion County Comprehensive Plan (MCCP) Rural Residential Goal 8.

When the application was amended to provide for the AR-10 zone instead of an AR-3, the need to apply Goal 14 or to take an exception to it was eliminated.

Goal 14 does not apply to this application and no Exception is required.

F. Compliance with Other Statewide Goals:

This application similarly complies with all the standards and considerations contained in the other relevant statewide goals. Discussion of the other relevant goals follows:

1. Goal 1 (Citizen Involvement). The notice and hearing process involved in this case provided an opportunity for citizen involvement. The application complies with this goal.
2. Goal 2 (Land Use Planning). As noted above, this application has been examined under the implementing regulations of this goal. The application complies with this goal.
3. Goal 5 (Open Spaces, Scenic and Historic and Natural Resources). There are no open spaces, scenic, historic or natural resource areas identified on the subject property. The application complies with this goal.
4. Goal 6 (Air, Water and Land Quality). There is nothing about this application to create rural residential home sites that adversely affects the air quality. As noted above, the quality of the land is not suitable for resource use, and rural residential housing is the highest and best use of this land. The site is located within an identified Sensitive Groundwater Overlay zone, where study is necessary for any parcel smaller than five acres (SGO-5). In this case, where the minimum lot size will be set at 10 acres, it would appear that water quantity and quality will not be affected, especially given the fact that there has been no water problems associated with the Chinook Subdivision next door with its lot sizes significantly smaller than is to be allowed here. In any event, Marion County has review procedures to be applied during the subdivision process to review and

assess water issues on a lot by lot basis. The application complies with this goal.

5. Goal 7 (Natural Hazards and Disasters). The subject property is located in an identified Geologically Hazardous Area Overlay zone (GHAO). Marion County has regulations to achieve this goal and the subject property is subject to those regulations. Construction of a subdivision and rural residential dwellings is a regulated activity. There is a geology report for a portion of the property showing the ability of the site to comply with the GHAO. During the subdivision process, the applicant will be required to show compliance for the entire site pursuant to the code. The application complies with this goal.
6. Goal 8 (Recreation Needs). There are no identified recreational areas located on the subject property. The site is not near, nor dependent upon, any other recreational site. No recreational uses are now or have been taking place on the subject property. The site is not needed for recreational purposes in Marion County. The application complies with this goal.
7. Goal 9 (Economic Development). The subject property has essentially been unproductive as far back as there are records. Most agricultural enterprises attempted have not produced sufficient revenue to warrant continuation. The result is that the property has been idle and not producing any economic gain for the community. It is important that Marion County land use regulations not cause land to become wasteland and totally unproductive. By allowing the subject property to be used for rural residential uses at the 10 acre lot size, the land becomes productive. Property taxes increase dramatically as the land comes out of deferral and onto the tax rolls at fair market value and with a high end dwelling such as that built on the adjacent subdivision. The development costs to construct the lots and buildings also create positive economic benefit for the county. The application complies with this goal.
8. Goal 10 (Housing). This application will ultimately allow the construction of 8 new homes on the subject property. There will be a total of 9 lots, however, the applicant already has their dwelling on the site that will be integrated into one of the new lots, allowing 8 new dwellings. These 8 new houses will help fill the growing desire for large tract rural residential dwellings. The application complies with this goal.
9. Goal 11 (Public Facilities). Each new dwelling will be on its own well and septic system. Wells and septic systems are regulated and controlled by Marion County and will be addressed in the subdivision review process. Impact on public facilities is limited to transportation, as storm drainage will be dealt with on-site. The application complies with this goal.
10. Goal 12 (Transportation). Bunker Hill Road is the primary access for this new development. The subject property has significant frontage on Bunker Hill Road, and there are several access points that provide safe sight distance for a new entrance for the development. Bunker Hill Road has the capacity to handle the additional traffic. To the

extent improvements are necessary, those will be identified and imposed during the subdivision review process. The application complies with this goal.

11. Goal 13 (Energy). There is a large BPA transmission line traversing the subject property that serves a regional energy need for the community. This application will have no affect on that line. All the new homes for the subdivision will be designed as energy efficient homes. The application complies with this goal.

Goals 3, 4 and 14 were discussed individually above. Goals 15-19 apply to the greenway and ocean related situations that do not apply to this case.

G. Compliance with the Marion County Comprehensive Plan:

This application involves a request to change the MCCP designation to Rural Residential (RR). An amendment to the MCCP must comply with all relevant MCCP goals and policies. The following goals and policies apply:

1. Rural Residential Policy 6. This policy provides for reasonable dwelling setbacks from protected resource areas in order to minimize conflicts between accepted resource management practices and rural residents. With 10 acre lot sizes, all reasonable setbacks are capable of being met during the subdivision review process. This policy is met.
2. Rural Residential Policy 7. Lands available for rural residential use shall be those areas that are unsuitable for resource use and which are reasonably located in proximity to a major employment center. As noted herein, the subject property is not defined as either agricultural land or forest land, therefore by definition the site is unsuitable for resource use. The subject property is located south of Salem, and in close proximity to Salem that provides the major employment center. The site is easily accessible to the I-5 Freeway and within commuting distance to Portland and Albany, which also are major employment centers. This policy is met.
3. Rural Residential Policy 8. This policy is discussed above and provides that any Acreage Residential zone shall have a minimum lot size of 10 acres unless an Exception to Goal 14 is taken. The proposal here is for the imposition of an AR-10 zone with its minimum lot size of 10 acres. As amended to provide for the AR-10 zone this policy is met.
4. Rural Residential Policy 9. When approving rural subdivisions each parcel shall be approved as a dwelling site only if it is determined that the site has the capacity to dispose of wastewater; is free from natural hazards or the hazard can be adequately corrected; that there is no significant evidence of an inability to obtain a suitable domestic water supply; and that there is adequate access to the site. Each of these issues is addressed as approval criteria in the land division process. At 10 acres in size, it appears that each building site would have sufficient size to establish a septic system to dispose of wastewater. The geologic report covering a portion of the property indicates that building sites can be engineered, and as a general rule all subdivisions in these

circumstances require a site specific geology study before a building permit can be issued. This site is in an SGO-5 area, however with 10 acre lots there is the capability for each lot to have a dwelling. Well creation and evaluation is something that is dealt with in more detail during the subdivision review process. There is adequate access from the subject property to Bunker Hill Road. The exact location and style of construction will be determined during the subdivision review process. This policy is met.

5. Rural Residential Policy 10. This policy affirms that all residential uses shall have water supply and distribution systems and sewage disposal systems that meet prescribed standards for health and sanitation. As indicated above, the site has the capability of providing adequate water and septic systems and the location, type and style will be determined during subdivision review. This policy is met.
6. Rural Residential Policy 11. This policy requires rural subdivisions to have paved streets. The subject property has the capability of having paved streets. The subdivision process will address this need and impose any such requirements as a condition of approval. This policy is met.
7. Rural Residential Policy 15. Where parcels are 20 acres in size or larger, and there is no previous impediment to a particular type of conventional subdivision, the developer shall be encouraged to cluster the dwellings through the PUD process to retain any resource use potential, to preserve significant blocks of open space and wildlife habitat and to provide buffers between residences and nearby resource uses and public roadways. There is no current proposed layout for the 9 lot subdivision that will ultimately be allowed with the changes approved here. It appears that the terrain, BPA easement and other physical features of the subject property lend itself to clustering, however actual lot layout and dwelling placement is dealt with in detail during the subdivision review after an engineered plan is submitted for review. This policy is met.

This application now complies with all the relevant provisions of the M CCP.

H. Compliance with the Marion County Zone Code:

This application involves the change of the SA zone applied to the subject property to an AR-10 zone. In order to change a zone map designation, MCRZO 123.060 requires affirmative findings and conclusions on four criteria. Compliance with those criteria follows:

Compliance with the Comprehensive Plan: the findings and conclusions above with regard to the M CCP show this application complies in all respects.

Appropriate to the Land Use Pattern in the Area: this application, which will pave the way for a 9 lot subdivision with an average lot size of in excess of 10 acres, is appropriate considering the surrounding land uses and the density and pattern of development in the area around the subject property. The area surrounding the subject property presents a mixture of acreage tracts from one acre to over 100 acres. The uses of the tracts are a mix of large and small acreage home sites

and tree and brush-covered steep slopes with little farming activities present. The Chinook Subdivision to the north is 227 acres in size and consists of 73 lots. The lots range in size from 2.10 acres to 7.34 acres, averaging 3.12 acres in size. There are 14 acreage residential home sites on the other side of Bunker Hill Road on land that was sold and divided in the early 1970s. These 14 home sites range in size from one to approximately 25 acres. The only exception to this is the land on the southwest that is not subdivided. Therefore, three out of four sides of the subject property are bordered by residential home sites. The land use pattern in the area is then characterized by rural residential lots of a size less than 10 acres and with a non-resource related dwelling. The proposal here is compatible and appropriate with this existing land use pattern, is less dense than the Chinook Subdivision. The application complies with this criterion.

Other Lands: Marion County has a shortage of rural residential lands throughout the county as shown by the demand, high lot prices, and the lack of available lots on the market. In the immediate vicinity of the subject property, only the Chinook Subdivision immediately north of the subject property is zoned AR. The MCCP, in the section on rural development, states that "[a] review of past rural housing activities and future population increases indicates a significant demand for rural housing." The MCCP indicates that there is a significant need for rural residential houses in the county every year. The MCCP says that in 1981 it was estimated that approximately 500 new residential dwellings were being built on rural lands every year. While a portion of these were related to farming and forestry activities, between 350 and 400 were non-farm related. This need for rural residential housing is much more prevalent today given the more restrictive land use regulations that make it very difficult to site new homes in the rural areas. The subject property is unique in being able to fill this need for rural residential housing because of size, location and lack of ability to use the site for agricultural purposes. From a size standpoint, the tract is over 90 acres in size, which makes it amenable to an AR-10 zone, which provides rural residential housing, but at a density which is in line with the desired density for such housing in the county. The terrain of the site also makes the 10 acre lots attractive, as there is plenty of room for the building envelope, appropriate setbacks and to allow placement of a septic system. In addition, the large lots allow for dwellings even though the site is in an SGO-5. The location of this property is ideal to fill the rural residential need because of its close proximity to Salem and to the I-5 Freeway making it very convenient for access to the Willamette Valley corridor for working and shopping purposes. The fact that the subject property is immediately adjacent to a well-established rural subdivision (Chinook) is also a distinct advantage that sets this site apart from other lands. Finally, the lack of agricultural production ability on this site make it perfect for conversion to rural residential uses. While other lands in the county may retain some agricultural potential, there is no other site in Marion County that has the documented history of failed agricultural enterprises of such a wide variety and over such a long period of time. The application complies with this criterion.

Least Intensive Uses: the proposed plan designation under this proposal is Rural Residential. According to the MCCP, the zone that carries out this plan designation is the AR zone. It is recognized that the base AR zone may have certain minimum lot size designations associated with it (AR-3, AR-5 and AR-10), but the allowed uses do not change. Since there are no more intensive uses allowed in this AR zone than in any other AR zone which implements the RR plan designation, the application complies with this criterion. Even if it were determined that the

proposed 10 acre minimum lot size subdivision that ultimately will be constructed on the property were a more intensive use, it would not significantly adversely affect adjacent lands zoned for SA use. Given the long history of compatibility between the adjacent Chinook Subdivision and the SA zone uses all around it, as well as the many other small tract non-farm uses in the area, the subject proposal would not negatively affect farm uses in the area, let alone significantly adversely affect them. The application complies with this criterion.

A zone change should be consistent with the purpose and intent of the new proposed zone. The purpose and intent of the AR zone is to provide areas that are suitable for development of acreage home sites. MCRZO 128.010. As discussed above, the amended application to provide for an AR-10 zone provides a density of housing that is both compatible with the surrounding lands; will not adversely affect any resource use in the area; is of a size that is double the minimum lot size allowed in the SGO-5 overlay, and is large enough to ensure that an adequate septic system can be installed. Having only 8 new houses using the road system also makes it such that the transportation impacts are minimal. Given Chinook's 73 lots averaging just over 3 acres each, and the many other rural residential parcels in the area that are under 10 acres each, the creation of a rural residential area with a minimum lot size of 10 acres is very compatible with the area. In addition, it ensures that this non-productive tract of land does not become a wasteland and instead is made into home sites that fill a distinct need in Marion County.

The project is consistent with the AR-10 zone. Single family dwellings are a permitted use in the AR zone. MCRZO 128.020. Special setbacks from any neighboring SA zone are feasible. MCRZO 128.050(a). The 10 acre minimum lot size is well above the 2 acre minimum lot size for rural residential parcels stated in the AR zone and in the Goal 14 OAR.

This case is extraordinarily unique. The detailed and documented history of failed farming attempts going back over 50 years probably can never be paralleled. The wide variety of farm crops and animal husbandry that have been tried unsuccessfully is unprecedented. The soil on the subject property is very complex, and is one of only a very few where the SCS classification cannot be supported after detailed on-site analysis by several well-qualified soil scientists. The location of the site so close to I-5 and contiguous to one of the most successful rural residential subdivisions in Marion County make the site ideal for conversion to rural residential uses. The size of the property and ability to accommodate a 10 acre minimum lot size in order to assure compatibility with surrounding lands and allow for negligible impact on public infrastructure are also very unique.

This application, as amended to provide for the AR-10 zone, complies with all the relevant provisions of the Marion County Rural Zoning Ordinance.

Based on all of these factors, the legal analysis and the very unique and unprecedented aspects of this particular case, this application to amend the Marion County Comprehensive Plan designation on the subject property from Special Agriculture to Rural Residential, and to change the zone from Special Agriculture to Acreage Residential (10 acre minimum) is hereby approved.

EXHIBIT B

The following described property is rezoned from SA (Special Agriculture) to AR-10 (Acreage Residential -10 acre Minimum) zone.

