



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

### NOTICE OF ADOPTED AMENDMENT

May 22, 2008

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 004-07



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 6, 2008**

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

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

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

Cc: Doug White, DLCD Community Services Specialist  
Gary Fish, DLCD Regional Representative  
Sterling Anderson, City of Salem

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# FORM 2

## DLCD NOTICE OF ADOPTION

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

(See second page for submittal requirements)

Jurisdiction: Marion County

Local File No.: ZC/CP07-04  
(If no

number, use none)

Date of Adoption: 5/14/08  
(Must be filled in)

Date Mailed: 5/14/08  
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 3/9/07

- |  |  |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment     | <input checked="" type="checkbox"/> Zoning Map Amendment             |
| <input type="checkbox"/> New Land Use Regulation           | <input type="checkbox"/> Other:                                      |

(Please Specify Type of Action)

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

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:

to:

Zone Map Changed from: AR-10

to: AR-2

Location: 3800 blk. Blanchet, St. Paul  
7.82

Acres Involved:

Specify Density: Previous:

New:

Applicable Statewide Planning Goals: Goal 14

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.:

004-07 (15953)

DEPT OF

MAY 16 2008

LAND CONSERVATION  
AND DEVELOPMENT

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:

5035885038

Address: PO Box 14500

City: Salem OR

Zip Code+4: 97309

Email Address:breich@co.marion.or.us

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## 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 Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can 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/CP07-04
	)	
Application of	)	Clerk's File No. 5567
	)	
Ron and Kellie Manning	)	Zone Change/Comprehensive
	)	Plan Change Amendment

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. 1262**

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 Ron and Kellie Manning to change the zone from AR-10 (Acreage Residential –10 acre minimum parcel size) to AR-2 (Acreage Residential – 2 acre minimum parcel size), and to take an exception to Statewide Goal 14 (Urbanization) with accompanying comprehensive plan amendment on a 7.82 acre parcel in the 3800 block of Blanchet Avenue NE, St. Paul. (T4S; R2W; S19B; tax lot 200).

**SECTION II. Procedural History**

The Marion County Hearings Officer held a public hearing on this application on May 2, 2007. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On December 14, 2007, 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 March 12, 2008. 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 Comprehensive Plan Amendment Goal 14 (Urbanization) exception is hereby GRANTED.

The requested zones change from AR-10 (Acreage Residential – 10 Acre minimum parcel size) to AR-2 (Acreage Residential – 2 acre minimum parcel size) 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**

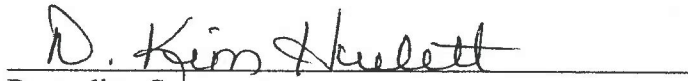
Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 14th day of May, 2008,  
2008, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS



Chair

  
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 BOARD OF COUNTY COMMISSIONER**

**IN THE MATTER OF THE APPLICATION OF  
RON AND KELLIE MANNING**

**ZONE CHANGE FROM AR-10 TO AR-2 AND AN EXCEPTION TO STATEWIDE GOAL 14**

**CASE No. ZC/CP 07-04**

**NATURE OF THE APPLICATION**

This matter comes before the Marion County Board of County Commissioners on an application of Ron and Kellie Manning to change the density of the Rural Residential Zone on an approximately 8 acre parcel located in the 3800 block of Blanchet Avenue NE, St. Paul, Marion County, Oregon (T4S, R2W, S19B, tax lot 200) adjacent to the City of St. Paul's Urban Growth Boundary from AR-10 to AR-2 and to take an exception to Statewide Planning Goal 14 (Urbanization) with accompanying comprehensive plan amendment.

**Public Hearing**

A public hearing was duly held on this application on March 12, 2008 to review the recommendation of the Marion County Hearings officer dated December 14, 2007. At the hearing, the Planning Division file was made part of the record. The following persons appeared at the hearing and provided testimony on the application:

- |    |                   |                      |
|----|-------------------|----------------------|
| 1. | Sterling Anderson | Planning Division    |
| 2. | William Cox       | Applicants' attorney |
| 3. | Ron Manning       | Applicant            |

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

## FINDINGS OF FACT

The Board of Commissioners, after consideration of the Hearings Officer recommendation, applicant and planning staff testimony, applicants' legal memorandum, and evidence in the record finds as follows:

St. Paul's' initial Comprehensive Plan, as acknowledged by LCDC, placed the subject property within its Urban Growth Boundary (UGB). The property was never annexed into St. Paul and retained the County designation of Urban Transition Farm until St. Paul reduced the size of its UGB and removed it from the St. Paul UGB.

Historically (until 2000) the subject parcel had been cultivated as part of a larger commercial grass seed operation which extended north beyond its property line. Evidence in the record indicates it is no longer commercially viable to farm the subject property due to the construction of housing on other parts of the former farm operation. The subject and surrounding property is no longer large enough to continue the commercial enterprise.

Blanchet Road (CR 404) separates the site from residential structures and uses to its south. Across Blanchet Road are tax lots 1900, about 10 acres in size containing a residence and a greenhouse operation; 1800, about 2 acres in size containing a residence; and, 1700, about 1/2 acre in size containing a residence. Further to the east of tax lot 1700 are City of St. Paul lots each about 1/2 acre in size.

The Adjacent property to the east is within the City of St. Paul and is subdivided into lots of about 1/2 acre containing residential structures. To the immediate north are 3 lots, each about 2 acres in size upon which homes have been built. To the north of those 3 lots are 7 more lots with an average size of about 2.6 acres. Most of those lots contain homes. Adjacent to the west of the subject property is tax lot 300 with an existing residential structure on 1.86 acres. Immediately west and north of lot 300 is the City of St. Paul's sewage treatment facility, including lagoons and tertiary treatment operation, the boundary of the St. Paul sewage plant property only slightly touches the western boundary of the subject property.

1. The subject approximately 8 acre undeveloped parcel is designated Rural Residential in the MCCP and zoned AR-10. The subject property is in the 3800 block of Blanchet Avenue NE. Properties to the north and east are within the St. Paul city limits and are developed with residential uses. Properties to the south across Blanchet Avenue and west contain the City of St. Paul sewage lagoons, rural homesites and farm uses.
2. Applicants have applied for a zone change from AR-10 to AR-2 and an exception to Statewide Planning Goal 14, Urbanization. A comprehensive plan amendment necessarily accompanies a goal exception.

3. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

The Marion County Public Works Engineering and Permits Section (DPW) commented: Approval of the proposal would change the zone from AR-10 (Acreage Residential – 10 acre minimum) to AR-2 (Acreage Residential – 2 acre minimum), which would facilitate division of the subject property, which could result in approximately 30 additional daily trips on Blanchet Avenue and other roads in the area. The Public Works Department has the following comments, requirements, and recommendations on this case:

- a). Pursuant to the Marion County Urban Zoning Ordinance, the applicant will be required to dedicate sufficient right-of-way to provide the public dedicated right-of-way half-width of 30 feet along Blanchet Avenue. It appears that no additional width is required. Any dedications should be to the public, not Marion County.
- b). If this development proceeds, the developer would be required to improve Blanchet Avenue along their frontage in accordance with appropriate standards as directed by Public Works. This will include such elements as pavement overlay, gravel shoulder, slope work, and drainage work.
- c). The proposed development will be permitted one connection to Blanchet Avenue, and the developer will need to obtain an access permit for this new access (or change in use of an existing access). Driveways will also need to meet fire district standards for emergency access.
- d). If access to any of the property would be via private easements, the developer will need to show appropriate rights to use those easements, and will be required to sign road maintenance and joint access agreements for those easements. If any of the property is to be accessed via Mission Avenue, the developer would be required to build Mission Avenue to county standards, including additional right-of-way width.
- e). It is the responsibility of the developer to preserve and protect the current PCI rating and the structural integrity of adjacent county roads to the satisfaction of Marion County Public Works through all phases of development. Failure to preserve and protect the road may result in the developer being responsible for replacing or reconstructing the damaged road at the developer's expense.
- f). Prior to plat approval, the applicant shall provide a Declaration of Covenants for Road Maintenance Agreement regarding the shared access (form available from Public Works).



- g). Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. The developer will need to construct facilities as necessary to address drainage issues, and will be required to obtain approval of a site drainage plan to verify this lack of negative impact. An approved engineered drainage plan will be required, and drainage facilities must be constructed prior to development approval or plat release.
  - h). Construction of the proposed buildings, accesses, and parking areas would increase the amount of storm water runoff from the subject property. The County requires any development 0.5 acre or larger to provide storm water detention. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm with development conditions. Drainage plans and construction of drainage facilities must be satisfactorily completed prior to development or plat approval.
4. The subject property is within the unincorporated area of Marion County. Systems Development Charges will be assessed upon development of the subject property at the time of application for building permits.
  5. Any utility work in the public right-of-way will require a utility permit from Public Works.
  6. The Marion County Building Inspection\_Division commented that each lot would require a septic site evaluation.
  7. The City of St. Paul commented:

The St. Paul City Council has reviewed the request for comments, all the application materials and the Public Works memorandum and has concerns on the impact of proposed development of four new homes on the existing site's storm drainage.

- a. In the past, the maintained tile had kept the property drained into the County's storm drain system and the land dry enough to support agricultural uses.
- b. The property has considerable standing water during the "rainy" season which has, in the past few years [] overflowed into the city's storm drain system versus flowing to the west away from the city as originally planned by the county.
- c. The property is adjacent to the City's sewer lagoons.

8. The Public Works Memorandum stated storm drainage from the development shall not impact historical or naturally occurring runoff from adjacent properties. The St. Paul City Council believes that the development should also not impact with any additional runoff into either the City's sewer lagoons or storm drainage system.

## **GOAL 2 EXCEPTION STANDARDS**

An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II Exceptions (OAR 660-004-0000(2)). An exception for the Manning property can be justified with the necessary findings, supported by substantial evidence. Goal 2, Part II holds that a local government may adopt an exception to a goal when:

XXXXXX

"(b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed in the applicable goal impracticable;"

XXXXXX

For the purpose of taking an exception the "applicable goal", under the "irrevocably committed" exception option is defined as: "...a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken" (OAR 660-004-0028(1)(c)).

OAR 660-014-0030 Rural Lands Irrevocably Committed to Urban Levels of Development holds that when taking a 'committed exception' to Goal 14:

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

XXXXXX

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

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

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

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

“(d) Parcel sizes and ownership patterns”.

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

According to OAR 660-004-018(1), irrevocably committed exceptions under 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in OAR 660-004-028. OAR 660-004-18(2)(b) holds:

"[I]rrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

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

(b) Which meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and,

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

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

According to the terms of OAR 6600-004-0028(2) whether land is irrevocably committed to a use other than addressed by the applicable goal depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception must address the following:

(a) The characteristics of the exception area;

(b) The characteristics of the adjacent lands;

- (c) The relationship between the exception area and the lands adjacent to it;
- (d) The other relevant factors set forth in OAR 660-040-0028.

In pertinent part OAR 660-004-0028(3) holds:

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

#### Evaluation of Hearings Officer Recommendation

The Board has reviewed and taken under consideration the hearings officer recommendation the application be denied. After a thorough review of that recommendation in light of the evidence as a whole, including that presented at the Board of Commissioner hearing on the matter, it is the Board’s conclusion the applicants have presented substantial evidence supporting an irrevocably committed exception to Statewide Goal 14 (Urbanization)<sup>1</sup> and approve the requested zone and comprehensive plan change.

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<sup>1</sup> OAR 660-014-0030: Rural Lands Irrevocably Committed to Urban Levels of Development states:

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

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

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

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

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

Marion County Commission concluded in 2005 the subject property qualified for “an irrevocably committed” exception to Statewide Goal 3 because of its small size and the fact that it is surrounded by urban uses. After granting the exception the County zoned the property Rural Residential (AR-10). During periodic review the findings supporting that exception were acknowledged by LCDC as meeting state standards. As those findings state:

“As a result of addressing each of the considerations which must be reviewed before granting the proposed exception it is concluded that the Manning property is irrevocably committed to nonfarm use. The Marion County Board of Commissioners finds that the rural uses, density, and public facilities and services allowed pursuant to the county's comprehensive plan designation as Rural Residential and zoning ordinance as AR-10 (Acreage Residential, 10 acre minimum) will maintain the land as "Rural Land" as defined by the goals and is consistent with all other applicable Goal requirements. The Board also finds that the rural uses, density, and public facilities and services allowed by such designations will not commit adjacent or nearby resource land to non resource use and are compatible with adjacent or nearby resource uses.”

The Mannings are not requesting to change in the property’s Rural Residential designation. Their request is change the suffix of the designation from AR-10 to AR-2. Marion County’s Comprehensive Plan and implementing ordinances define Rural Residential uses to include 2 acre parcels. Those documents were acknowledged by LCDC as being in compliance with the Statewide Goals.<sup>2</sup>

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

“(d) Parcel sizes and ownership patterns”.

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

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

<sup>2</sup> The Comprehensive plan includes these policies and standards for rural residential zoning. They by definition are not urban level uses.

#### RURAL RESIDENTIAL POLICIES

“The Rural Residential designation is applied to those lands that are intended to be developed primarily with acreage homesites.” “It is also the intent of the Plan to assure that the type of residential use locating in the Rural Residential area is of a type which cannot readily be supplied in an urbanized area. That is, the residential use should be for the purposes of providing housing in a low density residential environment. In this Plan, 2 acres per dwelling unit is considered as the maximum density.”

The focus of the “irrevocably committed” exception is evaluation of the appropriateness, when viewing the activities surrounding the property, of using the land for rural residential purposes at a density consistent with those surrounding activities. The issue is whether land whose use has already be determined to be rural residential is committed to urban levels of development. As OAR 660-014-0030 states

“(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands).”

As can be ascertained by reviewing the contents of OAR 660-04-0018 the focus of the evaluation is upon the potential impact the increase in density from one 8 acre parcel to four 2 acre parcels will have to adjacent permitted uses and whether the 2 acre parcels are consistent with adjacent urban level uses.<sup>3</sup>

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Marion County considers rural residential living a distinct type of residential experience. The rural life style involves a sacrifice of many of the conveniences associated with urban residences and the acceptance of lower levels of governmental services, narrow roads and the noises, smells and hazards associated with rural living and accepted farm and forest management practices. Marion County finds that it is financially difficult, not cost effective and inconsistent with maintaining a rural life style for government to reduce or eliminate the inconveniences caused by lower levels of public services or farming and forest management practices. When residences are allowed in or near farm or forest lands, the owners shall be required to agree to filing of a declaratory statement in the chain of title that explains the County's policy giving preference to farm and forest uses in designated resource lands.

#### URBAN SERVICES

As urban growth policies recognize, urban services should not extend beyond the urban growth boundary of each city. This not only limits the development potential in rural areas, it also maintains the integrity of the urban growth program.

#### <sup>3</sup> **660-004-0018 Planning and Zoning for Exception Areas**

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule...

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

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

The Manning property is rural residential land surrounded by urban uses on parcels of property of a size consistent with those being proposed by this application. The adjacent uses within the UGB are zoned as urban and are located on parcels of the same size or smaller than those being requested. The Marion County Comprehensive plan contemplates the need for and desirability of providing rural residential opportunities on 2 to ten acre parcels. The Manning property can be better used to meet the Marion County recognized need for rural residential homes by allowing up to four homes rather than just one.

### **IRREVOCABLY COMMITTED EXCEPTION FINDINGS**

The standards applicable to an evaluation of factors necessary to justify an irrevocably committed exception are found in several portions of the Oregon Administrative Rules.

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**Finding: The existing use allowed is rural residential.**

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and,

**Finding: The Mannings proposed uses are consistent with rural uses, density (AR zone allows 2 acre parcels) and no urban services are being proposed.**

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

**Finding: There are no "resource uses" adjacent or nearby. With the exception of the St. Paul sewage plant all adjacent uses are rural residential and urban of the same type with equal or higher density than being proposed by the Mannings.**

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

**With the exception of the St. Paul sewage plant all adjacent uses are rural residential and urban of the same type with equal or higher density than being proposed by the Mannings.**

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022. Underlined emphasis added. ***Bold italicized underlined type are comments by the applicants.***

Although the standards differ slightly depending on which rule is being considered there is a consistent theme in all of the standards. OAR 660-004-028(6) appears to best encompass the entirety of the standards. OAR 660-004-028(6) shall serve as the format for the Board's evaluation of the Manning application.

OAR 660-004-028(6) declares that findings of fact for an irrevocably committed exception shall address the following factors:

- (a) Existing adjacent uses;
- (b) Existing public facilities and services (water and sewer lines, etc.);
- (c) Parcel size and ownership patterns of the exception area and adjacent lands:
  - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.
  - (B) Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.
- (d) Neighborhood and regional characteristics;
- (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;
- (f) Physical development according to OAR 660-040-0025; and
- (g) Other relevant factors.

**Standard:** (a) Existing adjacent uses;

**Facts:** The subject property is located adjacent to and north of Blanchet Road (CR 404), an improved road separating the site from residential structures to the south. Across Blanchet are tax lots 1900, about 10 acres in size containing a residence and a greenhouse operation; 1800, about 2 acres in size containing a residence; and, 1700, about 1/2 acre in size. Further to the east of tax lot 1700 are City of St. Paul lots of about 1/2 acre each.



To the immediate north of the subject parcel is dedicated right of way for a future extension of Mission Avenue. On the other side of that right-of-way the City has approved 14 homes on 14 lots whose sizes vary from less than one acre to 3.75 acres. The Average size of 11 of the 14 lots about 2.6 acres. The three lots immediately adjacent to the subject property, across Mission Avenue right-of- way, are 1.66, 2.00 and 1.94 acres respectively. None of the lots are served by urban level services, i.e. sanitary sewer and water.

On the west is tax lot 300 (Gooding) with an existing residential structure on 1.86 acres. Further west from the 1.86 acre (Gooding parcel) is the City of St. Paul's sewage treatment facility, including lagoons and tertiary treatment operation. The boundary of that tax lot only slightly touches the western boundary of the subject property.

Adjacent to the East of the subject property, within the City of St. Paul, is parcel 203 containing 3.26 acres and parcel 201 containing .48 acres. Parcel 201 is not served by public sanitary sewer or water facilities. Parcel 203 appears to contain some form of improvement. It is not served by public sanitary sewer or water facilities. To the east of parcels 201 and 203 are numerous lots each approximately ½ acre. Those lots contain houses.

The City of St. Paul City Planner description of adjacent property was stated in 1999 at the time of UGB shrinkage: "To the northeast is Public/Semi-Public zoned land containing the high school. Land to the east and south (is) also zoned R-1 with single family homes the dominant use." (R-1 at that time allowed 10,000 square foot or larger parcels).

**Standard: (b) Existing public facilities and services (water and sewer lines, etc.);**

**Facts:** Mission Avenue is a dedicated and partially improved St. Paul city street which originates several blocks to the east and extends along the subject property's entire Northern boundary. The subject property is also accessible from its north via an access easement between tax lots 1101, 1203, 103 and 101 connecting to Mission Road. Blanchet Road (County Road 404) is located adjacent the subject property's southern border.

No public facilities serve the Manning property. Water must be obtained from individual wells and sanitary sewerage must be provided for by individual systems. Preliminary tests indicate that water is available via wells and the soil will percolate sufficiently to allow four 2 acre residential sites. Sewer and water lines exist in Mission Avenue east of its intersection with Neil Street but do not extend to the subject property. In fact none of the lots adjacent to Mission Avenue between the subject site and Neil Street to its east are served by sanitary sewer or water. Sewer and water lines would need to be extended and sized to serve the subject property as well as existing homes along the portion of Mission Avenue not presently served. See Exhibit D (24" by 36" map indicating water and sewer locations in vicinity).

Designating the subject property Rural Residential will not promote the need for urban style services. Nor will it force expansion of an urban growth boundary because the shrinking of that UGB is what caused this issue to be before the County.

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

**(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.**

**(B) Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.**

**Facts:** See discussion of Standard (a) above. Also, this property was considered urban until St. Paul reduced the size of its UGB. St. Paul's comprehensive plan, which designated the subject property as Industrial, was approved by the LCDC. Since the property was never annexed into St. Paul it retained the Marion County Urban Transition/Farm zone at the time St. Paul removed it from its UGB. Historically (until 2000) the subject parcel was cultivated as part of a larger commercial grass seed operation which extended north. Some of that operation was within the City of St. Paul. When the property to the north began being developed with houses and streets farming ceased. Scott McKillip, who had been farming the property, shared his professional opinion as to the future viability for farm use of the subject land. He described the property as being adjacent to residential uses on two sides, the City's sewer lagoons and Blanchet Road. He recognized that the property to the north of the Manning property (tax lots 100, 1100, 1101 1200, 1201, 1202, 1203 and 1204) is being developed with residential uses. With those events taking place he said the subject property is an isolated parcel. There are no commercially viable farm operations adjacent to the Manning property. As a result he concluded the approximate 8 acre parcel is no longer feasible or economically viable as a site for a commercial farm operation.

**Standard: (d) Neighborhood and regional characteristics;**

**Facts:** Within walking distance of the subject site are schools, shopping, a tavern, fuel, post office, commercial and light industry, etc. St. Paul is a small town which has historically existed as a rural center serving the farming community that surrounds it. The small parcels which surround the subject property are in diverse ownership. It is highly unlikely that consolidation of the area's lots into a single ownership sufficient to support a commercial farming enterprise will occur. The ownership pattern is random.

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

**Facts:** Adjacent to the west, in addition to the 1.86 acre tax lot 300, are the City of St. Paul sewage treatment facilities, sewage lagoons and tertiary treatment activities, a decidedly urban use. To the south is an improved County Road which runs through the City of St. Paul's commercial center (Blanchet Boulevard). Adjacent to the east are residential developments. To the north is a dedicated but unimproved portion of the City of St. Paul's Mission Street and housing.

**Standard: (f) Physical development according to OAR 660-040-0025<sup>4</sup>; and**

**Facts:** As explained above, the Manning application is based upon an irrevocably committed exception instead of the physically developed option. Due to the subject property's isolation and its surrounding urban level development, it is appropriate to continue the Rural Residential use with an AR-2 zoning designation. This has been addressed in other findings in this document. Those findings are incorporated here.

**Standard: (g) Other relevant factors.**

**Facts:** The Marion County Comprehensive Plan indicates it is appropriate to designate this land as Rural Residential AR-2 because it is an area committed to residential use, is unsuitable for commercial resource use due to existing and zone allowed development, and is located in reasonable proximity to major employment centers.

In 1999 the applicants applied for approval of a subdivision consistent with the then acknowledged St. Paul Comprehensive Plan on property they owned adjacent to the east and north of the subject. That land was zoned R-1 allowing development of 10,000

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<sup>4</sup> 660-004-0025 Exception Requirements for Land Physically Developed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

square foot lots. The applicants established they could improve Mission Avenue and extend it as well as public water and sanitary sewer utilities to the subject site. The proposed Mission Estates PUD subdivision application was summarily denied by the City Council.

In the file/record made over the years for the subject property is a copy of the June 22, 1999 City of St. Paul's Planner's report which described the proposed PUD and its surrounding uses and concluded the City could serve the development with City services subject to the developer meeting certain conditions relating primarily to extension of utilities.

The staff report shows the subject property is more urban than rural, even though it is presently designated rural. The 1999 staff report supports the conclusion that the land in question is committed to urban level development even though it has since been designated rural residential.

Since the 1999 staff report the property to the north has been developed in 2-2.5 acre lots as describe above. Those lot sizes resulted from the City refusing to extend services to the area as proposed by the Mission Estates PUD, application. Soon after the Mission Estates PUD denial the City reduced the size of its UGB. The subject property was removed entirely from the UGB and, as discussed above, no public services are now available to it.

After removing the subject property from its UGB the City of St. Paul established a holding zone, Urban Transitional (UT). The (UT) designation was placed on the properties immediately to the north and to the extent they were not already built upon, the east of the subject. The UT zoned properties are not to be served by public sewer, water or storm services. The City's current, acknowledged, Comprehensive Plan and implementing zoning ordinances indicate the UT zone is designed to allow what the City considers urban development sufficiently dense to meet the City's growth projections without it incurring the expense of providing those lands with public services. The fact that the UT zoned properties to the north of the subject property have received residential building permits on lots similar in size to those being proposed by this application serves as evidence the proposed 2 acre lots are consistent with the adjacent urban level development and zoning. The AR-2 zone is no less urban than the zones within the St. Paul UGB.

The proposed zone change will allow up to 4 residential structures (depending of the exact size of the property to be determined by a County approved survey) provided that each lot containing a residence meets applicable health standards for on-site sewage treatment and a domestic well. Applicant has submitted evidence indicating on site sewage and water can be obtained from each lot in a manner that satisfies applicable health standards. Furthermore, due to the subject property being located outside the City of St. Paul's Urban Growth Boundary, extension of the sewer services is prohibited under OAR 660-011-0060.

Included in the record are economic and development studies conducted by E.D. Hovee and Company between February 10, 1997 and September 16, 1997. They were part of the record

made before Marion County and the Land Conservation and Development Commission during the acknowledgement process which eventually allowed reduction in St. Paul's UGB. Prior to being allowed to reduce its UGB, St. Paul had failed to provide sufficient utilities to meet growth the demands indicated by the Hovee studies. As is evidenced by the St. Paul City Planner's evaluation of the 1999 Mission Estates application, the subject property could have been served by public sewer and water had the City Council approved the adjoining subdivision. The Planner found that sufficient capacity existed in both the sewage and water systems to serve that development of 32 lots as well as surrounding properties.

The subject property, being at that time within the UGB, was available to meet the housing demands which the 1997 Hovee studies found to exist in both the short and long term. Those demands appear to continue to exist today when viewed in the context of the heavy population growth that has occurred in Marion County and the State of Oregon since 1997. The decision to not allow extension of utilities to land which was then within its UGB has not changed the fact there is a demand for urban housing at a density consistent, at a minimum, with the proposed AR-2 zone. Approval of the subject 2 acre lots will, in a small manner, help meet the projected demand without being a catalyst for future urban growth boundary extension since the basis for approving the boundary reduction was that public facilities and services could not and would not be extended to the subject property.

The reduction of the City of St. Paul's UGB has orphaned the Manning land. Its limited size, the fact that it is surrounded by urban level development and zoning and its history establishes the subject parcel is more urban than rural. Given the adjacent City of St. Paul's zoning code which permits development on lots the size proposed by the Mannings and for which there will be no public facilities provided, the evidence weighs heavily that the subject land is consistent with urban level development while remaining rural in use pattern.

The Marion County Comprehensive Plan recognizes a need for and desirability of Rural Residential land. Under the designation of Rural Lands the Comprehensive Plan recognizes that 5,500 new dwellings will be needed in rural Marion County. As a matter of equitable treatment the allowance of some reasonable use of the subject property is appropriate. Without a reasonable zone designation which is consistent with its adjacent lot sizes the land will be underused and become, in effect, land whose use will be restricted to few if any economical purpose. If it can not be used commercially as farm land at its present size it is reasonable to allow four families to enjoy the rural residential living experience contemplated in Marion County Code and Statewide Goal 10.

Consistent with application of the standards found in OAR 660-004-0025 and 660-004-0028 rezoning the subject site recognizes and allows continuation of existing types of development in the area of the exception.

## **STATEWIDE GOAL COMPLIANCE FINDINGS**

As noted under OAR 660-004-0018(1) (and under OAR 660-04-0010(3)), exceptions to one goal or portion of one goal do not relieve a jurisdiction from the remaining goal requirements. Each statewide planning goal is examined for compliance.

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

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

**Goal 3: Agricultural Lands.** The property is subject to an existing exception to goal 3. This goal is not applicable.

**Goal 4: Forest Lands.** The subject site is not in a forest zone. This goal is not applicable.

**Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources.** No MCCP identified wetlands, riparian ways, aggregate sites, big game habitat, sensitive waterways or cultural sites are identified on or immediately adjacent to this site. This goal is not applicable.

**Goal 6: Air, Water and Land Resources Quality.** The subject site is not within an identified air or watershed or sensitive groundwater area. State law, administered through the county, governs septic disposal systems. State and county regulations are consistent with this goal. Single family residential uses of the property will not result in significant particulate discharge into the air. This goal is met.

**Goal 7: Areas Subject to Natural Disasters and Hazards.** The subject site is not within an identified floodplain or geologic slide hazard area. This goal is not applicable.

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

**Goal 9: Economic Development.** This goal focuses on commercial and industrial development, mostly within urban growth boundaries. OAR chapter 660, division 9, the Goal 9 implementing regulation, applies only to comprehensive plans for areas within UGBs. The subject site is not within a UGB. This goal is not applicable.

**Goal 10: Housing.** This goal applies to buildable lands. Buildable lands, as defined in Goal 10, occur in urban and urbanizable areas. Urbanizable lands are, by Statewide Planning Goal definition, within urban growth boundaries. The subject property is not considered buildable or urbanizable under this goal. This goal is not technically applicable, but the proposal would allow additional housing in accordance with this goal.

**Goal 11: Public Facilities and Services.** Goal 11 applies when a local government redesignates land to allow for more intensive uses that place a greater demand on public facilities than uses allowed under the existing designation. No water and sewage disposal services are implicated by this goal. Roadway and drainage services are applicable

considerations. By meeting Marion County Department of Public Works (DPW) requirements as set forth above this goal will be met.

**Goal 12: Transportation.** Under OAR 660-012-0060(2), a plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of an existing or planned transportation facility;
- (b) Changes standards implementing a functional classification system;
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
- (d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.

Under OAR 660-012-0060(3), these determinations must be coordinated with affected transportation facility and service providers and other affected local governments.

The subject property is off of Blanchet Avenue, a county road. The herein granted exception will allow up to three additional dwellings, resulting in more traffic on Blanchet Avenue. The application was coordinated with DPW, the roadway authority for Marion County. DPW provided comments on possible needed roadway improvements, including pavement overlay, gravel shoulder, slope work, and drainage work. The 20 to 30 extra trips generated by the proposal will not change the functional classification of the roadways, change standards implementing the functional classification system, allow types or levels of land uses that result in levels of travel or access inconsistent with a local street, or reduce the performance standards of the roadway. Additionally, impacts on the roadway system can be addressed by conditions requiring drainage and roadway improvements to DPW specification. The proposal will not significantly affect a transportation facility. This goal is satisfied.

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

**Goals 14: Urbanization.** A goal 14 exception is addressed in this order.

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

## MARION COUNTY COMPREHENSIVE PLAN FINDINGS

No new plan designation is requested, but taking an exception results in a comprehensive plan amendment, so the following MCCP policies are considered:

**Rural Development Policy 2:** “Strip-type” commercial or residential development along roads in rural areas shall be discouraged.

**Finding:** The county has already determined that the subject parcel is appropriate for residential development. The proposal will not create strip-type development. This policy is satisfied.

**Rural Residential Policy 5:** Marion County considers rural residential living a distinct type of residential experience . . . When residences are allowed in or near farm or forest lands, the owners shall be required to agree to filing of a declaratory statement in the chain of title that explains the County’s policy giving preference to farm and forest uses in designated resource lands.

**Finding:** Declaratory statements will be a condition of any partition. This policy can be met.

**Rural Residential Policy 6:** Where designated rural residential lands are adjacent to lands protected for resource use a reasonable dwelling setback from the resource land shall be required, and any other means used, to minimize the potential for conflicts between accepted resource management practices and rural residents.

**Finding:** Appropriate setbacks from EFU zoned land will be a condition of any later partition. This policy can be met.

**Rural Residential Policy 7:** Lands available for rural residential use shall be those areas committed to residential use or significant areas unsuitable for resource use located in reasonable proximity to a major employment center.

**Finding:** The subject property is already in an area committed to rural residential development. This policy is met.

**Rural Residential Policy 8:** Since there is a limited amount of area designated Rural Residential, efficient use of these areas shall be encouraged. The minimum lot size in Rural Residential areas existing on October 4, 2000, shall not be less than 2 acres allowing for a range of parcel sizes from 2 to 10 acres in size unless environmental limitations require a larger parcel. Areas rezoned to an Acreage Residential zone after October 4, 2000, shall have a 10-acre minimum lot size unless an exception to Goal 14 (Urbanization) is granted.

**Finding:** An exception to goal 14 is approved by this order. This policy is met.



**Rural Residential Policy 10:** All residential uses in rural areas shall have water supply and distribution systems and sewage disposal systems which meet prescribed standards for health and sanitation.

**Finding:** Any water wells and septic systems will be required to meet state health standards upon any future partitioning. With appropriate conditions this policy will be met.

**Rural Residential Policy 14:** In rural residential areas within one mile of an urban growth boundary, a redevelopment plan may be required as a condition of land division. The plan shall demonstrate that reasonable urban density development is possible should the urban growth boundary need to be expanded in the future.

**Finding:** The subject property is adjacent to the City of St. Paul and, in this case, no redevelopment plan appears necessary. New development in St. Paul adjacent to the subject property essentially mirrors the proposed development because the City of St. Paul is not extending city services in this area. Without city services, even if this property is taken into the UGB again, no additional development is likely to be allowed. The applicant is encouraged to take into consideration the possibility of future partitioning of the subject properties when locating residences.

**Rural Residential Policy 16:** The Acreage Residential (AR) zone will be the predominant zone applied to the lands designated Rural Residential. A numerical suffix may be used to indicate the minimum lot size allowed in the zone.

**Finding:** An AR-2, a two-acre suffix parcel size is approved.

## **MARION COUNTY ZONING CODE FINDINGS**

MCZO 123.060 contains the following zone change criteria:

**Standard:** 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

**Finding:** The proposed AR-2 zoning is already consistent with the current Rural Residential designation. MCCP policies have been addressed and, with conditions, can be met.

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

**Finding:** The subject property has similar residential uses on three sides. On two sides, the homes are within the City of St. Paul, and on the third, next to the City of St. Paul sewage lagoons, is a 1.8-acre parcel developed with a homesite. A determination

that residential use of the area will not interfere with farm use was already made when a committed exception to goal 3 was taken. Still, the property owner to the south is concerned about drainage (as is another nearby property owner and the City of St. Paul). The subject property apparently, during certain times of the year, encounters runoff. The City of St. Paul wants to make sure that any runoff is directed to county rather than city drainage facilities. As a condition of development, applicant is directed to provide engineered drainage plans for the subject property for DPW approval. With this condition, the proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area. MCZO 123.060(b) can be met.

**Standard:** 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

**Finding:** Drainage facilities are public services and, again, proper drainage facilities are required for residential development of the subject property. Sewage disposal will be by on-site subsurface disposal and septic site evaluations will be required as a condition of any partition approval. This process will ensure adequate septic service is available. Water will be by on-site well. The neighbor to the south is concerned about extra wells drawing down water resources. The subject site is not within an identified groundwater limited or sensitive groundwater overlay zone, and the opponent cites no independent evidence or basis for the concern. Provided the wells are constructed to state standards, there is no apparent problem with water service availability. Roadway improvements to Blanchet Avenue as recommended in the Marion County DPW comments above will ensure that there are adequate roadway facilities in place to support the zone change. As conditioned, adequate public facilities, services, and transportation networks will be in place. MCZO 123.060(c) can be met.

**Standard:** 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

**Finding:** The subject property is already designated for rural residential use and the use will remain residential after the zone change. There is no need to consider other designated rural residential land. MCZO 123.060(d) is not applicable.

**Standard:** 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.

**Finding:** The approved AR-2 zoning will allow somewhat more intensive use of the subject property. County Assessor's Office records show the property as 7.82 acres. Applicants believe the property contains at least eight acres but that determination would depend on the evidence available at the time any partitioning application would be requested. Either way, up to four dwellings sites might be possible under the proposed

new zoning. This density is similar to the existing development to the north, east and west. Also to the west are the City of St. Paul sewage lagoons. It is highly unlikely that the proposed dwelling sites would have any impact on the sewage facility. The one area of contention is the proposal's effect on the EFU zoned parcel to the south, across Blanchett Road. As noted above, the county already determined that rural residential use of the subject property would be compatible with surrounding farm uses when the exception to goal 3 was taken. And, with conditions of approval, including drainage requirements and declaratory statements, conflict with this site would be minimized. MCZO 123.060(e) can be met.

## **CONCLUSION**

As a result of addressing each of the considerations which must be reviewed before granting the proposed exception it is concluded that the Manning property is irrevocably committed to an urban level development defined by adjacent zoning and uses within the City of St. Paul Urban Growth Boundary. The proposed AR-2 zone, its allowed rural uses, density, and the property's lack of critical public facilities will not commit adjacent or nearby resource land to non resource use. The density is compatible with adjacent or nearby residential uses. The Manning application is approved conditioned on the above as well as the following conditions.

## EXHIBIT B

The following described property is rezoned from AR-10 (Acreage Residential 10 acre minimum) to AR-2 (Acreage Residential 2 acre minimum) zone.

