BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Zone Change From Farm Forest 10-acre (FF-10) to Rural Residential Farm Forest 5-acre (RRFF-5).	Case File No: Z0475-22-Z (King)

A. SUMMARY

1. The applicant and owner of the subject property is David King. The subject property is located at no situs (does not have a street address) approximately 6 miles east of Sandy and immediately west of and abutting the western end of SE Ridgecrest Drive. The legal description is T2S, R5E, Section 23, Tax Lot(s) 01300, W.M. The subject property is an approximately 10.0 acre parcel zoned Farm Forest 10-acre (FF-10).

2. The applicant's proposal seeks a zone change from the current FF-10 zoning to Rural Residential Farm Forest, 5-acre (RRFF-5) to allow for a future partition to create one additional lot. No development is proposed as part of this application.

3. On February 16, 2023, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant's proposal. Several neighbors residing near the site, the Oregon Department of Land Conservation & Development (DLCD), the Firwood Neighbors Community Planning Organization (CPO), and the applicant, provided written comments in advance of the hearing. Martha Fritzie, Principal Planner for Clackamas County, and the applicant David King each appeared and provided testimony.

4. County staff recommended approval of the zone change application subject to certain Conditions of Approval that were not contested by the applicant. The Hearings Officer approved the application consistent with the County's recommendation.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the February 16, 2023 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

Discussion of County Staff Report

2. At the hearing County Principal Planner Martha Fritzie shared a PowerPoint presentation and discussed the County's staff report reviewing this application, discussed several related

exhibits, and discussed the County's recommended approval of the application subject to a couple of Conditions of Approval. Ms. Fritzie noted that several neighbors and the Firwood Neighbors CPO submitted written comments in advance of the hearing opposing the proposed zone change, while other neighbors submitted written comments supporting the proposal, or expressing concerns without opposing it. Ms. Fritzie noted that the application is to change the zoning for the subject property from FF-10 to RRFF-5 and since both of these zones are rural residential the County views the Comprehensive Plan designation for the subject property as not changing. Ms. Fritzie also referenced, however, written comments submitted by Kelly Reid with the Oregon Department of Land Conservation & Development disagreeing with this legal analysis and asserting that a Goal 14 exception is necessary in this case. Ms. Fritzie further noted that approval of this zone change would not authorize any development of the subject property, but would increase the development potential from 1 lot to 2 lots for detached single-family homes.

3. Ms. Fritzie shared a slide showing the site location, noting that Taxlot 1601 is included in the subject lot of record and is already zoned RRFF-5. This small Taxlot is essentially a "flagpole" access from the subject property to SE Coalman Rd. The subject property also has a second "flagpole" access running to the east that provides access to SE Ridgecrest Rd. The slide shows that the location of the subject property is approximately 6 miles east of the City of Sandy and 7 miles west of the unincorporated community of Wemme/Welches.

4. Ms. Fritzie shared a slide showing the zoning of the surrounding area and noting the subject property's current FF-10 zoning. This slide shows that the subject property is one of four approximately 10-acre parcels grouped together that are zoned FF-10, with properties to the north of these four parcels zoned Timber (TBR), generally 20+ acres, and properties to the east, south, and west of the subject property Zoned RRFF-5, generally consisting of 2-5 acres in size. Further surrounding properties to the east and north include some Exclusive Farm Use (EFU) properties and additional TBR zoned properties, with two-thirds of the properties in the general area of the subject property zoned RRFF-5. The slide includes an aerial view of the subject property and general vicinity showing that the subject property is vacant. Ms. Fritzie pointed out a seasonal stream/riverine wetland identified in the eastern portion of the subject property noting this is regulated by the Oregon Department of State Lands (DSL) and not the County or County Zoning and Development Ordinance. Ms. Fritzie noted that the subject property has moderate slopes with some flatter areas and some sloped areas that could be greater than 15-20 percent. She also noted that the subject property is wooded and adjacent to and surrounded by other wooded areas that are winter range for deer and elk.

5. Ms. Fritzie shared a slide and provided discussion of relevant policies and criteria, including Statewide Planning (SWP) Goals, Goal 12 *Transportation* and Goal 14, *Urbanization*. Ms. Fritzie reviewed relevant portions of the County's Zoning & Development Ordinance (ZDO) Sections 1202 (Zone Change) and 1307 (Procedures). Ms. Fritzie also reviewed relevant County Comprehensive Plan Goals & Policies, including Chapter 2 (Citizen Involvement), Chapter 3 (Natural Resources & Energy), Chapter 4 (Land Use), Chapter 5 (Transportation) and Chapter 11 (The Planning Process).

6. With respect to SWP Goal 14, *Urbanization*, Ms. Fritzie provided discussion related to OAR 660-004-0040, which addresses the application of Goal 14 specifically to rural residential lands and provides direction about whether an exception to Goal 14 is needed to change zoning. Ms. Fritzie points out that even if no exception is warranted under OAR 660-004-0040, case law requires a determination whether the proposed use is "urban" or "rural." Ms. Fritzie noted that any "urban" development on "rural" lands needs an exception to Goal 14.

7. Ms. Fritzie shared a slide detailing the requirements of OAR 660-004-0040, noting that the rule:
   (a) Requires a minimum lot size of at least 2 acres for new rural residential areas.
   (b) Recognizes that some jurisdictions were already acknowledged to comply with Goal 14.
   (c) Identifies when an exception of Goal 14 is required for a change in "a local government's requirements for minimum lot or parcel sizes in rural residential area."

8. Ms. Fritzie also pointed to differing interpretations of Goal 14 exception requirements arising from OAR 660-004-0040(7), which states: *After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.* Ms. Fritzie points to case law interpreting this provision in a 2007 LUBA decision[1] (following an Oregon Supreme decision interpreting these same provisions[2]) stating: "While the text of OAR 660-004-0040(6)[3] could be clearer, we believe it refers to the *amendment* to allow a smaller minimum lot size and does not refer to an existing acknowledged zoning ordinance that already allowed a reduction from a ten-acre minimum lot size to a five-acre minimum lot size in the RR zone without an exception."[4]

9. Ms. Fritzie shared a slide and provided discussion concerning the application of OAR 660-004-0040 as interpreted by County staff and County Counsel. Specifically, County staff and County Counsel assert that OAR 660-004-0040 applies to the present matter as follows:
   (a) Goal 14 exception is not always required for rural residential zone change and is not required in this case.
   (b) County acknowledged to comply with Goal 14.
   (c) Process and criteria to change zones/minimum lot sizes within Rural designation in Comp Plan not changed.
   (d) Not functionally or substantively different from [the Curry County decision].

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[1] *See Oregon Shores Coalition v. Curry County, 53 Or LUBA 503 (2007*), interpreting the text of former OAR 660-004-0040(6), now contained in OAR 660-004-0040(7).

[2] *See 1000 Friends of Oregon v. LCDC (Curry Co.), 724 P.2d 268 (1986), 301 Or. 447.*

[3] The referenced text is now found in OAR 660-004-0040(7).

[4] *Oregon Shores Coalition v. Curry County, 53 Or LUBA 503 (2007*), further states: "Relevant context supports the more narrow reading as well. As we noted earlier, when LCDC adopted OAR 660-004-0040 in 2000, it expressly provided that local governments like Curry County with comprehensive plans and land use regulations that had been acknowledged for compliance with Goal 14 after the Supreme Court's 1986 Curry County decision were not required to amend their comprehensive plans and land use regulations to comply with OAR 660-004-0040. However, that express exemption from OAR 660-004-0040 did not extend to amendments to those previously acknowledged comprehensive plans and land use regulations that post-date OAR 660-004-0040."

10. Ms. Fritzie also provided discussion and a slide concerning the interpretation of OAR 660-004-0040 by DLCD and its application to this matter, specifically:
    (a) Goal 14 exception is required.
    (b) Do not believe the "carve out" for Curry County applies to Clackamas County.
    (c) Curry County's Plan and rural residential zoning structured differently.

11. Ms. Fritzie provided discussion concerning the meaning of the terms "Urban" and "Rural" and how these concepts apply to this matter. Ms. Fritzie noted that while 1 acre lots are "urban" and 10 acre lots are "rural" there is no bright line for lot sizes in between. Rather, Ms. Fritzie points to a number of factors to consider, derived from LUBA and other case law, and how staff considered these factors in determining the proposed use is "rural" as follows:
    (a) Public facilities and services
    (b) Potential impacts to nearby UGB (Urban Growth Boundary)
    (c) Use appropriate for, limited to needs of rural area to be served
    (d) Intensity of use

12. Ms. Fritzie discussed the analysis staff conducted in making proposed findings that the application meets each of the ZDO 1202.03(A) requirements that the proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan. She pointed to procedural and coordination policies and requirements in Chapters 2 and 11 asserting that these policies and requirements have been followed for this application. Ms. Fritzie also provided discussion of Chapter 5 requirements that the proposed zone change comply with the Transportation Planning Rule (TPR), SWP Goal 12, pointing to the determination by County Transportation Engineering (TE) staff confirming compliance with the TPR.

13. With respect to Chapter 3: wetland and winter range policies, Ms. Fritzie provided discussion of staff analysis and findings for ZDO 1202.03(A) noting the following specific subsections of Chapter 3:
    (a) *3.F.1 ...prevent disturbance of natural wetlands (marshes, swamps, bogs) associated with river and stream corridors*
    (b) *3.K.5. Minimize adverse wildlife impacts in sensitive habitat areas, including deer and elk winter range below 3,000 feet elevation, riparian areas, and wetlands*

    Ms. Fritzie provided discussion on these subsections noting that the wetlands policy was adopted so that the County would review significant developments – including zone changes – to assure consistency with Goal 5 for wetland resources. Ms. Fritzie also pointed out that the development that could result from the proposed zone change would occur in the northern portion of the site, away from the seasonal stream/wetland, and most of the site would remain undisturbed.

14. With respect to Chapter 4 policies for the application of an RRFF-5 zoning district, Ms. Fritzie pointed to 4.MM.11.2 standards that the RRFF-5 zoning district shall be applied when all the following criteria are met:
    (a) 4.MM.11.2.a. Parcels are generally five acres.
    (b) 4.MM.11.2.b. The area is affected by development.
    (c) 4.MM.11.2.c. There are no serious natural hazards, and the topography and soil conditions are suitable for development.

(d) 4.MM.11.12.d. Areas are easily accessible to an Unincorporated community or incorporated city.

15. Ms. Fritzie pointed to staff findings with respect to ZDO 1202.03(A) that within ¼ mile of the subject site a simple majority of properties are "less than 6 acres" with 64.1% of these area parcels "less than 6 acres." She also pointed to findings that 86.2% of these Rural parcels are less than 6 acres with at least two-thirds of these parcels being developed (i.e. with existing single-family residences). Further, Ms. Fritzie pointed to staff findings that there are no major hazard areas, such as floodplain or mapped landslides. She pointed to findings concerning some slopes on site but also again noted that there are not steep slopes in the upper areas of the site. Ms. Fritzie reported that soils at the site are suitable for development, and the site is about an 8-10 minute drive to the City of Sandy via Hwy 26. Based on these findings, Ms. Fritzie asserts that the proposal is consistent with the County's Comprehensive Plan policies.

16. With respect to ZDO findings for Section 1202.03(B), Ms. Fritzie stated that this section requires demonstration that any needed public services are available and sufficient for development under the new zoning designation. She noted that there are no public services available, and pointed to a signed preliminary statement of feasibility indicating that surface water could be adequately managed in the subject site.

17. Ms. Fritzie pointed to staff findings with respect to the impact of the proposed zone change on the transportation system. Specifically, ZDO 1202.03(C) requires finding that: *The transportation system is adequate and will remain adequate with approval of the proposed zone change…* and Section 1202.03(D) requires finding that: *Safety of the transportation system is adequate to serve the level of development anticipated by the zone change.* Ms. Fritzie pointed to County Transportation Engineering findings confirming the transportation system is adequate and finding no safety concerns associated with approving the proposed zone change. Ms. Fritzie also referenced the potential impact of approving the zone change is to increase potential development of the site from one single-family residence to two single-family residences.

18. Based on staff analysis as discussed, Ms. Fritzie stated it is the County's position that the proposal does not need an exception to Statewide Planning Goal 14 and meets all applicable zone change criteria. Ms. Fritzie stated that County staff recommends approval of Z0475-22-Z subject to recommended Conditions of Approval.

Agency Comments

19. Gary Boyles, Fire Marshal for Sandy Fire District No. 72, submitted comments identifying requirements for future development of the site that do not oppose or support the application.

20. Christian Snuffin, County Senior Traffic Engineer, submitted comments stating no concerns with the operational or safety adequacy transportation system related to this proposed zone change.

21. Kelly Reid, Oregon Department of Land Conservation and Development (DLCD) also submitted written comments via February 7, 2023 email that do not necessarily oppose or support the application itself, but focus on Statewide Planning Goal 14, *Urbanization* and recommend denial of the application until such time as a Goal 14 exception is taken. The letter explains the reasons why DLCD staff disagrees with County staff about whether an exception to Goal 14 would be required to change the zoning designation of the subject property.

22. In her February 7, 2023 written comments Ms. Reid notes that the subject property consists of a single 10-acre parcel that is part of a rural residential exception area designated "Rural" in the Clackamas County Comprehensive Plan. Ms. Reid notes that the current zoning for the subject property is Farm Forest or FF-10, which requires a minimum of ten acres for new land divisions. Ms. Reid further notes that the applicant is proposing to re-zone the subject property to RRFF-5, which requires a minimum of five acres for new land divisions. Ms. Reid points out that this proposed zone change would result in the ability to divide the subject property into two 5-acre lots.

23. Ms. Reid discusses materials provided for review that assert a Goal 14 exception is not necessary because: "The forty one permitted uses and restrictions for rural residential areas of Clackamas county are set out in this ordinance, which covers both RRFF 5 and FF10 zoned properties. Except for the difference in lot size, the uses and restrictions for property zoned RRFF 5 is the same as property zoned FF10." Ms. Reid asserts this analysis is incorrect, pointing to DLCD's interpretation that: "While the effective zoning of FF-10 is consistent with the provisions of OAR 660-004-0040(6) and is deemed compliant with Goal 14, changing the effective zoning to RRFF-5, which would amend the applicable requirements regarding minimum parcel size to allow a greater amount of development, triggers OAR 660-004-0040(7). Ms. Reid cites the following referenced sections of OAR 660-004-0040:

(6)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (8) of this rule.[5]

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.[6]

(c) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

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[5] 660-004-0040(6)(a)
[6] 660-004-0040(6)(b)

24. Ms. Reid also discusses references in the submitted materials to the Land Use Board of Appeals (LUBA) decision in *Ocean Shores Coalition v Curry County* from 2007. She makes several points concerning that decision including the following statements:
    - The case did not involve re-zoning any specific property. Instead, it was about an amendment to the county's one existing rural residential zoning district.
    - The county's one existing zoning district applies to all of its rural residential areas. Prior to 2007 it offered two minimum parcel size options: 5-acres and 10-acres, that were applied based on criteria included in the county's comprehensive plan.
    - The county comprehensive plan also includes criteria for adjusting the minimum parcel size parcel size applying to a rural residential area from 10 acres to 5 acres while maintaining the single county rural residential zoning district.
    - The challenged decision sought to add a third minimum parcel size option of 2-acres to the county's single rural residential zoning district. The county's proposal included express language that the new 2-acre option could not be available without taking a Goal 14 exception.

25. Ms. Reid acknowledges in her submitted comments DLCD's "understanding that the petitioners [in *Ocean Shores Coalition v Curry County*] challenged the county's decision adopting the amendment based on a contention that, among other things, the county had erred by not adopting language requiring a Goal 14 exception for the 10-acre option down to the 5-acre option offered by the county's single rural residential zoning district." Ms. Reid further acknowledges DLCD's understanding of the LUBA decision to:
    - Agree with the county that adding the third minimum parcel size option was acceptable because the express text of the added language required a Goal 14 exception before it could be applied.
    - Disagree with the Petitioners that a Goal 14 exception was necessary to apply the 5-acre zoning to existing exception areas that had been subject to the 10-acre option, because the county's program (zoning district and comprehensive plan provisions) were acknowledged to be in compliance with Goal 14. Put another way, this type of activity conducted within the existing acknowledged zoning district and guided by existing and acknowledged comprehensive plan provisions would not result in requirements for minimum lot or parcels sizes in rural residential areas being amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14.

26. Ms. Reid states that DLCD's interpretation of the *Ocean Shores Coalition v Curry County* decision is that it applies only to a very narrow set of circumstances that is not applicable to this case. Ms. Reid states that it is DLCD's recommendation that the application be denied and the subject property retain the existing and effective FF-10 zoning. Ms. Reid advises that if the applicant chooses to proceed with re-zoning the subject property, then the applicant should explore the possibilities of a Goal 14 exception pursuant to the provision of OAR 660-014-0030. Ms. Reid also acknowledges that there is not much case law on application of OAR 660-014-0030. Ms. Reid further states that DLCD is interested in working with Clackamas County on crafting findings related to OAR 660-014-0030 if the County and the applicant wish to proceed with such an application.

Applicant Comments

27. David King, the applicant and owner of the property, appeared at the hearing and made a statement that he is willing to work with his neighbors and encourages them to contact him with their concerns.

28. The applicant David King also submitted written comments in advance of the hearing in support of the proposed zone change. In his written comments Mr. King cites Oregon DLCD policies and procedures, Oregon LCDC Rules and Statewide Planning Goals, and several recent LUBA cases interpreting Oregon statutes relevant to application of DLCD and LCDC policies and procedures. Specifically, Mr. King disputes the comments submitted by Kelly Reid of DLCD asserting that an exception to Statewide Planning Goal 14, Urbanization, is required for this application.

Public Comments

29. Barbara Hubbard is a neighbor who owns and resides on property on the southeast side of the subject site. Ms. Hubbard is in support of the proposed zoning change. Ms. Hubbard notes that her own property is zoned RRFF-5 and is a little more than 4 acres, and states that most of her neighbors' lots are zoned RRFF-5 as well. Ms. Hubbard describes the lots in the immediate vicinity as similar in size and zoning, noting that development of the subject site will make it accessible to fire fighting crews, reducing fire risk to all of these properties. Ms. Hubbard stated she is not aware of any negative impacts from the proposed zone change, noting development of the site will not be visible to herself or her neighbors, and believes the water level in neighborhood wells will not be affected. Ms. Hubbard further asserts that the rural character of the neighborhood will remain intact and traffic will continue to be light.

30. Ken and Bren Urban are neighbors who own and reside on property directly adjacent to the subject site. The Urbans are opposed to approval of the proposed zone change. The Urbans note that the gravel access drive they use to access Coalman Road is currently used and maintained by them and one neighbor home, and therefore approving the zone change could potentially double the use of this access. (This access road appears to be an easement on Taxlot 1601, owned by the applicant David King, that extends from the subject site to Coalman Road.) The Urbans also describe the entrance onto Coalman Road as already congested, with three other homes located near the intersection of Coalman Road, describing a blind spot at this intersection for eastbound traffic. The Urbans further report that the applicant's siblings also own at least two more 10-acre lots and contend that approving this zone change proposal would set a precedent for these other lots. The Urbans point to Badger Creek, describing the potential for environmental degradation to this water resource from additional nearby development. Further, the Urbans question whether there is enough water to serve additional development, and express concerns that the drainfield for proposed Lot 1 could cause contamination of their garden. The Urbans point to the zoning restrictions as protecting their rural way of life, asserting that increases in population density should be absorbed by urban and suburban areas.

31. Ken Urban submitted a second written comment in advance of the hearing expressing concerns that the water table may not support an increase in the number of buildable lots in this area. Mr. Urban reports that he and his neighbors, the Shaws, have struggled for years with low water pressure and asserts that an increase in demand could make the situation untenable.

32. Teresa Shaw is a neighbor who owns and resides on property that shares the easement that runs from Coalman Road to the easement on the King's property (the subject site) and also to the Urban's property. Ms. Shaw submitted a copy of the easement document, referencing maintenance agreements. Ms. Shaw did not submit a comment either opposing or supporting the application.

33. Anne Moen is a neighbor who owns and resides on property near the subject site. Ms. Moen's property uses the SE Ridgecrest Dr. access road, to which the subject property has an existing easement providing a second potential access. Ms. Moen did not submit a comment either opposing or supporting the application. Rather, Ms. Moen expressed concerns with the condition of SE Ridgecrest Dr. noting that local residents using SE Ridgecrest Dr. maintain the road themselves by adding gravel to it every few years. Ms. Moen described factors affecting the condition of the road, such as underground springs, and submitted a photograph showing a rutted, muddy gravel access road. Ms. Moen points out that it appears the subject site could use its access onto SE Ridgecrest Dr. and is looking for some assurances that the road would be maintained and or repaired when the road is used by heavy machinery.

34. Debbie Gosnell is a neighbor residing in the vicinity of the subject site. Ms. Gosnell submitted a written statement expressing concern with the precedent set by allowing rezoning of FF-10 properties to RRFF-5 zone, and also allowing properties to be divided into smaller parcels, further expressing concern that the guidelines established for such zoning are not being followed. Ms. Gosnell further stated that she has concerns regarding the disruption of the water/stream and the effect this will have on the ecosystem.

35. Marjorie Stewart submitted a written statement on behalf of the Firwood CPO, the Community Planning Organization for the local area that includes the subject site. Ms. Stewart reported that the Firwood CPO held a meeting on February 7, 2023 at which a group of residents predominantly adjacent or close to the subject property voiced concern and objections to the application, with little to no expressed support for the application. Ms. Stewart listed the following concerns voiced at the hearing: a) the application shows an easement access to SE Ridgecrest Drive, an unimproved road maintained by local residents who do not want further traffic use without the road being adopted and improved by the County; b) discussion around four siblings each owning similarly situated 10-acre lots; c) the application will allow creation of 2 buildable lots potentially adding 2 new homes to this rural area; d) approval may result in the applicant's siblings submitting similar applications (further development); e) the Badger Creek Watershed, which includes the subject site, is an important wildlife migratory route ; f) certain residents report water issues with their wells and are concerned with overburdening the local water aquifer; g) residents disagree with the analysis by Christian Snuffin, Senior Traffic Engineer of Clackamas County, that the potential increased trip generation from approving this application would not represent a significant

effect on the County's road system. Residents point out that this analysis does not describe the specific impact to the un-adopted SE Ridgecrest unfinished road and the effects of increased use on this privately maintained road; h) questions regarding references to a 400ft easement connecting the subject property to Coalman Road.

36. Ms. Gosnell provided additional comments and concerns expressed by the Firwood CPO, asserting that the decision should not be limited to a simple inquiry concerning the legality of the proposed zone change. Rather, she reported that the CPO is concerned with potential planning applications for new housing and the effects of such future housing on the area, water aquifer, and un-adopted roads. Ms. Gosnell reported that two officers of the Firwood CPO carried out a site visit to determine whether access to the site should be considered through SE Ridgecrest Drive or via the apparent easement to Coalman Rd. Ms. Gosnell reported that these officers determined that it would make much more sense to have access directly to Coalman Rd., particularly noting the extremely poor condition of SE Ridgecrest. The CPO recommends that SE Ridgecrest be dealt with either by adoption or by inclusion in routine maintenance of unpaved roads.

37. Ms. Gosnell also attached a letter from Jeff Jaqua, a member of the Firwood CPO, as a written submittal. In this letter, Mr. Jaqua expresses his understanding that the consensus of thought of a majority of those attending the February 7, 2023 CPO meeting was to recommend that this application be rejected by the County. Mr. Jaqua states that the Firwood CPO believes approving a zone change from FF-10 to RRFF-5 is a dangerous precedent that could lead to many more similar requests. Mr. Jaqua notes that many property owners represented by the Firwood CPO own properties with rural zone designations that have been established to preserve rural values, with land stewardship responsibilities often dependent on comprehensive land planning, ordinances, and dependency on management of adjacent properties. Mr. Jaqua particularly describes the Badger Creek watershed area and how critical this area is, especially as a low elevation wildlife migratory route, and the importance of preservation of the rural nature of the watershed and relative lack of extensive development.

38. Prior to closing the record, the Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The applicant David King affirmed that he wished to waive the period for final written argument. The hearings officer closed the hearing, closing the record at 4:00 pm Ferbruary 16, 2023 to allow for submission of any written comments or materials submitted the day of the hearing.

C. BACKGROUND FACTS

1. The subject property is taxlot 1300 of Assessor's Map 25E23 with no situs address (see Assessor's Map, Exhibit 3a). It is a 10.0-acre parcel with a current Clackamas County Comprehensive Plan (Plan) land use designation of Rural (R) and a Farm Forest, 10-Acre (FF-10) zoning designation. The subject property, combined with taxlot 1601 of Assessor's Map 25E23, form a single legal lot of record. However taxlot 1601 – a small, 0.11 acre strip that runs from the subject site, south to SE Coalman Rd – is already within the Rural Residential Farm Forest, 5-acre (RRFF-5) zoning district and is therefore not a part of this application.

2. The subject site is located approximately six miles east of the City of Sandy and approximately six to seven miles west of the unincorporated communities of Wildwood/Timberline and Wemme/Welches. It is located in a predominantly rural area, with a mix of an established rural residential development and large, undeveloped forested areas.

3. The subject property is one of a cluster of four, 10-acre properties that are zoned FF-10. In the immediate vicinity of this cluster are both residential and forested properties:
   - To the south of the subject site are properties zoned RRFF-5, all of which contain a dwelling and are generally four to five acres in size.
   - To the east is a 14-lot rural residential subdivision, which is zoned RRFF-5, but contains lots that are around two to three and a half acres in size. Each of these lots also contains a dwelling.
   - To the west, north and southeast of the subject property are larger (20+ acre) properties which are zoned Timber (TBR) and appear largely forested. Very few of these parcels contain development.

4. The subject taxlot is an irregular, generally square-ish shape, but with a 25-foot ”flagpole” strip that extends to the east and abuts the end of SE Ridgecrest Drive. The Applicant notes that there is also a *400' easement [that] extends down from the southern boundary*, presumably to SE Coalman Rd. Although the Applicant notes that he plans to have future development on the site use that access easement from SE Coalman, it is unclear whether (1) the referenced access is through Taxlot 1601 (which is owned by the Applicant) or if the proposed access is via an easement that traverses another property and (2) whether the 25-foot wide “flagpole” strip on the subject property could be used if access through the easement is not adequate or legally available. At the time of development, the sufficiency of any access will need to be assessed.

5. Although the FF-10 zoning designation would allow for one dwelling to be built on the subject property the site is currently vacant and appears to be largely if not completely treed.

6. The site contains moderately sloped topography, with the highest elevations in the northern portion of the property. Although the Applicant notes that *the subject property is situated on the gentle rolling wooded hill, sloping 7% to 15% on the downside and <5% along the top 200',* mapped contours indicate to Staff that there may be some areas with slopes greater than 15% within the southeastern and middle portions of the site. Regardless, slopes of greater than 15% certainly would not preclude development. At the time of development the actual slope would be assessed and, if over 20%, an additional land use review related to development on that slope would be required.

7. The subject site is comprised almost entirely of type 9D (Bull Run silt loam, 8 to 30 percent slopes) soils, rated as Class 6 agricultural soils. According to the Oregon Department of Agriculture’s Soil *Survey of Clackamas County Area, Oregon*, these soils are “*deep well-drained soils on mountainous uplands,*” with moderate permeability and used mainly for timber production, but also for “*pasture, homesites, recreation, water supply, and wildlife habitat*.”

8. The Department of State Lands (DSL) Statewide Wetland Inventory identifies a small riverine wetland in the eastern portion on the subject site (see Exhibit 3a). The Applicant identifies this area as a "seasonal stream" and indeed the classification identified in the SWI (R4SBC), references an "intermittent" subsystem with water flowing only part of the year. DSL has not provided any comment on this proposal; any future proposal for future development would be noticed to DSL and may require a permit from the State.

9. The subject property is also located within the deer and elk winter range, identified on the county's Comprehensive Plan Map 3-2, *Distinctive Resource Areas* (see Exhibit 3a). The county's ZDO does not contain any specific regulations for development within the winter range, but there are specific policies in the county's Comprehensive Plan that must be addressed in consideration of this zone change proposal. There are no other known wetlands, streams or other protected resource areas on the property.

10. The subject site's current FF-10 zoning took effect in 1980 after being adopted through the Rural Plan Amendment or RUPA process, which included a number of different Comprehensive Plan amendment packages for different rural areas of the County. The subject property is part of Firwood/Bull Run Zoning Amendment, adopted on June 19, 1980 (Court Order 80-1206). At the time this zoning was established, the subject property was part of a larger lot, which was subsequently divided into the four 10-acre lots through two separate partitions in 1982 and 1983.

11. The Applicant's proposal is to change the zoning designation of the property from Farm Forest, 10 acre (FF-10) to Rural Residential Farm Forest, 5-acre (RRFF-5) in order to divide the property into two lots for single-family home development. No new construction or land uses are proposed in this application; no subdivision is proposed in this application. Rather, the Applicant is effectively seeking to change the number of lots and dwellings potentially allowable on the property from one (under the current FF-10 zoning) to two (under the RRFF-5 zoning), a net increase of only one rural residential lot.

12. Service providers:
    (a) Sewer: The subject property is not located within a public or private sewer district. Septic systems would be required for any future development.
    (b) Water: The subject property is not located within a public or private water district. Private wells would be required for any future development.
    (c) Fire Protection: Sandy Fire District #72

13. This application has been processed consistent with the legal noticing requirements in Section 1307 of the County's Zoning and Development Ordinance (ZDO) and with state noticing requirements. Specifically, the County has provided notice to interested agencies, local governments and property owners within 1/2-mile of the subject property consistent with State law and Section 1307 of the ZDO. The notification to property owners, public notices and hearings ensures an opportunity for citizens to participate in the land use process.

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D. DISCUSSION

This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 316, 1202, 1307, and the Comprehensive Plan. Oregon Administrative Rules and Statewide planning Goals 11, 12, and 14 are also applicable when determining whether a Goal Exception is required for the zone change. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision. The Hearings Officer has jurisdiction to hear and decide applications for zoning changes pursuant to Section 1307 as shown by Table 1307-1. The Hearings Officer has reviewed the entire record of this proceeding, finding the evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. Clackamas County Land Use and Zoning Staff reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and makes the following findings and conclusions, ***reviewed, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics.***

PART 1. SUBMITTAL REQUIREMENTS – ZONING CHANGE

Subsection 1202.02 of the County ZDO lists the information that must be included in a complete application for a Zone Change. This application includes a completed land use application form, site plan, application fee, additional narrative and supplemental application statements addressing the criteria in Section 1202 of the ZDO. The application also includes a description of the proposed use and vicinity map, a statement addressing the need for a transportation study, and a preliminary statement of feasibility concerning adequacy of surface water management, tratement, and conveyance. All the submittal requirements under Subsection 1202.02 are included in the application. The application was submitted on September 26, 2022. The application was deemed complete for the purposes of Oregon Revised Statutes (ORS) 215.427 on November 7, 2022. Notice was issued on January 12, 2023 for the February 16, 2023 hearing. The 150-day deadline established by state law for processing this application is April 6, 2023.

The Hearings Officer concurs with staff findings that the submittal requirements of Subsection 1202.02 are met.

PART 2. ZONING CHANGE

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section 1202, *Zone Changes* and the Clackamas County Comprehensive Plan. Because the subject properties are rural exception lands with a "Rural" Comprehensive Plan designation, they are also subject to the rules in OAR 660-004-0040 that require, in some cases, a new exception Statewide Planning Goal 14, *Urbanization,* when changing the zoning designation. Compliance with the applicable regulations is discussed below.

A. Section OAR 660-004-0040 -- Application of Statewide Planning Goal 14 to Rural Residential Areas

OAR 660-004-0040 implements Statewide Planning Goal 14 and sets standards for lot sizes in rural residential zones. It partially codifies a court ruling that determined development on lots smaller than two acres was "urban development" and not allowed outside urban growth boundaries or an acknowledged unincorporated communities without taking an exception to Goal 14. OAR 660-004-0040 (see Exhibit 3c) also identifies considerations and requirements for zone changes within rural residential areas (Rural Exception Lands). In some cases, a zone change in Rural Exceptions Lands will require a new exception to Statewide Planning Goal 14. The determination about whether a Goals 14 Exception is needed for the subject application is discussed in the findings below.

Background: Comprehensive planning following adoption of the Statewide Planning Goals and the creation of the Department of Land Conservation and Development (DLCD) involved determining which rural lands could accommodate residential development and be acknowledged as Rural Exception Lands, pursuant to an exception to statewide Planning Goals 3 and 4. However, when the state's Land Conservation and Development Commission (LCDC) became concerned that certain counties were allowing urban uses on rural land, the application of Goal 14, *Urbanization*, became an integral part of the comprehensive planning process.[7] Specifically, for Clackamas County, the adoption of Rural Exception Lands was authorized through the Rural Plan Amendment or RUPA process, which included a number of different Comprehensive Plan amendment packages for different rural areas of the County. As part of the RUPA process, LCDC and Metro required the County to make Goal 14 compliance findings for the rural exception lands to allow for a rural land use designation with 10-acre, 5-acre, and 2-acre minimum lot sizes; the County's rural Comprehensive Plan land use designation and minimum parcel sizes (10-acre, 5-acre, and 2-acre) were determined by the State to comply with Goal 14.

Subsequently, as part of the 1986 DLCD Periodic Review process the County was required to "submit information on existing potential development patterns, Goal 14 exceptions for certain areas, analyses of rural areas and revised plan policies and ordinances consistent with Goal 14/Curry County decision" (Reference DLCD Order No. 00073). DLCD Order 00631 (7/2/96) modified this work task and created new Task 13, 14 and 15 to address Curry County issues. The new Task 13 description was "Resolve the Goal 14 issues raised in the Curry County Supreme Court decision for the areas Zoned RRFF5, RA-2, RR, RC, HL, and RI located outside of unincorporated communities". From what County staff can determine in our records, the original component of Task 13 that included "inventory information on exception areas, Goal 14 exceptions for certain areas, analysis of rural areas, and revised plan policies and ordinances, as necessary to be consistent with Goal 14 and the Curry County decision" (No. 5 of original Periodic Review Task 8, periodic review work program approval DLCD Order No. 00073), was completed and acknowledged by DLCD prior to the second Task 13 modification in 1997 (DLCD No. 00804). Regardless of what components of Task #13 were satisfied during what time period, DLCD approved the full Periodic Review Task #13 in 2002 (Order No. 001365), without requiring the County to take Goal 14 exceptions for existing rural residential zoning. Staff assumes the documentation and Goal 14

[7] 1000 Friends of Oregon v. LCDC (1986 Curry County), 301 Or 447.

consistency findings submitted as part of the Periodic Review Task 13 (previously task #8) was sufficient for DLCD to determine that the County's existing exception areas were consistent with Goal 14 and did not need a post-Curry County Goal 14 exception. As such, Staff finds that the County acknowledged, post-1986 Curry County, Goal 14 consistency findings for rural minimum lot sizes of 2 acres, 5 acres, and 10 acres. Since Comprehensive Plan adoption, zone changes on rural residential lands have been subject to the same set of Zoning and Development Ordinance approval criteria in Section 1202 and Rural Land Use policies in the Comprehensive Plan.

In 2000, LCDC adopted administrative rules in OAR 660-004-0040 to respond to the Oregon Supreme Court's Curry County 1986 Decision. For rural residential areas designated after the effective date of OAR 660-004-0040, OAR 660-004-0040(7)(i) requires a minimum lot or parcel size of two acres and any lot sizes between 10 acres and 2 acres must be justified by an exception to Goal 14. LCDC recognized that some local government like Curry County, had already adopted comprehensive plan and land use regulation amendments incorporating Goal 14 consistency findings as addressed in the Supreme Court's 1986 Curry County decision, and that those amendments had already been acknowledged by LCDC[8].

Application of OAR 660-004-0040(6) and Goal 14 Exceptions: In 2007, LUBA dealt directly with the question of how OAR 660-004-0040 applies to changes in minimum lots sizes in rural residential areas (see *Oregon Shores Coalition v. Curry County, 53 Or LUBA 503(2007),* Exhibit 3d). While there were two main issues raised by this case, and discussed in a 2/7/23 letter from DLCD Staff (see Exhibit 9), the issue relevant to this particular proposal is whether a zone change that does not change the Plan designation but simply allows for a five-acre lot size for land divisions, rather than a 10-acre lot size, would require an exception to Goal 14. Regarding this particular issue, LUBA concluded the following:

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

While the text of OAR 660-004-0040(6) could be clearer, we believe it refers to the amendment to allow a smaller minimum lot size and does not refer to an existing acknowledged zoning ordinance that already allowed a reduction from a ten-acre minimum lot size to a five-acre minimum lot size in the RR zone without an exception. Relevant context supports the more narrow reading as well. As we noted earlier, when LCDC adopted OAR 660-004-0040 in 2000, it expressly provided that local governments like Curry County with Comprehensive Plans and land use regulations that had been acknowledged for compliance with Goal 14 after the supreme Court's Curry County decision were not required to amend their comprehensive plans and land use regulations to comply with OAR 660-004-0040.

Per County Planning staff's and County Counsel's reading of Oregon Shores Coalition v. Curry County, OAR 660-004-0040 would not explicitly require a Goal 14 exception for a proposed zone change from FF-10 to RRFF-5 due to the following:

[8] Oar 660-004-0040(3)(b)

(1) Rural exception lands in Clackamas County were already acknowledged as such on 10/4/00 (the effective date of the afore-mentioned Rule amendments) and the County has not amended the provisions of the Comprehensive Plan to allow a smaller minimum lot size in its Rural Exception Lands than was previously allowed. Nor has the County changed the process or criteria of approval for such a zone change, as regulated by ZDO Section 1202 and the Comprehensive Plan.

(2) The County's Comprehensive Plan was reviewed and acknowledged by LCDC for compliance with Statewide Planning Goal 14 during initial acknowledgement and during Periodic Review from 1986-2002. The rural land exception documents (RUPA I, II, III, and IV) included Statewide Goal 14 findings for rural residential exception lands. LCDC determined that the County did not allow any 'urban uses' on rural lands and, as such, the County was determined to be compliant with Goal 14.

(3) Furthermore, as discussed above, the County has acknowledged, post-1986 Curry County Goal 14 consistency findings for minimum lot sizes of 2 acres, 5 acres, and 10 acres. The County has one Rural land use designation identified in the Comprehensive Plan, which includes three minimum lot sizes (2 acre, 5 acre and 10 acre) with thresholds for changing from one minimum lot size to another. This is very similar to how Curry County's Rural plan designation is set up, except that they did not have a 2-acre minimum lot size acknowledged for consistency with post-1986 Curry County Goal 14 requirements. As such, County staff asserts the carve out situation LUBA created in LUBA 503, 2007 is applicable to Clackamas County and that, in this particular case, a Goal 14 exception is not explicitly required to rezone from FF-10 to RRFF-5.

In their testimony dated 2/7/23 (Exhibit 9), DLCD Staff provides comments very similar to those provided for a similar proposal (Planning file #Z0331-22-Z), that was approved by the county's Hearing's Officer in 2022 (see Exhibit 3e). DLCD Staff notes that they continue to disagree with the county's assessment of the applicability of Goal 14 to the proposed (and other similar) rural residential zone changes. In their testimony, DLCD Staff seems to be distinguishing Clackamas County's situation from the 2007 Curry County case because Curry County had a single rural zone with two minimum lot sizes so, in effect, there was no zone change, even though they were applying Comprehensive Plan criteria to decide whether to apply the 10-acre or the 5-acre minimum lot size standard. Clackamas County, on the other hand has one Comprehensive Plan designation (Rural), under which there may be several options for specific designations with 10, 5, or 2-acre minimum lot sizes that are determined based on applying certain Comprehensive Plan criteria. County staff feels there is no functional or substantive difference in the structure of the Curry and Clackamas County's processes in this instance: both are applying Comprehensive Plan criteria to choose between different, acknowledged minimum lot sizes, through a process that was previously acknowledged to comply with Goal 14. And in both scenarios, the outcome is the same – rural residential development may happen at a higher density (with a smaller minimum lot size) than would have been allowed prior to the change.

Further, in its 2007 decision, LUBA does not explicitly refer to "zone changes", rather it explicitly states that the cited OAR does not apply to an *ordinance that already allowed a reduction from a*

ten-acre minimum lot size to a five-acre minimum lot size. In the case of this proposal, the proposed reduction is also from a ten-acre to a five-acre minimum lot size and under the same set of circumstance as in Curry County (i.e. an ordinance that already allowed for such a reduction).

As noted above, the county's Hearing's Officer concurred with county Staff's assessment of the applicability of Goal 14 to the rural residential zone change proposed under file Z0331-22-Z and found that no Goal 14 exception was required. Although that proposal was not identical to the current proposal – it included a zone change from RRFF-5 to RA-2 (Rural Area Residential, 2-acre) – Staff finds no real distinction in the two proposals as they relate specifically to the applicability of Goal 14 under OAR 660-004-0040(6).

The Applicant also asserts that a Goal 14 exception is not required, citing agreement with the assessment in the "Curry" case as well as noting other past cases related to the Goal 14 in rural lands question. While county Staff and the Applicant concur about the conclusion, Staff do not necessarily agree with entire analysis and findings the Applicant provides in the application (see Exhibit 2, *Application*, pages 10 – 13). However, given the analysis provided above, a detailed analysis of the Applicant's findings are not necessary in this instance. As such, Staff has determined that a Goal 14 exception under OAR 660-004-0040(6) is not required for the proposed zone change.

Rural versus Urban Uses: When making a determination that a Goal 14 exception is not required, *DLCD v. Klamath County, 38 Or LUBA 769 (2000)* makes it clear that findings also need to be included in a local government's action to explain why the proposed use on rural exception lands is "rural" and not "urban". *OAR 660-014-0040 Establishment of New Urban Development on Undeveloped Rural Lands and 660-004-0010 Application of the Goal 2 Exception Process to Certain Goals*, provide the required process for a Goal 14 exception. However, these OARs are only applicable to new urban development on rural lands and, as such, the Applicant and Planning Staff have also included findings to address why the proposed zone change would still be a "rural" use and would not require a Goal 14 exception.

What is "urban" and what is "rural" is not explicitly clear in the context of Goal 14 since Statewide Planning Goals contain no definition of urban or rural uses. Additionally, while it is clear that OAR 660-004-040 applies to urban development on rural land, "urban development" is not defined in the OARs. That said, the Statewide Planning Goals do contain the following definitions of rural and urban land:

> *RURAL LAND. Rural lands are those which are outside the urban growth boundary and are:*
> *(a) Non-urban agricultural, forest or open space lands or,*
> *(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use,*
>
> *URBAN LAND. Land inside an urban growth boundary.*

The meaning of these terms in the context of individual applications has been contemplated in many different case law discussions over the years. See, *Jackson County Citizens League v. Jackson County, 38 Or LUBA 37, 48 (2000)*. The key case, *1000 Friends v. LCDC (Curry Co.), 301 Or. at 505* and those cases since Curry Co. make it clear that residential parcel sizes at either extreme are either clearly urban (one acre lots are urban) or clearly rural (10 acre lots are rural) but contain no

bright line for anything in between. According to the Courts, these decisions must be made on a case-by-case basis since state law does not draw a line between urban and rural use based on parcel size alone. Additional considerations in an analysis of what constitutes urban development on rural land include the necessity for the extension of public services such as sewer and water[9]. In general, relevant case law suggests that three main areas of consideration must be addressed to make a determination that a use is rural:

1. *That public facilities and services providing for water and sewage disposal will be limited to the types and levels of service available and appropriate for rural lands. Or in other words, that the proposed uses on rural lands will not require urban levels of service.*

The proposed zone change, which increases the development potential by only one single-family residential lots, does not need, nor does it involve any public sewer or public water service. Similar to surrounding development, any dwellings built on the subject site would be served with on-site septic systems and private wells. In fact, public sewer service is explicitly prohibited outside of a UGB (except in specific circumstances), making it a good proxy for "urban levels of service." As such, Planning Staff finds that the proposed services to a new parcel in this area would still be a rural level of service. ***The Hearings Officer concurs with this analysis and in these staff findings.***

2. *The potential impact on a nearby Urban Growth Boundary. Specifically, consideration of whether the density and number of residential units allowed under the proposed zoning would impermissibly affect the ability of nearby UGBs to perform their urbanization function.*

The subject property is located approximately six miles from the city of Sandy's Urban Growth Boundary and it well outside the city's Urban Reserve area, so it is not located adjacent to any urban uses or in an area planned for urban uses. The addition of one new rural residential lot that this proposed zone change would authorize would not impact the ability of nearby UGBs to perform their urbanization function. Furthermore, the proposed RRFF-5 zoning is an acknowledged rural zoning district which is found immediately adjacent to the subject site on the east and south and, if approved, the subject would be developed consistent with the pattern of development in the immediate area. ***The Hearings Officer concurs with this analysis and in these staff findings.***

3. *Whether the size of the proposed lots in a partition or subdivision that will accompany the zone change can be considered a rural use.*

Case law has made the determination of a rural vs. urban use on parcel size alone on a case by case basis. However, as long as the minimum lot size of the proposed new zoning district does not allow for the creation of parcels under 2 acres, the proposed zone change would stay consistent with the

[9] Conarow v. Coos County, Or LUBA 190,193 (1981), Kayne/DLCD v. Marion County, 23 Or LUBA 452, 462-64 (1992) Hammock and Associates, Inc. v. Washington County, 16 Or LUBA 75, 80, aff'd 89 Or App 40, 747 P.2d 373 (1989); Grindstaff v. Curry Co., 15 Or LUBA 100 (1986); Schaffer v. Jackson Co., 16 Or LUBA 871 (1988); 1000 Friends of Oregon v. Yamhill Co., 27 Or LUBA 508 (1994); Metropolitan Service District v. Clackamas County, 2 Or LUBA 300, 307 (1981)

County's Goal 14 consistency findings for Rural Exception Lands. This is because the proposed RRFF-5 zoning would still be considered a rural use, as determined by LCDC during the original Comprehensive Plan acknowledgement RUPA process and during the subsequent post 1986 Periodic Review acknowledgement that included Goal 14 findings for the RRFF-5 zone.
In addition, Staff agrees with the Applicant's assertion that *[t]his zone change will almost imperceptibly affect the rural character of the neighborhood.* The 2-lot partition that may result from the proposed zone change would only increase the potential number of single-family dwelling lots by one and would, in fact, create two lots that are still larger than nearly all of the other lots in the vicinity that are zoned RRFF-5, particularly the 14-lot subdivision immediately east of the site, which contains two- to three and a half-acre lots.

As such, Planning Staff finds that the proposed zone change to RRFF-5 would constitute a rural, not an urban, use. **A Goal 14 exception is not required for this proposal.** ***The Hearings Officer concurs with this analysis and in these staff findings, adding the following additional comments in support of this analysis:***

In her February 7, 2023 written comments asserting that a Goal 14 exception pursuant to the provisions of OAR 660-014-0030 is required for the proposed zoning change, Ms. points to DLCD's interpretation that: "While the effective zoning of FF-10 is consistent with the provisions of OAR 660-004-0040(6) and is deemed compliant with Goal 14, changing the effective zoning to RRFF-5, which would amend the applicable requirements regarding minimum parcel size to allow a greater amount of development, triggers OAR 660-004-0040(7)."

"It is our position that a Goal 14 exception is necessary in this case. DLCD submitted a similar comment to the County on File # Z0331-22-Z, in September 2022, and out interpretation remains the same for this current proposal. While the effective zoning of FF-10 is consistent with the provisions of OAR 660-004-0040(6) and is deemed compliant with Goal 14, changing the effective zoning to RRFF-5, which would amend the applicable requirements regarding minimum parcel size to allow a greater amount of development, triggers OAR 660-004-0040(7)." This position implies that the creation of any new lot or parcel in a rural residential neighborhood triggers OAR 660-004-0040(7)'s requirement to take an exception to Goal 14, regardless whether the lot is larger or smaller than five or even ten acres. This position would require an exception to Goal 14 for before the owner of a 10-acre property of RRFF-5 property could divide that property into two 5-acre lots. There is no substantive difference in this proposal. This is the same issue addressed in *Oregon Shores Coalition v. Curry County, 53 Or LUBA 503(2007),* ***with a relevant portion of the text discussed above set out again below for reference:***

> ***While the text of OAR 660-004-0040(6) could be clearer, we believe it refers to the amendment to allow a smaller minimum lot size and does not refer to an existing acknowledged zoning ordinance that already allowed a reduction from a ten-acre minimum lot size to a five-acre minimum lot size in the RR zone without an exception. Relevant context supports the more narrow reading as well. As we noted earlier, when LCDC adopted OAR 660-004-0040 in 2000, it expressly provided that local governments like Curry County with Comprehensive Plans and land use regulations that had been acknowledged for compliance with Goal 14 after the Supreme Court's Curry County decision were not required to amend their comprehensive plans and land use regulations to comply with OAR 660-004-0040.***

Consistent with the above discussion, OAR 660-004-0040(8)(a) provides that: "The creation of any new lot or parcel smaller than two acres in a rural residential area shall be construed an urban use." Thus, a Goal 14 exception would be required if creation of any new lot or parcel smaller than two acres were proposed. However, none is proposed here. Of note, the specific phrasing implies that creation of new lots or parcels of two acres or more in a rural residential area are not necessarily construed an urban use or would require a Goal 14 exception. Rather, as discussed below, further analysis is required to make this determination.

OAR 660-004-0040(8)(a) further provides that: "This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14." This specific phrasing can, however, be construed to imply that creation of new lots or parcels two acres or larger <u>may</u> comply with Goal 14. Consistent with this analysis, OAR 660-004-0040(8)(a) continues: "The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule." Thus, OAR 660-004-0040(8)(a) makes clear the creation of new lots or parcels two acres or larger <u>may</u> comply with Goal 14, requiring analysis addressing whether the proposed zone change would result in "rural" use as opposed to "urban" use to determine whether the proposed zone change requires a Goal 14 exception.

Here, Clackamas County has specified a minimum lot size of 2-acres or larger for each rural residential area. This proposal is merely to change this parcel's zoning from the County's FF-10 zone to the RRFF-5 zone, still requiring a minimum lot size of 2-acres or larger within an acknowledged exception area planned for rural residential uses. The proposed zone will permit a rural residential use with no available public facilities (a rural level of service), not receiving or requiring urban levels of service. In particular, development on the subject site is and will continue to be served by private well and on-site septic systems and does not need to connect to public water or sewer. The record shows no potential impact to the ability of nearby UGBs to perform their urbanization function. Rather, approval of the proposed zone will result in the subject property being developed consistent with the pattern of development in the local area: sparse settlement on acreage lots, the majority of which are RRFF-5 lots as proposed here. Thus, the subject property's proposed RRFF-5 zone remains a rural residential use in an existing rural residential area and no Goal 14 exception is required.

B. <u>Zoning and Development Ordinance (ZDO) Findings</u>

The Clackamas County Planning and Zoning Staff have reviewed the relevant Sections of the ZDO and Comprehension Plan in conjunction with this proposal and make the following findings and conclusions:

Submittal requirements

Subsection 1202.02 of the ZDO lists the information that must be included in a complete application for a Zone Change.

The application was submitted on September 26, 2022. The application was deemed incomplete and a notice sent to the Applicant on October 18, 2022. The Applicant provided additional information to address the incomplete notice and the application was deemed complete on

November 7, 2022. As such, the 150-day deadline established by state law for processing this application is April 6, 2023. ***The Hearings Officer concurs in these staff findings.***

Zone change approval criteria of Zoning and Development Ordinance Section 1202.03

The zone change criteria are listed in Section 1202.03 of the ZDO. Section 1202.03 states that a zone change may be approved after a hearing conducted pursuant to Section 1307, if the Applicant(s) provide evidence substantiating the following criteria:

A. Section 1202.03(A)

The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan

The County's Comprehensive Plan includes goals and policies that must be considered when evaluating a proposed zoning district change. The applicant provided findings addressing ZDO Section 1202.03(A) approval criteria and Staff did an independent review of which Comprehensive Plan policies are applicable. All Comprehensive Plan chapters were reviewed, but the findings below are limited to only those goals and policies that were found applicable to this specific proposal.

i. **Chapter 2; Citizen Involvement**: The purpose of this Chapter is to promote citizen involvement in the governmental process and in all phases of the planning process.

There is one policy in this Chapter applicable to this application:

Policy 2.A.1 *Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representation, not only of property owners and County wide special interests, but also of those within the neighborhood or areas in question.*

The Clackamas County Comprehensive Plan and ZDO have adopted and acknowledged procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County has provided notice to interested agencies, local governments and property owners within ½ mile of the subject property consistent with State law and Section 1307 of the ZDO. The notification to property owners, public notices and hearings ensures an opportunity for citizens to participate in the land use process.

This application is consistent with Chapter 2. ***The Hearings Officer concurs in these staff findings.***

ii. **Chapter 3 Natural Resources and Energy:** The purpose of this Chapter is to provide for the planning, protection and appropriate use of the County's natural resources and energy.

This Chapter contains eight (8) Sections addressing; 1) Water Resources; 2) Agriculture; 3) Forests; 4) Mineral and Aggregate Resources; 5) Wildlife Habitats and Distinctive

Resource Areas; 6) Natural Hazards; 7) Energy Sources and Conservation and; 8) Noise and Air Quality.

As discussed previously, the subject property does contains a wetland identified in the Department of State Lands (DSL) Wetland Inventory and is located within the boundaries of the deer and elk winter range and therefore two policies found in Chapter 3 are applicable to the subject proposal.

Policy 3.F.1 *For areas that are outside both the Metropolitan Service District Boundary and the Portland Metropolitan Urban Growth Boundary, prevent disturbance of natural wetlands (marshes, swamps, bogs) associated with river and stream corridors. Adjacent development shall not substantially alter normal levels or rates of runoff into and from wetlands. Site analysis and review procedures specified in the Open Space and Floodplains section of the Land Use chapter shall apply. (See Wildlife Habitats and Distinctive Resource Areas of this chapter).*

Policy 3.F.1 was included in the acknowledged Comprehensive Plan in order to comply with Statewide Planning Goal 5, for wetland resources. Outside of the Urban Growth Boundary (except in parts of the Mt. Hood area) the federal wetland inventory is so general (just based on aerial fly overs) that it has not been possible to determine the exact location, quality, or quantity of wetlands. The County has not had the resources in order to develop more in depth or County specific wetland mapping. As such, policy 3.F.1 was adopted so that the County would review significant developments- including zone changes- to assure consistency with Goal 5 for wetland resources.

As noted, the DSL Statewide Wetland Inventory identified an intermittent, riverine wetland on site. The Applicant identifies this area as a "seasonal stream" and has noted in the submitted materials that homesites that would be developed, if the zone change is approved, would be in the northwestern areas of the site, well away from this "stream." The Applicant offers the following: *The well drained soil, the gradual slope, and the ample sized footprint of the proposed building area should ensure that the seasonal stream is unaffected by the development*.

DSL has not provided any comment on this proposal; any future proposal for a land division or building permit would be noticed to DSL and any proposed removal or fill of the wetlands exceeding 50 cubic yards would require a permit from the State.

As such, Staff finds is reasonable to conclude that the proposed zone change would not result in the disturbance of natural wetlands (marshes, swamps, bogs) and therefore the proposal is consistent with the Policy 3.F.1 of the Comprehensive Plan. ***The Hearings Officer concurs.***

Policy 3.K.5. ***Minimize adverse wildlife impacts in sensitive habitat areas, including deer and elk winter range below 3,000 feet elevation, riparian areas, and wetlands.***

Approval of the proposed zone change would be expected to have a minimal impact on the surrounding area, including any habitat, for several reasons:

- The 2-lot partition that may result from the proposed zone change would only increase the potential number of single-family dwelling lots by one and would, in fact, create two lots that are still larger than nearly all of the other lots in the vicinity that are zoned RRFF-5.

- Based on the Applicant's proposal and the topography of the site, the most likely location for future development on the property would be on the upper, flatter portions of the site. This would allow the remainder, more sloped portions of the site to remain treed, and allow for the development to avoid the identified stream. The forested areas and the stream/wetland could remain largely undisturbed by the development.

  The lower portion of the hill is forested with a mix of alder, vine maple, cedar, and a 40 year old stand of Doug Fir. In years past, the top 200' had been cleared and an apple orchard grew there, though it is now neglected and overgrown. Land clearing and development is most feasible along the top 200' and the easterly 400', where the apple orchard had previously been, while the best use of the downside is its current use-- a mixed forest which offers a privacy buffer for the nearby neighbors.(Applicant)

  As such, Staff finds is reasonable to conclude that any development resulting from the proposed zone change could be situated so as to minimize habitat impacts and therefore the proposed zone change can be found consistent with Policy 3.K.5 of the Comprehensive Plan.

This application is consistent with Chapter 3. ***The Hearings Officer concurs with this analysis and in these staff findings. I considered the written statements submitted by interested citizens opposed to this application, including comments submitted by Ken and Bren Urban, Debbie Gosnell, Marjorie Stewart/Firwood CPO, and Jeff Jaqua. I note, however, that a significant majority of the parcels within the area under consideration (within ¼ mile of the site) are identified as five acres or smaller in size, characterized by rural residential development on large lots, with a rural level of services. In other words, the immediate vicinity is already impacted by rural residential development. This is the point made in the written comments submitted by Barbara Hubbard in support of the proposal. A seasonal stream runs through a portion of the site, but there appears to be suitable area for any future development of the site on the upper, flatter portions previously cleared for an apple orchard. I am persuaded that any development resulting from the proposed zoned could be so situated as to have minimal additional impact on the surrounding area, including wildlife habitat. I also considered concerns raised by neighbors regarding potential impacts to their water supply from additional development. However, I find no substantial evidence or analysis to support finding that the zone change should be denied for this reason.***

iii. **Chapter 4 Land Use:** *This Section of the Comprehensive Plan includes the definitions for urban and rural land use categories, and outlines policies for determining the appropriate Comprehensive Plan land use designation for all lands within the County.*

This Chapter contains three Sections addressing; 1) Urbanization; 2) Urban Growth Concepts; and 3) Land Use Policies for the each Land Use Plan designation. Only the Land Use Policies for the each Land Use Plan designation would be applicable to the proposed zone change and those are addressed below:
The subject property is designated Rural on the Comprehensive Plan Map. The proposed change is to a rural residential zoning designation with a different minimum lot size. There is no change proposed to the existing Rural designation on the Comprehensive Plan Map. Each of the applicable Policies in the Rural Section of Ch. 4 (Land Use) Chapter of the Comprehensive Plan are addressed as follows:

Policy 4.MM.11.2 *The RRFF-5 zoning district shall be applied when all the following criteria are met:*

a. Parcels are generally five acres.

In 2000, the Board of County Commissioners (Board) provided an interpretation of this criteria through Board Order (BO) 2000-57 (see Exhibit 3b). Although in 2000, these policies were numbered differently, the text of the policies has remained the same and this interpretation is still used to assess whether a zone change proposal to the RRFF-5 zoning district will comply with this standard.

Under BO 2000-57, the Board interpreted the use of "generally five acres" to mean parcels that are "less than 6 acres." The term "generally" is interpreted to mean a "simple majority of the parcels within the area under consideration." And the Board interpreted "area" as meaning a majority of the parcels within a Rural land use designation that are at least partially located within ¼ mile of the boundaries of the property being considered for a zone change, including the parcels being considered for the zone change.

The application materials included a map and analysis of all properties that are wholly or partially within ¼ mile (1,320 feet) of the boundaries of the subject property. Specifically, the Applicant's submitted analysis concluded that there were 39 total properties within the ¼-mile area and of those 39 properties, 25 (or 64.1%) are smaller than six acres in size.

This alone meets the "generally five acres" standards. However, the Applicant's analysis includes all of the properties within the ¼-mile, not just the properties within a Rural land use designation, as per the Board interpretation. When only the Rural-designated properties are included, 86.2% (or 25 of the 29 properties) are less than 6 acres in size, even farther above the threshold for "generally**."**

Total lots within ¼ mile		Lots less than 6 acres in size	**Percentage of lots < 6 acres in size**	
All Plan designations	**Rural Plan designation**		All Plan designations	**Rural Plan designation**
39	**29**	25	64.1%	**86.2%**

Staff has verified the Applicant's analysis and finds it to be sufficient:

- Through the county's internal GIS platform (PlanMap), Staff has verified the Applicant correctly identified the taxlots within a 1,320-foot buffer from the subject site on the map provided. The Applicant did, however omit one of the lots from the analysis spreadsheet. The omitted lot is not within the Rural Plan designation, so it does not substantively affect the analysis.
- The Applicant's spreadsheet incorrectly identifies one property's zoning designation, but the identified Plan designation is correct, so it does not affect the analysis.
- Arguably, the small taxlot (1601) that is part of the legal lot of record that includes the subject, should not be counted as a separate "lot" in this analysis. But even if this lot were removed from the analysis, it also would not substantively affect the analysis or conclusions.

Policy 4.MM.11.2(a) is met. ***The Hearings Officer concurs with this analysis and in these staff findings. The referenced small additional taxlot (1601 appears to be the access from the site to SE Coalman Road.***

b. The area is affected by development.

"Affected by development" is not internally defined by the Plan or ZDO. At a most basic interpretation, the fact that the aforementioned analysis found two-thirds (66.7%) of the total parcels located within a ¼ -mile of the subject site were developed could reasonably lead one to conclude the area is "affected" by development. In addition, nearly all (86%) of the parcels with a Rural designation are developed, with only the four parcels zoned FF-10 and the one small taxlot (1601) that is part of the subject lot of record not developed with a home.

This conclusion can be further refined by looking at the hierarchical structure of the policies of 4.MM.11 of the Plan, which include the approval criteria and policies for all three zones included in the Rural Comprehensive Plan designation (FF-10, RRFF-5 and RA-2). In this section of the Plan, "significantly affected" is the term used to describe properties that are generally 2 acres or smaller. "Affected" is the term used to describe properties that are generally 5 acres or 10 acres. Based on the analysis of the properties partially or wholly within ¼ mile of the subject property, all but one of the developed properties (96.2%) are five to 10 acres, or smaller, and thus could be considered "affected" by development.

In addition, as the applicant noted, the subject property is located within an established neighborhood, Cherryville. "*The population of Cherryville is approximately 100 residents. In days past it was a small town that was established in 1854 and that once had its own post office and school. The school and post office are gone now, becoming defunct shortly after the four lane US Highway 26 was completed and travel time from Cherryville to Sandy cut to a quick 8 minutes. With Sandy being a quick 8 minutes away, the general store is gone too."*

It is clear to Staff that the area in the vicinity of the subject property has a history of rural development patterns and finds it reasonable to conclude that the area can be considered "affected by development."

Policy 4.MM.11.2.b is met. ***The Hearings Officer concurs with this analysis and in these staff findings. I considered the written statements submitted by interested citizens opposed to this application, including comments submitted by Ken and Bren Urban, Debbie Gosnell, Marjorie Stewart/Firwood CPO, and Jeff Jaqua. I note, however, that a significant majority of the parcels within the area under consideration (within ¼ mile of the site) are identified as five acres or smaller in size, and the entire Cherryville area is characterized by rural residential development and can certainly be considered "affected by development.***

c. There are no serious natural hazards, and the topography and soils are suitable for development.

Similar to the policy discussed above, there is no definition or necessarily precedent for "serious natural hazards," so it is left to providing reasonable evidence leading to a reasonable conclusion. The subject site includes no mapped landslide areas or mapped flood hazard areas. There are some sloped areas, but there do not appear to be any steep enough or other topographical features that would preclude the development of the property.

Even if there are found to be slopes in excess of 20%, this would not necessarily preclude development, nor would it necessarily make a site "unsuitable" for development. At the time of development the actual slope would be assessed and, if development is proposed on slopes of over 20%, an additional land use review would be required. And, based on the Applicant's submittal and the topography of the site, there appears to be sufficient area in the less-sloped, northern portions of the property to accommodate the development of the two dwelling that would be allowed with the proposed zone change.

As noted, the mapped soils in the subject property are Bull Run silt loam, which according to the Oregon Department of Agriculture's Soil *Survey of Clackamas County Area, Oregon*, these soils are "*deep well-drained soils on mountainous uplands*" and commonly used for "*pasture, homesites, recreation, water supply, and wildlife habitat* (emphasis added)."

Policy 4.MM.11.2.c is met. ***The Hearings Officer concurs in these staff findings.***

d. Areas are easily accessible to an Unincorporated Community or incorporated city.

Again, "easily accessible" is not a term defined or interpreted in the Comp Plan or ZDO and it is left to providing reasonable evidence leading to a reasonable conclusion.

The subject property is located approximately six miles east of the City of Sandy and seven miles west of the Unincorporated Community of Welches; both of which are

accessible via Hwy 26 (a State highway). According to the Applicant, the trip to the City of Sandy takes approximately 8 to 10 minutes of driving time. He further notes that because of this proximity and ease, the Cherryville area has lost its "small town" features like a school, post office and general store to this nearby city.

Subject property is situated in the Cherryville neighborhood, which is located along the Mt Hood Corridor, approximately 6 miles east of city of Sandy and 7 miles west of the unincorporated community of Welches. The population of Cherryville is approximately 100 residents. In days past it was a small town that was established in 1854 and that once had its own post office and school. The school and post office are gone now, becoming defunct shortly after the four lane US Highway 26 was completed and travel time from Cherryville to Sandy cut to a quick 8 minutes. With Sandy being a quick 8 minutes away, the general store is gone too.

Staff finds it more than reasonable to conclude that an 8-10 minute drive, primarily along a State highway, constitutes "easily accessible."

Policy 4.MM.11.2.d is met. ***The Hearings Officer concurs in these staff findings.***

Based on the above analysis and findings, **this application is consistent with Chapter 4.** ***The Hearings Officer concurs with this analysis and in these staff findings.***

iv. <u>Chapter 5 Transportation:</u> *This Chapter outlines policies addressing all modes of transportation.*

This Chapter contains eight Sections including 1) Foundation and Framework; 2) Land Use and Transportation; 3) Active Transportation; 4) Roadways; 5) Transit; 6) Freight, Rail, Air, Pipelines and Water Transportation; 7) Finance and Funding; and 8) Transportation Projects and Plans.

The only policy found in this chapter that is relevant to this application is found in the Roadways section.

<u>Policy 5.F.6</u> *Require changes in land use plan designation and zoning designation to comply with the Transportation Planning Rule [Oregon Administrative Rules (OAR) 660-012-0060]*
The applicant was required to submit a traffic study or similar evidence to demonstrate compliance with requirements of the Transportation Planning Rule (TPR), found in Oregon Administrative Rules 660-012- 0060, as well as the requirements of ZDO Section 1202.03 and Chapter 5 of the Comprehensive Plan.

Based on information provided by the Applicant (see Exhibit 2, *Application*, pages 31-33), County Transportation Engineering (TE) reviewed the proposal and consulted with the Applicant and provided the following comments related to the TPR and this proposal:

This zone change would result in one additional residential parcel. The resulting trip generation increase (10 daily trips) would not represent a significant effect on the County road network per the Transportation Planning Rule, and it does not trigger the need for

traffic operations analysis per County Roadway Standards Section 295. It is inferred that traffic operations on the affected roads are adequate and would remain adequate with the zone change per Comprehensive Plan Table 5-2b.

I would not expect the proposed zone change to degrade safety, and I do not have specific safety concerns beyond what would be required to be addressed with a future development proposal.

After review of the applicant materials, TE Staff verified they have *no concerns about the operational or safety adequacy of the transportation system related to this zone change* (see Exhibit 6). As such, the proposal is consistent with the requirements of the TPR.

This application is consistent with Chapter 5. ***The Hearings Officer concurs with this analysis and in these staff findings. The traffic and safety concerns raised by several residents of the local area are genuine: additional use of local access roads in particular will always have some impact, and I noted the particularly poor condition of SE Ridgecrest Drive. However, I also note that the site has direct access to Coalman Road, so it is not a given that the property owner would use the access easement to SE Ridgecrest Drive. At most, approval of this zone change could result in one additional residential parcel, a minimal additional impact. I was persuaded that approval of this zone change will not significantly affect the operational or safety adequacy of the transportation system.***

v. Chapter 11 The Planning Process: *The purpose of this Chapter is to establish a framework for land use decisions that will meet the needs of Clackamas County residents, recognize the County's interrelationships with its cities, surrounding counties, the region, and the state, and insure that changing priorities and circumstances can be met.*

In the City, Special District and Agency Coordination Section of this Chapter, one policy is applicable:
Policy 11.A.1 *Participate in interagency coordination efforts with federal, state, Metro, special purpose districts and cities. The County will maintain an updated list of federal, state and regional agencies, cities and special districts and will invite their participation in plan revisions, ordinance adoptions, and land use actions which affect their jurisdiction or policies.*

Notice of this application has been provided to all appropriate agencies and parties, DLCD and the Firwood Neighbors CPO, and an advertised public hearing before the Hearing's Officer provides an adequate opportunity for interagency coordination of this proposed zone change and demonstrates compliance with this policy.

This policy is met; this application is consistent with Chapter 11. ***The Hearings Officer concurs with this analysis and in these staff findings. I understood the argument advanced by neighbors, and the CPO, concerning setting a precedent by allowing additional residential development in the area or approving this zone change application. Here, the parcel as it is zoned could be developed with one dwelling. The applicant is following the correct procedure for a zone change for this rural property that would allow***

two parcels consistent in size and development potential as the large majority of other parcels in the area.

Based on the above findings and those provided by the applicant, staff finds that **the proposed zone change can be found compliant with ZDO Subsection 1202.03(A).** ***The Hearings Officer concurs with this analysis and in these staff findings.***

B. Section 1202.03(B):

If development under the proposed zoning district designation has a need for any of the following public services, the need can be accommodated with the implementation of the applicable service provider's existing capital improvement plan: sanitary sewer, surface water management, and water. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

Development that could occur under the proposed zoning district would not have access to or need public sewer or water. The subject property is not located in a public sanitary sewer district or a public water district and onsite septic systems and private wells would be required for each lot allowed under the RRFF-5 zoning district. A signed *Preliminarily Statement of Feasibility* was submitted with the application, indicating that surface water could be adequately managed on the subject site.

The proposed zone change is consistent with 1202.03(B). ***The Hearings Officer concurs with this analysis and in these staff findings***

C. Section 1202.03(C):

The transportation system is adequate and will remain adequate with approval of the proposed zone change. For the purpose of this criterion:

1. Adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area.

2. The evaluation of transportation system adequacy shall be conducted pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012- 0060).

3. It shall be assumed that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.

4. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.

5. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed zone change. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.

6. A determination regarding whether submittal of a transportation impact study is required

shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.

7. Notwithstanding Subsections 1202.03(C)(4) through (6), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.

ZDO Subsections 1202.03(C)(1)-(7) define what is meant by an "adequate" transportation system. The Applicant's submitted evidence, as verified the county's Transportation Engineering (TE) Division, which indicate that the existing and planned transportation system is adequate to serve the proposed zone change and no safety mitigation measures are recommended.

The proposed zone change can be found compliant with 1202.03(C). ***The Hearings Officer concurs with this analysis and in these staff findings. As stated in the discussion above, the traffic and safety concerns raised by several residents of the local area are genuine: additional use of local access roads in particular will always have some impact. Further, SE Ridgecrest Drive is in poor condition. However, as noted above, the site has direct access to Coalman Road and the owner may choose not to use the access easement to SE Ridgecrest Drive. In any case approval of this zone change could result in one additional residential parcel, a minimal impact either way. I was persuaded that approval of this zone change will not significantly affect the operational or safety adequacy of the transportation system, which will remain adequate with approval of the proposed zone change.***

D. Section 1202.03(D):

Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.

After review of the applicant's submitted materials related to the transportation system, TE Staff verified they have *no concerns about the operational or safety adequacy of the transportation system related to this zone change* (see Exhibit 6).

The proposed zone change can be found compliant with 1202.03(D). ***The Hearings Officer concurs with this analysis and in these staff findings.***

Conclusion: Staff finds that the proposed Rural Residential Farm Forest, 5-Acre (RRFF-5) zoning district is consistent with State law; all applicable goals and policies in the Comprehensive Plan; and all applicable ZDO criteria. ***The Hearings Officer concurs.***

PART 3. CONDITIONS OF APPROVAL

Staff recommended approval of the zone change (File No. Z0475-22-Z) from Farm Forest, 10-acre (FF-10) zone to Rural Residential Farm Forest, 5-acre (RRFF-5) zone, subject to the following conditions, ***reviewed, adopted and/or modified by the Hearings Officer:***

1. The Clackamas County *Mt. Hood Corridor Zoning Map* shall be amended to identify the subject property as being in the Rural Residential Farm Forest, 5-acre (RRFF-5) zoning district.

2. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

E. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer finds that the application satisfies all the criteria in Section 1202 of the ZDO and is consistent with the Comprehensive Plan criteria for the Rural Residential Farm Forest 5-acre (RRFF-5) zoning designation, as well as all other applicable Comprehensive Plan policies, and APPROVES Zone Change Application Z0475-22-Z.

Dated: February 28, 2023

Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.