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January 26, 2026

**Via Email - [MFritzie@clackamas.us](mailto:MFritzie@clackamas.us)**

Martha Fritzie, Principal Planner  
Clackamas County DTD  
150 Beavercreek Road  
Oregon City, OR 97045

Re: County Case File No.: Z0315-25 and Z0316-25  
Our File No.: PAD6.1

Dear Ms. Fritzie:

Reviewing its Jan. 20 report on the referenced application, the Applicants appreciate staff's analysis. Though not in full agreement therewith, Mike & Mary respond herewith to staff's concerns, seeking yet to procure a recommendation of approval. Accordingly, the Applicants submit herewith a Second Amended Narrative, supporting a Goal 3 Exception and FF-10 zoning.

The Applicants' land use planner, Dr. Peter Finley Fry, responds point-by-point, in the attached Jan. 26 memo, to the letters from DLCD and 1000 Friends. For my part, though posted by both the State of Oregon and its preeminent environmental interest group, opposing counsel offers no evidence that rebuts materially that provided in the application. As such and as is so often the case, the different views on the application presented by the Applicants and opposing counsel relate not to the answer, but of the question. That question is whether factors inherent in the Site and adjacent lands render "farm use" of the Site "impracticable."

I first emphasize the definition of "farm use" set forth at p. 18 of the staff report - "current employment of land for the primary purpose of obtaining profit in money by raising, harvesting and selling . . ." (Emphasis added.) Opponents note that the Site has been mowed in the past, thus showing past farm use. As Dr. Fry notes, "the site has been cut for hay primarily for fire protection and avoid accumulation of debris." The Applicants will attest to this at hearing. Opponents provide no evidence that such mowing brought any profit. Thus, the record includes no evidence of past farm use.

Next, opposing counsel cite a number of cases, none of which add materially to the County's consideration of the matter. Notably, they fail rebut my citation to *Gordon v. Polk County*, 54 Or LUBA 351, 354-56 (2007) for the following point:

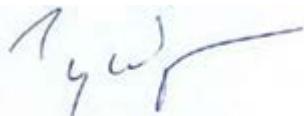
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LUBA has emphasized that the impracticability standard under OAR 660-004-0028(3) must be evaluated in light of practical, real-world conditions—not theoretical possibilities. The Board observed that the county must identify the conflicts caused by nearby residential uses that render resource uses on the subject property impracticable. It clarified that a local government need not find that every use allowed by the applicable resource goal is impossible, rather must find that key resource uses are impracticable under the specific characteristics of the site and its surroundings. *Id.* This site-specific, functional analysis must account for “the relationship between the exception area and the lands adjacent to it,” including development patterns, parcel sizes, and land use conflicts that undermine the viability of resource use. *Id.*

The Application describes six such factors leading to such a conclusion as to the subject parcel. Opposing counsel address these factors piecemeal, noting that no one of them renders farm use impracticable. I do not disagree. The letters fail, however, to rebut our fundamental point, that the totality of factors – soil quality, proximity to an existing exception area, parcelization/development, drift of sprayed pesticides/herbicides, unavailability of water, and transportation system impacts - render “current employment of [the Site] for the primary purpose of obtaining profit in money by raising, harvesting and selling . . .” impracticable.

Again, we appreciate your consideration of the Application as amended. Please present this letter and enclosures to the Planning Commission. Feel free in the meantime to follow up with any comments/questions. We’re happy to provide additional information.

Very truly yours,



Ty K. Wyman  
TKW:mlb

Enclosures  
cc: Mike & Mary Paden

January 26, 2026

**MEMORANDUM**

**TO:** Ty Wyman, attorney at law  
**FROM:** Peter Finley Fry  
**RE:** Paden Case: Z0315-25 and Z0316-25  
Response to opposition letters  
Department of Land Conservation and Development – January 13, 2026  
1000 Friends of Oregon – January 13, 2026

**Paden Case**

You asked me to review and comment on the referenced letters. Having assisted scores of rural owners over the past 40 years, owned/operated a small farm for most of that time, and sat on the Multnomah County Planning Commission for about half of it, I fully recognize that our system is legalistic. However, this application presents foremost a planning challenge - these 15 acres cannot, due to its physical characteristics and the surrounding uses, be farmed or used without a dwelling unit on the property. The current zone prohibits dwellings - forces the land to lose value as an orphan unit of land. The applicant requests an exception and zone change to allow the unit of land to be used in the same manner as surrounding properties – rural residential with farm activities.

**Department of Land Conservation and Development (DLCD)**

**Paragraph 3:** DLCD asserts that the applicant has not demonstrated that the property is unsuitable for farm use nor committed to other uses. The applicant clarified that the legal standard here is “impracticability,” so never asserted that the property was unsuitable for farm use. Farm use of the property is impracticable because the EFU zone effectively prohibits the existence of a dwelling and the property will not be farmed without a dwelling. The property is not committed to other uses – the area has committed to other uses, and the applicant seeks to use the property as the surrounding properties are used.

**Paragraph 4:** The property’s size and the character of surrounding uses block any use of the land as the EFU zone essentially prohibits a dwelling that would allow the land to be farmed as surrounding properties are.

**Paragraph 5:** As a planner, opponents’ reference to Oregon’s right to farm law points up the deficiency in their case. That law allows farmers to protect themselves through litigation. Opponents may use litigation regularly. For the typical owner of 15 acres, however, suing their neighbor would constitute an extraordinary action.

The common circumstance is harassment of isolated orphan property by neighbors and government including demanding even basic land maintenance such as cutting the grass

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or cleaning up refuge on a vacant lot. Litigation is not a practical way to conduct farm operations.

**Paragraph 6:** The opponents assert that soil quality is not relevant to the application but then spend several paragraphs discussing it. I agree that soil quality is marginal to the question at hand, practicability of the soil for farming.

**Paragraph 7:** The existing development pattern is relevant; we will explain this more clearly at hearing.

**Paragraph 8:** We will discuss at hearing findings that the area was suitable for farm use.

**Paragraph 9:** The presence of an existing exception area is just one of the situational facts that cause the site to claim an exception. The applicant never asserted otherwise.

**Paragraph 10:** The applicant interpreted the Goal 14 rural residential upzone to mean that if a county does not have an established minimum, then the standard is ten acres. Although the County has a two-acre minimum zone, a 10-acre min lot size appropriate in this situation.

#### **1000 Friends of Oregon**

**Introduction:** Like DLCD, 1000 Friends asserts that soil is not relevant nor the fact that the site cannot support a self-sufficient agricultural operation. As noted above, I do not necessarily disagree. For example, commercial nurseries can operate on rocky soil.

The applicant's point is that the site cannot, as a practical matter, become a part of a larger commercial agricultural operation because of the small size and the surrounding uses. The applicant argued that the property cannot be used for farm activities without a dwelling and a dwelling is effectively prohibited by the EFU zone.

**Part II:** Whether or not a site is irrevocably committed depends on the relationship of the site (exception area) and lands adjacent. The applicant argues that the site's size and characteristics makes the site impractical as a commercial farm operation and the EFU zone effectively prohibits a dwelling making the site not farmable as surrounding small acreage rural residential uses are.

The site has been cut for hay primarily for fire protection and avoid accumulation of debris. Fifteen acres of hay results primarily in straw and is an unprofitable use due to the site's size, surrounding density of dwellings, human activity, and the fact that the hay is effectively worthless. The existing small lot rural residential uses prove that the existence of a dwelling on the site allows for more robust and sustainable farm uses such as gardens, orchards, and livestock.

**Part III.** Proximity to an existing exception area is one factor and consistent with the need to maintain rational and consistent zoning patterns.

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**Part IIii:** The statewide minimum 80-acre site relates to commercial farming as evidenced by the income requirement to allow a dwelling on EFU less than 80 acres. The applicant argues that this is not a site for commercial farming. The site will remain vacant and unused unless a dwelling is allowed consistent with the surrounding zones and land uses.

**Part IIii:** Pesticides and herbicides are a public health issue and have more severe consequences in areas of higher densities with multiple dwellings. The Department of Environmental Quality applies a risk based standard to identify the amount of contamination that can be tolerated in a specific situation. Multiple dwellings and residential uses are considered at the greatest risk.

**Part IIiv:** Water availability is not relevant on a small site unless the crop is an extremely high-water user.

**Part IIv:** The applicant has never argued that farming is not feasible on the site. Farming is technically feasible on all land in Oregon regardless of location. Farming is feasible in downtown Portland; in fact, it is currently conducted in warehouses. That the site can be farmed is not in question. The fact is that the 14.97-acre lot cannot be profitability farm and does not meet the state's definition of a protected farm use.

The applicant argues that the site's size and characteristics tend to preclude farming. The EFU zone effectively prohibits dwellings. The site is an abandoned and vacant lot. The exception allows the site to receive zoning and land use similar to surrounding rural residential uses.

**Part III:** The applicant has agreed to support and protect surrounding agricultural uses. The allowance of dwellings will allow for the property to be used in the same manner as surrounding rural residential uses with farming activities including gardens, orchards, and livestock. The site is marginal compared to highly productive land and sits within a fragmented tapestry of lots and land uses. The amendment allows the site's use to be similar to the surrounding land uses. The site's conversion in zoning does not fragment an existing farm does not encroach onto or into an existing large lot farming landscape.

## CLACKAMAS COUNTY APPLICATION FOR LAND USE REVIEW

### APPLICANTS' SECOND AMENDED NARRATIVE

January 26, 2026



**Location:** 40822 SE Allgeier Road, Sandy, OR 97055  
Tax Lot No. 25E31B 00200  
Parcel No. 00700904

**Prepared By:** Ty Wyman, Dunn Carney

**Prepared For:** Mike and Mary Paden  
11000 SE 121<sup>st</sup> Court  
Happy Valley, OR 97086

**PROJECT NAME:** Paden Map Amendments

**REQUEST:** Approval of concurrent Comprehensive Plan Amendment and Zone Change Applications to change the Site's designation from EFU (Exclusive Farm Use) to FF-10 (Farm Forest 10-acre)

**ASSESSOR'S DESCRIPTION:** Lot 200 on Tax Map 25E1B  
Allgeier Road, Sandy, OR, 97055

**APPLICANTS' REPRESENTATIVE:** Ty Wyman, Attorney  
Dunn Carney LLP  
851 SW Sixth Avenue  
Suite 1500  
Portland, OR 97204

**APPLICANTS/ PROPERTY OWNERS:** Mike and Mary Paden  
11000 SE 121<sup>st</sup> Court  
Happy Valley, OR 97086

**SITE AREA:** 14.97 acres

- I. Background**
- II. Applicants' Proposed Findings of Applicable Regulations**
  - A. Clackamas County Comprehensive Plan**
  - B. Oregon Statewide Planning Goals**
  - C. Clackamas County ZDO**
    - 316: FARM FOREST 10-ACRE (FF-10)
    - 400: Exclusive Farm Use (EFU)
    - 1202: Zone Changes
- III. Conclusion**
- IV. Attachments**
  - A. Depiction of the Site**
  - B. Kitzrow's Soil Assessment**
  - C. Vicinity Map**
  - D. Amended Characteristics of Vicinity Parcels Table**
  - E. 40720 SE Allgeier Rd Letter of Support from Janice Balderson [No. 11 on Vicinity Map]**
  - F. 40919 SE Allgeier Rd. Letter of Support from Tricia Priest [No. 6 on Vicinity Map]**
  - G. 40930 SE Allegier Rd. Letter of Support from Beth Rapp [No. 12 on Vicinity Map]**
  - H. Traffic Memo from Chris Clemow, PE**
  - I. Commercial Farm Use Analysis Memo from Peter Finley Fry, AICP**
  - J. Groundwater Availability Memo from Sarah Liljefelt**
  - K. Death by 1000 Cuts - The Erosion of Oregon's Exclusive Farm Use Zone**
  - L. Preliminary Statement of Feasibility**
  - M. Vesting Deed for Subject Property**
  - N. Vicinity Map in Compliance with 4.MM.11.2**
  - O. Farm Use on Surrounding Property Memo from Maggie Bielak**

## I. Background

Mike and Mary Paden request approval of consolidated Comprehensive Plan Amendment and Zone Change applications for a parcel identified by the Assessor as Tax Lot 200 on Map 25E1B ("the Site"). Approximately 15 acres in size, the County zones the Site Exclusive Farm Use (EFU).

Approval of the map amendments will change the County's designation from EFU to Farm Forest 10-acre (FF-10) on both the Comprehensive Plan Map and the Zoning Map. The Application requests an exception to Statewide Planning Goal 3.

This narrative explains compliance with applicable provisions of the Zoning & Development Ordinance, Comprehensive Plan, Statewide Planning Goals, Oregon Revised Statutes, and Oregon Administrative Rules. Supported by a signed Application Form, property deed, expert testimony, and other evidence, the narrative and attachments demonstrate compliance with all applicable criteria.

## II. Applicants' Proposed Findings<sup>1</sup>

### A. Clackamas County Comprehensive Plan

#### Chapter 1 - Introduction

##### Goals

###### **The overall goals of the Plan are:**

- *Balance public and private interests and adopt a coordinated set of goals and policies to guide future development in Clackamas County.*
- *Identify the most appropriate land uses for individual sites by evaluating site characteristics in light of market demand, human needs, technology, and state, regional, and County goals.*
- *Provide for growth in areas where public facilities can economically be provided to support growth.*
- *Create development opportunities most compatible with the fiscal and financial capacity of the County and its residents.*
- *Implement the policies of this Plan by adopting a zoning map and set of regulations, and by guiding public investments to support anticipated growth.*

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<sup>1</sup> This narrative is formatted as follows - each relevant provision of law is cited in bold; the substance of the provision is then set forth in italics; the Applicants' response to each is then set forth in Roman type.

- *Establish a system whereby individual interests may be compared to stated County policy and provide a process for review and amendment of those policies as expressed in this Comprehensive Plan.*

## **FINDING**

Mike and Mary provide herein findings that the Application meets or exceeds each relevant goal and policy of the County's Comprehensive Plan.

## **Chapter 2 - Citizen Involvement**

### **Goals**

- *Promote public participation in formulation of the long-range goals, objectives, scope, and focus of the planning programs.*
- *Encourage broadly based public participation representing all concerned geographical areas and diverse interests.*
- *Provide an opportunity for every interested citizen to participate in the formative stages and throughout the planning process.*
- *Insure successful citizen participation through ongoing education in the planning process.*
- *Insure regular communication between citizens and County officials (governing body, Planning Commission, and Planning staff).*
- *Insure a continuing citizen participation effort in the planning process and periodic reevaluation.*

## **FINDING**

Application to amend the Comprehensive Plan requires public notice and two public hearings, first before the Planning Commission, which issues a recommendation. The second hearing is before the Board of Commissioners who make the final local land use decision. The public is invited to participate.

## **Chapter 3 – Natural Resources & Energy**

### **Water Resources**

## **FINDING**

The Site is not on a river or stream corridor and stream and does not have wetland or water features. Any future development on the Site would occur pursuant to the County's permitting process, which will ensure appropriate treatment and disposal of stormwater.

**Agriculture**

**FINDING**

As described herein, nearby agriculture operations are not commercial in scale. Accordingly, the proposed goal exception would not adversely impact such operations. As described below in response to Comp Plan policies implementing this goal, the Site is also not suitable for farming.

**Forests**

**FINDING**

The Site is not in a forest.

**Mineral and Aggregate Resources**

**FINDING**

The Site is not near mineral or aggregate resources.

**Wildlife Habitats and Distinctive Resource Areas**

**FINDING**

The Site is not in or near a wildlife habitat or distinctive resource area.

**Natural Hazards**

**FINDING**

The Site is not in or near an area of natural hazards.

**Energy Sources and Conservation**

**FINDING**

Any development of the requested amendment Site will conform with Clackamas County and Oregon State laws regarding noise and air quality.

**Noise and Air Quality**

**FINDING**

Any development of the requested amendment Site will conform with Clackamas County and Oregon State laws regarding noise and air quality.

## Chapter 4 – Land Use

### Urbanization

#### Goals:

- *Clearly distinguish Urban and Urban Reserve areas from non-urban areas.*
- *Encourage development in areas where adequate public services and facilities can be provided in an orderly and economic way.*
- *Insure an adequate supply of land to meet immediate and future urban needs.*
- *Provide for an orderly and efficient transition to urban land use.*
- *Distinguish lands immediately available for urban uses from Future Urban areas within Urban Growth Boundaries*

### **FINDING**

The Site is approximately two miles from the City of Sandy UGB. The proposed zone designation would allow a single-family dwelling that would not require urban services. The site is not in an area that is expected or programmed to urbanize.

### Urban Growth Concept

*Rural lands are exception lands, as defined in Oregon Administrative Rules 660-004-0005(1), that are outside urban growth boundaries and Unincorporated Communities and are suitable for sparse settlement such as small farms, wood lots or acreage home sites. They lack public facilities or have limited facilities and are not suitable, necessary, or intended for urban, agricultural, or forest use.*

### **FINDING**

Applicant seeks an exception to rural lands and does not plan to urbanize the Site.

### Open Space and Floodplains

### **FINDING**

The Site is not located in an open space or floodplain.

### Unincorporated Communities

*Unincorporated Communities, as defined in Chapter 660, Division 22 of the Oregon Administrative Rules, are settlements located outside urban growth*

*boundaries in which concentrated residential development is combined with limited commercial, industrial, or public uses. Unincorporated Communities may have limited public facilities and services.*

## **FINDING**

The site is not in an area that has concentrated on residential development. Nearby residential lots are five acres to ten acres in size with a cluster of one-acre lots at the corner of SE Firwood and Allgeier roads. There are no commercial, industrial, or public uses in the immediate area.

Some internet sources characterize Firwood as an unincorporated community, but we do not find it listed as such in the Comprehensive Plan.

### **Rural Goals**

- *To provide a buffer between urban and agricultural or forest uses.*
- *To perpetuate the rural atmosphere while maintaining and improving the quality of air, water, and land resources.*
- *To conserve open space and protect wildlife habitat*

## **FINDING**

The Site provides a transition from the urban City of Sandy, located about two miles to the north and the agricultural and forested land to the south and east. The proposed designation is consistent with the pattern of uses immediately around it, *i.e.*, small five to ten-acre lots with dwellings and non-commercial agricultural activities. The Site is not open space nor in a protected wildlife habitat. The five-acre minimum of the proposed designation/zone ensures that the property will be developed at a density that allows natural wildlife habitat to coexist with the possible dwellings.

*4.MM.1 Areas may be designated Rural if they are presently developed, built upon, or otherwise committed to sparse settlement or small farms with limited, if any, public services available.*

*4.MM.2 Designation of additional Rural lands shall be based on findings that shall include, but not be limited to:*

*4.MM.2.1 Reasons why additional Rural land is needed or should be provided;*

*4.MM.2.2 An evaluation of alternative areas in the County that should be designated Rural and a statement of why the chosen alternative is more suitable;*

*4.MM.2.3 An evaluation of the long-term environmental, economic, social, and energy consequences to the locality, region, or state of designating the area Rural; and*

*4.MM.2.4 Reasons why designating the area Rural will be compatible with other adjacent uses;*

**FINDING:** The Applicants propose exception for a single unit of land, which would be used as allowed under the FF-10 zone. The amendment would provide for an additional dwelling, in a nominal way addressing the community's severe shortage of housing. The requested amendment is in an area of lots approximately six acres in size, which itself constitutes the result of the County's evaluation of alternatives. The addition of more density does not have any discernible impact on economic, social or energy situations. The proposed use is similar to the existing abutting uses.

*4.MM.3 Areas impacted by major transportation corridors, adjacent to urban growth boundaries or areas designated Rural, and for which public services are committed or planned shall be given priority in designating additional Rural areas.*

**FINDING:** The site is within several miles of Highway 26, a major state highway that connects Portland area to central and eastern Oregon.

*4.MM.5 Existing large lots should be reduced to meet future rural housing needs prior to expanding the areas designated as Rural.*

**FINDING:** The Site does not constitute a large lot; as amended herein, the zoning will not facilitate division into smaller parcels.

*4.MM.6 Areas with marginal or unsuitable soils for agricultural or forest use shall be given a higher priority for conversion to rural development than areas with more suitable soils.*

**FINDING:** As described at p. 11 hereof, the submitted analysis demonstrates that the soil is marginal and unsuited for commercial agricultural production.

*4.MM.11.3 The FF-10 zoning district shall be applied when one or more of the following criteria are met:*

*4.MM.11.3.a Parcels are generally ten acres.*

*4.MM.11.3.b The area is developed with a mixture of uses not consistent with extensive commercial agriculture or forestry uses.*

*4.MM.11.3.c Access to an Unincorporated Community or an incorporated city is generally poor.*

**FINDING:** Attachment N depicts the parcels within the "area" (as the Board of Commissioners has interpreted that term); most of the parcels therein are about six acres in size.

## **Agriculture**

*Agriculture Goals - Preserve agricultural use of agricultural land. Protect agricultural land from conflicting uses, high taxation and the cost of public facilities unnecessary for agriculture. Maintain the agricultural economic base of the County and increase the County's share of the agricultural market. Increase agricultural income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries. Maintain and improve the quality of air, water, and land resources. Conserve scenic and open space. Protect wildlife habitats.*

### **FINDING**

The Applicants cite below policies within this chapter, which relate to farm use of land, then provide evidence that the Application is consistent therewith.

#### **Agriculture Policies**

*4.NN.1.1 Areas with predominantly Class I through IV agricultural soil as defined by the United States Natural Resources Conservation Service or identified as agricultural soil by more detailed data.*

### **FINDING**

Gary Kitzrow is a Certified Professional Soil Classifier and Certified Professional Soil Scientist whose expertise in such matters LUBA has recognized. *Doob v. Josephine County*, LUBA No. 2004-083 (2004) (p. 4-7). Attachment B hereto constitutes his study of soils on the Site.

In short, collecting samples from 15 different locations, Gary found "a majority (preponderance) of the legal lot of record is comprised of Capability Class 6 Bull Run Variant (15B) soils combined with the Class 4 Delena Variant mapping unit both of which, [sic] are Non-High Value."

#### **4.NN.1.2 Areas Generally In Parcels of 20 Acres or Larger**

### **FINDING**

The Vicinity Map (Attachment C hereto) depicts properties situated within 2,000 feet of the Site. It shows 20 parcels, three of which are at least 20 acres in size. The Characteristics of Vicinity Parcels table (Attachment D hereto) calculates the average size of these parcels at 11.21 acres.

#### **4.NN.1.3 Areas Primarily In Agricultural Use**

##### **FINDING**

The Characteristics of Vicinity Parcels Table notes existing uses and development in the vicinity of the Site. Attachments E, F, and G hereto constitute declarations of Janice Balderson, Tricia Priest, and Beth Rapp (respectively), each attesting to the lack of commercial agricultural use of land within the vicinity. This evidence shows that the existing EFU zoning is inconsistent with the Agriculture goals set forth in the Comp Plan.

#### **Chapter 5 – Transportation System Plan**

*Building on the foundation of our existing assets, we envision a well-maintained and designed transportation system that provides safety, flexibility, mobility, accessibility and connectivity for people, goods and services; is tailored to our diverse geographies; and supports future needs and land use plans.*

##### **TSP GOALS**

- *Goal 1: Provide a transportation system that optimizes benefits to the environment, the economy and the community*
- *Goal 2: Plan the transportation system to create a prosperous and adaptable economy and further the economic well-being of businesses and residents of the County.*
- *Goal 3: Tailor transportation solutions to suit the diversity of local communities.*
- *Goal 4: Promote a transportation system that maintains or improves our safety, health, and security.*
- *Goal 5: Provide an equitable transportation system.*
- *Goal 6: Promote a fiscally responsible approach to protect and improve the existing transportation system and implement a cost-effective system to meet future needs.*

- A. *Compliance and Coordination Policies*
- B. *Road Safety Policies*
- C. *Equity, Health and Sustainability Policies*
- D. *Intelligent Transportation Systems (ITS) Policies*
- E. *Rural Transportation Demand Management (TDM) Policies*

##### **FINDING**

As described in the attached memo from transportation systems expert Chris Clemow, Attachment H, the application will not undermine any of the TSP goals.

## **Chapter 6 – Housing**

*Meeting the future housing needs and desires of residents will require the County to allow for new housing types and densities. A wider range of housing prices can be encouraged by providing a greater variety of lot sizes and more opportunities for the development of a range of housing sizes and types. Providing more opportunities for the development of multifamily dwellings and other alternative housing forms are needed to house the young, the elderly, and lower-income households who may prefer, or only be able to afford, housing types other than detached single-family homes. And as the current housing stock ages and redevelopment takes place, regulations pertaining to density, design and accessibility will shape neighborhoods and the county.*

### **FINDING**

The proposed amendment would allow a dwelling where none can now exist.

## **Chapter 7 – Public Facilities & Services**

*The provision of public facilities and services is a key ingredient in the development of Clackamas County and the implementation of this Plan. All development requires a certain level of public facilities and services. The objective of this Plan element is to provide the level of public facilities and services to support the land use designations in this Plan, and to provide those facilities and services at the proper time to serve development in the most cost-effective way.*

### **Public Facilities**

- A. Sanitary Sewage Treatment Policies
- B. Water Policies
- C. Storm Drainage Policies
- D. Solid Waste Policies
- E. Street Lighting Policies

### **Public services**

- F. Fire Policies
- G. Law Enforcement Policies
- H. Education Policies
- I. County Government Policies

### **FINDING**

Development of the Site under the requested zoning would not require urban services such as sewer and water; septic and wells would serve any future

dwellings. Clackamas County sheriff, the Dover Fire station #75, and the Sandy Fire District #72 would serve it. Firwood Elementary, Cedar Ridge Middle, and Sandy High schools provide educational services.

## **Chapter 8 – Economics**

### **Goals:**

- *Establish a broad-based, stable, and growing economy to provide employment opportunities to meet the needs of the County's residents.*
- *Retain and support the expansion of existing industries and businesses.*  
*Clackamas County Comprehensive Plan [8-3] Last Amended 10/13/14*
- *Attract new industrial and commercial development that is consistent with environmental quality, community livability, and the needs of County residents.*

### **FINDING**

The requested amendment would not have an economic impact on the county's community.

## **Chapter 9 – Open Space, Parks & Historic Sites**

*The conservation of land, water, and historic resources, and the related provision of recreation opportunities, is one of the most important factors in maintaining the quality of life which has made Clackamas County an attractive place to live. Recently, however, the urban area in particular has experienced a sharp jump in population, with substantial changes in the physical environment. Population growth is inevitable, at least for the foreseeable future, but the degradation of our communities is not.*

### **FINDING**

The requested amendment does not affect open space, parks, or historic sites as there are none within the vicinity.

## **Chapter 10 - Community Plans & Design Plans**

*This chapter sets forth a number of Community Plans and Design Plans.*

### **FINDING**

The Site is within the Firwood Community Plan and would be able to meet the goals as outlined in Article III, Section 2 of the Community Bylaws.

## Chapter 11 – The Planning Process

*The purpose of Clackamas County's comprehensive planning process is to establish a framework for land use decisions that will meet the needs of County residents; recognize the County's interrelationships with its cities, surrounding counties, the region, and the state; and ensure that changing priorities and circumstances can be met. Coordination with other governmental agencies and refinement of this Plan and County ordinances is essential to achieve this end.*

### **11.B. Amendments and Implementation of Policies**

**11.B.3.0** *Amend the Comprehensive Plan pursuant to the following procedures and guidelines.*

**11.B.3.1** *Allow initiation of a map amendment only by the Board of County Commissioners, the Planning Commission, the Planning Director, or the owner of the property for which a change is requested.*

**11.B.3.2** *Allow initiation of a text amendment only by the Board of County Commissioners, the Planning Commission, or the Planning Director.*

**11.B.3.3** *Consider all proposed Comprehensive Plan amendments at advertised public hearings before the Planning Commission and the Board of County Commissioners, in accordance with state law and County requirements.*

**11.B.3.4** *For quasi-judicial amendments, provide notice of application and public hearing to nearby property owners and the applicable Community Planning Organization a minimum of 20 days prior to the first scheduled public hearing. Provide a copy of the application to the applicable Community Planning Organization a minimum of 35 days prior to the first scheduled public hearing. For legislative amendments, provide notice of proposal and public hearing to all active and recognized Community Planning Organizations, and ensure that the proposal is available for review, a minimum of 35 days prior to the first scheduled public hearing.*

**11.B.3.5** *Provide the opportunity for the Department of Land Conservation and Development and Metro to review and comment on proposed legislative amendments, pursuant to the applicable provisions of state law and the Metro Code.*

**11.B.3.6** *Recognize the Board of County Commissioners as the decision making body for quasi-judicial and legislative Plan amendments, but provide for the Planning Commission to make recommendations to the Board on these amendments, except in the case of a Plan amendment to designate an historic*

*resource, in which case the Historic Review Board shall be the recommending body.*

## **FINDING**

The request is made by the property owner and is an amendment to the map and not the Comprehensive Plan text. The request shall be noticed and heard before the Planning Commission for recommendation to the Board of Commissioners for the local land use decision. The site is not a designated historic resource. The findings support the request as equal to/or improved upon the existing Comprehensive Plan map.

## **B. Oregon Statewide Planning Goals**

### **Goal 1: Citizen Involvement**

*Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.*

## **FINDING**

The Applicants are confident that the County's Citizen Involvement plan will accord the Application the full measure of public process mandated by State law. Also, as a post-acknowledgement plan amendment, ORS 197.610, *et.seq.*, governs this public process.

### **Goal 2: Land Use Planning**

*Goal 2 requires all local governments in Oregon to create and follow a comprehensive land use plan based on factual data. These plans must be consistent across cities, counties, and coordinating agencies. Plans are reviewed and approved by the Land Conservation and Development Commission (LCDC) to ensure they align with statewide planning goals. Once approved, local plans guide zoning, development, infrastructure, and natural resource conservation. Local governments can take exceptions to certain goals if unique circumstances justify a better outcome.*

Staff asserts as follows:

[T]his Goal . . . requires a jurisdiction's Comprehensive Plan provisions and land use regulations to be consistent with the Statewide Planning Goals. This report outlines how this proposal is not consistent with:

- Applicable policies of the County's acknowledged Comprehensive Plan;
- Statewide Planning Goals 3 and 14; and
- Criteria for the required exceptions to Statewide Planning Goals 3 and 14.

## **FINDING**

As amended herein, the Application satisfies Planning Goal 2.

### **PART II – EXCEPTIONS [ORS 197.732:2b]**

*A local government may adopt an exception to a goal when:*

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

## **FINDING**

OAR 660-004-0028, Exception Requirements for Land Irrevocably Committed to Other Uses, explicitly implements this provision of Goal 2. Mike and Mary provide below a lengthy explanation of compliance with the criteria set forth in that rule.

### **ORS 197.732(2):**

*A local government may adopt an exception to a goal if:*

\* \* \*

*(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.*

## **FINDING**

OAR 660-004-0028 explicitly implements this statute (as well as Statewide Planning Goal 2); we provide here a lengthy explanation of compliance with the criteria set forth in that rule.

**OAR 660-004-0028(2):**

*Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

- a. The characteristics of the exception area;*
- b. The characteristics of the adjacent lands;*
- c. The relationship between the exception area and the lands adjacent to it; and*
- d. The other relevant factors set forth in OAR 660-004-0028*
  - (a) The characteristics of the exception area;*
  - (b) The characteristics of the adjacent lands;*
  - (c) The relationship between the exception area and the lands adjacent to it.*

**FINDING**

Rather than set forth a yardstick against which the County is to measure the Application, this provision lists evidence relevant to criteria set forth in OAR 660-004-0028(3)-(7). That said, the provision does clarify that practicability of resource use of the proposed exception area involves evidence of both on-site and off-site characteristics. LUBA has commented several times on such practicability at a given site, which guidance may assist the County in evaluating this criterion.

In this vein, we note that LUBA has emphasized that the impracticability standard under OAR 660-004-0028(3) must be evaluated in light of practical, real-world conditions—not theoretical possibilities. In *Gordon v. Polk County*, 54 Or LUBA 351, 354-56 (2007), the Board observed that the county must identify the conflicts caused by nearby residential uses that render resource uses on the subject property impracticable. It clarified that a local government need not find that every use allowed by the applicable resource goal is impossible, rather must find that key resource uses are impracticable under the specific characteristics of the site and its surroundings. *Id.* This site-specific, functional analysis must account for “the relationship between the exception area and the lands adjacent to it,” including development patterns, parcel sizes, and land use conflicts that undermine the viability of resource use. *Id.* “The mere presence of adjoining residential uses is not sufficient to conclude that resource lands are irreversibly committed to non-resource uses.” *Id.* *Dooley v. Wasco County*, LUBA No. 2022-045 (2022), reaffirmed these principles, underscoring that “impracticable” means unworkable or infeasible under existing conditions.

**OAR 660-004-0028(3):**

*Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*

- a. Farm use as defined in ORS 215.203;<sup>2</sup>*
- b. Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
- c. Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*

**FINDING**

This criterion constitutes the crux of the Application. It requires us to demonstrate that "existing adjacent uses and other relevant factors" render resource use<sup>3</sup> of the Site "impracticable." We address below in turn characteristics of (a) the proposed exception area (*i.e.*, the Site) and (b) the adjacent land.

**Characteristics Inherent to the Site**

The following characteristics relate to the practicability of resource use of the Site:

- i. Zoning – EFU

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<sup>2</sup> ORS 215.203(2)(a) defines farm use as "current employment of land for the primary purpose of obtaining profit in money by raising, harvesting and selling crops or feeding, breeding, management and sale of, or the produce or, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other ag or horticulture use."

<sup>3</sup> Resource use, as relevant here, refers to those uses specifically identified for protection under Goals 3 and 4 and the implementing rules:

- For Goal 3: "Farm use" as defined in ORS 215.203(2)(a), which includes growing crops, raising animals, and other agricultural activities.
- For Goal 4: "Forest operations or forest practices" as described in OAR 660-006-0025(2)(a), including the propagation or harvesting of forest products.

- ii. Size – approximately 15 acres
- iii. Dimensions – approximately 1,300' x 470'
- iv. Soil Quality - Poor performing soils for commercial farming
- v. Resources - Limited quantity of trees/timber

We consider the relevance of soil quality to practicability for resource use obvious. *Friends of Linn County v. Linn County*, 42 Or LUBA 235, 245-246 (2002). As described above in response to Agriculture Policy 4.NN.1.1, Certified Professional Soil Classifier and Certified Professional Soil Scientist Gary Kitzrow prepared a study that clearly demonstrates the Site consists of a preponderance of Non-High Value soil.

### **Characteristics of the Adjacent Land**

As to “the relationship between the [proposed] exception area and the lands adjacent,” we note that the surroundings of the Site feature rural residential uses, rather than commercial farms. This includes those twenty adjacent parcels that the County zones EFU. With reference to the Vicinity Map (Attachment C), the remaining land situated adjacent to the exception area is characterized by the following:

- i. Twenty discrete parcels;
- ii. Sixteen of which are improved with a single-family home;
- iii. Average parcel size – 11.21 acres;
- iv. Fifteen of which is in farm/forest deferral.<sup>4</sup>

The Padens find the following distinct characteristics of the adjacent land to render resource use of the Site impracticable: (a) proximity to an existing exception area, (b) parcelization/development, (c) drift of sprayed pesticides/herbicides, (d) unavailability of water, (e) transportation system impacts, and (f) profitability of farming the Site.

**a) Proximity to an Existing Exception Area** - The Site (along its southeast border) touches the Firwood School Exception Area. The County adopted this exception in 1980, pursuant to a Final Order that read in material part as follows:

This 480-acre area is located southeast of Sandy along Hwy 26 and Firwood. The area has 150 parcels. There are 133 ownerships of which 105 are 0 to 5 acres, 21 are 5 to 10 acres, 7 are 10 to 20 acres, and 0 are over 100 acres in size. Average parcel size is 3.20 acre, and average ownership size is 3.61 acres. The 108 dwelling units in this area average over 4.44 acres.

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<sup>4</sup> Staff corrects some of this information, but with reference to Attachment O, memo of today from Maggie Bielak, we continue to assert that surrounding properties are not in “farm use” as defined in ORS 215.

Detailed soil maps for this area show the soil suitability for agriculture is 20% class II, 50% class III, 20% class IV, and 10% class VI-VII. The soil suitability for Douglas fir is 95% Class II, and 5% class III. The suitability of the soil for septic systems is 85% suitable, 10% marginal, and 5% unsuitable.

This intensity of use and development next to the Site tends to decrease the practicability of farm use thereon.

**b) Parcelization/Development** – The Applicant accepts the case law guidance that the number and size of adjacent parcels, alone, may not evidence impracticability of resource use of the Site. That said, a few considerations show that size of the adjacent parcels relates to such practicability. First off, were parcel size irrelevant to the practicability of undertaking farm use, then LCDC would not mandate statewide a minimum 80-acre size for any EFU-zoned parcel.

Beyond that, we note the following comments from 1,000 Friends of Oregon:<sup>5</sup>

[M]inimum lot sizes are intended to maintain sufficiently-sized tracts of farmland to ensure the continued viability of agriculture in each region.

\* \* \*

Agricultural producers that utilize the services of and support of such businesses in a given area make up the critical mass. Once the critical mass slips below a certain threshold — typically when there are fewer farms — the area will no longer be profitable, so the agricultural businesses leave, reducing the number of resources available to farmers.

We assert this as evidence that a relatively high density of parcels and land improvements near a farm tends to reduce the practicability of crop production.

Lastly, the July 16 memo from land use planning expert Peter Finley Fry, Attachment I hereto, describes how parcelization/development of adjacent land tends to reduce the practicability of farming the Site.

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<sup>5</sup> *Death by 1000 Cuts - The Erosion of Oregon's Exclusive Farm Use Zone*, pp.13 & 15 (excerpted at Attachment K hereto).

**c) Pesticide/Herbicide Drift** – As described in *Anderson v. Coos County*, 51 Or LUBA 454, 474 (2006), LUBA has acknowledged that concerns over pesticide and herbicide drift from adjacent farms may be legitimate and relevant in evaluating potential conflicts between resource and non-resource uses. Dr. Fry's July 16 memo, Attachment I hereto, describes how the need to use such chemicals tends to reduce the practicability of farming the Site.

**d) Unavailability of Water for Irrigation** - As described in the memo from water law expert Sarah Liljefelt, Attachment J hereto, water use on adjacent parcels and water availability on the Site tend to render farm use of the latter impracticable. See *FOLC v. Linn Co.* (2003) (acknowledging that the lack of a right to draw sufficient water from a well on the property could tend to render farm or forest use impracticable).

**e) Transportation System Impacts** - As described in the attached memo from transportation systems expert Chris Clemow, Attachment H hereto, use and development on adjacent parcels tend to render farm use of the Site impracticable.

**f) For a Farm Operation to be Profitable** on a parcel the size of the Site (approximately 15 acres), would require high-value crops. Such crops would, in turn, require security. Yet, existing zoning prohibits the obvious way to provide such security (a dwelling).

To summarize, the County allowed use/development of adjacent land in a manner that conflicts materially with zoned use of the Site. Uses undertaken on adjacent land render resource use of the Site impracticable.

In its Jan. 20 report, Staff requests “reasonable explanation for has [sic] changed in the area that would now preclude these farming activities from occurring.” The Applicants have not, cannot, and need not demonstrate that farming activities on the Site are “precluded” at present. Rather, as noted elsewhere herein:

- A. “farming activities” can take place in any zone, e.g., in urban backyards; and
- B. the Applicants need demonstrate only that “existing adjacent uses and other relevant factors” render farm use of the Site “impracticable.”<sup>6</sup>

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<sup>6</sup> Nothing in this criterion, OAR 660-004-0028(3), requires demonstration that circumstances have changed since the County last zoned the Site.

The Applicants accept the fact that no one factor is dispositive on the issue. However, the foregoing evidence demonstrates that six distinct factors, taken together, (a) proximity to an existing exception area, (b) parcelization/development, (c) drift of sprayed pesticides/herbicides, (d) unavailability of water, (e) transportation system impacts, and (f) the poor soil quality render farm use of the site impracticable.

**OAR 660-004-0028(4):**

*A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.*

**FINDING**

This provision does not constitute a criterion for evaluation of the Application; rather simply identifies criteria that do apply.

**OAR 660-004-0028(6):**

**(a) Existing adjacent uses;**

**FINDING**

We describe above, in response to OAR 660-004-0028(3), uses of adjacent land. In short on our observations, these parcels contain single family homes and are not being used as commercial farmland. The site also touches an existing RRFF-5 exception area.

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

**FINDING**

"The focus of OAR 660-004-0028(6)(b) is on whether existing public facilities and services on or near the subject property commit the subject property to non-resource uses, not on whether public facilities and services are available to serve the proposed non-resource uses." *Gordon*, 54 Or LUBA 351 at 362; see also *Friends of Linn County v. Linn County*, 53 Or LUBA 420, 435 (2007).

Pursuant to Goal 11, public water and sanitary sewer services are generally prohibited outside of a UGB (the closest of which lies about two miles from the Site).

As noted above, the concentration of wells within the area around the Site diminish the sufficiency of water needed for farming.

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

## **FINDING**

We describe above at length, in response to OAR 660-004-0028(3), how parcelization, use, and development on adjacent lands render resource use of the Site impracticable.

**(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.**

## **FINDING**

This provision does not set forth a criterion applicable to the Application. Rather, it includes a submittal requirement – “analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision” – and sets forth context in which the criteria of OAR 660-004-0028 apply.

**(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land’s actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand**

alone amidst larger farm or forest operations, or are buffered from such operations;

## **FINDING**

Like subsection (A) above, this provision sets forth context in which the County is apply the criteria set forth in OAR 660-004-0028, rather than a distinct criterion applicable herein. With reference to the Vicinity Map (Attachment C) and Characteristics of Vicinity Parcels Table (Attachment D), the Applicant observes that none of the adjacent parcels adjoin another parcel in common ownership.

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

## **FINDING**

As noted above in response to OAR 660-004-0028(2)(a), the Site touches an existing exception area dating to the 1980's. Its characteristics clearly relate to the practicability of resource use of the Site.

To reiterate, those characteristics consist of the following:

This 480-acre area is located southeast of Sandy along Hwy 26 and Firwood. The area has 150 parcels. There are 133 ownerships of which 105 are 0 to 5 acres, 21 are 5 to 10 acres, 7 are 10 to 20 acres, and 0 are over 100 acres in size. Average parcel size is 3.20 acre, and average ownership size is 3.61 acres. The 108 dwelling units in this area average over 4.44 acres.

Detailed soil maps for this area show the soil suitability for agriculture is 20% class II, 50% class III, 20% class IV, and 10% class VI-VII. The soil suitability for Douglas fir is 95% Class II, and %% class III. The suitability of the soil for septic systems is 85% suitable, 10% marginal, and 5% unsuitable.

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

## **FINDING**

As noted above, the Site sits immediately south of Allgeier Road, but such impediments do not appear to affect practicability of resource use.

**(f) Physical development according to OAR 660-004-0025;**

**FINDING**

As described above with reference to the Vicinity Map (Attachment C) and Characteristics of Vicinity Parcels Table (Attachment D), no less than sixteen of the twenty adjacent parcels are physically developed with improvements that support non-resource use of the land.

**(g) Other relevant factors.**

**FINDING**

We are aware of no other factors that bear upon the practicability of resource use of the Site.

**(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.**

**FINDING**

This provision sets forth no yardstick against which to measure the proposed goal exception. Rather, it describes information that an applicant is to submit. The Applicants reference such information (maps, aerial, and text information of the Site and adjacent land) above and attach it hereto.

**Goal 3: Agricultural Lands**

*Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.*

**FINDING**

The County implements this Goal through Agriculture Policies 4.NN.1.1, *et.seq.*, set forth in the Comp Plan, which the Applicants address above.

**A. "Irrevocably Committed" Exception to Statewide Planning Goal 3: In addition to the criteria addressed in the application, a request for an**

*exception to Goal 3 under the "irrevocably committed" criteria must also address the following criteria:*

*660-004-0018(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):*

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

**FINDING:** The Site is vacant.

*(b) That meet the following requirements:*

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

**FINDING:** Per DLCD, "rural land" is, generally, land outside of an urban growth boundary." Approval of the Application will not place the Site within a UGB.

*(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and*

**FINDING:** As shown on Attachment N, the Site abuts an area of parcels that average \_ acres in size and constitute predominantly small family farms. Use and development on this Site would be served by wells and septic systems, and not have sufficient density or capacity to justify the cost of urban services such as sewer systems and public water. The density provides sufficient space for wildlife and natural vegetation to thrive.

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

**FINDING:** As described at p. 11 hereof, the character of the area is rural with small gardens, orchards, and livestock (including horses or cows). The presence of single-family dwellings at a density averaging ten acres provides a rural character with space – landscaped and wild between dwellings, while at a density preventing large scale farming or forestry practices. Use and development on this Site, as just described, will not have sufficient density or capacity to justify the cost of urban services such as sewer systems and public

water. Also, the Applicants will accept an approval condition waiving the right to remonstrate against allowed farm and forestry practices on nearby resource land.

*(c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;*

**FINDING:** The site is not in an unincorporated community.

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

**FINDING:** The Applicants propose no industrial use of the Site.

#### **Goal 4: Forest Lands**

*This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."*

**FINDING**

The site is not within a forest.

#### **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources**

*Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of a balance between the resource and the uses that would conflict with it.*

**FINDING**

The requested amendment does not affect open space, scenic or historic areas, or natural resource as there are none within the vicinity.

#### **Goal 6: Air, Water and Land Resources Quality**

*This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.*

## **FINDING**

Please see the findings above proposed for Comp Plan Chapter 3 – Natural Resources and Energy. The proposed amendment would not have adverse impacts on the surrounding air, water, and land quality.

### **Goal 7: Areas Subject To Natural Disasters and Hazards**

*Goal 7 deals with development in places subject to natural hazards such as floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there.*

## **FINDING**

The site is not within a natural disaster or hazard zone.

### **Goal 8: Recreation Needs**

*This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expedited siting of destination resorts.*

## **FINDING**

The site is not in or near a recreational area. The site is not large enough or situated in a place that would allow or support a destination resort.

### **Goal 9: Economy of the State**

*Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.*

## **FINDING**

The requested amendment would not have an economic impact on the surrounding community.

### **Goal 10: Housing**

*This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.*

#### **FINDING**

The amendment would add a dwelling unit.

### **Goal 11: Public Facilities and Services**

*Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should to be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.*

#### **FINDING**

Development of the Site would not require public sewer or water (each of which is unavailable, regardless). The possible dwelling units would have no measurable impact on law enforcement or fire protection.

### **Goal 12: Transportation**

*The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."*

#### **FINDING**

ZDO 1202.03.C&D, with which the Applicants demonstrate compliance below, fully implements this goal.

### **Goal 13: Energy**

*Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."*

#### **FINDING**

This goal is not applicable to this application as the goal applies to regional form.

### **Goal 14: Urbanization**

*This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.*

#### **FINDING**

Because allowed future development would neither be urban in intensity nor demand urban services to an extent that would drive urbanization, this goal is inapplicable.

**B. Exception to Statewide Planning Goal 14: A Comprehensive Plan amendment and zone change from Agriculture/EFU to Rural/RRFF-5 requires an exception to Statewide Planning Goal 14. Per OAR 660-004-0040, new rural residential areas must have a minimum parcel size of at least 10 acres (which in Clackamas County would correspond with the FF-10 zone) unless an exception to Goal 14 is taken. See specifically:**

*660-004-0040(8)(i) For rural residential areas designated after October 4, 2000, the affected county shall either:*

- (A) Require that any new lot or parcel have an area of at least ten acres, or*
- (B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the applicable requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."*

*While the application does request an exception to Goal 3 (Agriculture), it does not contain a request for, evidence of, or findings addressing the criteria for an exception to Goal 14 (Urbanization). The application needs to address all applicable criteria for a Goal 14 exception.*

**FINDING:** The Application complies with OAR 660-004-0040(8)(i) because the County has (with the FF-10 zone) established a minimum size of at least ten acres for new lots or parcels.

### **Goal 15: Willamette Greenway**

*Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.*

## **FINDING**

This goal is inapplicable as the Site is not on or near the Willamette River.

### **Goal 16: Estuarine Resources**

*This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."*

## **FINDING**

This goal is inapplicable as the site is not on or near an estuary.

### **Goal 17: Coastal Shorelands**

*The goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water related" uses.*

## **FINDING**

This goal is inapplicable as the site is not on or near the coast.

### **Goal 18: Beaches and Dunes**

*Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes, but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.*

## **FINDING**

This goal is inapplicable as the site is not on or near beaches or dunes.

### **Goal 19: Ocean Resources**

*Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products*

*into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.*

## **FINDING**

This goal is inapplicable as the site is not on or near the ocean.

## **C. Clackamas County ZDO**

### **316: Urban and Rural Residential Districts** **316.04 Dimension Standards**

A. General: *Dimensional standards applicable in the rural and future urban residential zoning districts are listed in Table 316-2, Dimensional Standards in the Rural Residential and Future Urban Residential Zoning Districts.*

## **FINDING**

Table 316-2 sets forth the following dimensional standards applicable in the FF-10 zone. As depicted in the Characteristics of Vicinity Parcels Table (Attachment D, hereto), the Site complies with those standards.

## **400: Exclusive Farm Use (EFU)**

### **401.01 PURPOSE**

*Section 401 is adopted to implement the policies of the Comprehensive Plan for Agriculture areas.*

*Agriculture areas are those of predominantly Class I through IV soils as identified by the United States Natural Resources Conservation Service or as identified in more detailed data; and other lands that are suitable for farm use due to soil fertility, suitability for grazing, climatic conditions, existing or future potential for irrigation, land use patterns, or accepted farming practices or are necessary to permit farming practices to be undertaken on adjacent or nearby lands.*

## **FINDING**

This provision does not constitute a criterion for evaluation of the Application; rather simply provides context for application of the criteria.

## **1202: Zone Changes**

### **1202.03 General Approval Criteria**

#### **II. Zone Change**

##### **1202.03 GENERAL APPROVAL CRITERIA**

*A zone change requires review as a Type III or IV application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:*

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

#### **FINDING**

The County implements the Rural Residential Farm and Forest plan designation exclusively through the Rural Residential Farm and Forest zone.

**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:*

#### **FINDING**

As described in the attached memo from land use planning expert Peter Finley Fry, development under the proposed zoning district is not reasonably expected to generate need for any of the listed public services. Applicant has obtained a Preliminary Statement of Feasibility from Clackamas County Department of Transportation and Development, Transportation Engineering Division, attached hereto as Attachment L.

**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.*

## **FINDING**

As described in the attached memo from transportation systems expert Chris Clemow, the facilities serving the Site are adequate to accommodate the level of development anticipated to result from the proposed zone change.

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

## **FINDING**

As described in Mr. Clemow's memo, the facilities serving the Site are adequate to accommodate safe operation at the level of development anticipated by the proposed zone change.

### **III. Summary and Conclusion**

Based upon the foregoing narrative and cited attachment, the Application complies with each applicable criterion, so warrants approval.

## Memorandum

**To:** Ty Wyman**Date:** January 26, 2026**From:** Maggie Bielak**File No:** Z0315-25 and Z0316-25**Subject:** Paden Goal Exception Application

Attachment C of the Application provided information regarding 20 EFU-zoned parcels surrounding the Site. Staff observes (p. 19 of its Jan. 20 report) that such information:

is inaccurate, as it identifies 'no farmland' on every parcel and asserts that only one of the 20 identified properties is under special tax assessment, or farm tax deferral.

Having prepared Attachment C (and most others), I want here to explain its contents.

In evaluating the surrounding parcels for "farm use," I applied the ORS 215.203 definition, which p. 16 of the staff report quotes - "the current employment of land for the primary purpose of obtaining a profit in money by...."

When evaluating the surrounding properties, I used Google Earth to see if there are currently sites with cultivated land, and did not reference historical aerials. Based on Google Earth, I simply saw no cultivated land on the parcels identified in Applicant's Attachment C.

Also, we obtained (and submitted) letters from neighbors that described uses on these properties surrounding the site. These noted uses limited to horse boarding and livestock. Again, applying ORS 215.203, I looked for commercial activity and not personal or small family activity, so did not list those as "farm uses" in Applicant's Attachment D.

Ty Wyman  
January 26, 2026  
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To determine if parcels were in farm or forest deferral, I accessed the Assessor's website. Records for the surrounding parcels revealed only one identified property that had farm/forest deferral identified outright. The others noted "Potential Additional Tax Liability," which I understood to mean it was eligible for the deferral, but not actively in it. This was my misunderstanding of the records.

Attached please find and Amended Attachment D, that addresses the inconsistencies the county addressed in the staff report.

## Characteristics of Parcels in the Vicinity

### Key for Vicinity Map:



EFU



RRFF5



Subject Parcel Owned by Applicants

#### 1. **40010 SE Paul Moore Rd** (Map 30C,<sup>1</sup> TL 400)

- Zoning - TBR
- Size - 14.04 acres (per Assessor)
- Improvements -
- Single-family home built in 1990; 2,220 square-feet (per Zillow);
- Two additional out buildings visible from Google Earth
- Building Value - \$561,590 (RMV shown by Assessor)
- No Farm/ Forest deferral
- Water/ Sanitation – No records.

#### 2. **40675 SE Allgeier Rd** (Map 30C, TL 501)

- Zoning - EFU
- Size - 20.53 acres (per Assessor)
- Improvements - single family home built in 2001; 2,723 square-feet.
- Building Value – \$707,810 (RMV shown by Assessor)
- Farm/ Forest deferral
- Notes –
  - [April 2021] real estate listing described this as a “beautifully remodeled home on 20 tranquil acres;” Sold in 2021 for \$1,072,106.00 (Zillow) does not describe any farm use
  - “Temp Use for Care Application” submitted in 01, 03, 05, 07, 10, and 12.
- Water – Well noted at septic 2001 septic application;
- Sanitation – Septic application in 2001. Septic Permit No.: SE031701

#### 3. **No Situs** (Map 30 C, TL: 500)

- Zoning - EFU
- Size – 4.40 acres (per Assessor)
- Vacant Land with no improvements or farm use.

<sup>1</sup> Each listed parcel is in 2 South 5 East.

- Farm/ Forest deferral
- Owned by residents of 40720 SE Allgeier; identified at parcel 11 on the "Vicinity Map".
- Water/ Sanitation – No records.

4. **40707 SE Allgeier Rd** (Map 30C, TL: 600)

- Zoning – EFU
- Size – 8.08 acres (per Assessor)
- Improvements – single family home built in 1950; 1,682 square-feet (per Zillow)
- Building Value - \$283,290 (RMV shown by Assessor)
- Farm/ Forest deferral
- Water/ Sanitation – No records.

5. **No Situs** (Map 30C, TL 700)

- Zoning - EFU
- Size – 8.08 acres (per Assessor)
- Vacant land with no improvements
- Farm/ Forest deferral
- Water – Well indicated on Oregon Water Resources Dept. Well Report Mapping Tool. No reports available.
- Sanitation - No septic records available.

6. **40919 SE Allgeier Rd** (Map 30C, TL: 800)

- Zoning - EFU
- Size - 16.01 acres (per Assessor)
- Improvements - single family home built in 1920; 2,376 square-feet (per Zillow)
- Building Value - \$220,210 (RMV shown by Assessor)
- Use - Livestock, Farm/ Forest deferral
- Water - Well indicated on Oregon Water Resources Dept. Well Report Mapping Tool. No reports available.
- Sanitation - Septic application in 1994. Request in 2008 to temporarily place second dwelling unit on the system was authorized for five years. Septic Permit No.: ST064794.

7. **40985 SE Allgeier Rd** (Map 30C, TL: 1000)

- Zoning - EFU
- Size - 7.98 acres (per Assessor)
- Improvements - manufactured home in 2008
- Farm/ Forest deferral
- Water - No records
- Sanitation – Septic application in 2007. Septic Permit No.: ST008807.

8. **41281 SE Allgeier Rd** (Map 30DC, TL: 1400)

- Zoning - EFU
- Size - 16.27 acres (per Assessor)
- Improvements - single family home built in 1920; 3,540 square-feet (per Zillow)
- Building Value - \$554,570.00 (RMV shown by Assessor)
- Farm/ Forest deferral
- Water – No records.
- Septic – Septic application 1979. Septic Permit No.: S0045779

9. **41400 SE Cornog Rd** (Map 30DC, TL: 1300)

- Zoning - EFU
- Size - 2.44 acres (per Assessor)
- Improvements - single family home built in 1973; 1,420 square-feet (per Zillow)
- Building Value - \$183,840.00 (RMV shown by Assessor)
- No Farm/ Forest deferral
- Water – No records.
- Septic – Septic tank replacement application in 2000. Septic Permit No.: STO0519-00

10. **No Situs** (Map 30DC, TL: 1202)

- Zoning - EFU
- Size - 1.03 acres
- Vacant land with no improvements
- No Farm/ Forest deferral
- Water - Well indicated on Oregon Water Resources Dept. Well Report Mapping Tool. No reports available.
- Septic – No records.

11. **40720 SE Allgeier Rd** (Map 31B, TL300)

- Zoning - EFU
- Size - 21.45 acres (per Assessor)
- Improvements - single family home built 1960; 3,870 square-feet (per Zillow), and a hop barn
- Building Value - \$524,580 (RMV shown by Assessor)
- Use – Horse Boarding; Farm/ Forest deferral
- Owners of parcel are also in possession of parcel 3 on the "Vicinity Map".
- Water - Well indicated on Oregon Water Resources Dept. Well Report Mapping Tool. No reports available.
- Septic – No records.

12. **40930 SE Allgeier Rd** (Map 31B, TL: 102)

- Zoning - EFU
- Size - 16.28 acres (per Assessor)
- Improvements - single family home built in 1970; 2,213 square-feet
- Building Value - \$593,360 (RMV shown by Assessor)
- Use - Horse Boarding; Farm/ Forest deferral
- The property has a small blueberry patch and orchard, not being used for commercial sales.
- Water – No records.
- Sanitation - No records.

13. **41050 SE Allgeier Rd** (Map 31B, TL: 101)

- Zoning – EFU
- Size – 2.82 acres (per Assessor)
- Improvements - single family home built in 1966; 2,210 square-feet; horse barn
- Value - \$198,3800 (RMV shown by Assessor)
- No Farm/ Forest deferral
- Water – No records.
- Sanitation – Septic application in 1979. Septic Permit No.: SENA2479

14. **41380 SE Allgeier Rd** (Map 31B, TL: 900)

- Zoning - EFU
- Size - 9.76 acres (per Assessor)
- Improvements – single-family home built in 1895; 1,895 square-feet (per Zillow)
- Building Value - \$637,310 (RMV shown by Assessor)
- Farm/ Forest deferral
- Water – No records.
- Sanitation – Septic application 2011. Septic Permit No.: ST019011

15. **40730 SE Allgeier Rd** (Map 31B, TL: 301)

- Zoning - EFU
- Size - 29.35 acres (per Assessor)
- Vacant land with no improvements
- Farm/ Forest deferral
- Water – No records.
- Sanitation – Septic application in 1979. Septic Permit No.: SENA2479

16. **23132 Bornstedt Rd** (Map 31B, TL: 400)

- Zoning - EFU.
- Size - 19.29 acres (per Assessor)
- Improvements - single family home built in 2009; 1,152 square-feet (per Zillow)
- Building Value - \$229,480 (RMV shown by Assessor)
- Farm/ Forest deferral
- Partition in 2010 pursuant of Measure 37/49. This property, as well as **18** and **19**, were able to add "New Single Family Dwelling" (NSFD) in 2012 pursuant to Measure 49.
- Water – Well indicated on Oregon Water Resources Dept. Well Report Mapping Tool. No reports available.
- Sanitation – Several septic applications 1989-2007. Septic Permit No.: SE060206

17. **23060 SE Bornstedt Rd** (Map 31B, TL: 401)

- Zoning - EFU
- Size - 2.92 acres (per Assessor)
- Improvements - single family home built in 1972; 2,271 (per Zillow)
- Building Value - \$336,450 (RMV shown by Assessor)
- Farm/ Forest deferral
- Water – No records.
- Sanitation – No records.

18. **23160 SE Bornstedt Rd** (Map 31B, TL: 402)

- Zoning - EFU
- Size - 2.00 acres (per Assessor)
- Improvements - single family home in 2012; 2,114 square-feet (per Zillow)
- Building Value - \$581,460 (RMV shown by Assessor)
- Farm/ Forest deferral
- Result of 2010 partition
- Water – No records.
- Sanitation – Septic application in 2012. Septic Permit No.: ST005312

19. **23170 SE Bornstedt Rd** (Map 31B, TL: 403)

- Zoning - EFU
- Size - 2.00 acres (per Assessor)
- Improvements - single family home in 2012; 2,097 square-feet (per Zillow)
- Building Value - \$618,210 (RMV shown by Assessor)
- No Farm/ Forest deferral
- Result of 2010 partition

- Water – Well indicated on Oregon Water Resources Dept. Well Report Mapping Tool. No reports available.
- Sanitation - Septic application in 2012. Septic Permit No.: ST006712

20. **23242 SE Bornstedt Rd** (Map 31B, TL: 500)

- Zoning - EFU
- Size - 19.54 acres (per Assessor)
- Improvements – one single-family home built in 1945, 2,600 square-feet; one manufactured home, 1400 square-feet; (per Zillow)
- Value - \$629,450 (RMV shown by Assessor)
- Farm/ Forest deferral
- Water – No records.
- Sanitation – Septic application in 1993. Septic Permit No.: ST065693