



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

12/05/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment  
DLCD File Number 002-11

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

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, December 22, 2011

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Lisa Milliman, Marion County  
Jon Jinings, DLCD Community Services Specialist  
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA



FORM 2

DLCD

# Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person  electronic  mailed

DATE STAMP

DEPT OF  
DEC 02 2011  
LAND CONSERVATION  
AND DEVELOPMENT

Jurisdiction: **MARION COUNTY**

Local file number: **ZC/CP11-002**

Date of Adoption: **11/30/2011**

Date Mailed: **12/1/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 6/14/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Change zone from SA (Special Agricultural) to FT (Farm Timber) and change the comprehensive plan designation from Special Agriculture to Farm Timber

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

Plan Map Changed from: **Special Agriculture**

to: **Farm Timber**

Zone Map Changed from: **Special Agriculture**

to: **Farm Timber**

Location: **2800 block Cloverdale DR SE Turner**

Acres Involved: **38**

Specify Density: Previous:

New:

Applicable statewide planning goals:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** 002-11 (18863) [16852]



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

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Local Contact: **Joe Fennimore** Phone: **(503) 588-5038** Extension:  
Address: **5155 Silverton RD NE** Fax Number: **503-589-3284**  
City: **Salem** Zip: **97305-** E-mail Address:

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### **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)**  
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615 ).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845 ).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615 ).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

<http://www.oregon.gov/LCD/forms.shtml>

Updated April 22, 2011

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of the ) Case No. ZC/CP11-002  
Application of: ) Clerk's File No. 5663  
ResCom Capital, LLC )

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1920

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 ResCom Capital, LLC to change the zone from SA (Special Agriculture) to FT (Farm Timber), and change the Comprehensive Plan designation from Special Agriculture to Farm/Timber, on a 38+ acres located in the 2800 block of Cloverdale Drive SE, Turner, Oregon (T9S; R3W; Section 01; tax lot 100).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on August 3, 2011. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On October 5, 2011, the Hearings Officer issued a report recommending the Board deny the request. The Board held a duly noticed public hearing on the application on November 2, 2011.

The Board, after having considered the Planning Division's and Clerk's file, 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 of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.



SECTION IV. Action

The requested Comprehensive Plan designation change from Special Agriculture to Farm/Timber is hereby **GRANTED**. The requested zone change from SA (Special Agriculture) to FT (Farm Timber) zone is hereby **GRANTED**.

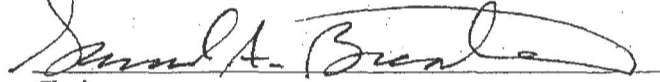
The property rezoned by this Ordinance is described in Exhibit B, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

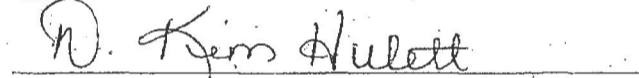
SECTION V. Effective Date

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 30th day of November,  
2011, 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

### Findings of Fact and Conclusions of Law

1. The subject 38± acre property is designated Special Agriculture in the Marion County Comprehensive Plan (MCCP) and zoned SA (Special Agriculture). The primary intent of the designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on the north side of Cloverdale Drive, about 2,250 feet east of Ridgeway Drive. The property contains a horse barn, arena, and septic system. About six acres of the property are in Christmas trees matured beyond common market size. About 15 acres are in Douglas fir and another six acres are in oak and other hardwoods. Parcel lines were configured in property line adjustment case 11-001 (PLA 11-001).
3. Surrounding properties to the east, southeast, north, west and southwest are zoned SA and contain a mixture of medium and large sized farm operations. Property to the south is zoned AR (Acreage Residential) and is in rural residential use.
4. The subject property contains 100% high-value farm soils.
5. Applicant asks to change the MCCP designation on the property from Special Agriculture to Farm/Timber, and the zone from SA to FT (Farm Timber).
6. The Marion County Planning Division requested comments on the application from various governmental agencies. The Marion County Department of Public Works (DPW) Land Development and Engineering Permits (LDEP) commented on engineering requirements:
  - A. In accordance with Marion County Driveway Ordinance #651, a driveway "Access Permit" for access to the public right-of-way may be required upon application for a building permit for a new dwelling.
  - B. There are physical limitations for adequate sight distance from the subject property onto Cloverdale Road SE due to roadway horizontal and vertical geometry that was identified during development of the equestrian center. Therefore, it is unlikely that a suitable location for an additional (second) unrestricted direct access to Cloverdale Road SE could be located on the subject property. Therefore, any future access for residential or agricultural purposes would likely be required to share the existing equestrian center access adjacent to the eastern property line.
  - C. The application plan incorrectly denotes a fire pond as a stormwater detention pond located to the southwest of the equestrian center. However, a stormwater detention system, including earthen berm and outfall control structure, was constructed on the subject property located to the northeast of the equestrian center as required per Marion County Permit #UR08-108, yet is not depicted on the application site plan. The system controls stormwater discharge from the equestrian center to an ephemeral drainage flow way traversing the property. The applicant is advised that any modification to this system related to future residential development and/or agricultural practices would require advanced coordination, engineering design and construction permitting from Public Works. A copy of the approved engineering design drawings for the constructed stormwater detention system is available upon request by contacting Public Works Land Development Engineering & Permits at (503) 584-7714.
  - D. Construction of roads, structures, and related improvements will increase the amount of storm water runoff from the subject property. Upon application for building permits, the County may require any development having 0.5 acre or more cumulative impervious (hard) surface to provide storm water detention or modify an existing system to accommodate the additive developed area.



E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

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

7. Applicant has the burden of proving all applicable standards and criteria are met.
8. Under MCCC plan amendments Policy 2, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by the zone change procedure established in Chapter 17.123 of the Marion County (MCC). A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one property and is being processed simultaneously with a zone change application. This is a quasi-judicial plan amendment request.

9. The Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified but did not comment on the proposal.

#### STATEWIDE PLANNING GOALS

10. According to the MCCC plan amendments section, 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 Marion County Board of Commissioners (BOC) provides an opportunity for citizen involvement.

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 shall be coordinated with the plans of affected governmental units. Affected governmental units are those 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. Marion County notified the Turner Fire District, Cascade School District, Oregon Department of Land Conservation and Development (DLCD), and various county departments of the proposed comprehensive plan amendment. Marion County DPW LDEP commented on engineering requirements. Other contacted agencies did not respond, or stated no objection to the proposal. Transportation issues are examined elsewhere in this order and addressed as necessary. Goal 2 is satisfied.

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

The subject site is currently covered by the agricultural lands goal. Under OAR 660-006-0015(2), no Goal 3 exception is required to designate the subject property for forest use.

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 implements the forest lands goal.

*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.

*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 subject property has not been inventoried for and is not currently designated or zoned forest land. If this application is approved, it would include a Board of Commissioners (BOC) inventory of the subject property as forest land and would apply a forest designation and zone consistent with OAR 660-006. No Goal 4 exception applies to the subject property, Marion County is not a marginal lands county, and the subject property is not an abandoned mill site. The property's SA zoning is an exclusive farm use zone subject to ORS chapter 215 and special assessment. This is an acceptable reason for non-forest designation and zoning under OAR 660-006-0015. However, applicant asks to designate and zone the property for forest use consistent with OAR 660-006 so the M CCP description is examined.

The M CCP forest lands introduction states:

An area located east and south of the city of Silverton and commonly referred to as the Silverton Hills consist 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.

The M CCP also contains the following:

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.

The MCCP describes the Farm/Timber zone and its purpose. As described, the zone is applied in the area south and east of Silverton, and coexistent with the peripheral big game habitat area. The subject property is not near this area but the property has many characteristics compatible with the general description of farm/forest areas, such as variable terrain, uses, and soils and a 20-40-acre parcel size.

The subject property slopes up from its Cloverdale Drive frontage from 470' above mean sea level (msl) to 670' msl, a 200' gain over a distance of about 1,800' to 1,900'. The lower portion of the property is more gently sloping than the upper portion which contains two small geologic hazard zone areas. The lower portion contains a large horse barn/arena and some overly mature (escaped) Christmas trees. Stabling or training equines and growing cultured Christmas trees are MCC defined farm uses. A timber cruise was performed on the property and 15.4 acres of merchantable conifer were found in the upper portions of the property. The subject property contains the following USDA identified soils:

Jory silty clay loam (JoB) 2-7% slopes	class II	20%
Jory silty clay loam (JoC) 7-12% slopes	class II	1%
Nekia silty clay loam (NeC) 7-12% slopes	class III	8%
Nekia silty clay loam (NeD) 12-20% slopes	class III	43%

Nekia stony silty (NkC) 2-12% slopes class III 28%

The soils are all class II and III high value farm soils and all are in woodland suitability group 3c1. Woodland suitability groups classify soils according to their potential productivity for Douglas fir. The number in the first position of the group indicates the site classification, with one as the highest, and five as the lowest. Three indicates intermediate wood-producing capacity. The letter in the second position indicates soil limitations, with c indicating clay. The number in the third position indicates the degree of difficulty in applying woodland management, with 1 being less difficult than 2 and 3. (*Soil Survey of Marion County Area, Oregon, USDA, 1972.*) Jory soils can produce 178 cubic feet per acre per year of wood fiber, while Nekia soils can produce 163 cubic feet per acre per year of wood fiber according to figures provided to the county by DLCD. Two or three drainage ways are on the site. At 38 acres, the subject property is within the 20 to 40-acre average parcel size in the FT zone.

The soils throughout the subject property are good for and are in farm and forest use. Farm use is on the Jory soils in the lower, less sloping portion of the property. Forest use is on the Nekia soils in the upper, more steeply sloping portion of the property. The soil survey considers forest use of these soils temporary because they are highly valuable for farm use.

The area considered for re-designation and rezoning consists solely of the subject property. Goal 3 and 4 uses are examined.

Goal 3 use. The property has been zoned for resource use since the M CCP was adopted. (See M CCP, appendix A - area 28.6, Ridgeway bordering the subject property. Maps on pages 66 and 68 mislabel Ridgeway 28.3, but show the subject property was never considered for a Goal 3 exception.) The subject property contains class II and III agricultural soils. Forest use is being made of a portion of the subject property, but propagation and harvest of forest products is an allowed use in the SA zone.

Goal 4 use. The soils on the subject property are productive for forest uses and a good portion of the property (about 15 of 38 acres) currently contains merchantable Douglas fir timber. Farm uses are allowed outright in the Timber Conservation and Farm/Timber zones.

Based on the information in the record at the time the Hearings Officer found that the subject property does not fit the M CCP location description of Farm/Timber designated property but it shares some of the general qualities of Farm/Timber designated lands. Also that the subject property could be used for all farm, all forest or mixed resource production. It is not clear that the area to be rezoned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone. The SA zone has been applied alone to the subject property for many years with no harm to farm or forest use of the property. The hearings officer found that OAR 660-006-0057 and Goal 4 were not satisfied.

The hearings officer stated that, to the hearings officer's knowledge, the Farm/Timber designation and FT zoning has been applied only once outside of the east county area. Several years ago the Dawn Robberstad Trust asked to amend the M CCP designation from Special Agriculture to Farm/Timber and to change the zone from SA to FT on a 26.38 acre parcel on Jory Hill Road (ZC/CP03-5). The BOC approved this request. The BOC order in ZC/CP03-5 was not a part of the record when the hearings officer heard this case; however, at its hearing the BOC took note of the findings made in that case as well as a November 4, 2003 submitted by DLCD staff clarifying OAR 660-006-0057.

During the hearing the BOC reviewed the findings and the DLCD letter in ZC/CP03-5 and determined that similar findings could be made to meet the applicable amendment criteria in this case. The predominant use of the property is forest use, as evidenced by the timber cruise that was provided and based on the factors outlined above including topography, soil type, and size of the property to meet the characteristics of the Farm/Timber designation and Goal 4. Although the property was not located in the Silverton Hills in ZC/CP 03-5, a finding was made that the South Salem Hills in which that property was located, was considered for the farm/timber designation when the comprehensive plan was adopted in the early 1980s,



but the less restrictive SA zone was applied to allow greater development in the area. The letter from DLCD in ZC/CP 03-5 described how to apply OAR 660-006-0057 and concluded that it should be read consistent with the other Goal 4 rule provisions to simply require an explanation about why the mixed farm/forest zone was chosen. It concluded that in ZC/CP03-5, given the predominant forest use of the subject property, "...it makes perfect sense to rezone the parcel for either forest or mixed farm/forest use rather than a farm zone or to apply two different zones."

In the current case the subject property contains a mixture of farm and forest uses with the predominant use as forest. Considering the condition and use of the property as a timber resource, the mixed resource character of the South Salem Hills, the findings in ZC/CP03-5, and the clarifications provided by the 2003 DLCD letter, the Board finds that the FT zone and comprehensive plan designation are appropriate for this property.

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

No Goal 5 resources are identified on or near the subject property. This goal is not applicable.

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

The subject site is now zoned SA, which allows intensive agricultural and forest uses. Designating the subject property for farm/forest use will not significantly change the types of operations allowed on the subject property. FT zoning may allow one dwelling on the property but, if development avoids the two small geologic hazard areas, if a positive septic site evaluation and permit are obtained, and if any Sensitive Groundwater Overlay zone rules are applied, one single family dwelling should not have a significant affect on air, water or land resources quality. With the regulations currently in place, the level of air, water and land resources will be maintained. Goal 6 is satisfied.

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

The subject property is not in a floodplain but two small portions of the subject site are in an MCCC identified geologic slide hazard area. Applicant would need to avoid development in the geologic hazard areas or comply with Geologically Hazardous Overlay zone requirements. In place regulations will protect people and property. 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.

This goal 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 660-008-0000 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.

Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on any future development. Goal 11 is satisfied.

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

Under OAR 660-012-0060(1), where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:
  - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
  - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
  - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The subject property fronts Cloverdale Drive, a Marion County Rural Transportation System Plan (RTSP) identified local road. SA and FT zone uses are similar, and, propagation and harvesting of forest products are allowed in the SA zone. Marion County DPW commented on the application and had no concerns that the proposed comprehensive plan amendment/zone change would significantly affect the existing transportation facility by changing its functional classification, changing the standards implementing the classification, or by allowing uses or levels of development that would be inconsistent with Cloverdale Drive's functional classification or reduce or worsen its performance. Nothing in the application triggers further examination under Goal 12. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

Farm and forest uses are similar. FT zone uses are not likely to be more energy intensive than SA uses. 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.

This application does not provide an opportunity for urbanizing the subject property. Goal 14 is not applicable.

Goals 15 - Willamette River Greenway, 16 - Estuarine Resources, 17 - Coastal Shorelands, 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.

11. Based on the findings in item 10 above, the Board finds that the comprehensive plan amendment application is consistent with and meets the applicable statewide planning goals and satisfies OAR 660-006-0057.

#### MCCP POLICIES

12. Comprehensive plan amendments must be consistent with applicable MCCP goals and policies. If the subject property is designated Farm/Timber, forest lands goals and policies will apply, so the proposal must be consistent with forest lands goals and policies.

The forest land and farm/timber land goal is to conserve forest lands and mixed farm/timber lands by maintaining the forest land base and the mixed forest and agricultural base and to protect the county's forest and farm economies by making possible economically efficient forest and agricultural practices that assure the continuous growing and harvesting of forest tree species and agricultural products as the leading use on forest land and mixed farm/timber land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities.

Forest land and farm/timber land policies:

1. Protect the resource values of those areas designated as forest lands by applying a Timber Conservation zone consistent with OAR 660 Division 6.

Applicant is not seeking Forest Land designation or TC (TIMBER CONSERVATION) zoning. Policy 1 is not applicable.

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.

If the proposed comprehensive plan amendment is approved, Farm/Timber designation and FT zoning will be applied consistent with OAR 660 Division 6. Policy 2 will be met.

3. Protect the agricultural resource value of those areas designated as farm/timber lands by applying a Farm/Timber zone consistent with OAR 660 Division 33.

The subject property has been in agriculture and timber uses. OAR 660, Divisions 6 and 33 will be applied as required. Policy 3 will be met.

4. Non-forest and non-farm uses included in OAR 660-06-0025 and 660-33-120 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 increased risks associated with fire.

Nonfarm and nonforest uses are reviewed and allowed only in accordance with state law and local ordinances that include examining impacts on surrounding properties. Policy 4 is met.



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.

The minimum parcel size in the FT zone is 80 acres. The subject property is already below 80 acres. No land divisions are contemplated or likely. Applying the FT zone will satisfy Policy 5.

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 660-33-120.

The subject parcel is already below 80 acres. No land divisions are contemplated or likely. Any future land division must be in accordance with state law and local ordinance. Policy 6 is met.

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.

A property line adjustment was previously approved between the subject property and a neighboring farm parcel. No lot line adjustment is requested here, but any future land reconfiguration must be in accordance with state law and local ordinance. Policy 7 is met.

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 with this application, but the property may become eligible for a dwelling as a result of the proposal. Any proposed dwellings must be in accordance with state law and local ordinance. Farm management practices on adjacent lands, road access, fire protection, domestic water supply, and fire hazards will be examined if an application for a dwelling is filed. Policy 8 is met.

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.

Though policy 9 specifically mentions TC zoning, any dwellings allowed subject to standards or conditionally permitted in the FT zone must also be approved in accordance with state law and local ordinance so policy 9 would be satisfied for FT zoning as well.

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.

Applicant claims forest use was predominant on the subject property on January 1, 1993. The timber cruise report shows that most of the property's Douglas fir is between 55 and 65 years old, so some of the property has been in timber use since January 1, 1993. It is not clear that forest use was "predominant" then because only 15 of 38 acres are forested with the 50+ year old Douglas fir. Whether OAR 660-006 or 033 will apply to development will be determined when an application is filed. Appropriate resource zone laws and rules will be applied at that time. Policy 10 is satisfied.

#### ZONE CHANGE

13. 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.
14. This application includes a comprehensive plan amendment request that would change the comprehensive plan designation from Special Agriculture to Farm/Forest. If the comprehensive plan amendment is approved, the proposed FT zone would be consistent with the Farm/Timber plan designation. As noted in the comprehensive plan amendment analysis above, MCCP goals and policies are satisfied, even though hearings officer determined that OAR 660-006-0057 was not satisfied. MCC 17.123.060(A) is satisfied.
15. The area surrounding the subject property is zoned AR and SA and is in mixed residential and resource use. Not a lot of specific information was provided on the types of resource use in the area, but it was noted that Willamette Valley Vineyard purchased the property immediately to the west for grape production. Aerial photographs show Christmas tree production to the west across Cloverdale Drive and other unidentified uses that appear agricultural in nature. The aerial photographs also show property to the west, north and east is treed, and looks similar to the subject property. Dwellings appear sparsely scattered throughout the wooded areas. The subject property is similar to the surrounding land properties. The subject property is similar in use, density and development as other properties in the area. MCC 17.123.060(B) is satisfied.
16. The subject property borders an acreage residential area. Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on future development. Uses allowed or conditionally permitted in the FT zone do not differ significantly from SA zone uses and should tax public services no more than SA zone uses. 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.
17. MCC 17.123.060(D) is difficult to apply here where applicant asks to go from one resource zone to a similar, compatible resource zone. In the section of the applicant's statement addressing this criterion, applicant discusses the similarity between the subject property and FT zoned properties. Applicant states that a "finding can be made that other lands in the county zoned F/T are concentrated in the eastern portion of the county and that they are generally unavailable because most of them already have residency management." This may show that most FT zoned properties have dwelling units but it does not show that they are unavailable for other FT zone uses or that the subject property is more suitable for FT zone uses.

The hearings officer determined that the applicant had not shown that other like designated lands were unavailable or not as well suited for FT zone uses as the subject property and concluded that MCC 17.123.060(D) was not satisfied.

The BOC looked to the findings made in ZC/CP03-5 regarding this criterion and determined that the same factors exist on the subject property. The BOC finds that the request to rezone the parcel to FT is specific to the conditions on the property, and that applying the FT zone will benefit the long-term resource management of the parcel. While there are other lands zoned FT in the Silverton Hills and the east county area which may be equally suited to timber production, they do not contain a ready for use horse stable and arena. The available method of providing a for future mixed use of timber resource management on the majority of the property while allowing farm management on the remainder, is by applying the FT zone. For these reasons, the BOC finds that due to the location of other lands in the county already designated FT, these lands are unavailable and not as well suited for the use proposed for the subject property. For these reasons, the BOC finds that MCC 17.123.060(D) is satisfied.

18. The FT zone is the only zone allowed under the Farm/Timber designation. MCC 17123.060(E) is not applicable.
19. The BOC finds that the applicant has met the burden of proving compliance with the applicable standards and criteria of the MCCP and MCC for approval of the comprehensive plan amendment and zone change from SA to FT (ZC/CP 11-002).



BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. ZC/CP 11-002  
Application of: ) Clerk's File No.  
RESCOM CAPITAL, LLC ) Zone Change/Comprehensive  
Plan Amendment

RECOMMENDATION

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the application of ResCom Capital, LLC to change the zone from SA (SPECIAL AGRICULTURE) to FT (FARM TIMBER) and to amend the comprehensive plan designation from Special Agriculture to Farm/Timber on a 38± acre parcel in the 2800 block of Cloverdale Drive SE, Turner, Marion County, Oregon (T9S, R3W, S1, 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 duly held on this application on August 3, 2011. 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. David Epling Planning Division
2. Frank Walker For applicant

At hearing, no objections were raised as to notice, jurisdiction, conflicts of interest, evidence or testimony. No documents were presented as exhibits at hearing. The record remained open until August 24, 2011 for applicant to submit additional information. On applicant's written request, the open record period was extended to September 7, 2011. During the open record period, applicant submitted a September 5, 2011 letter from Frank D. Walker with attached timber cruise report by Marc E. Setchko. The documents were marked and entered into the record as exhibit 1.

**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 38± acre property is designated Special Agriculture in the MCCP and zoned SA. The primary intent of the designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is on the north side of Cloverdale Drive, about 2,250 feet east of Ridgeway Drive. The property contains a horse barn, arena, and septic system. About six acres of the property are in Christmas trees matured beyond common market size. About 15 acres are in Douglas fir and another six acres are in oak and other hardwoods. Parcel lines were configured in property line adjustment case 11-001 (PLA 11-001).
3. Surrounding properties to the east, southeast, north, west and southwest are zoned SA and contain a mixture of medium and large sized farm operations. Property to the south is zoned AR (Acreage Residential) and is in rural residential use.
4. The subject property contains 100% high-value farm soils.
5. Applicant asks to change the MCCP designation on the property from Special Agriculture to Farm/Timber, and the zone from SA to FT.
6. The Marion County Planning Division requested comments on the application from various governmental agencies. The Marion County Department of Public Works (DPW) Land Development and Engineering Permits (LDEP) commented on engineering requirements:
  - A. In accordance with Marion County Driveway Ordinance #651, a driveway "Access Permit" for access to the public right-of-way may be required upon application for a building permit for a new dwelling.
  - B. There are physical limitations for adequate sight distance from the subject property onto Cloverdale Road SE due to roadway horizontal and vertical geometry that was identified during development of the equestrian center. Therefore, it is unlikely that a suitable location for an additional (second) unrestricted direct access to Cloverdale Road SE could be located on the subject property. Therefore, any future access for residential or agricultural purposes would likely be required to share the existing equestrian center access adjacent to the eastern property line.
  - C. The application plan incorrectly denotes a fire pond as a stormwater detention pond located to the southwest of the equestrian center. However, a stormwater detention system, including earthen berm and outfall control structure, was constructed on the subject property located to the northeast of the equestrian center as required per Marion County Permit #UR08-108, yet is not depicted on the application site plan. The system controls stormwater discharge from the equestrian center to an ephemeral drainage flow way traversing the property. The applicant is advised that any modification to

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this system related to future residential development and/or agricultural practices would require advanced coordination, engineering design and construction permitting from Public Works. A copy of the approved engineering design drawings for the constructed stormwater detention system is available upon request by contacting Public Works Land Development Engineering & Permits at (503) 584-7714.

- D. Construction of roads, structures, and related improvements will increase the amount of storm water runoff from the subject property. Upon application for building permits, the County may require any development having 0.5 acre or more cumulative impervious (hard) surface to provide storm water detention or modify an existing system to accommodate the additive developed area.
- E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

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

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

- 1. Applicant has the burden of proving all applicable standards and criteria are met.
- 2. Under MCCP plan amendments policy 2, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by the zone change procedure established in the Marion County Zoning Ordinance. A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one property and is being processed simultaneously with a zone change application. This is a quasi-judicial plan amendment request.

- 3. The Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified but did not comment on the proposal.

#### STATEWIDE PLANNING GOALS

- 4. According to the MCCP plan amendments section, comprehensive plan amendments must be consistent with statewide planning goals.



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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 Marion County Board of Commissioners (BOC) provides an opportunity for citizen involvement.

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 shall be coordinated with the plans of affected governmental units. Affected governmental units are those 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. Marion County notified the Turner Fire District, Cascade School District, Oregon Department of Land Conservation and Development (DLCD), and various county departments of the proposed comprehensive plan amendment. Marion County DPW LDEP commented on engineering requirements. Other contacted agencies did not respond, or stated no objection to the proposal. Transportation issues are examined elsewhere in this order and addressed as necessary. Goal 2 is satisfied.

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

The subject site is currently covered by the agricultural lands goal. Under OAR 660-006-0015(2), no goal 3 exception is required to designate the subject property for forest use.

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 implements the forest lands goal.

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

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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 has not been inventoried for and is not currently designated or zoned forest land. If this application is approved, it would include a BOC inventory of the subject property as forest land and would apply a forest designation and zone consistent with OAR 660-006. No goal 4 exception applies to the subject property, Marion County is not a marginal lands county, and the subject property is not an abandoned mill site. The property's SA zoning is an exclusive farm use zone subject to ORS chapter 215 and special assessment. This is an acceptable reason for non-forest designation and zoning under OAR 660-006-0015. However, applicant asks to designate and zone the property for forest use consistent with OAR 660-006 so the MCCP description is examined.

The MCCP forest lands introduction states:

An area located east and south of the city of Silverton and commonly referred to as the Silverton Hills consist 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.

The MCCP also contains the following:

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

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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.



The MCCP describes the Farm/Timber zone and its purpose. As described, the zone is applied in the area south and east of Silverton, and coexistent with the peripheral big game habitat area. The subject property is not near this area but the property has some characteristics compatible with the general description of farm/forest areas, such as variable terrain, uses, and soils and a 20-40-acre parcel size.

The subject property slopes up from its Cloverdale Drive frontage from 470' above mean sea level (msl) to 670' msl, a 200' gain over a distance of about 1,800' to 1,900'. The lower portion of the property is more gently sloping than the upper portion which contains two small geologic hazard zone areas. The lower portion contains a large horse barn/arena and some overly mature (escaped) Christmas trees. Stabling or training equines and growing cultured Christmas trees are MCC defined farm uses. A timber cruise was performed on the property and 15.4 acres of merchantable conifer were found in the upper portions of the property. The subject property contains the following USDA identified soils:

Jory silty clay loam (JoB) 2-7% slopes	class II	20%
Jory silty clay loam (JoC) 7-12% slopes	class II	1%
Nekia silty clay loam (NeC) 7-12% slopes	class III	8%
Nekia silty clay loam (NeD) 12-20% slopes	class III	43%
Nekia stony silty (NkC) 2-12% slopes	class III	28%

The soils are all class II and III high value farm soils and all are in woodland suitability group 3c1. Woodland suitability groups classify soils according to their potential productivity for Douglas fir. The number in the first position of the group indicates the site classification, with one as the highest, and five as the lowest. Three indicates intermediate wood-producing capacity. The letter in the second position indicates soil limitations, with c indicating clay. The number in the third position indicates the degree of difficulty in applying woodland management, with 1 being less difficult than 2 and 3. (*Soil Survey of Marion County Area, Oregon, USDA, 1972.*) Jory soils can produce 178 cubic feet per acre per year of wood fiber, while Nekia soils can produce 163 cubic feet per acre per year of wood fiber according to figures provided to the county by DLCD. Two or three drainage ways are on the site. At 38 acres, the subject property is within the 20 to 40-acre average parcel size in the FT zone.

The soils throughout the subject property are good for and are in farm and forest use. Farm use is on the Jory soils in the lower, less sloping portion of the property. Forest use is on the Nekia soils in the upper, more steeply sloping portion of the property. The soil survey considers forest use of these soils temporary because they are highly valuable for farm use.

To the hearings officer's knowledge, the Farm/Timber designation and FT zoning has been applied only once outside of the east county area. Several years ago the Dawn Robberstad Trust asked to amend the MCCP designation from Special Agriculture to Farm/Timber and to change the zone from SA to FT on a 26.38 acre parcel on Jory Hill Road (ZC/CP 03-5). The BOC approved the request. The BOC order is not a part of the record in this case so the hearings officer does not have benefit of the commissioners' reasoning in that case.

The subject property does not fit the MCCP location description of Farm/Timber designated property but it shares some of the general qualities of Farm/Timber designated lands. Should the BOC decide, on balance that the subject property should be redesignated and rezoned, the plan amendment must clearly document the factors that were used to select a Farm/Timber designation.

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. Goal 3 and 4 uses are examined.

Goal 3 use. The property has been zoned for resource use since the MCCP was adopted. (See MCCP, appendix A - area 28.6, Ridgeway bordering the subject property. Maps on pages 66 and 68 mislabel Ridgeway 28.3, but show the subject property was never considered for a goal 3 exception.) The subject property contains class II and III agricultural soils. Forest use is being made of a portion of the subject property, but propagation and harvest of forest products is an allowed use in the SA zone.

Goal 4 use. The soils on the subject property are productive for forest uses and a good portion of the property (about 15 of 38 acres) currently contains merchantable Douglas fir timber. Farm uses are allowed outright in the Timber Conservation and Farm/Timber zones.

The subject property could be used for all farm, all forest or mixed resource production. It is not clear that the area to be rezoned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone. The SA has been applied alone to the subject property for many years with no harm to farm or forest use of the property.

The hearings officer finds that OAR 660-006-0057 and goal 4 are not satisfied.

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

No goal 5 resources are identified on or near the subject property. This goal is not applicable.

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

The subject site is now zoned SA, which allows intensive agricultural and forest uses. Designating the subject property for farm/forest use will not significantly change the types of operations allowed on the subject property. FT zoning may allow one dwelling on the property but, if development avoids the two small geologic hazard areas, if a positive septic site evaluation and permit are obtained, and if any Sensitive Groundwater Overlay zone rules are applied, one single family dwelling should not have a significant affect on air, water or land resources quality. With the regulations currently in place, the level of air, water and land resources will be maintained. Goal 6 is satisfied.

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

The subject property is not in a floodplain but two small portions of the subject site are in an MSCP identified geologic slide hazard area. Applicant would need to avoid development in the geologic hazard areas or comply with Geologically Hazardous Overlay zone requirements. In place regulations will protect people and property. 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.

This goal 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 660-008-0000 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.

Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on any future development. Goal 11 is satisfied.

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

Under OAR 660-012-0060(1), where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:

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

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

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform



below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The subject property fronts Cloverdale Drive, a Marion County Rural Transportation System Plan (RTSP) identified local road. SA and FT zone uses are similar, and, propagation and harvesting of forest products are allowed in the SA zone. Marion County DPW commented on the application and had no concerns that the proposed comprehensive plan amendment/zone change would significantly affect the existing transportation facility by changing its functional classification, changing the standards implementing the classification, or by allowing uses or levels of development that would be inconsistent with Cloverdale Drive's functional classification or reduce or worsen its performance. Nothing in the application triggers further examination under goal 12. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

Farm and forest uses are similar. FT zone uses are not likely to be more energy intensive than SA uses. 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.

This application does not provide an opportunity for urbanizing the subject property. Goal 14 is not applicable.

Goals 15 - Willamette River Greenway, 16 - Estuarine Resources, 17 - Coastal Shorelands, 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.

5. Based on the OAR 660-006-0057 findings, the hearings officer recommends denial of the comprehensive plan amendment application as inconsistent with statewide planning goal 4.

#### MCCP POLICIES

6. Comprehensive plan amendments must be consistent with applicable MCCP goals and policies. If the subject property is designated Farm/Timber, forest lands goals and policies will apply, so the proposal must be consistent with forest lands goals and policies.

The forest land and farm/timber land goal is to conserve forest lands and mixed farm/timber lands by maintaining the forest land base and the mixed forest and agricultural base and to protect the county's forest and farm economies by making possible economically efficient forest and agricultural practices that assure the

continuous growing and harvesting of forest tree species and agricultural products as the leading use on forest land and mixed farm/timber land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities.

Forest land and farm/timber land policies:

1. Protect the resource values of those areas designated as forest lands by applying a Timber Conservation zone consistent with OAR 660 Division 6.

Applicant is not seeking Forest Land designation or TC (TIMBER CONSERVATION) zoning. Policy 1 is not applicable.

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.

If the proposed comprehensive plan amendment is approved, Farm/Timber designation and FT zoning will be applied consistent with OAR 660 Division 6. Policy 2 will be met.

3. Protect the agricultural resource value of those areas designated as farm/timber lands by applying a Farm/Timber zone consistent with OAR 660 Division 33.

The subject property has been in agriculture and timber uses. OAR 660, divisions 6 and 33 will be applied as required. Policy 3 will be met.

4. Non-forest and non-farm uses included in OAR 660-06-0025 and 660-33-120 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 increased risks associated with fire.

Nonfarm and nonforest uses are reviewed and allowed only in accordance with state law and local ordinances that include examining impacts on surrounding properties. Policy 4 is met.

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.

The minimum parcel size in the FT zone is 80 acres. The subject property is already below 80 acres. No land divisions are contemplated or likely. Applying the FT zone will satisfy Policy 5.

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 660-33-120.

The subject parcel is already below 80 acres. No land divisions are contemplated or likely. Any future land division must be in accordance with state law and local ordinance. Policy 6 is met.

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.

A property line adjustment was previously approved between the subject property and a neighboring farm parcel. No lot line adjustment is requested here, but any future land reconfiguration must be in accordance with state law and local ordinance. Policy 7 is met.

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 with this application, but the property may become eligible for a dwelling as a result of the proposal. Any proposed dwellings must be in accordance with state law and local ordinance. Farm management practices on adjacent lands, road access, fire protection, domestic water supply, and fire hazards will be examined if an application for a dwelling is filed. Policy 8 is met.

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.

Though policy 9 specifically mentions TC zoning, any dwellings allowed subject to standards or conditionally permitted in the FT zone must also be approved in accordance with state law and local ordinance so policy 9 would be satisfied for FT zoning as well.

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.



Applicant claims forest use was predominant on the subject property on January 1, 1993. The timber cruise report shows that most of the property's Douglas fir is between 55 and 65 years old, so some of the property has been in timber use since January 1, 1993. It is not clear that forest use was "predominant" then because only 15 of 38 acres are forested with the 50+ year old Douglas fir. Whether OAR 660-006 or 033 will apply to development will be determined when an application is filed. Appropriate resource zone laws and rules will be applied at that time. Policy 10 is satisfied.

ZONE CHANGE

7. 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.
8. This application includes a comprehensive plan amendment request that would change the comprehensive plan designation from Special Agriculture to Farm/Forest. If the comprehensive plan amendment is approved, the proposed FT zone would be consistent with the Farm/Timber plan designation. As noted in the comprehensive plan amendment analysis above, MCCP goals and policies are satisfied, even though OAR 660-006-0057 is not satisfied. MCC 17.123.060(A) is satisfied.
9. The area surrounding the subject property is zoned AR and SA and is in mixed residential and resource use. Not a lot of specific information was provided on the types of resource use in the area,

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but it was noted that Willamette Valley Vineyard purchased the property immediately to the west for grape production. Aerial photographs show Christmas tree production to the west across Cloverdale Drive and other unidentified uses that appear agricultural in nature. The aerial photographs also show property to the west, north and east is treed, and looks similar to the subject property. Dwellings appear sparsely scattered throughout the wooded areas. The subject property is similar to the surrounding land properties. The subject property is similar in use, density and development as other properties in the area. MCC 17.123.060(B) is satisfied.

10. The subject property borders an acreage residential area. Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on future development. Uses allowed or conditionally permitted in the FT zone do not differ significantly from SA zone uses and should tax public services no more than SA zone uses. 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.
11. MCC 17.123.060(D) is difficult to apply here where applicant asks to go from one resource zone to a similar, compatible resource zone. In the section of the applicant's statement addressing this criterion, applicant discusses the similarity between the subject property and FT zoned properties. Applicant states that a "finding can be made that other lands in the county zoned F/T are concentrated in the eastern portion of the county and that they are generally unavailable because most of them already have residency management." This may show that most FT zoned properties have dwelling units but it does not show that they are unavailable other FT zone uses or that the subject property is more suitable for FT zone uses. Applicant has not shown that other like designated lands are unavailable or not as well suited for FT zone uses as the subject property. MCC 17.123.060(D) is not satisfied.
12. The FT zone is the only zone allowed under the Farm/Timber designation. MCC 17.123.060(E) is not applicable.
13. The zone change is not recommended.

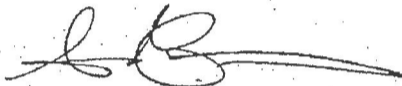
VI. Recommendation

It is hereby found that applicant has not met the burden of proving the applicable standards and criteria for approval of a comprehensive plan amendment and zone change have been met. The hearings officer recommends the BOC DENY the zone change and comprehensive plan amendment 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 5<sup>th</sup> day of October 2011.



Ann M. Gasser  
Marion County Hearings Officer



CERTIFICATE OF MAILING

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

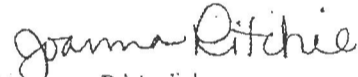
Frank Walker  
Frank Walker & Associates  
1480 Jamestown St SE  
Salem, OR 97302

Laurel Hines  
10371 Lake Dr SE  
Salem OR 97306

Aileen Kaye  
10095 Parrish Gap Rd SE  
Turner, OR 97392

Agencies Notified  
Planning Division  
Assessor's Office  
Building Inspection  
Department of Public Works  
AAC Member No. 1

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 5<sup>th</sup> day of October 2011, and that the postage thereon was prepaid.



Joanna Ritchie  
Secretary to Hearings Officer

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of the ) Case No. ZC/CP11-002  
Application of: ) Clerk's File No. 5663  
ResCom Capital, LLC )

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1920

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 ResCom Capital, LLC to change the zone from SA (Special Agriculture) to FT (Farm Timber), and change the Comprehensive Plan designation from Special Agriculture to Farm/Timber, on a 38+ acres located in the 2800 block of Cloverdale Drive SE, Turner, Oregon (T9S; R3W; Section 01; tax lot 100).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on August 3, 2011. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On October 5, 2011, the Hearings Officer issued a report recommending the Board deny the request. The Board held a duly noticed public hearing on the application on November 2, 2011.

The Board, after having considered the Planning Division's and Clerk's file, 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 of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Special Agriculture to Farm/Timber is hereby **GRANTED**. The requested zone change from SA (Special Agriculture) to FT (Farm Timber) zone is hereby **GRANTED**.

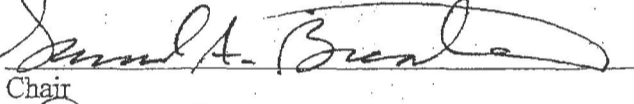
The property rezoned by this Ordinance is described in Exhibit B, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

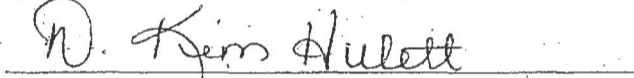
SECTION V. Effective Date

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 20th day of November,  
2011, 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

### Findings of Fact and Conclusions of Law

1. The subject 38± acre property is designated Special Agriculture in the Marion County Comprehensive Plan (MCCP) and zoned SA (Special Agriculture). The primary intent of the designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on the north side of Cloverdale Drive, about 2,250 feet east of Ridgeway Drive. The property contains a horse barn, arena, and septic system. About six acres of the property are in Christmas trees matured beyond common market size. About 15 acres are in Douglas fir and another six acres are in oak and other hardwoods. Parcel lines were configured in property line adjustment case 11-001 (PLA 11-001).
3. Surrounding properties to the east, southeast, north, west and southwest are zoned SA and contain a mixture of medium and large sized farm operations. Property to the south is zoned AR (Acreage Residential) and is in rural residential use.
4. The subject property contains 100% high-value farm soils.
5. Applicant asks to change the MCCP designation on the property from Special Agriculture to Farm/Timber, and the zone from SA to FT (Farm Timber).
6. The Marion County Planning Division requested comments on the application from various governmental agencies. The Marion County Department of Public Works (DPW) Land Development and Engineering Permits (LDEP) commented on engineering requirements:
  - A. In accordance with Marion County Driveway Ordinance #651, a driveway "Access Permit" for access to the public right-of-way may be required upon application for a building permit for a new dwelling.
  - B. There are physical limitations for adequate sight distance from the subject property onto Cloverdale Road SE due to roadway horizontal and vertical geometry that was identified during development of the equestrian center. Therefore, it is unlikely that a suitable location for an additional (second) unrestricted direct access to Cloverdale Road SE could be located on the subject property. Therefore, any future access for residential or agricultural purposes would likely be required to share the existing equestrian center access adjacent to the eastern property line.
  - C. The application plan incorrectly denotes a fire pond as a stormwater detention pond located to the southwest of the equestrian center. However, a stormwater detention system, including earthen berm and outfall control structure, was constructed on the subject property located to the northeast of the equestrian center as required per Marion County Permit #UR08-108, yet is not depicted on the application site plan. The system controls stormwater discharge from the equestrian center to an ephemeral drainage flow way traversing the property. The applicant is advised that any modification to this system related to future residential development and/or agricultural practices would require advanced coordination, engineering design and construction permitting from Public Works. A copy of the approved engineering design drawings for the constructed stormwater detention system is available upon request by contacting Public Works Land Development Engineering & Permits at (503) 584-7714.
  - D. Construction of roads, structures, and related improvements will increase the amount of storm water runoff from the subject property. Upon application for building permits, the County may require any development having 0.5 acre or more cumulative impervious (hard) surface to provide storm water detention or modify an existing system to accommodate the additive developed area.

- E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

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

7. Applicant has the burden of proving all applicable standards and criteria are met.
8. Under MCCP plan amendments Policy 2, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by the zone change procedure established in Chapter 17.123 of the Marion County (MCC). A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one property and is being processed simultaneously with a zone change application. This is a quasi-judicial plan amendment request.

9. The Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified but did not comment on the proposal.

#### STATEWIDE PLANNING GOALS

10. According to the MCCP plan amendments section, 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 Marion County Board of Commissioners (BOC) provides an opportunity for citizen involvement.

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 shall be coordinated with the plans of affected governmental units. Affected governmental units are those 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. Marion County notified the Turner Fire District, Cascade School District, Oregon Department of Land Conservation and Development (DLCD), and various county departments of the proposed comprehensive plan amendment. Marion County DPW LDEP commented on engineering requirements. Other contacted agencies did not respond, or stated no objection to the proposal. Transportation issues are examined elsewhere in this order and addressed as necessary. Goal 2 is satisfied.

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

The subject site is currently covered by the agricultural lands goal. Under OAR 660-006-0015(2), no Goal 3 exception is required to designate the subject property for forest use.

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 implements the forest lands goal.

*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.

*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 subject property has not been inventoried for and is not currently designated or zoned forest land. If this application is approved, it would include a Board of Commissioners (BOC) inventory of the subject property as forest land and would apply a forest designation and zone consistent with OAR 660-006. No Goal 4 exception applies to the subject property, Marion County is not a marginal lands county, and the subject property is not an abandoned mill site. The property's SA zoning is an exclusive farm use zone subject to ORS chapter 215 and special assessment. This is an acceptable reason for non-forest designation and zoning under OAR 660-006-0015. However, applicant asks to designate and zone the property for forest use consistent with OAR 660-006 so the MCCP description is examined.

The MCCP forest lands introduction states:

An area located east and south of the city of Silverton and commonly referred to as the Silverton Hills consist 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.

The MCCP also contains the following:

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.

The MCCP describes the Farm/Timber zone and its purpose. As described, the zone is applied in the area south and east of Silverton, and coexistent with the peripheral big game habitat area. The subject property is not near this area but the property has many characteristics compatible with the general description of farm/forest areas, such as variable terrain, uses, and soils and a 20-40-acre parcel size.

The subject property slopes up from its Cloverdale Drive frontage from 470' above mean sea level (msl) to 670' msl, a 200' gain over a distance of about 1,800' to 1,900'. The lower portion of the property is more gently sloping than the upper portion which contains two small geologic hazard zone areas. The lower portion contains a large horse barn/arena and some overly mature (escaped) Christmas trees. Stabling or training equines and growing cultured Christmas trees are MCC defined farm uses. A timber cruise was performed on the property and 15.4 acres of merchantable conifer were found in the upper portions of the property. The subject property contains the following USDA identified soils:

Jory silty clay loam (JoB) 2-7% slopes	class II	20%
Jory silty clay loam (JoC) 7-12% slopes	class II	1%
Nekia silty clay loam (NeC) 7-12% slopes	class III	8%
Nekia silty clay loam (NeD) 12-20% slopes	class III	43%

Nekia stony silty (NkC) 2-12% slopes class III 28%

The soils are all class II and III high value farm soils and all are in woodland suitability group 3c1. Woodland suitability groups classify soils according to their potential productivity for Douglas fir. The number in the first position of the group indicates the site classification, with one as the highest, and five as the lowest. Three indicates intermediate wood-producing capacity. The letter in the second position indicates soil limitations, with c indicating clay. The number in the third position indicates the degree of difficulty in applying woodland management, with 1 being less difficult than 2 and 3. (*Soil Survey of Marion County Area, Oregon, USDA, 1972.*) Jory soils can produce 178 cubic feet per acre per year of wood fiber, while Nekia soils can produce 163 cubic feet per acre per year of wood fiber according to figures provided to the county by DLCD. Two or three drainage ways are on the site. At 38 acres, the subject property is within the 20 to 40-acre average parcel size in the FT zone.

The soils throughout the subject property are good for and are in farm and forest use. Farm use is on the Jory soils in the lower, less sloping portion of the property. Forest use is on the Nekia soils in the upper, more steeply sloping portion of the property. The soil survey considers forest use of these soils temporary because they are highly valuable for farm use.

The area considered for re-designation and rezoning consists solely of the subject property. Goal 3 and 4 uses are examined.

Goal 3 use. The property has been zoned for resource use since the MCCP was adopted. (See MCCP, appendix A - area 28.6, Ridgeway bordering the subject property. Maps on pages 66 and 68 mislabel Ridgeway 28.3, but show the subject property was never considered for a Goal 3 exception.) The subject property contains class II and III agricultural soils. Forest use is being made of a portion of the subject property, but propagation and harvest of forest products is an allowed use in the SA zone.

Goal 4 use. The soils on the subject property are productive for forest uses and a good portion of the property (about 15 of 38 acres) currently contains merchantable Douglas fir timber. Farm uses are allowed outright in the Timber Conservation and Farm/Timber zones.

Based on the information in the record at the time the Hearings Officer found that the subject property does not fit the MCCP location description of Farm/Timber designated property but it shares some of the general qualities of Farm/Timber designated lands. Also that the subject property could be used for all farm, all forest or mixed resource production. It is not clear that the area to be rezoned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone. The SA zone has been applied alone to the subject property for many years with no harm to farm or forest use of the property. The hearings officer found that OAR 660-006-0057 and Goal 4 were not satisfied.

The hearings officer stated that, to the hearings officer's knowledge, the Farm/Timber designation and FT zoning has been applied only once outside of the east county area. Several years ago the Dawn Robberstad Trust asked to amend the MCCP designation from Special Agriculture to Farm/Timber and to change the zone from SA to FT on a 26.38 acre parcel on Jory Hill Road (ZC/CP03-5). The BOC approved this request. The BOC order in ZC/CP03-5 was not a part of the record when the hearings officer heard this case; however, at its hearing the BOC took note of the findings made in that case as well as a November 4, 2003 submitted by DLCD staff clarifying OAR 660-006-0057.

During the hearing the BOC reviewed the findings and the DLCD letter in ZC/CP03-5 and determined that similar findings could be made to meet the applicable amendment criteria in this case. The predominant use of the property is forest use, as evidenced by the timber cruise that was provided and based on the factors outlined above including topography, soil type, and size of the property to meet the characteristics of the Farm/Timber designation and Goal 4. Although the property was not located in the Silverton Hills in ZC/CP 03-5, a finding was made that the South Salem Hills in which that property was located, was considered for the farm/timber designation when the comprehensive plan was adopted in the early 1980s,

but the less restrictive SA zone was applied to allow greater development in the area. The letter from DLCD in ZC/CP 03-5 described how to apply OAR 660-006-0057 and concluded that it should be read consistent with the other Goal 4 rule provisions to simply require an explanation about why the mixed farm/forest zone was chosen. It concluded that in ZC/CP03-5, given the predominant forest use of the subject property, "...it makes perfect sense to rezone the parcel for either forest or mixed farm/forest use rather than a farm zone or to apply two different zones."

In the current case the subject property contains a mixture of farm and forest uses with the predominant use as forest. Considering the condition and use of the property as a timber resource, the mixed resource character of the South Salem Hills, the findings in ZC/CP03-5, and the clarifications provided by the 2003 DLCD letter, the Board finds that the FT zone and comprehensive plan designation are appropriate for this property.

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

No Goal 5 resources are identified on or near the subject property. This goal is not applicable.

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

The subject site is now zoned SA, which allows intensive agricultural and forest uses. Designating the subject property for farm/forest use will not significantly change the types of operations allowed on the subject property. FT zoning may allow one dwelling on the property but, if development avoids the two small geologic hazard areas, if a positive septic site evaluation and permit are obtained, and if any Sensitive Groundwater Overlay zone rules are applied, one single family dwelling should not have a significant affect on air, water or land resources quality. With the regulations currently in place, the level of air, water and land resources will be maintained. Goal 6 is satisfied.

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

The subject property is not in a floodplain but two small portions of the subject site are in an MCCC identified geologic slide hazard area. Applicant would need to avoid development in the geologic hazard areas or comply with Geologically Hazardous Overlay zone requirements. In place regulations will protect people and property. 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.

This goal 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 660-008-0000 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.

Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on any future development. Goal 11 is satisfied.

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

Under OAR 660-012-0060(1), where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:
  - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
  - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
  - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The subject property fronts Cloverdale Drive, a Marion County Rural Transportation System Plan (RTSP) identified local road. SA and FT zone uses are similar, and, propagation and harvesting of forest products are allowed in the SA zone. Marion County DPW commented on the application and had no concerns that the proposed comprehensive plan amendment/zone change would significantly affect the existing transportation facility by changing its functional classification, changing the standards implementing the classification, or by allowing uses or levels of development that would be inconsistent with Cloverdale Drive's functional classification or reduce or worsen its performance. Nothing in the application triggers further examination under Goal 12. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

Farm and forest uses are similar. FT zone uses are not likely to be more energy intensive than SA uses. 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.

This application does not provide an opportunity for urbanizing the subject property. Goal 14 is not applicable.

Goals 15 - Willamette River Greenway, 16 - Estuarine Resources, 17 - Coastal Shorelands, 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.

11. Based on the findings in item 10 above, the Board finds that the comprehensive plan amendment application is consistent with and meets the applicable statewide planning goals and satisfies OAR 660-006-0057.

#### MCCP POLICIES

12. Comprehensive plan amendments must be consistent with applicable MCCP goals and policies. If the subject property is designated Farm/Timber, forest lands goals and policies will apply, so the proposal must be consistent with forest lands goals and policies.

The forest land and farm/timber land goal is to conserve forest lands and mixed farm/timber lands by maintaining the forest land base and the mixed forest and agricultural base and to protect the county's forest and farm economies by making possible economically efficient forest and agricultural practices that assure the continuous growing and harvesting of forest tree species and agricultural products as the leading use on forest land and mixed farm/timber land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities.

Forest land and farm/timber land policies:

1. Protect the resource values of those areas designated as forest lands by applying a Timber Conservation zone consistent with OAR 660 Division 6.

Applicant is not seeking Forest Land designation or TC (TIMBER CONSERVATION) zoning. Policy 1 is not applicable.

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.

If the proposed comprehensive plan amendment is approved, Farm/Timber designation and FT zoning will be applied consistent with OAR 660 Division 6. Policy 2 will be met.

3. Protect the agricultural resource value of those areas designated as farm/timber lands by applying a Farm/Timber zone consistent with OAR 660 Division 33.

The subject property has been in agriculture and timber uses. OAR 660, Divisions 6 and 33 will be applied as required. Policy 3 will be met.

4. Non-forest and non-farm uses included in OAR 660-06-0025 and 660-33-120 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 increased risks associated with fire.

Nonfarm and nonforest uses are reviewed and allowed only in accordance with state law and local ordinances that include examining impacts on surrounding properties. Policy 4 is met.

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.

The minimum parcel size in the FT zone is 80 acres. The subject property is already below 80 acres. No land divisions are contemplated or likely. Applying the FT zone will satisfy Policy 5.

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 660-33-120.

The subject parcel is already below 80 acres. No land divisions are contemplated or likely. Any future land division must be in accordance with state law and local ordinance. Policy 6 is met.

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.

A property line adjustment was previously approved between the subject property and a neighboring farm parcel. No lot line adjustment is requested here, but any future land reconfiguration must be in accordance with state law and local ordinance. Policy 7 is met.

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 with this application, but the property may become eligible for a dwelling as a result of the proposal. Any proposed dwellings must be in accordance with state law and local ordinance. Farm management practices on adjacent lands, road access, fire protection, domestic water supply, and fire hazards will be examined if an application for a dwelling is filed. Policy 8 is met.

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.

Though policy 9 specifically mentions TC zoning, any dwellings allowed subject to standards or conditionally permitted in the FT zone must also be approved in accordance with state law and local ordinance so policy 9 would be satisfied for FT zoning as well.

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.

Applicant claims forest use was predominant on the subject property on January 1, 1993. The timber cruise report shows that most of the property's Douglas fir is between 55 and 65 years old, so some of the property has been in timber use since January 1, 1993. It is not clear that forest use was "predominant" then because only 15 of 38 acres are forested with the 50+ year old Douglas fir. Whether OAR 660-006 or 033 will apply to development will be determined when an application is filed. Appropriate resource zone laws and rules will be applied at that time. Policy 10 is satisfied.



#### ZONE CHANGE

13. 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.
14. This application includes a comprehensive plan amendment request that would change the comprehensive plan designation from Special Agriculture to Farm/Forest. If the comprehensive plan amendment is approved, the proposed FT zone would be consistent with the Farm/Timber plan designation. As noted in the comprehensive plan amendment analysis above, MCCP goals and policies are satisfied, even though hearings officer determined that OAR 660-006-0057 was not satisfied. MCC 17.123.060(A) is satisfied.
15. The area surrounding the subject property is zoned AR and SA and is in mixed residential and resource use. Not a lot of specific information was provided on the types of resource use in the area, but it was noted that Willamette Valley Vineyard purchased the property immediately to the west for grape production. Aerial photographs show Christmas tree production to the west across Cloverdale Drive and other unidentified uses that appear agricultural in nature. The aerial photographs also show property to the west, north and east is treed, and looks similar to the subject property. Dwellings appear sparsely scattered throughout the wooded areas. The subject property is similar to the surrounding land properties. The subject property is similar in use, density and development as other properties in the area. MCC 17.123.060(B) is satisfied.
16. The subject property borders an acreage residential area. Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on future development. Uses allowed or conditionally permitted in the FT zone do not differ significantly from SA zone uses and should tax public services no more than SA zone uses. 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.
17. MCC 17.123.060(D) is difficult to apply here where applicant asks to go from one resource zone to a similar, compatible resource zone. In the section of the applicant's statement addressing this criterion, applicant discusses the similarity between the subject property and FT zoned properties. Applicant states that a "finding can be made that other lands in the county zoned F/T are concentrated in the eastern portion of the county and that they are generally unavailable because most of them already have residency management." This may show that most FT zoned properties have dwelling units but it does not show that they are unavailable for other FT zone uses or that the subject property is more suitable for FT zone uses.

The hearings officer determined that the applicant had not shown that other like designated lands were unavailable or not as well suited for FT zone uses as the subject property and concluded that MCC 17.123.060(D) was not satisfied.

The BOC looked to the findings made in ZC/CP03-5 regarding this criterion and determined that the same factors exist on the subject property. The BOC finds that the request to rezone the parcel to FT is specific to the conditions on the property, and that applying the FT zone will benefit the long-term resource management of the parcel. While there are other lands zoned FT in the Silverton Hills and the east county area which may be equally suited to timber production, they do not contain a ready for use horse stable and arena. The available method of providing a for future mixed use of timber resource management on the majority of the property while allowing farm management on the remainder, is by applying the FT zone. For these reasons, the BOC finds that due to the location of other lands in the county already designated FT, these lands are unavailable and not as well suited for the use proposed for the subject property. For these reasons, the BOC finds that MCC 17.123.060(D) is satisfied.

18. The FT zone is the only zone allowed under the Farm/Timber designation. MCC 17123.060(E) is not applicable.
19. The BOC finds that the applicant has met the burden of proving compliance with the applicable standards and criteria of the MCCP and MCC for approval of the comprehensive plan amendment and zone change from SA to FT (ZC/CP 11-002).

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. ZC/CP 11-002  
Application of: ) Clerk's File No.  
RESCOM CAPITAL, LLC ) Zone Change/Comprehensive  
Plan Amendment

RECOMMENDATION

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the application of ResCom Capital, LLC to change the zone from SA (SPECIAL AGRICULTURE) to FT (FARM TIMBER) and to amend the comprehensive plan designation from Special Agriculture to Farm/Timber on a 38± acre parcel in the 2800 block of Cloverdale Drive SE, Turner, Marion County, Oregon (T9S, R3W, S1, 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 duly held on this application on August 3, 2011. 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. David Epling Planning Division
2. Frank Walker For applicant

At hearing, no objections were raised as to notice, jurisdiction, conflicts of interest, evidence or testimony. No documents were presented as exhibits at hearing. The record remained open until August 24, 2011 for applicant to submit additional information. On applicant's written request, the open record period was extended to September 7, 2011. During the open record period, applicant submitted a September 5, 2011 letter from Frank D. Walker with attached timber cruise report by Marc E. Setchko. The documents were marked and entered into the record as exhibit 1.

**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 38± acre property is designated Special Agriculture in the M CCP and zoned SA. The primary intent of the designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is on the north side of Cloverdale Drive, about 2,250 feet east of Ridgeway Drive. The property contains a horse barn, arena, and septic system. About six acres of the property are in Christmas trees matured beyond common market size. About 15 acres are in Douglas fir and another six acres are in oak and other hardwoods. Parcel lines were configured in property line adjustment case 11-001 (PLA 11-001).
3. Surrounding properties to the east, southeast, north, west and southwest are zoned SA and contain a mixture of medium and large sized farm operations. Property to the south is zoned AR (Acreage Residential) and is in rural residential use.
4. The subject property contains 100% high-value farm soils.
5. Applicant asks to change the M CCP designation on the property from Special Agriculture to Farm/Timber, and the zone from SA to FT.
6. The Marion County Planning Division requested comments on the application from various governmental agencies. The Marion County Department of Public Works (DPW) Land Development and Engineering Permits (LDEP) commented on engineering requirements:
  - A. In accordance with Marion County Driveway Ordinance #651, a driveway "Access Permit" for access to the public right-of-way may be required upon application for a building permit for a new dwelling.
  - B. There are physical limitations for adequate sight distance from the subject property onto Cloverdale Road SE due to roadway horizontal and vertical geometry that was identified during development of the equestrian center. Therefore, it is unlikely that a suitable location for an additional (second) unrestricted direct access to Cloverdale Road SE could be located on the subject property. Therefore, any future access for residential or agricultural purposes would likely be required to share the existing equestrian center access adjacent to the eastern property line.
  - C. The application plan incorrectly denotes a fire pond as a stormwater detention pond located to the southwest of the equestrian center. However, a stormwater detention system, including earthen berm and outfall control structure, was constructed on the subject property located to the northeast of the equestrian center as required per Marion County Permit #UR08-108, yet is not depicted on the application site plan. The system controls stormwater discharge from the equestrian center to an ephemeral drainage flow way traversing the property. The applicant is advised that any modification to

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this system related to future residential development and/or agricultural practices would require advanced coordination, engineering design and construction permitting from Public Works. A copy of the approved engineering design drawings for the constructed stormwater detention system is available upon request by contacting Public Works Land Development Engineering & Permits at (503) 584-7714.

- D. Construction of roads, structures, and related improvements will increase the amount of storm water runoff from the subject property. Upon application for building permits, the County may require any development having 0.5 acre or more cumulative impervious (hard) surface to provide storm water detention or modify an existing system to accommodate the additive developed area.
- E. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

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

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

1. Applicant has the burden of proving all applicable standards and criteria are met.
2. Under MCCP plan amendments policy 2, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by the zone change procedure established in the Marion County Zoning Ordinance. A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one property and is being processed simultaneously with a zone change application. This is a quasi-judicial plan amendment request.

3. The Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified but did not comment on the proposal.

#### STATEWIDE PLANNING GOALS

4. According to the MCCP plan amendments section, comprehensive plan amendments must be consistent with statewide planning goals.

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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 Marion County Board of Commissioners (BOC) provides an opportunity for citizen involvement.

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 shall be coordinated with the plans of affected governmental units. Affected governmental units are those 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. Marion County notified the Turner Fire District, Cascade School District, Oregon Department of Land Conservation and Development (DLCD), and various county departments of the proposed comprehensive plan amendment. Marion County DPW LDEP commented on engineering requirements. Other contacted agencies did not respond, or stated no objection to the proposal. Transportation issues are examined elsewhere in this order and addressed as necessary. Goal 2 is satisfied.

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

The subject site is currently covered by the agricultural lands goal. Under OAR 660-006-0015(2), no goal 3 exception is required to designate the subject property for forest use.

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 implements the forest lands goal.

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



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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 has not been inventoried for and is not currently designated or zoned forest land. If this application is approved, it would include a BOC inventory of the subject property as forest land and would apply a forest designation and zone consistent with OAR 660-006. No goal 4 exception applies to the subject property, Marion County is not a marginal lands county, and the subject property is not an abandoned mill site. The property's SA zoning is an exclusive farm use zone subject to ORS chapter 215 and special assessment. This is an acceptable reason for non-forest designation and zoning under OAR 660-006-0015. However, applicant asks to designate and zone the property for forest use consistent with OAR 660-006 so the MCCP description is examined.

The MCCP forest lands introduction states:

An area located east and south of the city of Silverton and commonly referred to as the Silverton Hills consist 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.

The MCCP also contains the following:

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



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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.

The M CCP describes the Farm/Timber zone and its purpose. As described, the zone is applied in the area south and east of Silverton, and coexistent with the peripheral big game habitat area. The subject property is not near this area but the property has some characteristics compatible with the general description of farm/forest areas, such as variable terrain, uses, and soils and a 20-40-acre parcel size.

The subject property slopes up from its Cloverdale Drive frontage from 470' above mean sea level (msl) to 670' msl, a 200' gain over a distance of about 1,800' to 1,900'. The lower portion of the property is more gently sloping than the upper portion which contains two small geologic hazard zone areas. The lower portion contains a large horse barn/arena and some overly mature (escaped) Christmas trees. Stabling or training equines and growing cultured Christmas trees are MCC defined farm uses. A timber cruise was performed on the property and 15.4 acres of merchantable conifer were found in the upper portions of the property. The subject property contains the following USDA identified soils:

Jory silty clay loam (JoB) 2-7% slopes	class II	20%
Jory silty clay loam (JoC) 7-12% slopes	class II	1%
Nekia silty clay loam (NeC) 7-12% slopes	class III	8%
Nekia silty clay loam (NeD) 12-20% slopes	class III	43%
Nekia stony silty (NkC) 2-12% slopes	class III	28%

The soils are all class II and III high value farm soils and all are in woodland suitability group 3c1. Woodland suitability groups classify soils according to their potential productivity for Douglas fir. The number in the first position of the group indicates the site classification, with one as the highest, and five as the lowest. Three indicates intermediate wood-producing capacity. The letter in the second position indicates soil limitations, with c indicating clay. The number in the third position indicates the degree of difficulty in applying woodland management, with 1 being less difficult than 2 and 3. (*Soil Survey of Marion County Area, Oregon, USDA, 1972.*) Jory soils can produce 178 cubic feet per acre per year of wood fiber, while Nekia soils can produce 163 cubic feet per acre per year of wood fiber according to figures provided to the county by DLCD. Two or three drainage ways are on the site. At 38 acres, the subject property is within the 20 to 40-acre average parcel size in the FT zone.

The soils throughout the subject property are good for and are in farm and forest use. Farm use is on the Jory soils in the lower, less sloping portion of the property. Forest use is on the Nekia soils in the upper, more steeply sloping portion of the property. The soil survey considers forest use of these soils temporary because they are highly valuable for farm use.

To the hearings officer's knowledge, the Farm/Timber designation and FT zoning has been applied only once outside of the east county area. Several years ago the Dawn Robberstad Trust asked to amend the MCCP designation from Special Agriculture to Farm/Timber and to change the zone from SA to FT on a 26.38 acre parcel on Jory Hill Road (ZC/CP 03-5). The BOC approved the request. The BOC order is not a part of the record in this case so the hearings officer does not have benefit of the commissioners' reasoning in that case.

The subject property does not fit the MCCP location description of Farm/Timber designated property but it shares some of the general qualities of Farm/Timber designated lands. Should the BOC decide, on balance that the subject property should be redesignated and rezoned, the plan amendment must clearly document the factors that were used to select a Farm/Timber designation.

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. Goal 3 and 4 uses are examined.

Goal 3 use. The property has been zoned for resource use since the MCCP was adopted. (See MCCP, appendix A - area 28.6, Ridgeway bordering the subject property. Maps on pages 66 and 68 mislabel Ridgeway 28.3, but show the subject property was never considered for a goal 3 exception.) The subject property contains class II and III agricultural soils. Forest use is being made of a portion of the subject property, but propagation and harvest of forest products is an allowed use in the SA zone.

Goal 4 use. The soils on the subject property are productive for forest uses and a good portion of the property (about 15 of 38 acres) currently contains merchantable Douglas fir timber. Farm uses are allowed outright in the Timber Conservation and Farm/Timber zones.

The subject property could be used for all farm, all forest or mixed resource production. It is not clear that the area to be rezoned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone. The SA has been applied alone to the subject property for many years with no harm to farm or forest use of the property.

The hearings officer finds that OAR 660-006-0057 and goal 4 are not satisfied.



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

No goal 5 resources are identified on or near the subject property. This goal is not applicable.

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

The subject site is now zoned SA, which allows intensive agricultural and forest uses. Designating the subject property for farm/forest use will not significantly change the types of operations allowed on the subject property. FT zoning may allow one dwelling on the property but, if development avoids the two small geologic hazard areas, if a positive septic site evaluation and permit are obtained, and if any Sensitive Groundwater Overlay zone rules are applied, one single family dwelling should not have a significant affect on air, water or land resources quality. With the regulations currently in place, the level of air, water and land resources will be maintained. Goal 6 is satisfied.

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

The subject property is not in a floodplain but two small portions of the subject site are in an MCCP identified geologic slide hazard area. Applicant would need to avoid development in the geologic hazard areas or comply with Geologically Hazardous Overlay zone requirements. In place regulations will protect people and property. 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.

This goal 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 660-008-0000 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.

Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on any future development. Goal 11 is satisfied.

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

Under OAR 660-012-0060(1), where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:

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

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

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform

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below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The subject property fronts Cloverdale Drive, a Marion County Rural Transportation System Plan (RTSP) identified local road. SA and FT zone uses are similar, and, propagation and harvesting of forest products are allowed in the SA zone. Marion County DPW commented on the application and had no concerns that the proposed comprehensive plan amendment/zone change would significantly affect the existing transportation facility by changing its functional classification, changing the standards implementing the classification, or by allowing uses or levels of development that would be inconsistent with Cloverdale Drive's functional classification or reduce or worsen its performance. Nothing in the application triggers further examination under goal 12. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

Farm and forest uses are similar. FT zone uses are not likely to be more energy intensive than SA uses. 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.

This application does not provide an opportunity for urbanizing the subject property. Goal 14 is not applicable.

Goals 15 - Willamette River Greenway, 16 - Estuarine Resources, 17 - Coastal Shorelands, 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.

5. Based on the OAR 660-006-0057 findings, the hearings officer recommends denial of the comprehensive plan amendment application as inconsistent with statewide planning goal 4.

#### MCCP POLICIES

6. Comprehensive plan amendments must be consistent with applicable MCCP goals and policies. If the subject property is designated Farm/Timber, forest lands goals and policies will apply, so the proposal must be consistent with forest lands goals and policies.

The forest land and farm/timber land goal is to conserve forest lands and mixed farm/timber lands by maintaining the forest land base and the mixed forest and agricultural base and to protect the county's forest and farm economies by making possible economically efficient forest and agricultural practices that assure the

continuous growing and harvesting of forest tree species and agricultural products as the leading use on forest land and mixed farm/timber land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities.

Forest land and farm/timber land policies:

1. Protect the resource values of those areas designated as forest lands by applying a Timber Conservation zone consistent with OAR 660 Division 6.

Applicant is not seeking Forest Land designation or TC (TIMBER CONSERVATION) zoning. Policy 1 is not applicable.

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.

If the proposed comprehensive plan amendment is approved, Farm/Timber designation and FT zoning will be applied consistent with OAR 660 Division 6. Policy 2 will be met.

3. Protect the agricultural resource value of those areas designated as farm/timber lands by applying a Farm/Timber zone consistent with OAR 660 Division 33.

The subject property has been in agriculture and timber uses. OAR 660, divisions 6 and 33 will be applied as required. Policy 3 will be met.

4. Non-forest and non-farm uses included in OAR 660-06-0025 and 660-33-120 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 increased risks associated with fire.

Nonfarm and nonforest uses are reviewed and allowed only in accordance with state law and local ordinances that include examining impacts on surrounding properties. Policy 4 is met.

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.

The minimum parcel size in the FT zone is 80 acres. The subject property is already below 80 acres. No land divisions are contemplated or likely. Applying the FT zone will satisfy Policy 5.

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 660-33-120.

The subject parcel is already below 80 acres. No land divisions are contemplated or likely. Any future land division must be in accordance with state law and local ordinance. Policy 6 is met.

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.

A property line adjustment was previously approved between the subject property and a neighboring farm parcel. No lot line adjustment is requested here, but any future land reconfiguration must be in accordance with state law and local ordinance. Policy 7 is met.

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 with this application, but the property may become eligible for a dwelling as a result of the proposal. Any proposed dwellings must be in accordance with state law and local ordinance. Farm management practices on adjacent lands, road access, fire protection, domestic water supply, and fire hazards will be examined if an application for a dwelling is filed. Policy 8 is met.

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.

Though policy 9 specifically mentions TC zoning, any dwellings allowed subject to standards or conditionally permitted in the FT zone must also be approved in accordance with state law and local ordinance so policy 9 would be satisfied for FT zoning as well.

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.



Applicant claims forest use was predominant on the subject property on January 1, 1993. The timber cruise report shows that most of the property's Douglas fir is between 55 and 65 years old, so some of the property has been in timber use since January 1, 1993. It is not clear that forest use was "predominant" then because only 15 of 38 acres are forested with the 50+ year old Douglas fir. Whether OAR 660-006 or 033 will apply to development will be determined when an application is filed. Appropriate resource zone laws and rules will be applied at that time. Policy 10 is satisfied.

ZONE CHANGE

7. 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.
8. This application includes a comprehensive plan amendment request that would change the comprehensive plan designation from Special Agriculture to Farm/Forest. If the comprehensive plan amendment is approved, the proposed FT zone would be consistent with the Farm/Timber plan designation. As noted in the comprehensive plan amendment analysis above, MCCP goals and policies are satisfied, even though OAR 660-006-0057 is not satisfied. MCC 17.123.060(A) is satisfied.
9. The area surrounding the subject property is zoned AR and SA and is in mixed residential and resource use. Not a lot of specific information was provided on the types of resource use in the area,

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but it was noted that Willamette Valley Vineyard purchased the property immediately to the west for grape production. Aerial photographs show Christmas tree production to the west across Cloverdale Drive and other unidentified uses that appear agricultural in nature. The aerial photographs also show property to the west, north and east is treed, and looks similar to the subject property. Dwellings appear sparsely scattered throughout the wooded areas. The subject property is similar to the surrounding land properties. The subject property is similar in use, density and development as other properties in the area. MCC 17.123.060(B) is satisfied.

10. The subject property borders an acreage residential area. Utilities such as electric and telephone service are available in the area. A public roadway borders the property as well. Marion County DPW noted that driveway permitting will likely be required and changes to the drainage system will require coordination, engineering design and construction permitting. These items would be addressed on future development. Uses allowed or conditionally permitted in the FT zone do not differ significantly from SA zone uses and should tax public services no more than SA zone uses. 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.
11. MCC 17.123.060(D) is difficult to apply here where applicant asks to go from one resource zone to a similar, compatible resource zone. In the section of the applicant's statement addressing this criterion, applicant discusses the similarity between the subject property and FT zoned properties. Applicant states that a "finding can be made that other lands in the county zoned F/T are concentrated in the eastern portion of the county and that they are generally unavailable because most of them already have residency management." This may show that most FT zoned properties have dwelling units but it does not show that they are unavailable other FT zone uses or that the subject property is more suitable for FT zone uses. Applicant has not shown that other like designated lands are unavailable or not as well suited for FT zone uses as the subject property. MCC 17.123.060(D) is not satisfied.
12. The FT zone is the only zone allowed under the Farm/Timber designation. MCC 17.123.060(E) is not applicable.
13. The zone change is not recommended.

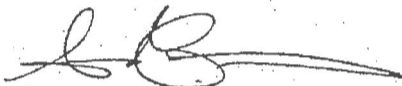
VI. Recommendation

It is hereby found that applicant has not met the burden of proving the applicable standards and criteria for approval of a comprehensive plan amendment and zone change have been met. The hearings officer recommends the BOC DENY the zone change and comprehensive plan amendment 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 5<sup>th</sup> day of October 2011.



Ann M. Gasser  
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

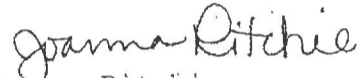
Frank Walker  
Frank Walker & Associates  
1480 Jamestown St SE  
Salem, OR 97302

Laurel Hines  
10371 Lake Dr SE  
Salem OR 97306

Aileen Kaye  
10095 Parrish Gap Rd SE  
Turner, OR 97392

Agencies Notified  
Planning Division  
Assessor's Office  
Building Inspection  
Department of Public Works  
AAC Member No. 1

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 5<sup>th</sup> day of October 2011, and that the postage thereon was prepaid.

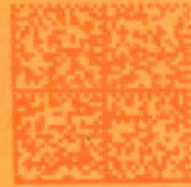


Joanna Ritchie  
Secretary to Hearings Officer



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FIRST CLASS



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LAND CONSERVATION  
AND DEVELOPMENT



MARION COUNTY PUBLIC WORKS  
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SALEM, OREGON 97309

**TO:**

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635 CAPITOL ST NE STE 150  
SALEM OR 97301