



# Oregon

John A. Kitzhaber, M.D., Governor

**Department of Land Conservation and Development**

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



## **NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION**

Date: April 27, 2015  
Jurisdiction: Marion County  
Local file no.: ZC/CPC 14-002  
DLCD file no.: 003-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 04/23/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 44 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 003-14 {19916}

Received: 4/23/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: Marion County

Local file no.: **ZC/CP14-002**

Date of adoption: 4/22/15

Date sent: 4/22/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 12/8/14

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

No difference

Local contact (name and title): Joe Fennimore, Principal Planner

Phone: (503) 588-5038

E-mail: [gfennimore@co.marion.or.us](mailto:gfennimore@co.marion.or.us)

Street address: 5155 Silverton Rd NE

City: Salem

Zip: 97305

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

#### For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from Primary Ag to Farm Timber 28 acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): T8S; R1W; S29D; 900

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from EFU	to FT	Acres: 28
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address): T8S; R1W; S29D; 900

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List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Ordinance #1352

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the Matter of the	)	Case No. ZC/CP 14-002
	)	
Application of:	)	Clerk's File No. 5688
	)	
Freres Timber, Incorporated	)	

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. 1352**

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 modified application of Freres Timber, Inc. to change the comprehensive plan designation from Primary Agriculture to Farm Timber, and the zone from EFU (EXCLUSIVE FARM USE) to FT (FARM TIMBER) on a 28.11 acre parcel in the 7,500 block of Sherman Road SE, Aumsville, Marion County, Oregon (T8S, R1W, S29D, tax lot 900).

**SECTION II. Procedural History**

Freres Timber, Inc. initially submitted an application to change the zone from Exclusive Farm Use to Acreage Residential - Ten Acre Minimum, and to amend the comprehensive plan designation from Primary Agriculture to Rural Residential with an exception to statewide goal 3, agricultural land. The hearings office held public hearings on the request on May 7, 2014, and July 9, 2014. On September 17, 2014, the hearings officer issued a recommendation to deny the request. The board held public hearings on the request on October 29, 2014, and December 3, 2014. On November 26, 2014, the applicant submitted a request to the Board to remand the application to the hearings officer for consideration of the modified application. On December 3, 2014, the Board signed Order #14-117 remanding the modified application to the hearings officer.

The hearings officer held a public hearing on the modified application on January 7, 2015, and on February 18, 2015, issued a recommendation that the board grant the request. The Board held a duly noticed public hearing on April 1, 2015, considered the Planning Division file, hearings officer's recommendation, and all the 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 Fact and Additional Findings of Fact and Conclusions of Law contained in Section IV and V of the Hearings Officer's recommendation dated February 18, 2015, contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan change from Primary Agriculture to Farm Timber is hereby **GRANTED**. The requested zone change from EFU (Exclusive Farm Use) to FT (Farm Timber) is hereby **GRANTED**.

The property rezoned by this Ordinance is identified on a map in Exhibit B, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to Marion County Code Section 17.110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Marion County Code Section 1.10.030, 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 22<sup>ND</sup> day of April,  
2015, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Janet Carlson  
Chair

Kim Huellett  
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

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. ZC/CP 14-002  
Application of: ) Clerk's File No.  
FRERES TIMBER, INCORPORATED ) Zone Change/Comprehensive Plan  
Amendment

## RECOMMENDATION

### I. Nature of the Application

This matter comes before the Marion County Hearings Officer on remand from the Marion County Board of Commissioners (BOC) for proceedings on the amended application of Freres Timber, Incorporated to change the comprehensive plan designation from Primary Agriculture to Farm/Timber, and the zone from EFU (EXCLUSIVE FARM USE) to FT (FARM TIMBER) on a 28.11-acre parcel in the 7500 block of Sherman Road SE, Aumsville, Marion County, Oregon (T8S, R1W, S29D, tax lot 900).

### II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and the Marion County Code (MCC) title 17, especially chapter 17.123.

### III. Public Hearing

A public hearing was held May 7, 2014 on the original application to change the property designation and zoning to residential. At hearing, the Planning Division file was made part of the record. The following persons appeared and testified at hearing:

1. Brandon Reich Planning Division
2. Alan Soren Applicant's attorney
3. Frank Walker Applicant's consultant
4. Andy Gallagher Applicant's soil consultant
5. Joe Fawlstrom Applicant's forester

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

- Ex. 1 Excerpt from ORS 215.203 (old version)
- Ex. 2a-b Excerpts from OAR 660-033
- Ex. 3 Excerpts from *Soil Survey of Marion County Area, Oregon*
- Ex. 4a-b Annotated aerial photograph and hand drawn site plan

No objections were made to notice, jurisdiction, conflict of interest, evidence or testimony. The hearing was continued to July 9, 2014.

The continued public hearing was opened on July 9, 2014. The record remained open for applicant until July 16, 2014. The following persons appeared and testified at hearing:

1. Brandon Reich            Planning Division
2. Alan Sorem             Applicant's attorney
3. Frank Walker           Applicant's consultant

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

- Ex. 5        Planning Division list of possible conditions
- Ex. 6        July 8, 2014 memorandum from Alan Sorem, with attached Land Use Board of Appeals (LUBA) case and OAR 660-04 changes
- Ex. 7        Supplemental statement in support by Frank Walker, with attachments
- Ex. 8        July 16, 2014 letter from Frank Walker

No objections were raised as to notice, jurisdiction, conflicts of interest, evidence or testimony.

On September 17, 2014, the Marion County Hearings Officer recommended the BOC deny the application. On October 29, 2014, the BOC opened a hearing on the application. The hearing was continued to December 3, 2014. On November 26, 2014, applicant asked the BOC to remand the case to the hearings officer to consider a modified application. On December 3, 2014, the BOC remanded the case to the hearings officer for proceedings on the modified application.

On January 7, 2015, the Marion County Hearings Officer opened a hearing on the modified application. Documents new to the record since July 16, 2014 were inventoried. The file in ZC/CP 11-002 was made a part of the record. The following persons appeared and testified at hearing:

1. Brandon Reich            Planning Division
2. Alan Sorem             Applicant's attorney
3. Frank Walker           Applicant's consultant

No new documents were submitted as exhibits. No objections were raised to notice, jurisdiction or conflict of interest.

#### IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject 28.11-acre property is designated Primary Agriculture in the MCCP and zoned EFU under MCC title 17. The property is in a Sensitive Groundwater Overlay-Six Acre Minimum (SGO-6) zone. The property is specially assessed for forest use.
2. The property is on the west side of Sherman Road SE directly west of its intersection with Ditter Drive SE. A February 3, 1978 Marion

County Planning Department letter determined the subject property was legally created. The *Soil Survey of Marion County Area, Oregon*, shows the subject property contains 94% high-value farm soils.

3. Properties to the north, west and south are zoned EFU and are in farm use. To the east and farther south are AR zoned homesites.
4. Applicant asks to change the comprehensive plan designation from Primary Agriculture to Farm/Timber, and zoning from EFU to FT.
5. The Marion County Planning Division requested comments on the modified proposal from various governmental agencies.

Marion County Public Works Land Development Engineering and Permits Division (LDEP) commented:

Approval of the proposed zone change would allow the zone designation to be changed from EFU (Exclusive Farm Use) to FT (Farm Timber) and the comp plan designation changed from Primary Agriculture to Farm Timber. Public Works Engineering Division requirements are given below.

**ENGINEERING REQUIREMENTS**

The following comments lettered A and B, are informational only regarding County requirements and issues that the applicant must address if the proposal is approved. Please note that Engineering Requirements are only generally referenced in land use Notice of Decisions.

- A. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. Any new driveway approach or modifications to existing access approach for timber removal or residential use requires for an Access Permit.
- B. Any loading of timber onto trucks must be done on private property, and not in the public right-of-way.

The Department of Land Conservation and Development (DLCD) commented on the original proposal but not the modified proposal.

Other contacted agencies did not respond or stated no objection to the modified proposal.

**V. Additional Findings of Fact and Conclusions of Law**

1. Applicant has the burden of proving all applicable standards and criteria are met. This is a recommendation to the BOC. The BOC will make the final decision in this matter.
2. Under MCCP plan amendment policy 2, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by zone change procedure



established in MCC title 17. A plan amendment application may be processed simultaneously with a zone change request. The proposed comprehensive plan amendment involves one ownership and is a quasi-judicial plan amendment accompanied by a zone change request.

3. DLCD must be notified of any comprehensive plan amendment. DLCD was notified of the original and modified proposals but commented only on the original proposal.

#### STATEWIDE PLANNING GOALS

4. The MCCP plan amendments section states that comprehensive plan amendments must be consistent with statewide planning goals.

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

The notice and hearings process before the hearings officer and BOC provides opportunity for citizen involvement. Goal 1 is satisfied.

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Under this goal, each plan and related implementation measure are coordinated with plans of local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific.

Applicant proposes a site-specific comprehensive plan amendment. The Planning Division notified the Aumsville Fire District, North Santiam School District, DLCD, and various county departments of the originally proposed comprehensive plan amendment. DLCD and Marion County DPW LDEP commented on that proposal. The Planning Division also provided notice for the modified application. LDEP's new advisory comments are set out above. DLCD did not comment on the new proposal. Goal 2 is satisfied.

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

OAR 660-033 governs agricultural lands. Under OAR 660-033-0145:

- (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;
- (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and

- (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.

Applicant's request to re-designate and rezone the subject property for farm/forest use is evaluated under OAR 660-006, specifically, OARs 660-06-0015, 660-006-0050 and 660-006-0057. Goal 3 is met.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

**OAR 660-006-0015:**

- (1) Lands inventoried as forest lands must be designated in the comprehensive plan and implemented with a zone that conserves forest lands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732, the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is zoned with an Exclusive Farm Use Zone pursuant to ORS chapter 215 provided the zone qualifies for special assessment under ORS 308.370, or is an "abandoned mill site" zoned for industrial use as provided for by ORS 197.719. In areas of intermingled agricultural and forest lands, an agricultural/forest lands designation may also be appropriate if it provides protection for forest lands consistent with the requirements of OAR chapter 660, division 6. The plan shall describe the zoning designation(s) applied to forest lands and its purpose and shall contain criteria that clearly indicate where the zone(s) will be applied.
- (2) When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

The subject property is not inventoried, designated or zoned as forest land. No goal 4 exception applies. Marion County is not a marginal lands county. The subject property is not an abandoned mill site. The property is zoned EFU under ORS chapter 215. ORS 308.370, a farm use special assessment provision, was repealed in 1999. ORS 308A now governs farm use special assessment. EFU zoned land in farm use may receive special farm assessment but the farm use definition does not include land subject to forest use special assessment (ORS 308A.056(2)). The subject property is currently specially assessed for forest use. To approve the subject application, the BOC must inventory the property, apply a

farm/forest designation and zone consistent with OAR 660-006, and explain the factors used to select the farm/forest designation. Under the MCCP forest lands section:

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

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Under the provisions of OAR 660-006-0050, a governing body may establish agricultural/forest zones in accordance with both Goals 3 and 4 and consistent with OAR Chapter 660, Divisions 6 and 33. The mixed nature of the farm and forest uses in this area justifies the application of an agricultural/forest zone and both Goals 3 and 4. The Farm/Timber designation is discussed in the Forest Lands section of the Marion County Comprehensive Plan and policies pertaining to this designation are also included in the forest land goal and policies section.

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

The variable terrain and crop capabilities have contributed to the existing land use pattern that is a transition area between the predominately large-scale farms on the low land to the west and the large-scale commercial timber operations on the higher elevations to

the east. The most common management units in the FT areas range from 20 to 40 acres. Ownership fragmentation and the alternating farm and timber character make it unlikely that these smaller farm and timber tracts will be consolidated to achieve larger management units.

A minimum parcel size of 80 acres is applied to the Farm/Timber land in Marion County. This minimum was chosen because it is consistent with the existing parcel sizes in this area being managed for timber and agriculture production on a commercial basis. Also, this parcel size is consistent with both OAR 660-06-0026 and 660-33-100, and it exceeds the recommendations of the State Department of Fish and Wildlife for the protection of significant deer and elk habitats. This area is primarily located within the peripheral deer and elk habitat as identified by the State Department of Fish and Wildlife. With development limited to such low densities, the watershed, open space and other resource values found on forest lands will be protected.

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

Soil name	Soil type	Acres	Parcel %	Farm soil class	Woodland suitability class	Hydrologic group
Waldo silty clay loam	Wa	1.7	6.0%	IIIw-2	None	D
Salkum silty clay loam 6-20% slopes	SkD	12.7	45.4%	IIIe-2	3c1	C
Salkum silty clay loam 2-6% slopes	SkB	0.8	1.4%	IIe-3	3c1	C
Nekia silty clay loam 2-7% slopes	NeB	0.1	0.4%	IIe-3	3c1	C
McAlpin silty clay loam 3-6% slopes	MaB	12.5	44.7%	IIe-1	None	C

*Soil Survey* class II farm soils have moderate limitations restricting plant choices or require moderate conservation practices. Class III farm soils have severe limitations restricting plant choices or requiring special conservation practices, or both. Under capability subclass e, erosion is the main problem unless close-growing plant cover is maintained. Under subclass w, water in or on the soil (ponding, high water table, flooding, etc.) interferes with plant growth or cultivation. In some soils wetness

may be partly corrected by artificial drainage. The classification number (-1, -2, -3) identifies a capability unit. Soils in a capability unit are similar enough to be suited for the same crops and pasture plants, similar management, and similar productivity. For example, SkB and NeB soils are in the same capability unit and could be managed together for the same uses.

Soil Survey, table 4, shows soil hydrologic groups. Group C soils infiltrate at a slow rate and have high runoff potential. Group D group soils may have high water tables, a thin layer of soil over impervious material, a surface layer of impervious material, or a very deep layer of impervious material. Group D has the highest runoff potential.

Soil Survey woodland suitability groups are based mainly on their productivity for Douglas fir. Waldo and McAlpin soils are not in a woodland suitability group. All other soils are in group 3cl. Site class 3 corresponds to measured tree heights at certain ages. The scale is 1 through 5, so trees in site class 3 soils attain medium heights over the years and produce medium yields per acre per year. Letter c means woodland management is limited by clay in the upper soil profile. The number 1 indicates a low degree of difficulty in applying woodland management.

There are 15,000+ Farm/Timber designated acres in Marion County (MCCP, page I-14), most of it in the Silverton Hills, coexistent with the peripheral big game habitat area. In ZC/CP 11-002 and ZC/CP 03-5, the BOC recognized that land outside the Silverton Hills area may qualify for Farm/Timber designation if it has sufficient Farm/ Timber characteristics. The Farm/Timber area is described as an area of stream canyons and broad ridge tops. This description fits the subject property pretty well, but in miniature. The property's terrain is mixed, with its low Beaver Creek tributary area, steep upward slope to the geologic hazard area just east of the property, and steep upward slope (up to 20%) to the west. The western ridge top broadens out to more level surrounding farm land. The variable topography makes integration with neighboring farm parcels less likely. At 28 acres the property fits within the 20- to 40-acre common Farm/Timber parcel size.

Designated Farm/Timber areas contain mixed soils. Consistent with this, the subject site contains five different soil types, mostly good for farm and forest use, but the property's steep slopes and excessive wetness pose difficulties for both uses, too. Applicant alerted the Oregon Department of State Lands (DSL) that delineable wetlands may be on the property and those areas will likely be avoided for farm or forest use. There are also setbacks for timber harvest in riparian areas that limit uses by DSL and Forest Practices Act (FPA) riparian setbacks. More level portions of the property were in farm use at one time, though the property is now primarily in naturally occurring and planted trees. Timber quality is not as good here as timber grown in higher elevation on large TC zoned tracts in the eastern county. The Farm/Timber designation

better suits the subject property than a Timber Conservation zone designation. The site shares sufficient characteristics to allow Farm/Timber designation and zoning. OAR 660-006-0015 is satisfied.

**OAR 660-006-0050:**

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

Goals 3 and 4, and OAR chapter 660, divisions 6 and 33 are being considered in this request to re-designate and rezone the subject property. A 1992 aerial photograph in the record shows the subject property was mostly treed and not apparently farmed at that time. OAR 660-006 dwelling standards apply. OAR 660-006-0055 is satisfied.

**OAR 660-006-0057:**

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

The area to be considered for re-designation and rezoning consists solely of the subject property. According to the *Soil Survey*, roughly half the soils on the property (Waldo and McAlpin) are not in a woodland suitability group. All other soils are in group 3c1, meaning they have medium timber yields, clay content, and few management impediments. All but about 6% of the soils (Waldo) on the property are high value farm soils according to the *Soil Survey*. Applicant's soil scientist stated that the Salkum soils are highly erodible, cause silting in Beaver Creek and, based on slopes, the site might qualify for a federal conservation reserve program for highly erodible soils. Salkum soils are normally good farm soils. The up to 20% slopes on Salkum soils make farming more difficult, but still allow timber use of that portion of the property. The wetter soils on the property are not in a woodland suitability group, but are still mostly high value farm soils.

Practical restrictions on this property do not make it wholly productive for solely farm or solely forest use. OAR 660-006-0057 is satisfied.

Goal 4 is satisfied.

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

Marion County's goal 5 resources are identified in the MCCP. A section of Beaver Creek identified in the MCCP as sensitive headwaters is near the subject property and a branch feeding into the creek crosses the subject property. Applicant found potential wetlands on site and contacted DSL, showing good faith in management of potential goal 5 resources. Forest management in riparian areas is also subject to FPA setbacks. The site is in the SGO zone which assesses risks to aquifer sustainability. SGO zone regulations would be applied at the time of any development. Goal 5 is satisfied.

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

Farm/forest designation and zoning will allow forest uses and perhaps a future dwelling. The site contains steep slopes and highly erodible soils. County SGO, building, septic and other development permits will address residential runoff and groundwater issues. Forest use is regulated by the FPA. DSL regulates wetland areas. Normal residential use would not emit excessive particulates or noise. In-place regulations will maintain the level of air, water and land resources. Goal 6 is satisfied.

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

Ponding, riparian areas and steep slopes occur on the subject property, and a county-identified slide hazard area nearly meets the subject property at its extreme northeast corner. The site itself is not in a floodplain or geologic hazard area, and state and local regulations will help manage its wet and sloping areas. Goal 7 is satisfied.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No goal 8 resources are identified on the subject site or implicated by this application. This goal is not applicable.

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

Goal 9 addresses commercial and industrial development, primarily in urban areas. OAR chapter 660, Division 009 applies only to comprehensive plans for areas within urban growth boundaries. Goal 9 is not applicable.

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

OAR 660-008 is intended to define standards for compliance with Goal 10. OAR 660-008 deals with providing an adequate number of needed housing units, and efficient use of buildable land within urban growth boundaries. The subject property is not within an urban growth boundary. Goal 10 does not apply.

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Electric and telephone utilities are available in the area. No public water and sewer services will be required. Little traffic will be generated by the proposed use, except during timber harvest. DPW alerted applicants to access permitting and timber load out requirements. Goal 11 is satisfied.

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

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

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP [transportation system plan]. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if



the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The MCCP Rural Transportation System Plan (RTSP) identifies adjacent Sherman Road as a local road in good condition and operating at level of service A. The proposal might allow one dwelling that would potentially generate 10 traffic trips a day. Forest use traffic would be minimal, except during harvest, and DPW alerted applicant to access permitting and timber load out requirements. Applicant does not propose changing the functional classification of the road or standards implementing them. DPW expressed no concern about the plan and zone amendment significantly affecting the existing transportation facility by allowing uses or levels of development that would be inconsistent with Sherman Road's functional classification, degrade its performance standards, worsen its performance or otherwise not meet performance standards. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

An additional homesite and continued forest use would not significantly increase energy consumption. Goal 13 is satisfied.

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

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

Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. The subject site is not within the Willamette River Greenway, or near ocean or coastal related resources. These goals do not apply.

5. Statewide planning goals are met.

MCCP AMENDMENT

6. The MCCP does not contain specific plan amendment review criteria, but any amendment must be consistent with applicable MCCP goals and policies. This request is for Farm/Timber designation. Forest land and farm/timber policies are examined:

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

Applicant asks for Farm/Timber rather than Forest Land designation. Forest Land designation, TC zoning and Forest Land and Farm/Timber Land Policy 1 do not apply.

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

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

Applicant proposes Farm/Timber designation and FT zoning. The subject parcel contains woodland and high value farm soils. FT zoning will recognize the parcel's current forest use while also protecting it for any future agricultural use. If re-designated Farm/Timber, OAR 660, Divisions 6 and 33 will be applied as required, and policies 2 and 3 will be met.

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

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

Forest Land and Farm/Timber Land Policy 5: Subdivision development is prohibited and other land divisions creating new dwelling sites are not compatible with the protection and efficient management of Forest Lands and Farm/Timber Lands and are discouraged.

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

Forest Land and Farm/Timber Land Policy 6: Division of forest lands and agricultural lands into parcels smaller than 80 acres may be

permitted only for those non-forest uses specified in OAR 660-06-0026(2) and those non-farm uses specified in OAR 660-33-0120.

The minimum parcel size in the FT zone is 80 acres. The subject 28-acre parcel is below that standard. Land division is not requested or allowed. Policy 6 is met.

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

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

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

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

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

MCC 17.139.070 contains special siting and fire hazard protection requirements for the FT zone. If a dwelling is allowed on the subject property, it would have to meet any applicable OAR 660-006 and MCC chapter 17.139 requirements. Policy 9 is met.

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

A 1992 aerial photograph shows the subject property predominantly in trees. The parcel was in forest use on the January 1, 1993.

Dwelling requests for the parcel will be reviewed and have to comply with OAR 660-006 and MCC requirements. Policy 10 is met.

7. The comprehensive plan amendment is recommended.

ZONE CHANGE

8. Under MCC 17.123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:
  - A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
  - B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
  - C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
  - D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
  - E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
9. Applicant asks to change the comprehensive plan designation from Primary Agriculture to Farm/Timber. As part of that process, Forest Land and Farm/Timber Land policies were evaluated, and the hearings officer found the policies satisfied. If the BOC approves the comprehensive plan amendment, the proposed FT zone will be consistent with the Farm/Timber plan designation. MCC 17.123.060 (A) is satisfied.
10. The area surrounding the subject property is zoned EFU and AR, and is in mixed farm and residential use. The subject property has been in forest use since at least 1992 without conflict with neighboring farm or residential uses. Resource uses are on three sides, and AR zoned properties to the east are separated from the subject site by vegetation, distance and topography. At 28 acres, the subject parcel is similar to farm parcels in the area. FT zoning of the subject property is appropriate considering area uses, density and development in the area. MCC 17.123.060(B) is satisfied.

11. Electric, telephone and other utilities and services are available in the area. Sherman Road is in good condition and operates at a level of service A. No water or sewer services are required. Adequate public facilities, services and transportation networks are in place, or will be provided concurrently with development of the property. MCC 17.123.060(C) is satisfied.
12. This criterion is difficult to apply in the context of this proposal. The BOC considered this criterion in two similar cases. In a 2003 case, the BOC found the focus of that application was site specific long-term resource management, and other FT zoned lands in the Silverton Hills equally did not address saving the specific site for timber production. The BOC applied an FT zone. In 2011, the BOC reconfirmed that interpretation using the site-specific approach, and again found MCC 17.123.060(D) satisfied. This approach is implicitly accepted by the state because it does not require an exception to re-designate from one resource use to another because both designations result in resource protection. Greater scrutiny is required when changing from resource to non resource designation, thus the exception requirement in those circumstances.  
  
The subject property contains sufficient FT zone characteristics, and FT zoning can be applied here to protect this site for FT uses MCC 17.123.060(D) is satisfied.
13. The FT zone is the only zone allowed under the Farm/Timber designation. MCC 17.123.060(E) is not applicable.
14. The proposed zone change is recommended.

#### VI. Recommendation

It is hereby found that applicant has met its burden of proving that applicable standards and criteria for approval of a comprehensive plan amendment and zone change have been met. The hearings officer recommends the BOC **GRANT** the comprehensive plan amendment and zone change applications.

#### VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 18<sup>th</sup> day of February 2015.



Ann M. Gasser  
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Freres Timber, Inc.  
P.O. Box 276  
Lyons, OR 97358

Frank Walker  
Frank Walker & Associates  
37708 Kings Valley Hwy.  
Philomath, OR 97370

Alan Sorem  
250 Church St. SE, Ste. 300  
P.O. Box 370  
Salem, OR 97308

Joe Fawlstrom  
226 Cedar Terrace Ct.  
Stayton, OR 97308

Andy Gallagher  
7205 NW Mountainview Dr.  
Corvallis, OR 97330

Anna and Stephen Roth  
10935 James Way  
Aumsville, OR 97325

Oregon Department of State Lands  
777 Summer St. NE, Ste. 100  
Salem, OR 97301

Agencies Notified  
Planning Division  
Building Inspection  
Public Works Engineering  
AAC Member No. 2

Raymond Bartosz  
10443 W. Stayton Rd. SE  
Aumsville, OR 97325

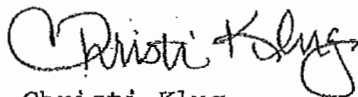
Dennis Koenig  
7538 Stayton Rd. SE  
Turner, OR 97392

Roger Kaye  
10095 Parrish Gap Rd. SE  
Turner, OR 97392

Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

Oregon DLCD  
635 Capitol St. NE, Ste. 150  
Salem, OR 97301

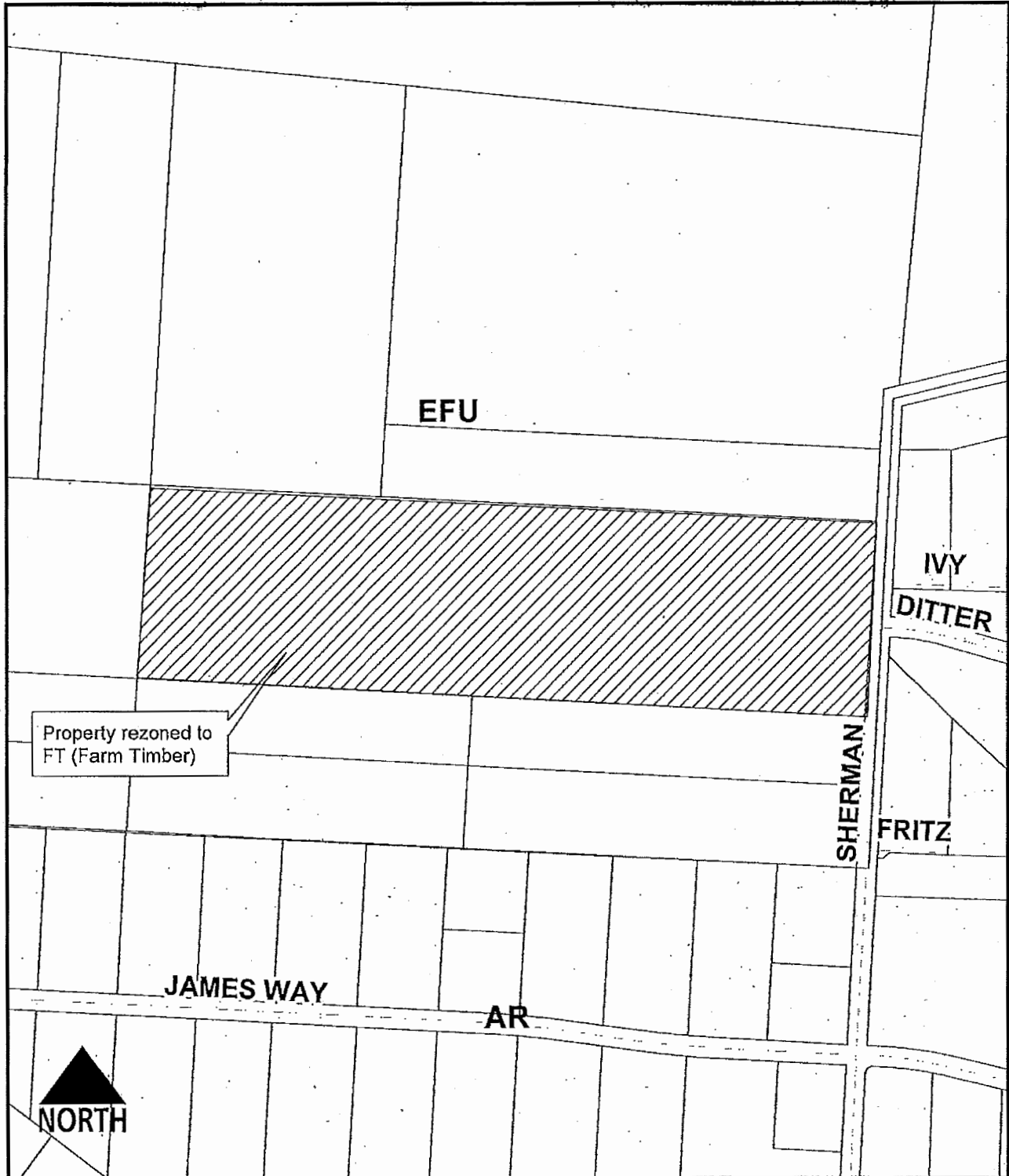
by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes, addressed as noted above, and deposited in the United States mail at Salem, Oregon, on the 18<sup>th</sup> day of February 2015, and that the postage thereon was prepaid.



Christi Klug  
Secretary to Hearings Officer

EXHIBIT B

The comprehensive plan designation and zone of the following described property is changed from Primary Agriculture/EFU (Exclusive Farm Use) to Farm Timber/ FT (Farm Timber).  
ZC/CP 14-002/Freres Timber, Inc.





MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: April 22, 2015

Department: Public Works

Title of Agenda Item: Consider adoption of an administrative ordinance granting ZC/CP Case 14-002/Freres Timber, Inc.

Agenda Planning Date: April 16, 2015 [ ] Audio/Visual aids required Time required: 10 Minutes

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: [Signature]

Presenters: Joe Fennimore

Description of Issue: Consider adoption of an administrative ordinance granting Zone Change/Conditional Plan Case 14-002/Freres Timber, Inc., Clerk's file #5688.

Description of Background: The hearings officer issued a recommendation on February 18, 2015, to approve ZC/CP Case 14-002/Freres Timber, Inc. At a public hearing on April 1, 2015, the Marion County Board of Commissioners approved the request. The ordinance and findings have been prepared and notice of adoption was given on April 15, 2015. The administrative ordinance is now set for formal adoption.

Financial Impacts: None.

Impacts: to departments and/or external entities None.

Options for Consideration: 1. Adopt the ordinance through signature. 2. Direct staff to prepare a modified ordinance. 3. Choose not to adopt the ordinance at this time.

Recommendation: Staff recommends the board of commissioners sign and thereby adopt the attached ordinance as written.

List of attachments: Administrative ordinance

Copies of completed paperwork to the following:

Name: Joe Fennimore E-mail: gfennimore@co.marion.or.us

Name: E-mail:

Name: E-mail:

Name: E-mail:

Name: E-mail: