

POLK COUNTY BOARD OF COMMISSIONERS

DATE: May 1, 2024
TIME: 9:00 a.m.
PLACE: Polk County Courthouse, Dallas, Oregon

THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.

PAGE: **AGENDA ITEMS**

1. CALL TO ORDER AND NOTE OF ATTENDANCE
2. ANNOUNCEMENTS
 - (a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
 - (b) The Polk County Board of Commissioners will be attending the Polk County Local Public Safety Coordinating Council meeting on May 6, 2024 at 12:00 p.m., located at 850 Main St., Dallas, OR 97338
 - (c) The Homeless Prevention Advisory Council (AKA P.A.T.H.S) will be meeting on May 8, 2024 from 12:00 pm to 2:00 pm located at 1407 Monmouth Independence Hwy, Monmouth OR 97361.
3. COMMENTS (for items not on this agenda and limited to 3 minutes)
4. APPROVAL OF AGENDA
5. APPROVAL OF CONSENT CALENDAR
6. APPROVAL OF MINUTES FROM APRIL 17, 2024 & APRIL 24, 2024
7. PUBLIC HEARING FOR PLAN AMENDMENT PA 23-01 AND ZONE CHANGE ZC 23-01 – Eric Knudson
8. OLDER AMERICANS’ MONTH & PROCLAMATION NO. 24-02 - Betty Sledge

CONSENT CALENDAR

- (a) Polk County Order No. 24-04, Brandt’s Rate Adjustment (Austin McGuigan, Community Development Director)
- (b) Polk County Contract No. 24-61, Marion County Health Department (Rosana Warren, Behavioral Health)
- (c) Polk County Contract No. 24-62, Salem Health West Valley (Rosana Warren, Behavioral Health)

THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION PURSUANT TO ORS 192.660.

ADJOURNMENT

POLK COUNTY BOARD OF COMMISSIONERS
MINUTES April 17, 2024

1. CALL TO ORDER & ATTENDANCE

At 9:00 a.m., Commissioner Pope declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Mordhorst and Commissioner Gordon were present.

Staff present: Morgan Smith, County Counsel
Matt Hawkins, Administrative Services Director

2. ANNOUNCEMENTS

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3. COMMENTS

None.

4. APPROVAL OF AGENDA

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER GORDON SECONDED, TO APPROVE THE AGENDA.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

5. APPROVAL OF MINUTES OF BOARD MEETING OF April 3, 2024

MOTION: COMMISSIONER GORDON MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE MINUTES OF April 3, 2024.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

6. APPROVAL OF CONSENT CALENDAR

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER GORDON SECONDED, TO APPROVE THE CONSENT CALENDAR.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

7. LENGTH OF SERVICE AWARDS

The Board of Commissioners and staff recognized and thanked the following employees for their length of service:

- Jay Schmoyer – 25 years
- Jaime Cantu – 20 years
- Molly Barth – 15 years
- Morgan Smith – 10 years

8. MORRIS ROAD VACATION DELIBERATION & ORDER NO. 24-03

Commissioner Pope stated that it was time for the Commissioners to deliberate about the remainder vacation of Morris Road and whether or not they want to approve and sign Polk County Order No. 24-03. Commissioner Pope stated that after reading all the testimony and hearing all the information, he is ready to make a decision. Commissioner Gordon agreed with Commissioner Pope explained why. Commissioner Mordhorst concurred with the other two Commissioners.

MOTION: COMMISSIONER GORDON MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE AND SIGN POLK COUNTY ORDER NO. 24-03.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

9. RECLASSIFICATION OF AN EMPLOYEE

Matt Hawkins, Admin Services Director, is recommending the reclassification of an employee from an Appraiser I to and Appraiser II position. Should the reclassification be approved, it would be effective May 1, 2024 with a fiscal impact of \$5,276 for FY23-24 including PERS contributions should it be for 12 months.

APPROVED BY CONSENSUS OF THE BOARD.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

- (a) **Polk County Ordinance No. 24-02, Amendments to the Polk County Zoning Ordinances Chapters 136 and 177
(Michael Burns, community Development)**

There no need for an executive session and Commissioner Pope adjourned the meeting at 9:07 a.m.

POLK COUNTY BOARD OF COMMISSIONERS

Craig Pope, Chair

Jeremy Gordon, Commissioner

Lyle Mordhorst, Commissioner

POLK COUNTY BOARD OF COMMISSIONERS
MINUTES April 24, 2024

1. CALL TO ORDER & ATTENDANCE

At 9:00 a.m., Commissioner Pope declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Mordhorst and Commissioner Gordon were present.

Staff present: Greg Hansen, Administrative Officer
Morgan Smith, County Counsel
Matt Hawkins, Administrative Services Director

2. ANNOUNCEMENTS

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3. COMMENTS

None.

4. APPROVAL OF AGENDA

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE AGENDA.

MOTION PASSED BY VOTE OF THE QUORUM.

5. APPROVAL OF CONSENT CALENDAR

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE CONSENT CALENDAR.

MOTION PASSED BY VOTE OF THE QUORUM.

6. SALEM HOSPITAL UNIT COUNCIL CHECK PRESENTATION TO POLK COUNTY WARMING CENTERS

Jessica Thomas and Mallery Gould from Salem Hospital presented a check to the Family & Community Outreach Department. They are a unit within the hospital that annually makes a donation to a local non-profit. This year they decided the warming center.

County staff provided an update on the warming center program. Approximately 350 different individuals were served by the County's warming shelters from November through March. The same program is beginning a safe showing program at a church in Monmouth, which is currently serving around 5 individuals a day.

7. LETTER TO OHA & CONTRACT NO. 24-36

Greg Hansen, Administrative Officer, presented background information on the contract and discussed ongoing issues with the State of Oregon and OHA surrounding liability.

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO SIGN THE CONTRACT AND SIGN AND SEND THE LETTER.

MOTION PASSED BY VOTE OF THE QUORUM.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

- (a) **Emergency Operations Plan (EOP) Letter
(Dean Bender, Emergency Management)**
- (b) **Job Description for GIS Technician I and Salary Range
(Matt Hawkins, Administrative Services)**

There no need for an executive session and Commissioner Pope adjourned the meeting at 9:11 a.m.

POLK COUNTY BOARD OF COMMISSIONERS

Craig Pope, Chair

Jeremy Gordon, Commissioner

Lyle Mordhorst, Commissioner



POLK COUNTY

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237

COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

Handwritten initials and signature
JL

MEMORANDUM

TO: Board of Commissioners

FROM: Eric Knudson, Associate Planner
Polk County Community Development

DATE: April 23, 2024

SUBJECT: Public Hearing for Plan Amendment PA 23-01 and Zone Change ZC 23-01

Public Hearing – May 1, 2024

ISSUE:

Should the Polk County Board of Commissioners move to adopt the Comprehensive Plan amendment presented in PA 23-01 and the Zone Change presented in ZC 23-01?

The applicants, represented by Saalfeld Griggs, PC, are requesting a Comprehensive Plan Map amendment and Zoning Map amendment for an approximately 22.1 acre parcel. The subject property is currently designated Agriculture on the Comprehensive Plan Map and Exclusive Farm Use (EFU) on the Zoning Map. The applicants are proposing to change the Comprehensive Plan designation to Farm Forest and the zoning to Farm Forest Overlay (FFO). If the Comprehensive Plan amendment is approved, the subject property would be amended on the Comprehensive Plan Map. If this Zone Change is approved, the subject property would be amended on the Official Zoning Map. Consequently, the adopting ordinance would include a text amendment to Polk County Zoning Ordinance (PCZO) Section 111.090(A) in order to update the effective date of the Official Zoning Map.

RECOMMENDATION:

Staff recommends that the Board of Commissioners approve the proposal as presented in PA 23-01 and ZC 23-01, as recommended by the Polk County Hearings Officer.

BACKGROUND:

The applicants are requesting Comprehensive Plan Map amendment for an approximately 22.1 acre parcel. The proposed amendment would change the Comprehensive Plan designation from Agriculture to Farm Forest. In addition, the applicants are concurrently applying for a Zoning Map amendment (zone change), which would change the zone from EFU FFO. The applicant's intent is to align the Comprehensive Plan designation and Zone more closely with the historical management and characteristics of the subject property. The subject property is identified on the Polk County Assessor's Map as Tax Lot 1601 (T7S, R3W, Section 7) and is located in West Salem near Brush College Road and Gibson Road.

The criteria for a Comprehensive Plan amendment is listed in PCZO Section 115.050. The criteria for a zone change are listed in PCZO Section 111.275. The Polk County Hearings Officer held a public hearing on February 20, 2024, and issued a recommendation of approval on March

17, 2024 (Exhibit A). A public hearing before the Board of Commissioners is scheduled for May 1, 2024 at 9:00 A.M.

A detailed description of the applicant's proposal, the applicable criteria, and associated findings are located in the staff report prepared for the Hearings Officer (Exhibit B) and in the Hearings Officer Recommendation (Exhibit A).

DISCUSSION/ALTERNATIVES:

After opening the public hearing and receiving testimony, the Board of Commissioner's options include the following:

1. Adopt the findings for PA 23-01 and ZC 23-01 located in the Hearings Officer's recommendation and **APPROVE** PA 23-01 and ZC 23-01; or
2. Other.

FISCAL IMPACTS:

No fiscal impacts to the County have been identified.

EXHIBITS:

- Exhibit A - Polk County Hearings Officer Recommendation
 - Attachment A: Map of Subject Property
 - Attachment B: Current Comprehensive Plan Map
 - Attachment C: Current Zoning Map
 - Attachment D: 2022 Aerial Photograph
- Exhibit B - Polk County Planning Division Staff Report
 - Attachment A: Map of Subject Property
 - Attachment B: Current Comprehensive Plan Map
 - Attachment C: Current Zoning Map
 - Attachment D: 2022 Aerial Photograph

**BEFORE THE PLANNING DIVISION
FOR POLK COUNTY, OREGON**

In the Matter of:

File No: PA 23-01 & ZC 23-01

DAVID KNIELING TRUST

**HEARINGS OFFICER'S
DECISION**

I. SUMMARY OF PROCEEDINGS

A. BACKGROUND

This matter arose on the application of the David Knieling Trust (“Applicant”) requesting a Comprehensive Plan amendment and a Zoning Map amendment for a property approximately 22.1 acres in size. The subject property is currently designated Agriculture on the Comprehensive Plan Map and Exclusive Farm Use (EFU) on the Zoning Map. The Applicant is proposing to change the Comprehensive Plan designation of the subject property to Farm Forest and the zoning to Farm Forest Overlay (FFO). The FFO zone is a mixed-use zone and permits the same uses as the Farm Forest (FF) Zone found in Polk County Zoning Ordinance (PCZO) Chapter 138.

1. PROCEDURAL HISTORY

The applications were submitted on May 26, 2023. On June 22, 2023, Polk County Community Development Staff (“County Staff”) placed the applications on hold and sent the Applicant a letter requesting additional information. The Applicant provided the requested information on September 25, 2023, and subsequently requested for the applications to be accepted as complete and for County Staff to schedule these applications for a public hearing before the Polk County Hearings Officer.

2. COMPREHENSIVE PLAN AND ZONING DESIGNATIONS:

Location	Comprehensive Plan Designation	Zoning Designation
Subject Property	Agriculture	Exclusive Farm Use
Property North	Agriculture	Exclusive Farm Use
Property South	Agriculture	Exclusive Farm Use
Property East	Urban Reserve/ City of Salem	Suburban Residential/City of Salem
Property West	Agriculture	Exclusive Farm Use

3. PARCEL SIZE: Approximately 22.1 acres

4. PROPERTY DESCRIPTION:

The subject property is located one property north of 3010 Brush College Road NW, Salem (Tax Assessment Map T7S, R3W, Section 7, Tax Lot 1601), and is approximately 22.1 acres in size. According to the 2023 Polk County Assessor’s Report, the subject property contains one (1) agriculture structure.

The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance (PCSO) 91.950(1)(a), as evidenced by the special warranty deed recorded in Polk County Deed Volume 166, Page 484, dated November 1957. The subject property is currently described in the bargain and sale deed recorded in Polk County Clerk Document 2005-021394, dated December 16, 2005.

According to the National Wetlands Inventory (NWI) Map, Salem West Quadrangle, there are inventoried freshwater forested and shrub wetlands located on the subject property that are associated with Brush College Creek. According to the Polk County Significant Resource Area (SRA) map, Brush College Creek is an inventoried significant fish bearing stream. The Applicant is not proposing any development as part of these applications, nevertheless, this report serves as notice to the property owners of the presence of fish habitat and significant wetland areas on the subject property, and the possible need for State or Federal permits. Prior to any development activity within a significant resource riparian area on the subject property, the property owner shall coordinate a management plan with the Oregon Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) if the activity is identified in PCZO Section 182.070(A) and (C) as a conflicting use. If a management plan is required, the property owner shall submit the management plan coordinated with DSL, ODFW, and any other appropriate State and Federal agencies to the Polk County Planning Division prior to issuance of permits for the development activity pursuant to PCZO 182.040 and 182.050. Structural development shall be prohibited within the riparian and significant wetland setback area. Within the setback area, all trees and at least 50 percent of the understory shall be retained, excluding the exceptions authorized pursuant to PCZO Section 182.050(B)(1)(a-e). The riparian setback area shall be measured from the bank top perpendicular to the stream and shall average three times the stream width and shall be a minimum of 25 feet but not more than 100 feet. Prior to any future development activities within the wetland area, the property owner shall obtain necessary State and Federal permits. Such permits may include but are not limited to, a Removal/Fill Permit from DSL.

Based on a review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel numbers 41053C0277F and 41053C0276F, dated December 18, 2006, the subject property is not located within the Special Flood Hazard Area (SFHA). Based on a review of the Polk County SRA Map, the subject property does not contain any other inventoried significant resources. There are no identified historic sites, or Willamette River Greenway areas on the subject property.

Table 2: Soil characteristics of the subject property as identified in the Natural Resources Conservation Service (NRCS) Soil Survey of Polk County, Oregon utilizing the Polk County Geographic Information System (GIS) ¹

Soil Type	Soil Name	Soil Class	High Value	Forest Productivity	Acres
77C	Woodburn Silt Loam, 3 to 12 percent slopes	IIE	Yes	Unknown	5.1
48A	McAlpin Silty Clay Loam, 0 to 3 percent slopes	IIW	Yes	Unknown	4.7
52C	Nekia Silty Clay Loam, 2 to 12 percent slopes	IIE	Yes	157	3.0
52D	Nekia Silty Clay Loam, 2 to 12 perfect slopes	IIIE	Yes	157	4.7

¹ Disclaimer: Information is based on NRCS soil information & Polk County Tax Assessment data. This information is provided for land use planning purposes only. Polk County is not responsible for map errors, omissions, misuse, or misinterpretation. The data in Table 2 does not account for approximately 2.3 acres of land on the subject property.

52F	Nekia Silty Clay Loam, 30 to 50 percent slopes	VIE	No	157	2.1
36C	Jory Silty Clay Loam, 2 to 12 percent slopes	IIE	Yes	172	2.6
TOTAL:					22.1 acres

Based on Polk County’s soil report depicted in Table 2 above, at least 90.1% of the subject property contains soils that are considered high value (Class I-IV). At least 56.1% of the subject property contains soils that are considered productive forestry soils. Those soils are capable of annually producing approximately 157 cubic feet of wood fiber per acre.

5. SERVICES:

- Access: The subject property has frontage along and direct access to Brush College Road, a Major Collector as identified in the Polk County Transportation Systems Plan, Figure 3.
- Services: The subject property is served by a private well. It does not appear that the subject property contains an on-site sewage disposal system (septic system).
- School: Salem SD #32J
- Fire: Spring Valley RFPD
- Police: Polk County Sheriff

B. COMMENTS RECEIVED

Prior to the public hearing no comments were received.

II. PUBLIC HEARING

Notice of the February 20, 2024 public hearing before the Polk County Hearings Officer was provided as required by PCZO 111.340-111.370. The Department of Land Conservation and Development (DLCD) was sent notice of the applications on January 16, 2024. Notice was mailed to property owners located within 750 feet of the outside perimeter of the subject property on January 31, 2024. Notice was printed in the local Itemizer-Observer Newspaper on January 31, 2024. Notice was posted on the subject property on or prior to January 31, 2024.

A duly advertised public hearing was held on February 20, 2024, at the Polk County Courthouse. The Hearings Officer called the meeting to order at the appointed hour. There were no objections as to the notice, jurisdiction, or conflict of interest. County Staff recited the applicable review and decision criteria and recommended approval. The Applicant’s attorney, Margaret Gander-Vo spoke in favor the application and the staff report recommending approval. No one spoke against the application. There was no request to keep the record open, or for a continuance. The Hearings Officer thereupon declared the record closed and adjourned the hearing.

III. REVIEW & DECISION CRITERIA

The review and decision criteria for a Polk County Comprehensive Plan (PCCP) Map amendment and a Zoning Map amendment are provided under Polk County Zoning Ordinance (PCZO) Sections 115.050 and 111.275. Under those criteria, the Hearings Officer conducts a public hearing pursuant to PCZO 111.190 and 115.030 and makes a recommendation to the Polk County Board of Commissioners. The Board of Commissioners conducts a public hearing pursuant to PCZO 111.200 and 115.030 and makes a final local decision.

1. Findings for Comprehensive Plan Map Amendment; File PA 23-01:

Amendments to the Comprehensive Plan Map must meet one or more of the following criteria: [PCZO 115.050(A)]

- A. The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error, or [PCZO 115.050(A)(1)]**
- B. The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and [PCZO 115.050(A)(2)]**

The Applicant is proposing a Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest. The Applicant asserts that the criteria listed in PCZO 115.050(A)(1) and 115.050(A)(2) are both relevant to this request. This criterion is intended to evaluate whether the original PCCP designation that Polk County assigned to the subject property was erroneous and should be corrected to a more appropriate designation, or whether the changing conditions to the surrounding area constitute the need for a change to a more appropriate PCCP designation.

In evaluating whether the original Agriculture PCCP designation was erroneous, the Hearings Officer must first evaluate the purpose and intent of the designation and how it relates to the historic management and conditions of the subject property. Then, the Hearings Officer must determine whether the Farm Forest PCCP designation would be the appropriate designation to correct this error.

According to Section 4 of the Polk County Comprehensive Plan, the areas designated Agriculture *“occur mainly in the eastern and central sections of the County. These areas are characterized by large ownerships and few non-farm uses. Topography in these areas is usually gentle, including bottom lands, central valley plains and the low foothills of the Coastal Range.”* The Plan further states that *“the areas designated for agriculture have a predominance of agricultural soils (SCS capability class I-IV).”* The intended purpose of the Agriculture Plan designation is to *“to preserve agricultural areas and separate them from conflicting non-farm uses. Toward that end, the County will discourage the division of parcels and the development of non-farm uses in a farm area (Only those non-farm uses considered essential for agriculture will be permitted).”*²

Alternatively, the Farm Forest Plan designation applies to lands *“which, for the most part, are situated between the relatively flat agricultural areas and the foothills of the coast range.”* The intended purpose of the Farm Forest Plan designation is to *“provide an opportunity for the continuance of large and small scale commercial farm and forestry operations.”* The Plan further states that *“these lands are generally hilly, heavily vegetative, and have scattered residential development.”*³

The Applicant states that Polk County’s original designation of Agriculture was erroneous because the subject property has historically been predominately in forest use, there are substantial topographical characteristics that limit the subject property’s ability to be managed predominately for farm use, and there has historically been scattered rural residential development in the area. The Applicant states that currently, approximately 12 acres are being managed for forest use, which was regenerated with new seedlings in 2005 and which is professionally thinned periodically. The Applicant also submitted into the record historical aerial photographs of the Subject Property that indicate these 12 acres have been consistently managed for this use, at least as far back as 1955. The Applicant has stated the remaining acreage is dedicated to access roads and wetlands, leaving approximately seven acres available for agricultural use. The Applicant provided a 1994 aerial photograph of the subject property that depicts a similar ratio of forest use to pastureland compared to what is observed on the property today, which could be described as an approximate 1:1 ratio. As depicted in Table 2 of this report, at least 56.1% of the subject property contains soils that are considered productive forestry soils capable of annually producing

² Comprehensive Plan, pp. 55

³ Comprehensive Plan, pp. 59-60

approximately 157 cubic feet of wood fiber per acre, and at least 90.1% of the soils on the property are considered to be high-value farmland soils. However, there isn't forest productivity data for approximately 9.8 acres of the subject property; therefore, these percentages could be higher.

According to the 2023 Assessor's report, the subject property currently receives a farm tax deferral. According to the Applicant, the topographical characteristics of the subject property, such as steep slopes, existing hardwood, small parcel size and the presence of wetlands, limits the area that could be effectively managed for agricultural use to approximately 7.0 acres, whereas approximately 12.0 acres of the subject property are forested and have extensive slopes. The remaining acreage is dedicated to access roads and contains wetland areas. The Applicant states that the 7.0 acres of pastureland is used to isolate up to 10 cattle at a time from a larger operation of approximately 100 cattle that is predominately managed on other properties in the vicinity. The 12.0 acres of forest land is managed for timber production and wetland enhancement and preservation. Based on the information provided by the Applicant, the Hearings Officer finds that there is evidence in the record to support the Applicant's conclusion that the subject property has historically been predominately in forest use.

The Applicant asserts that the Agriculture PCCP designation does not account for the limitations discussed above, and thus, is erroneous. Consequently, the Applicant contends that the Farm Forest PCCP designation would be more appropriate as it would better reflect the predominant forest use and the mixed farm and forest characteristics of the subject property. As discussed in more detail later in this decision, the Applicant provided an impacts analysis that characterizes the agricultural enterprise of the surrounding area. This analysis describes the area as containing significant patterns of rural residential development and small-scale farm and forest operations that more closely match the type of land use patterns that would be observed under the Farm Forest PCCP designation.

Although high-value soils are a component of what constitutes agricultural lands, the Hearings Officer concurs with the Applicant that the Agriculture PCCP designation does not entirely reflect how the subject property has historically been managed, nor does it take into account the topographical features that may limit the ability for the subject property's high-value farmland soils to be effectively utilized for commercial farm use. The Agriculture PCCP designation is implemented in the PCZO through the Exclusive Farm Use (EFU) zone. While the EFU zone permits the propagation or harvesting of forest products and accessory buildings and structures related to the use and management of forest lands, the Agriculture designation does not reflect the predominance of forest use on the subject property or the physical limitations on the ability to manage the subject property for commercial farm use. Staff concurs with the applicant that the original Agriculture PCCP designation was erroneous to the extent that it does not best reflect the size, topography, and historical management of the subject property and does not account for the existing patterns of rural residential development in the surrounding area. For these reasons, the Hearings Officer finds that that the historic and existing conditions constitute the need to change the PCCP designation.

The Applicant indicates that the criteria listed PCZO 115.050(A)(1) and 115.050(A)(2) are both relevant to this request; although, the criterion listed in Section 115.050(A) does not require compliance with both of these standards. As discussed above, the Hearings Officer finds the Applicant has provided substantial evidence to demonstrate compliance with PCZO 115.050(A)(1); nevertheless, the Applicant has asserted that this application also complies with PCZO 115.050(A)(2).

The Applicant states that the Agriculture PCCP designation is no longer appropriate due to the changing conditions in the surrounding area. Specifically, the Applicant asserts that the increase in residential development and resulting traffic have made it more difficult for the Subject Property to be highly productive for agricultural use alone and that the Farm/Forest designation better reflects the actual use and productivity of the Subject Property and the surrounding area. The Applicant provided aerial photographs from 1994 and 2022 that depicts an increase in residential

development to the surrounding area. Specifically, the establishment of a new subdivision in the incorporated city limits of Salem, located to the east of the subject property and Brush College Road. County Staff reviewed Tax Assessor's records and Polk County Community Development records and found that in addition to the fact that the subject property is in close proximity to a subdivision located within the City of Salem to the east, each of the surrounding adjacent properties also contains at least one (1) single-family dwelling. Based on this review, County Staff concurs with the Applicant that there has been a change in conditions to the surrounding area caused by an increase in residential development, which more closely aligns with the Farm Forest PCCP designation. As result, the Agriculture PCCP designation is no longer the most appropriate designation.

It is the Applicant's belief that a Farm Forest PCCP designation would be the most appropriate designation for the subject property. OAR 660-006-0057 is applicable to this request, which states:

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

It is the specific intent of the Farm/Forest PCCP designation *"to ensure that land-use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan."* Goal 2 of the Forest Lands PCCP designation is intended *"to conserve and protect watersheds, fish and wildlife habitats, riparian areas and other such uses associated with forest lands."* The Applicant asserts that the shift in the urban-rural interface of the surrounding area has resulted in habitat loss and topsoil destabilization that directly impacts the wetlands and riparian areas associated with Brush College Creek; therefore, the management and conservation of forest lands in this area must be prioritized in order to offset the impact caused by the shift in the surrounding area. The Applicant states that the forest lands on and around the subject property help filter run off from adjacent residential uses before it enters the wetlands and ground water in the area, preserving natural resources in the vicinity in a manner that is consistent with the policies of the Farm/Forest designation, but which is not addressed or emphasized within the County's Agricultural designation.

Based on the information provided by the Applicant, there is substantial evidence in the record to support the conclusion that neither Goal 3 nor Goal 4 can be applied alone to the subject property and that the mixed Farm/Forest designation would be the most appropriate PCCP designation to correct the erroneous designation and changing conditions to the surrounding area. The Hearings Officer finds that the Applicant's property and land management goals would be consistent with this proposed designation.

Based on the evidence in the record, the Hearings Officer finds the Comprehensive Plan Designation is erroneous and the proposed amendment would correct the error; as well as the Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding areas. Therefore, the Hearings Officer finds the application complies with these criteria.

- C. The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following: [PCZO 115.050(A)(3)]**
 - 1. Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation. [PCZO 115.050(A)(3)(a)]**
 - a. Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts. [PCCP Section 2, Agricultural Lands Policy 1.1]**

- b. **Polk County will place lands designated as agriculture on the Comprehensive Plan Map consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33 in an exclusive farm use zoning district. [PCCP Section 2, Agricultural Lands Policy 1.2]**
- c. **Polk County will apply standards to high-value farmland areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. [PCCP Section 2, Agricultural Lands Policy 1.3]**
- d. **Polk County will provide for the protection of productive forest lands. Designated forest lands will be areas defined as one of the following:**
 - i. **Predominately Forest Site Class I, II and III, for Douglas Fir as classified by the U.S. Soil Conservation Service;**
 - ii. **Suitable for commercial forest use;**
 - iii. **In predominately commercial forest use and predominately owned by public agencies and private timber companies;**
 - iv. **Cohesive forest areas with large parcels;**
 - v. **Necessary for watershed protection;**
 - vi. **Potential reforestation areas; and**
 - vii. **Wildlife and fishery habitat areas, potential and existing recreation areas or those having scenic significance. [PCCP Section 2, Forest Lands Policy 1.1]**
- e. **Polk County shall designate forest lands on the Comprehensive Plan Map consistent with Goal 4 and Oregon Administrative Rules Chapter 660, Division 6. [PCCP Section 2, Forest Lands Policy 1.2]**
- f. **Polk County shall zone forest lands for uses allowed pursuant to Oregon Administrative Rules Chapter 660, Division 6. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in Oregon Revised Statute 527.722, Polk County shall allow in the forest environment the following general types of uses:**
 - i. **Uses related to, and in support of, forest operations;**
 - ii. **Uses to conserve soil, water and air quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate for the forest lands;**
 - iii. **Locally dependent uses such as communication towers, mineral and aggregate resources use, etc.;**
 - iv. **Forest management dwellings as provided for in Oregon Administrative Rule 660-06-027; and**
 - v. **Other dwellings under prescribed conditions. [PCCP Section 2, Forest Lands Policy 1.4]**
- g. **Polk County will encourage the conservation and protection of watersheds and fish and wildlife habitats on forest lands in Polk County in accordance with the Oregon Forest Practices Act. [PCCP Section 2, Forest Lands Policy 1.8]**

- h. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.**

It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan. The Farm/Forest Plan designation will be implemented through the use of the Farm/Forest (F/F) Zone which includes areas designated as Farm/Forest Overlay on the zoning map. [PCCP Section 4].

The Applicant is requesting the Farm Forest designation, which is an “agricultural/forest” designation as referenced in OAR 660-006-0015(2). As described by the Applicant, the proposed Farm Forest Plan designation and corresponding FFO zoning would better reflect the topography and predominant forest use of the subject property and assist in the creation and continuance of large and small scale commercial forest operations. The proposed FFO zone, which implements the Farm Forest Comprehensive Plan land designation, has an 80-acre minimum parcel size. That is the same as the current EFU zone. Consequently, the proposed change would not increase the potential parcel density of the subject property. The subject property is currently designated Agriculture on the Comprehensive Plan map. As a result, the subject property has already been determined to comply with the PCCP Agriculture Lands’ goals and policies.

In order to determine whether the subject property could comply with the Goals and Policies of the Farm Forest PCCP designation, the Hearings Officer must evaluate whether the subject property can be identified as forest lands. OAR 660-006-0005(7) defines “Forest Lands” as follows:

(7) “Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:

- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and
- (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.

Based on the NRCS soil data for the subject property listed in Table 2 of this report, at least 90.1% of the subject property contains soils that are considered high value (Class I-IV) and at least 56.1% of the subject property contains soils that are considered productive forestry soils. Those soils are capable of annually producing approximately 157 cubic feet of wood fiber per acre. The Applicant states that approximately 12.0 acres of the subject property are forested, with a portion of the forested area functioning as a natural watershed for Brush College Creek that helps to maintain the fish and wildlife resources that rely on the creek. As demonstrated above, the Applicant has submitted evidence that the subject property has historically been utilized for timber production. The Hearings Officer finds that the soil characteristics and the current and historic management practices of the subject property are consistent with the definition of “forest lands” in OAR 660-006-0005(7) and Goal 4. The Applicant has provided substantial evidence demonstrating that the subject property is considered forest land.

Based on the evidence in the record, the Hearings Officer finds that the Farm Forest Plan designation is appropriate. The Farm Forest Plan designation, which would be implemented by the FFO zone, would allow the subject property to be used for an array of both commercial forestry and agricultural purposes.

As stated in Section 4 of the PCCP, it is the intent of the Farm Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that new permitted structures not pose limitations upon the existing farm and forest practices in the surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.

OAR 660-006-0015(2) is applicable to this request, which states:

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

Based on the findings above, the Hearings Officer concludes that applying the proposed Farm Forest Comprehensive Plan designation to the subject property would be consistent with the goals and policies of the PCCP. This analysis assumes that the FFO zone would implement the Farm Forest designation. The Applicant has concurrently applied for a zone change on the subject property from EFU to FFO in application ZC 23-01. These applications shall be dependent on the approval of one another.

Based on the evidence in the record, the Hearings Officer finds this application complies with this criterion.

D. Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and [PCZO 115.050(A)(3)(b)]

The Applicant is proposing a Comprehensive Plan Map amendment and Zoning Map amendment with the primary intention of having a PCCP designation that better reflects the historical topography and management of the subject property. The Applicant indicates that they would possibly pursue a small tract forest “template” dwelling on the subject property in the future if these applications were approved. Although farm and nonfarm dwellings can be authorized in the EFU zone, subject to review and approval of a land use application, PCZO Chapter 136 does not list forest template dwellings as a criteria that can be utilized to authorize a dwelling in the EFU zone. Findings pertaining to each of the Oregon Statewide Planning Goals are listed below.

Goal 1 - Citizen Involvement

Polk County has an established land use system which sets forth a procedure for amendments to the Polk County Comprehensive Plan and the Polk County Zoning Ordinances. This application requires two (2) public hearings and is subject to the notice requirements listed in PCZO Chapter 111. Citizen involvement is advanced by providing appropriate notice and an opportunity to comment on this application. Notice for comments and of any and all public hearings will be mailed appropriately and timely by County Staff pursuant to the requirements listed in PCZO 111.340-111.370. The comprehensive plan amendment process includes opportunities for participation from the public. The Hearings Officer concurs with the Applicant and finds that the application would be in compliance with Goal 1.

Goal 2 - Land Use Planning

The Applicant states that Polk County has an established land use planning process and policy framework through the adoption of the Polk County Comprehensive Plan and the associated Polk County Zoning Ordinance which includes a process for reviewing and approving applications of this nature. The Hearings Officer concurs with the Applicant and finds that the application would be in compliance with Goal 2.

Goal 3 -Agricultural Lands

The purpose of Statewide Planning Goal 3 (herein "Goal 3") is to preserve and maintain agricultural lands. Agricultural lands should be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space.

While both Farm/Forest (F/F) and Exclusive Farm Use (EFU) have been acknowledged as consistent with Goal 3, the decision to change the existing plan and zoning designations must comply with the Statewide Planning Goals. OAR 660-006-0057 is also applicable to this request, and states the following:

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

As described by the Applicant, the subject property has historically been predominately managed for forest use. In addition, the property owner manages portions of the pastureland on the subject property for the segregation of cattle associated with a small-scale cattle operation that is primarily managed on another property in the vicinity. The Applicant states that due to the limited pastureland, extensive slopes, and the presence of Brush College Creek and associated wetlands, the property owner is unable to manage the cattle operation entirely on the subject property and predominately manages the subject property for timber production.

Because the proposed PCCP designation is a mixed agriculture/forestry designation that implements both Goals 3 and 4, there would be additional uses that could be permitted on the subject property that would not otherwise be allowed under the current Agriculture designation. As depicted in Table 2 of this report, the subject property is classified as high-value farmland. Although many of these new uses are not allowed on high-value farmland in the EFU zone, PCZO Chapter 138 does not specifically restrict land uses based on soil types, other than dwellings, so some conditional uses permitted in the FFO zone would not be allowed on high value farm land in the EFU zone. However, the local ordinance is precluded by State law when it can be interpreted as being less restrictive than State law. Because the Applicant is requesting a Comprehensive Plan amendment to a mixed agriculture/forest designation, both Agriculture and Forest Goal policies must be applied to all land uses other than dwellings, as evidenced by OAR 660-006-0050(1) and (2), which state:

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

The application of this administrative rule by Marion County was evaluated by the Oregon Land Use Board of Appeals (LUBA) in its ruling of *Silver Creek Solar, LLC vs. Marion County* (LUBA Case No. 2023-045). In this case, LUBA found that "if a use is authorized in ORS Chapter 215 and in OAR 660-006-0025, requirements of both sections may apply under OAR 660-006-0050(2) because both sections are applicable to the use." Based on this opinion, it is understood that if a use other than a dwelling is not allowed on high-value farmland in the EFU zone, the county must

also apply the high-value farmland restriction to that same use in the FFO zone. Although PCZO Chapter 138 does not explicitly make this clear, the opinion from LUBA in the above referenced case states that the Goal 3 standards pertaining to high-value soils restrictions must apply to uses in the FFO zone.

The Applicant provided a chart comparing those uses in the EFU (on high-value farmland) and FFO zones that are permitted outright or subject to review and approval of a land use application. Many of the additional uses identified by the Applicant that would be allowed on the subject property under the Farm/Forest designation are primarily conditional uses that are limited to lands not classified as high-value farmland, thus, would not be permitted on the subject property as a result of the proposed Comprehensive Plan and Zoning Map amendment. Consequently, most of the additional permitted uses would be related to forestry management, such as log scaling and weigh stations, forest management research and experimentation facilities, and temporary portable facilities for the primary processing of forest products.

Further to this point, the Applicant states that Polk County's mixed farm/forest PCCP designation and FFO zone have been acknowledged by DLCD as consistent with the Statewide Planning Goals 3 and 4. Therefore, permitted and conditional uses in the FFO zone are per se compliant with Goal 3 and Goal 4, provided they meet the applicable approval criteria. The Hearings Officer concurs with the Applicant on the basis of this contention, and because any uses allowed on the subject property, other than dwellings, would still be subject to Goal 3 regulations listed in ORS Chapter 215 and OAR Chapter 660 Division 33, the proposed Comprehensive Plan designation would be in compliance with Goal 3.

While the majority of the property would continue be managed for timber production and the small-scale cattle operation, the Applicant indicates that the property owner would likely pursue a "Small Tract Template Dwelling" application, which is a criteria that could be utilized to apply for a dwelling in the FFO zone, but not in the EFU zone. Farm dwellings are permitted uses under the Agriculture PCCP designation. In order to establish a primary farm operator dwelling, the primary farm operator would need to demonstrate compliance with the criteria listed in PCZO 136.040(A), which in part is based on a gross income standard from the sale of farm products. However, nonfarm dwellings in the EFU zone require extensive analysis to determine compliance with Statewide Planning Goal 3.

As referenced above, OAR 660-006-0050(2) indicates that the county shall apply either OAR Chapter 660, Division 6 or 33 standards for the siting of a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993. As discussed in this report, the Applicant has asserted that the subject tract is predominately in forest use. When proposing to change a Zoning/ Comprehensive Plan designation that could result in the ability to utilize a different set of criteria for a nonfarm dwelling, such as a future forest template dwelling, an applicant would need to show consistency with Goal 3; otherwise an exception to Goal 3 would be required. LUBA made this determination in *DLCD vs. Polk County* (LUBA Case 91-044). In that case, LUBA found that a proposal to change the zone from EFU to FF must address Goal 3 because the zone change could result in additional parcelization and residential development that would not otherwise be permitted in the EFU zone. Although the EFU zone and FFO zone have the same minimum parcel size, which would not result in additional parcelization, additional types of non-farm dwelling applications could potentially be pursued in the FFO zone that would not otherwise be permitted in the EFU zone. Therefore, demonstrating compliance with Goal 3 is required, including findings to demonstrate that a future non-farm dwelling would not impact the existing agricultural enterprise of the area.

The land division standards for the EFU zone and FFO zone are listed under PCZO 136.070 and 138.130, respectively. The Applicant's narrative indicates that based on the current conditions of the subject property, any applicable land division that could be permitted under PCZO 138.130 could also be permitted under PCZO 136.070, except for those land divisions authorized by PCZO 138.130(H) and (J).

PCZO 138.130(H) is intended to allow for the division of mixed agriculture/forest lands for nonfarm uses, except dwellings, pursuant to OAR 660-006-0055(2)(a), for uses set out under OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o), provided that such uses have been approved by the Planning Director. The division of agricultural land for nonfarm uses is also authorized by State law, pursuant to OAR 660-033-0100(6), for uses set out under ORS 215.213(1)(c) or (2) and ORS 215.283(1)(c) or (2), provided that these uses have been approved. These uses set out in State law for agricultural lands and mixed agricultural/forest lands refer to the same land uses for the creation of substandard sized parcels; therefore, the Hearings Officer finds that the land division standards listed under PCZO 138.130(H) could not lead to any additional parcelization that would not otherwise be allowed on lands designated for Agriculture in the PCCP. Further, the Applicant states that establishing a use that would allow for the division of the subject property under this criteria would be unlikely due to the significant amount of residential development, roads, and utilities in the vicinity of the vicinity.

PCZO 138.130(J) is intended to allow for the division of mixed agriculture/forest lands to facilitate a forest practice, as defined in ORS 527.620. The Applicant's narrative pertaining to PCZO 138.130(J) states:

“When the partitions that would also be permitted under PCZO 136.070, which allows for partitions in the EFU, from this list the following divisions would be permitted PCZO 138.130(H) or (J), however, PCZO 138.130(J) requires a minimum lot size of 35 acres, which is larger than the Subject Property.”

County Staff understood the Applicant to be asserting that a land division permitted under PCZO 138.130(J) limits the resultant parcel to 35 acres; however, this claim isn't entirely accurate. These land division regulations derive from OAR 660-006-0055(2)(c), which states:

To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of section (1). Parcels created pursuant to this subsection:

- (A) *Are not eligible for siting of a new dwelling;*
- (B) *May not serve as the justification for the siting of a future dwelling on other lots or parcels;*
- (C) *May not, as a result of the land division, be used to justify redesignation or rezoning of resource land; and*
- (D) *May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:*
 - (i) *Facilitate an exchange of lands involving a governmental agency; or*
 - (ii) *Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.*

As listed under subsection (D) of this rule, land divisions permitted under PCZO 138.130(J) may result in the creation of a parcel less than 35 acres under specific circumstances. Therefore, additional parcelization could hypothetically occur on the subject property under the proposed designation, if the division was for public benefit or if the property was part of a much larger forestland tract. As discussed above, in *DLCD vs. Polk County* (LUBA Case 91-044), LUBA determined that a change from EFU to FF must demonstrate compliance with Goal 3 if additional parcelization could be allowed as a result of the change. This case was evaluated through the lens of whether the additional parcelization could lead to additional residential development and impede the existing agricultural enterprise in the area. LUBA found it was vital for the county to make findings explaining “whether the minimum lot size standard that will be imposed under the

F/F zone is sufficient to comply with the requirement of Goal 3 that the minimum lots size “be appropriate for the continuation of the existing commercial agricultural enterprise of the area.””

As discussed above, the standards listed under OAR 660-006-0055(2)(c) are intended to allow for the creation of parcels to facilitate a forest practice. As discussed in this decision, the Applicant submitted an impacts analysis that indicates in addition to the existing agricultural enterprise, small and large-scale forestry operations are a common land practice within the study area. In addition, there are many forest-management related uses that are permitted in the EFU zone, such as the propagation or harvesting of a forest product or accessory buildings or structures related to the use and management of forest lands. Based on LUBA’s opinion, the nature of the land division standards listed under OAR 660-006-0055(2)(c), and the Applicant’s narrative, the Hearings Officer finds that there is substantial evidence in the record to demonstrate that any additional land divisions that could be permitted as a result of the proposed Comprehensive Plan Amendment would be appropriate for the continuation of the existing commercial agricultural enterprise of the area, thus, in compliance with Goal 3.

In *Dobson v. Polk County* (LUBA Case No. 91-148 and 149) LUBA determined that in order to sufficiently demonstrate that a Comprehensive Plan Amendment from Agriculture to Farm Forest and Zoning Map Amendment from EFU to FF would be in compliance with Goal 3, the applicant must explain the “nature of the agricultural enterprises in the affected area in such a manner as to enable an analysis of whether a Comprehensive Plan Amendment from Agriculture to Farm Forest would allow the continuation of the identified existing agricultural enterprises.” To address how the proposed Farm Forest PCCP designation would be in compliance with Goal 3, here the Applicant prepared an impacts analysis that was selected to include the most accurate sampling of farm practices in the surrounding area and evaluate the addition of one (1) nonfarm dwelling on the subject property. The Applicant indicates that if a forest template dwelling were to be pursued on the subject property under the FFO zone, it would likely be established on the southeastern portion of the property due to the location of the existing access on the subject property, its proximity to existing utilities and development in the surrounding area, and the fact that it would be buffered from surrounding resource-zoned properties by Brush College Creek and forested areas. The Applicant relies on the tentative location of the potential forest template dwelling for portions of the impacts analysis, however, the Hearings Officer acknowledges that nothing in this application would ensure that a future dwelling would be limited to the location identified by the applicant. Nevertheless, the location identified by the Applicant appears to be a rational location for a dwelling based on the factors identified by the applicant.

The impacts analysis provided by the Applicant indicates that the resource lands in the surrounding area are located to the north and west of the subject property, with the incorporated city limits of Salem to the east and south, along with properties that are designated in the PCCP as Rural Lands (Acreage Residential- Five Acre (AR-5) Zone) and Urban Reserve (Suburban Residential (SR) Zone). Within the 2,000 acre study area, the impacts analysis identified 98 resource-zoned (EFU and FF) tax lots. Of these 98 tax lots, 63 are identified as Agricultural lands within the EFU zone and 35 are identified as Farm Forest lands within the FF zone. For each tax lot, the Applicant provided a brief description of how the property is predominately managed. Based on the impacts analysis, the most common practices on Agricultural lands in the study area are vineyards, orchards, pasture land, and row crops. The most common practices on Farm/Forest lands in the study area are timber management, pasture land, and row crops. The Applicant states that many of the farm and forest practices on lands in the study area are homogeneous in nature and that the land management on the properties adjacent to the subject property are representative of the enterprise of the surrounding area. For this reason, the Applicant asserts that the impacts to the surrounding area can be generalized by evaluating the potential impact of the adjacent properties, and justifies this stance by citing LUBA’s opinions in *Hood River Valley PRO v. Hood River County*, 67 Or LUBA 314 (2013) and *Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78, 84 (2004).

In the application and additional written information submitted in favor of the application, the Applicant cited several LUBA cases related to the application of ORS 215.296(1)(a) and (b), which pertain to the standards for conditional use permits that evaluate whether the proposed use would force a significant change in accepted farm or forest practices on surrounding lands devoted for farm or forest use; or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted for farm use. ORS 215.296(1) is only applicable to uses that are allowed under ORS 215.213(2) or (11) or ORS 215.283(2) or (4), which are uses that Polk County identifies as conditional uses in PCZO Chapter 136 and 138. A forest template dwelling is not a conditional use because it is a use that is allowed under OAR 660-006-0027(3) and ORS 215.750(2); therefore, ORS 215.296(1) is not applicable to the analysis of a forest template dwelling. While the cases referenced by the Applicant may not be entirely relevant, the Hearings Officer concurs with the Applicant to the extent that potential impacts to adjacent lands can be indicative of impacts to the general study area due to the fact that many of the uses are homogeneous in nature.

In addressing the potential impacts of one (1) nonfarm dwelling to the existing adjacent properties, the Applicant asserts that the impacts would be minimal, as the farm enterprises in the vicinity are insulated from the subject property by natural buffers such as creeks, rolling hills, steep ridges, and forested areas. The Applicant states that if a nonfarm dwelling were established on the subject property, it would likely be established in the southeastern portion of the property due to the location of the existing access on the subject property, its proximity to existing utilities and development in the surrounding area, and the fact that it would be buffered from surrounding resource-zoned properties by Brush College Creek and forested areas. The Applicant states this location would be the most viable due to inhibiting topographical characteristics that prevent most of the property from being developed on.

The Applicant's impacts analysis indicates that the majority of the properties in the study area can be characterized predominately as rural residential with several small-scale, owner-operated farm operations. The two (2) adjacent tax lots to the north are managed predominately for timber, with small portions of pastureland. The property to the south is managed predominately for pastureland and contains a forested area on the western portion. The adjacent property directly to the west is an approximately 124.0 acre tract that contains approximately 80.0 acres dedicated to a nursery and orchard that grows fruit, nuts, and flowering trees. The Applicant identified the larger scale agricultural operations located within the study area, which include Ditchen Land Company (approximately 951.3 acres predominately managed for pastureland), Byers Farm Holdings (approximately 156.9 acres predominately managed for pastureland and timber), Roserock, LLC (approximately 140 acres of vineyards), and Shudel Enterprises (approximately 198.3 acres predominately managed for a Christmas Tree operation). The Applicant also identified the smaller scale commercial farming operations in the study area such as Whitman Nursery, Northridge Vineyard, and X Novo Vineyard.

With the incorporated city limits of Salem, UGB, and AR-5 exception lands to the east and south of the subject property, the commercial farm operations identified by the Applicant are all located to the north and the west. In addition, the future dwelling would be accessed from Brush College Road to the east, which is a road that serves many properties that are zoned SR, AR-5, or within the incorporated city limits of Salem, whereas all of the commercial farm operations identified in the study are accessed using different roads further to the west and north of the subject property. This suggests that any additional traffic generated from a future dwelling would have limited impacts on the commercial farm operations in the study area. The impacts analysis further indicates that the addition of one (1) forest template dwelling could enhance the timber and farm uses on the subject property, which comprise a portion of the main agricultural enterprise of the study area, by allowing the primary operator of these farm and forest practices to live on-site.

The impacts analysis cites the existing level of residential development in the surrounding area and the manner in which residential development has historically co-existed with the surrounding farm and forest operations as evidence that any potential impacts of one (1) dwelling would be minimal because the farm operators in the area have historically had to account for these mixed

rural-residential patterns, including urban levels of traffic and utilities. For these reasons, the applicant states that an addition of one (1) nonfarm dwelling would not negatively impact the agricultural enterprise of the surrounding area and would largely conform to the character of the area.

In determining whether the addition of one (1) nonfarm dwelling on the subject property would be consistent with Goal 3, County Staff and the Hearings Officer must consider the existing and historical residential development patterns of the surrounding area. Of the 98 tax lots in the study area, the study identified 52 tax lots that contain at least one (1) dwelling. Of those 52 tax lots, 41 contained at least one (1) dwelling in 1993, whereas 11 of the tax lots have had dwellings established sometime after 1993. This does not account for replacement dwellings established after 1993; therefore, there could have been additional tax lots developed with dwellings prior to 1993. Many of the properties identified in the impacts analysis are substandard sized tax lots for the EFU and FF zones. Specifically, 55 of the 63 tax lots located within the EFU zone are below the minimum parcel size of 80.0 acres and 33 of the 35 tax lots located within the FF zone are below the minimum parcel size of 40.0 acres. County Staff acknowledges that tax lots are not entirely indicative of the legal parcel sizes and configurations and that some of these tax lots may be a part of larger tracts. Specifically, there are a total 13 tax lots that compose a total of four (4) different EFU tracts over 80.0 acres in size, and a total of four (4) tax lots that compose one (1) FF tract over 40.0 acres in size. When these larger tracts are taken into account, there are 71 tax lots in the study area that are substandard sized properties for their respective zones.

County Staff reviewed Polk County Assessor's records, Polk County Community Development records, and Polk County GIS, and confirmed that the Applicant has appeared to accurately characterize the surrounding land uses and property ownership within the 2,000 acre study area. Based on the impacts analysis provided, County staff concurs and the Hearings Officer agrees with the Applicant that the study area can be characterized as a transitional area that has been largely committed to mixed rural-residential uses despite the underlying PCCP designation and zoning of the area.

The purpose of this analysis is to determine whether a Comprehensive Plan change from Agriculture to Farm Forest would be in compliance with Goal 3, which is determined by evaluating whether the requested Amendment would allow for the continuation of the identified existing agricultural enterprises of the surrounding area. Based on the impacts analysis provided by the Applicant, it is evident that the surrounding area contains a mixture of large and small scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Based on the subject property's proximity to the City of Salem and the natural buffers that isolate the subject property from the identified commercial farm operations, together with the existing and historical patterns of rural residential development and utilities in the surrounding area that the agriculture enterprise is already oriented to account for, the Hearings Officer finds that there is substantial evidence in the record to support the conclusion that the addition of one (1) potential future nonfarm dwelling on the subject property would not materially alter the overall land use pattern of the surrounding area and would allow for the continuation of the identified agricultural enterprises of the area.

For the reasons described above, the Hearings Officer finds that the proposed Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest would be in compliance with Goal 3.

Goal 4 - Forest Lands

The purpose of Statewide Planning Goal 4 is to conserve forest lands for forest uses. As discussed in this report, the Applicant has asserted that at least 50% of the Subject Property has consistently been managed for forest use. The Applicant also states that those areas not managed for forest are suitable for agricultural purposes, which is a permitted use in the FFO zone. The Farm Forest Plan designation, which would be implemented by the FFO zone, would allow the subject property to

be used for an array of both commercial forestry and agricultural purposes. The FFO zone has been acknowledged by DLCDD to be consistent with both Goals 3 and 4.

The Hearings Officer finds that the application would be in compliance with Goal 4.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces

According to the National Wetlands Inventory (NWI) Map, Salem West Quadrangle, there are inventoried freshwater forested and shrub wetlands located on the subject property that are associated with Brush College Creek. According to the Polk County SRA map, Brush College Creek is an inventoried significant fish bearing stream, which is a Goal 5 resource. The Applicant is not proposing any development as part of these applications, nevertheless, this report serves as notice to the property owners of the presence of fish habitat and significant wetland areas on the subject property, and the possible need for State or Federal permits. Prior to any development activity within a significant resource riparian area on the subject property, the property owner shall coordinate a management plan with the Oregon Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) if the activity is identified in PCZO Section 182.070(A) and (C) as a conflicting use. If a management plan is required, the property owner shall submit the management plan coordinated with DSL, ODFW, and any other appropriate State and Federal agencies to the Polk County Planning Division prior to issuance of permits for the development activity pursuant to PCZO 182.040 and 182.050. Structural development shall be prohibited within the riparian and significant wetland setback area. Within the setback area, all trees and at least 50 percent of the understory shall be retained, excluding the exceptions authorized pursuant to PCZO Section 182.050(B)(1)(a-e). The riparian setback area shall be measured from the bank top perpendicular to the stream and shall average three times the stream width and shall be a minimum of 25 feet but not more than 100 feet.

While there are wetlands on the subject property, a shift from one resource designation to another is not anticipated to impact wetlands or riparian corridors. Moreover, timber lands have been acknowledged as an important component in the filtration of water and in the prevention of erosion, helping protect the natural resources on the Subject Property. There are no scenic or historic areas or open spaces on the Subject Property.

The Hearings Officer finds that the application would be in compliance with Goal 5.

Goal 6 - Air, Water, and Land Resources Quality

The Applicant states that this request would not present any greater impact with regards to air, water, and land resource quality of the state than any discharges that result from customary farm uses. The Applicant further asserts that this application will not result in development on the subject property and any subsequent development would be subject to review and approval of a land use application, including a review of any proposed impact on air, water, or land quality. The Applicant concludes that no issue regarding air, water, and land resource quality is presented by the application, it is consistent with Goal 6.

The Hearings Officer finds that the application would be in compliance with Goal 6.

Goal 7 - Areas Subject to Natural Hazards

Based on a review of tools accessed through Polk County GIS, County Staff determined that the subject property is not located within an inventoried natural hazard area.

The Hearings Officer finds that the application would be in compliance with Goal 7.

Goal 8 - Recreational Needs

The subject property is not within an identified or inventoried recreational area. There are no parks or other recreational designations involved with the subject property.

The Hearings Officer finds that the application would be in compliance with Goal 8.

Goal 9 - Economic Development

The Applicant states that this application proposes a shift to a land use designation that better fits the existing economic use of the Subject Property. The Applicant asserts that shifting to a Farm Forest designation will allow for the highest and best economic use of the Subject Property.

The Hearings Officer concurs with the application and finds that the application would be in compliance with Goal 9.

Goal 10 - Housing

The Applicant states that the Comprehensive Plan Amendment would only affect parcels located outside of adjacent city limits and urban growth boundaries. The subject property is therefore not subject to Goal 10.

The Hearings Officer finds that the application would be in compliance with Goal 10.

Goal 11 - Public Facilities and Services

The Application does not affect the need for public facilities and services in the vicinity.

The Hearings Officer finds that the application would be in compliance with Goal 11.

Goal 12 - Transportation

The Applicant asserts that the Comprehensive Plan Amendment would not significantly impact any existing or planned transportation facilities as the management on the subject Property would remain the same and there is no proposed development on the subject property at this time. Uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could be established under the current EFU zone of the subject property. The Hearings Officer does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, the Hearings Officer does not believe that the proposed change would create a significant impact on traffic use on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

The Hearings Officer finds that the application would be in compliance with Goal 12.

Goal 13 - Energy Conservation

The Amendment would not significantly affect the use of energy resources on the Subject Property.

The Hearings Officer finds that the application would be in compliance with Goal 13.

Goal 14 - Urbanization

The application proposes a change from one natural resource designation to another. The Applicant asserts that the use on the Subject Property will continue to be a resource use and would not affect urban or urbanizable land.

The Hearings Officer concurs and finds that the application would be in compliance with Goal 14.

Goal 15 - 19 Willamette River Greenway, Estuarine Resources, Coastal Shore Lands, Beaches and Dunes, and Ocean Resources.

Goals 15-19 are not applicable because the Subject Property is not within the Willamette River Greenway nor an ocean or coastal related resource.

For the reasons described above, the Hearings Officer finds that the Applicant has provided substantial evidence to demonstrate that the proposed Comprehensive Plan Amendment would be in compliance with all relevant Oregon Revised Statutes, Oregon Administrative Rules, and Statewide Planning Goals. The Applicant has addressed all applicable Oregon Statewide Planning Goals. No goal exception is necessary in order to approve these applications.

Based on the evidence in the record, the Hearings Officer finds the application complies with the above criterion.

- E. Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.050(A)(3)(c)]**

The subject property is not located within an urban growth boundary or within an incorporated city. As a result, no intergovernmental agreements are applicable to this application.

The Hearings Officer finds this criterion is not applicable to the proposed amendment.

2. Findings for Zone Change, File ZC 23-01:

- A. A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. [PCZO 111.110]**

The authorization for a zone change is provided under PCZO 111.275. A zone change is subject to recommendation by the Hearings Officer after holding a public hearing pursuant to PCZO 111.190 and 115.030 and decision by the Polk County Board of Commissioners after holding a public hearing pursuant to PCZO 111.200 and 115.030. County Staff reviews the proposed zone change, and prepares a report and recommendation for the Hearings Officer. The Hearings Officer makes a recommendation to the Polk County Board of Commissioners for a final local decision. This application has been processed in accordance with these procedural requirements of the PCZO.

- B. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:**

- 1. The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275(A)]**
 - a. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.**

It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan. The Farm/Forest Plan designation will be implemented through the use of the

Farm/Forest (F/F) Zone which includes areas designated as Farm/Forest Overlay on the zoning map. [PCCP Section 4]

The Applicant is requesting as part of this Application a change in the Subject Property's Comprehensive Plan Designation from "Agriculture" to "Farm/Forest." As described in Section 4 of the PCCP, the Farm Forest Plan designation is implemented by both the FF and FFO zones. The purpose of the FFO zone is to provide *"for the full ranges of agricultural and forest uses while providing for the maximum property tax benefits that are available."*⁴ The single difference between the FF and FFO zones is that the FF zone has a 40 acre minimum parcel size and the FFO zone has an 80 acre minimum parcel size. The subject parcel is currently zoned EFU, which has an 80 acre minimum parcel size; therefore, zoning the subject property FFO would not allow for additional parcel density beyond what is currently permitted. However, the subject property could be divided by utilizing the land division standards listed in PCZO 138.130(H) or (J). As discussed under subsection (1)(D) of this report, the Hearings Officer finds that any additional land divisions that could be permitted as a result of the proposed Comprehensive Plan amendment and zone change would be appropriate for the continuation of forestry operations and/or the commercial agricultural enterprise of the area, thus, in compliance with Goal 3.

The uses in the FFO zone have already been determined to be consistent with the Farm Forest Plan designation. The materials provided by the Applicant demonstrate the management of the subject property, timber management and a small-scale cattle operation, are suited to be managed consistently with the purpose and policies of the Farm/Forest Plan designation.

Therefore, the Hearings Officer concludes that the application complies with this criterion.

C. The proposal conforms with the purpose statement of the proposed zone; [PCZO 111.275(B)]

- a. The Farm/Forest (F/F) Zone is designed to provide for the full range of agricultural and forest uses for such lands, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral, wildlife habitat, etc.) and conformity with the Farm/Forest objectives and policies of the Polk County Comprehensive Plan.**

Upon periodic revision of the Polk County Comprehensive Plan, the lands within the F/F designation shall be reviewed by the County Commissioners as to their continued appropriateness in such a designation or, alternatively rezoning to a more appropriate category.

As with other natural resource zones, there are isolated lands within the F/F Zone which have no actual or potential use for agricultural or forest purposes. In those cases, other non-natural resource uses may be permitted only as provided in this Chapter and in the Polk County Comprehensive Plan. Such uses must not be adverse to accepted agricultural or forest practices. Further, consistent with the diverse character of this zone and recognizing that the actual and potential land use conditions vary from intensive to extensive cultivation and use, the Board of County Commissioners has adopted this zone to deal with myriad potential uses, while recognizing the primary orientation of this zone towards farm and forest uses. [PCZO 138.010]

The Applicant has proposed a zone change from EFU to FFO. The FFO zone is contained in chapter 138 of the Polk County Zoning Ordinance. The stated purpose of the Farm Forest Zone is to *"provide for the full range of agricultural and forest uses for such land, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open*

⁴ PCZO 138.010.

space deferral etc.) and with the Farm/Forest objectives and policies of the Comprehensive Plan.”⁵ Thus, the proposed FFO zone allows “farm use” and “use and management of forest lands” as outright permitted uses.

The subject property is currently managed for timber production and the cattle-ranching associated with a small-scale cattle operation managed on another property in the vicinity. Although the underlying zone of the property is EFU and the subject property currently receives a farm tax assessment, the Applicant has asserted that the subject property has historically been in forest use, and that there are topographic conditions that limit the property’s ability to be managed entirely for farm use. The Applicant is proposing to continue the current management practices on the subject property, but states that the current EFU zone and Agriculture PCCP designation are not entirely reflective of the topographical characteristics and management of the subject property, whereas, the FFO zone and Farm Forest PCCP designation more closely reflect these characteristics and practices. The Farm Forest Zone was adopted by Polk County to accommodate property owners who want to manage their land in both farm and forest types of uses. Based on the current and historical management and topography of the subject property, the Hearings Officer finds that the proposed zone change would conform to the purpose and intent of the FFO zone.

Future development of the subject property would be restricted to the uses permitted in the FFO zone. The Applicant indicates that they would likely to pursue a forest template dwelling on the subject property in the future upon approval of these applications. As discussed in this report, the PCZO Chapter 136 allows for some types of farm and nonfarm dwellings to be established in the EFU zone. However, the criteria for a Forest template dwelling cannot be utilized to establish a nonfarm dwelling in the EFU zone, but it could be utilized in the proposed FFO zone, subject to review and approval of a land use application.

The Applicant has proposed future uses on the property that are either outright permitted in the FFO zone, or could be permitted through an administrative review process. If the Applicant seeks to establish a forest template dwelling in the future, the applicant would need to submit an application and address all applicable criteria listed for a small tract “template” dwelling.

The Hearings Officer concludes that the Applicant’s proposal is consistent with the purpose and intent of the FFO zone.

D. The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275(C)]

The Applicant is proposing a Zoning Map Amendment to change the zoning of the subject property from EFU to FFO. The subject property is approximately 22.1 acres in size. As depicted in Table 2 of this report, the subject property is classified as high-value farmland. Based on a review of the Polk County Zoning Map, the properties contiguous to the subject property are zoned EFU, SR, or within the City of Salem. The surrounding area also includes properties zoned AR-5 and FF. The subject property is currently managed for a forest operation and cattle-ranch. The Applicant indicates that they intend to continue these management practices.

The FFO zone is intended to provide for the full range of agricultural and forest uses for such land, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral etc.). The FFO zone is also intended to facilitate the Farm/Forest objectives and policies of the Comprehensive Plan. Thus, with limited exceptions, the FFO zone permits those uses that are allowed in both the TC and EFU zones. It is commonly accepted that properties that have the same permitted uses are generally compatible with one another; therefore, those uses permitted in the FFO that are also permitted in the EFU zone would generally be compatible with one another.

⁵ PCZO 138.010.

The EFU zone permits some uses that are intended to support forestry activities, such as the propagation or harvesting of forest products and accessory buildings and structures related to the use and management of forest lands. However, there are other uses that would be allowed under the FFO zone that are not permitted in the EFU zone, some of which are related to forestry activities and others that are not related to resource management.

The Applicant provided a chart comparing those uses in the EFU (on high-value farmland) and FFO zones that are permitted outright or subject to review and approval of a land use permit. Those uses that would be permitted outright in the FFO zone include firearms training facilities that existed prior to 1992, caretaker residence for parks and hatcheries, and private fee hunting operations without any accommodations. Those uses subject to a conditional use permit and related to forest management include log scaling and weigh stations, forest management research and experimentation facilities, and temporary portable facilities for the primary processing of forest products.

PCZO Chapter 138 does not specifically restrict land uses based on soil types, other than dwelling, so some conditional uses permitted in the FFO zone would not be allowed on high value farm land in the EFU zone. However, the local ordinance is precluded by State law when it can be interpreted as being less restrictive than State law. Because the Applicant is requesting a Comprehensive Plan amendment to a mixed agriculture/forest designation, both Agriculture and Forest Goal policies must be applied to all land uses other than dwellings, as required by OAR 660-006-0050(1) and (2), which state:

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR Chapter 660, divisions 6 and 33.

(2) Uses authorized in Exclusive Farm Use zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993.

The application of this administrative rule by Marion County was evaluated by the Oregon Land Use Board of Appeals (LUBA) in its opinion in *Silver Creek Solar, LLC vs. Marion County* (LUBA Case No. 2023-045). LUBA found that “if a use is authorized in ORS Chapter 215 and in OAR 660-006-0025, requirements of both sections may apply under OAR 660-006-0050(2) because both sections are applicable to the use.” Based on this opinion, it is understood that if a use other than a dwelling is not allowed on high-value farmland in the EFU zone, the county must also apply the high-value farmland restriction to that same use in the FFO zone. Although PCZO Chapter 138 does not explicitly make this clear, the opinion from LUBA in the above referenced case states that the Goal 3 standards pertaining to high-value soils restrictions also apply to uses in mixed Farm/Forest zones.

The Applicant has not indicated that they would establish any of those uses. Those conditional uses that are allowed on high-value farmland would require an application with the County, and the Applicant would need to demonstrate how their specific proposal would comply with all conditional use standards, including a demonstration that “[t]he use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands” [PCZO 138.100(A)]. That analysis and opportunity for public involvement through the conditional use permitting process would ensure that conditional uses would not significantly adversely affect allowed uses on adjacent lands.

As discussed, the 2,000 acre study area provided by the Applicant identifies 35 tax lots that are zoned FF. The FF zoned properties in the study area are adjacent to properties that are zoned AR-5, SR, and EFU, and the City of Salem, similar to that of the subject property. This suggests that if the subject property were to be rezoned to FFO, it would remain within the character of, and in harmony with, the surrounding area. The study area provides substantial evidence that there are

already a significant number of properties designated for FF that have not adversely affected any allowable uses on properties zoned AR-5, SR, EFU, FF, or within the City of Salem.

In consideration of the above factors, the Hearings Officer finds that the application complies with this criterion.

E. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275(D)]

The Applicant is proposing to change the zoning of the subject property from EFU to FFO. With limited exceptions, the FFO zone permits the uses allowed in both the EFU and TC zones. The FFO zone allows limited residential development, and commercial development is largely restrained to activities in conjunction with farm and forest use on the subject property.

The Applicant states that they are likely to pursue a forest template dwelling on the subject property if this application is approved. Similar to a host of other permitted uses in the TC, EFU, and FFO zones, a dwelling requires road access, electricity, water, and the disposal of wastewater. The Applicant would be responsible for obtaining all necessary permits from the Polk County Environmental Health and Building Divisions and the Polk County Public Works Department. The subject property is not located within a public water utility district. Based on the information provided, it appears the subject property contains an existing well. Nevertheless, permits may also be needed from the Oregon Department of Water Resources if the Applicant plans to drill a well or collect and use surface water. These permits may place limitations on water intensive uses that are out of scale with the land and water resources available on the subject property. As discussed, the subject property is in an area that is adjacent to the City of Salem, and is located within the area served by Spring Valley Rural Fire Protection District and Salem School District #32J.

The subject property has frontage along and direct access to Brush College Road, a Major Collector as identified in the Polk County Transportation Systems Plan, Figure 3. If the proposed Comprehensive Plan amendment and Zoning Map amendment are approved, the Applicant would be able to establish the uses permitted in the FFO zone, assuming all applicable development standards could be met. Uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could be established under the current EFU zone of the subject property. As such, the Hearings Officer does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. Therefore, the Hearings Officer does not believe that the proposed change would create a significant traffic impact on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

Based on the evidence in the record, there are adequate public facilities, services, and transportation networks in place to support the proposed zone change. Approval of this proposed zone change and Comprehensive Plan amendment would not authorize the Applicant to establish a use that would exceed transportation, water and/or sewage disposal services until such services are planned or available. There have been no identified effects on local schools as a result of the proposed change.

Thus, the Hearings Officer finds the application complies with this criterion.

- F. The proposed change is appropriate taking into consideration the following:**
- a. Surrounding land uses,**
 - b. The density and pattern of development in the area,**
 - c. Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(1-3)]**

As discussed above, the Applicant provided an impacts analysis that describes the prominent land practices and agricultural enterprise of the area surrounding the subject property. County Staff reviewed Polk County Assessor's records, Polk County Community Development records, and Polk County GIS, and confirmed that the Applicant has appeared to accurately characterize the surrounding land uses and property ownership within the 2,000 acre study area.

The impacts analysis provided by the Applicant identifies 98 resource-zoned tax lots; 63 of which are within the EFU zone and 35 of which are within the FF zone. Based on the impact analysis, the most common practices on Agricultural lands in the study area are vineyards, pasture land, orchards, and row crops. The most common practices on Farm/Forest lands in the study area are timber management, pasture land, and row crops. The impacts analysis identified 52 tax lots that contain at least one (1) dwelling. In addition, many of the properties identified in the study area are substandard sized tax lots for the EFU and FF zones. Specifically, 55 of the 63 tax lots located within the EFU zone are below the minimum parcel size of 80.0 acres and 33 of the 35 tax lots located within the FF zone are below the minimum parcel size of 40.0 acres. County Staff acknowledges that tax lots are not entirely indicative of the legal parcel sizes and configurations and that some of these tax lots are part of larger tracts. Specifically, there are a total 13 tax lots that compose a total of four (4) different EFU tracts over 80.0 acres in size, and a total of four (4) tax lots that compose one (1) FF tract over 40.0 acres in size. When these larger tracts are taken into account, there are 71 tax lots in the study area that are substandard sized properties for their respective zones.

The Applicant's impacts analysis indicates that the majority of the properties in the study area can be characterized predominately as rural residential with several small-scale, owner-operated farm and forest operations. The impacts analysis identified the larger scale agricultural operations located within the study area, which include Ditchen Land Company (approximately 951.3 acres predominately managed for pastureland), Byers Farm Holdings (approximately 156.9 acres predominately managed for pastureland and timber), Roserock, LLC (approximately 140 acres of vineyards), and Shudel Enterprises (approximately 198.3 acres predominately managed for a Christmas Tree operation). The impacts analysis also identified the smaller scale commercial farming operations in the study area such as Whitman Nursery, Meyer Nursery & Orchards (approximately 80 acres dedicated to growing fruit, nut, shade, and flowering trees), Northridge Vineyard, and X Novo Vineyard.

Based on the Applicant's impacts analysis that evaluates the addition of one (1) potential future nonfarm dwelling (template dwelling) to the subject property, it is evident that the surrounding area contains a mixture of large and small-scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. County Staff and the Hearings Officer concur with the Applicant's findings that the proposed Zoning Map Amendment would be consistent with the development pattern that is commonly observed in areas where there is an evident transition from urban to rural uses. Due to the similar nature of the uses permitted in the FFO zone and the EFU zone, the proposed FFO zoning would be generally compatible with surrounding land uses. The FFO zone has an 80 acre minimum parcel size, which is the same as the EFU zone. The proposed zoning would not change the current potential parcel density of the area. Based on the information provided by the Applicant, the Hearings Officer finds that the proposed zone change of the subject property to FFO would be appropriate because it would remain in harmony with the character and patterns of the surrounding area and its land uses.

Thus, the Hearings Officer finds the application complies with this criterion.

G. The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275(F)]

The subject property is not located within an Urban Growth Boundary. There are no intergovernmental agreements that apply to this property. This criterion does not apply.

H. The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275(G)]

The Applicant is proposing a Zoning Map Amendment with the primary intention of having a zoning and plan designation that better reflect the topography and historical management of the subject property.

The proposal would change the zone from EFU which implements Goal 3, to FFO, which implements both Goals 3 and 4. The subject property is currently zoned EFU, which has an 80 acre minimum parcel size, and the Applicant is proposing the FFO zone which also has an 80 acre minimum parcel size. Consequently, the Applicant's proposal could not result in any additional land divisions or parcelization of the subject property, therefore, would not require an exception to Goals 3, 4 or 14 on that basis.

Because the proposed FFO zone is a mixed agriculture/forestry zone that implements both Goals 3 and 4, there would be additional uses that could be permitted on the subject property that would not otherwise be allowed under the current EFU zone designation. As discussed above in Subsection (1)(D), Polk County's mixed FFO zone has been acknowledged by DLCD to be in compliance with all of the Statewide Planning Goals, and in addition found that because any uses allowed on the subject property, other than dwellings, would still be subject to Goal 3 policies found in ORS Chapter 215 and OAR Chapter 660 Division 33, the proposed Comprehensive Plan designation would be in compliance with Goal 3.

While the majority of the property would continue be managed for the forest operation and the small-scale cattle operation, the Applicant indicates that the property owner may want to establish a "Small Tract Template Dwelling" on the subject property, which is permitted under the FFO zone. OAR 660-006-0050(2) indicates that the county shall apply either OAR Chapter 660, Division 6 or 33 standards for siting of a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993. As discussed in this report, the Applicant has asserted that the subject tract is predominately in forest use. When proposing to change a Zoning/ Comprehensive Plan designation that could result in additional parcelization or the ability to utilize a different set of criteria for a nonfarm dwelling, such as a future forest template dwelling, an Applicant would need to show consistency with Goal 3; otherwise an exception to Goal 3 would be required. Although the EFU zone and FFO zone have the same minimum parcel size, which would not result in additional parcelization, additional types of non-farm dwellings could potentially be pursued in the FFO zone that would not otherwise be permitted in the EFU zone. Therefore, demonstrating compliance with Goal 3 is required, including findings to demonstrate that a potential future non-farm dwelling (template dwelling) would not impact the existing agricultural enterprise of the area.

As discussed above in subsection (1)(D) of this report, the Applicant prepared a 2,000 acre impacts analysis that was selected to include the most accurate sampling of farm practices in the surrounding area and evaluate the addition of one (1) nonfarm dwelling on the subject property. As discussed in this decision, the impacts analysis provided by the Applicant demonstrates that the surrounding area contains a mixture of large and small scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Based on the subject property's proximity to the City of Salem and the natural buffers that isolate the subject property from the identified commercial farm operations, together with the existing and historical patterns of rural residential development and utilities in the surrounding area that the agriculture enterprise is already oriented to account for, the Hearings Officer finds that there is substantial evidence in the record to support the conclusion that the addition of one (1) nonfarm dwelling on the subject property would not materially alter the overall land use pattern of the surrounding area and would allow for the continuation of the identified agricultural enterprises of the area. Therefore, the Hearings Officer finds that the proposed Zone

Change to change the PCCP designation from Agriculture to Farm Forest, which would allow the property owner to utilize Goal 4 policies instead of Goal 3 policies to pursue a nonfarm dwelling on the subject tract, would be in compliance with Goal 3.

For the reasons described above and in subsection (1)(D) of this report, the Hearings Officer finds that the Applicant has provided substantial evidence to demonstrate that the proposed Zone Change would be in compliance with all relevant Oregon Revised Statutes, Oregon Administrative Rules, and Statewide Planning Goals. The Applicant has addressed all applicable Oregon Statewide Planning Goals. No goal exception is necessary in order to approve these applications.

Thus, the Hearings Officer finds the application complies with this criterion.

- I. **The road function, classification, capacity and existing and projected traffic volumes have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [PCZO 111.275(H)]**

The subject property is accessed from Brush College Road, which is under Polk County's jurisdiction and is managed by the Polk County Public Works Department. According to the Polk County Transportation Systems Plan (TSP), Figure 3, Brush College Road is identified as a Major Collector. As discussed, the Applicant indicates that they would likely pursue a forest template dwelling on the subject property if the proposed zone change is approved. Single-family dwellings are permitted uses in both the EFU and FFO zones, subject to review and approval of either an administrative review or conditional use permit. In addition, uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could also be established under the current EFU zone of the subject property. The Hearings Officer does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, the Hearings Officer does not believe that the proposed change would create a significant impact on traffic use on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

The FFO zone permits additional nonfarm and non-forest uses that are not permitted in the EFU zone. Under the circumstances that the property owner were pursue one of these nonfarm uses, a conditional use review would be required, where staff would evaluate the size and scale of the proposed use to ensure it would be in harmony with the purpose and intent of the zone. For the reasons listed above, staff finds that the Comprehensive Plan and Zoning Map amendments would not result in any more traffic that what is currently permitted in the EFU zone and would be consistent with the current road classification and traffic volume of the area.

Thus, the Hearings Officer finds the application complies with this criterion.

IV. CONCLUSION & RECOMMENDATIONS

Based on the evidence submitted into the record, and the findings presented above, the Hearings Officer recommends that the Board of Commissioners **APPROVE** applications PA 23-01 and ZC 23-01. These applications shall be dependent on the approval of one another. Future development on the subject property would be subject to the use and development standards listed in the PCZO. These include the standards for the Farm Forest Overlay zone listed in PCZO Chapter 138.

V. ATTACHMENTS

Attachment A: Map of the subject property

Attachment B: Current Comprehensive Plan map

Attachment C: Current zoning map
Attachment D: 2022 aerial photograph

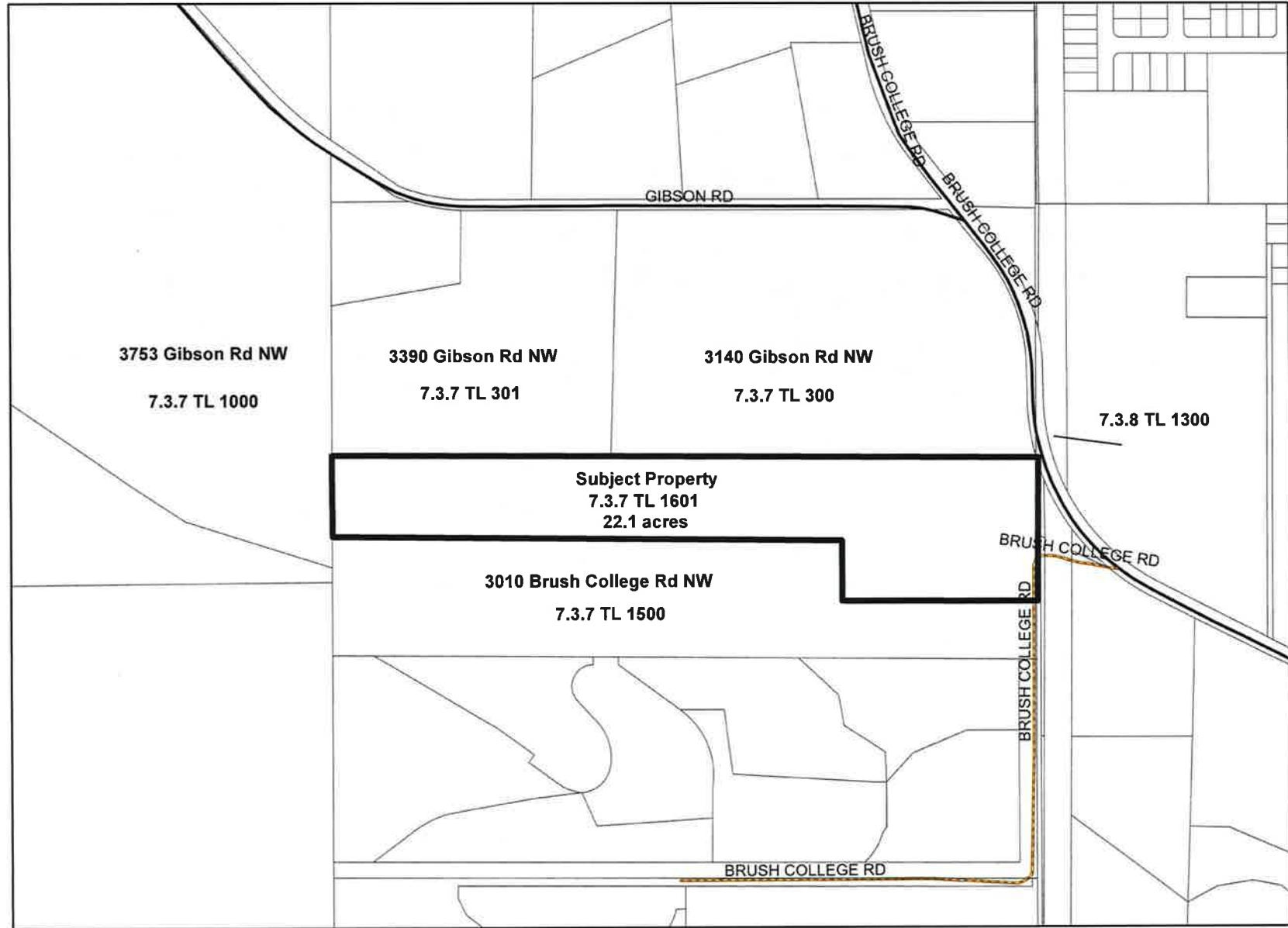
Dallas, Oregon, March 17th, 2024.

Leslie Howell

Leslie Howell
Polk County Hearings Officer

STAFF MAP FOR PA 23-01 & ZC 23-01

ATTACHMENT A

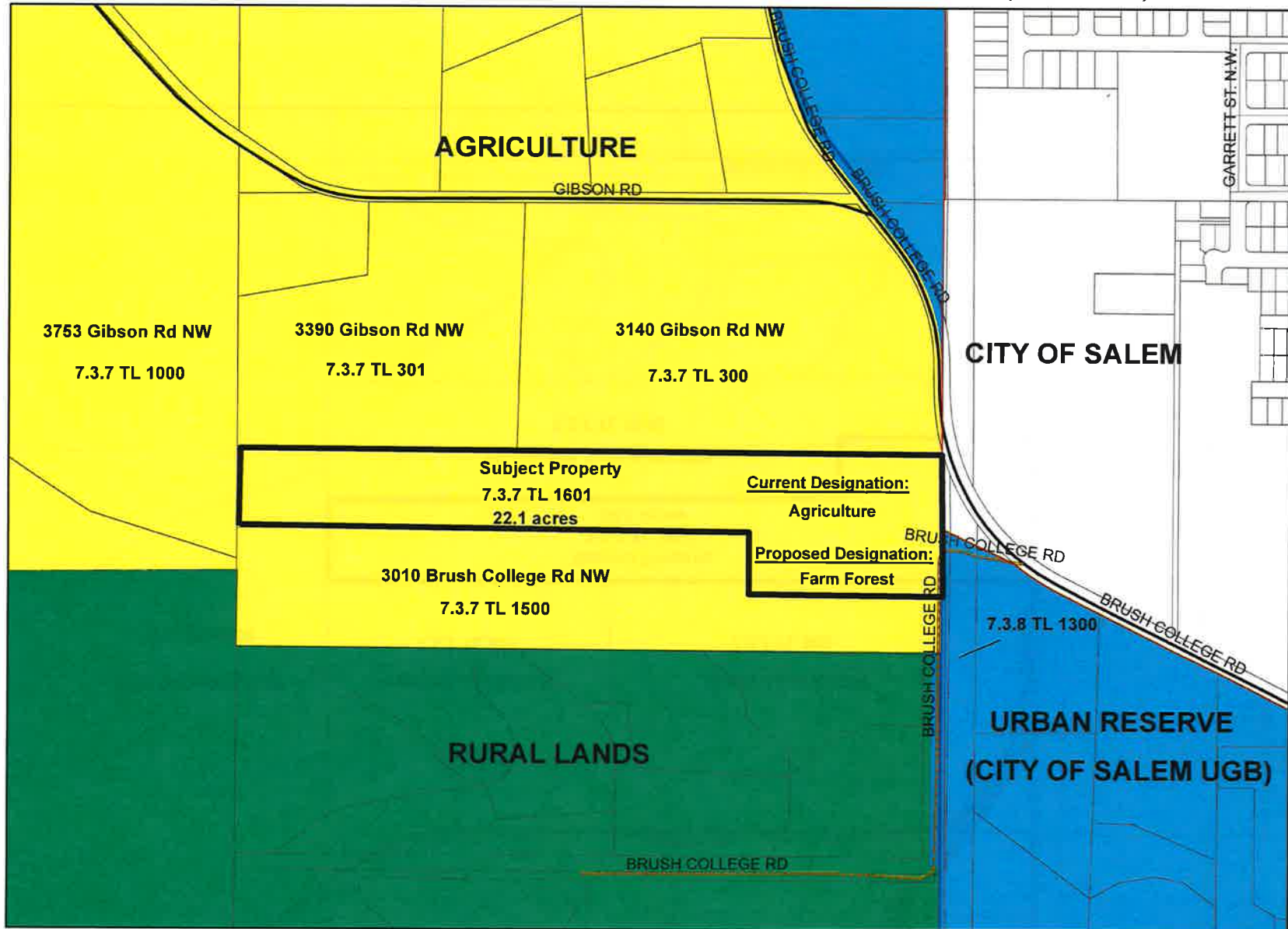


Date: 1/24/2024

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COMPREHENSIVE PLAN MAP OF SUBJECT PROPERTY (PA 23-01)

ATTACHMENT B

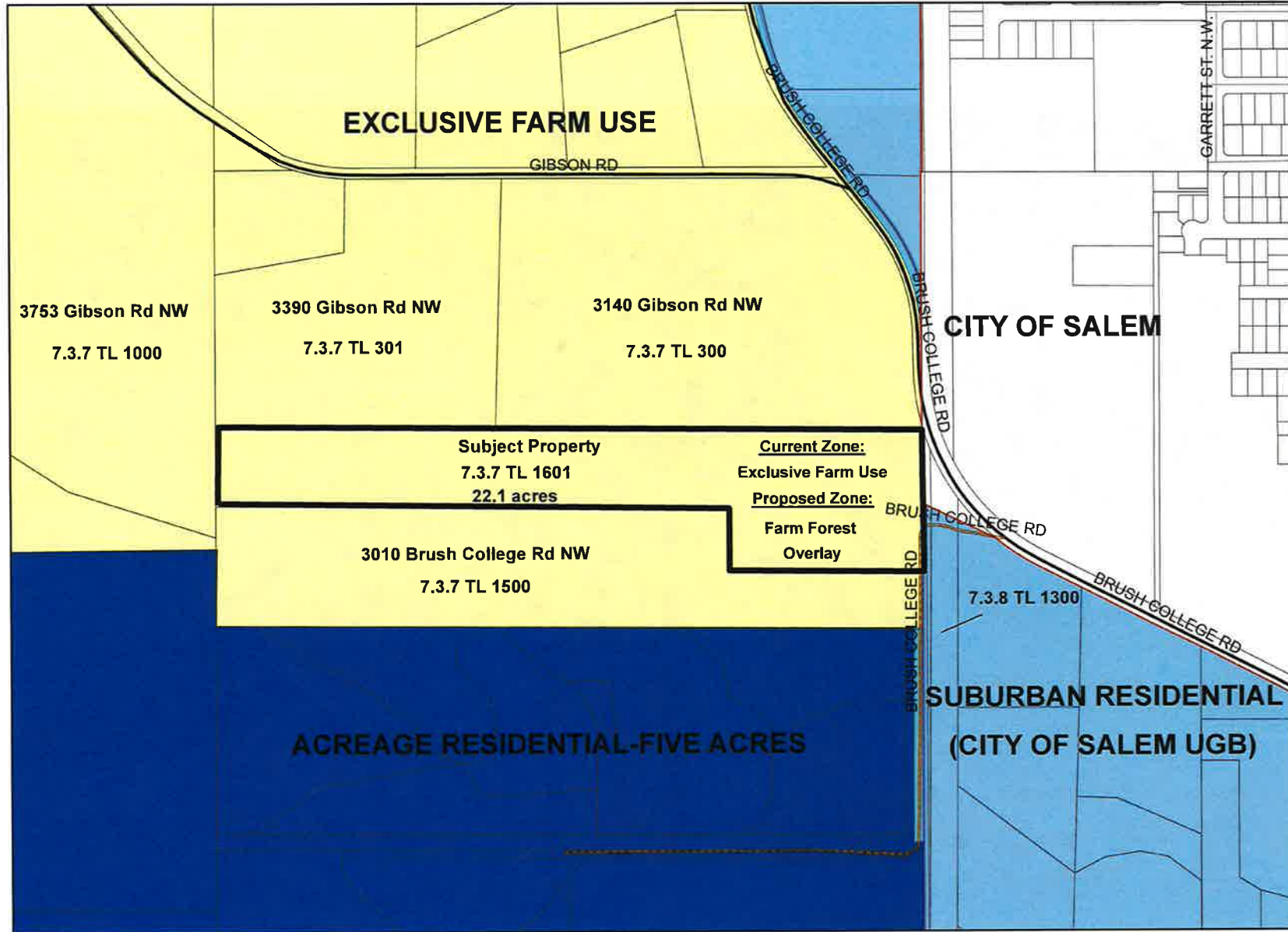


Date: 2/13/2024

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ZONING MAP OF SUBJECT PROPERTY (ZC 23-01)

ATTACHMENT C



Date: 2/13/2024

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2022 AERIAL PHOTOGRAPH OF SUBJECT PROPERTY (PA 23-01 & ZC 23-01) ATTACHMENT D



Date: 2/13/2024

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POLK COUNTY

COMMUNITY DEVELOPMENT

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237

AUSTIN M'GUIGAN
Director

Polk County Community Development Planning Division Staff Report and Recommendation

TYPE OF APPLICATIONS:	1. <u>Comprehensive Plan Map amendment</u> to change the Comprehensive Plan Map designation of an approximately 22.1 acre parcel from Agriculture to Farm Forest. 2. <u>Zoning Map amendment</u> to change the zoning of the subject property from Exclusive Farm Use (EFU) to Farm Forest Overlay (FFO)
OWNER/APPLICANT:	David Knieling Trust
APPLICANT'S REPRESENTATIVE:	Mark Shipman, Saalfeld Griggs, PC
PROPERTY LOCATION:	One property north of 3010 Brush College Road NW, Salem, Oregon 97304 (Polk County Assessor's Map: T7S, R3W, Section 7, Tax Lot 1601)
FILE NUMBERS:	PA 23-01 & ZC 23-01
REVIEW AND DECISION CRITERIA:	Polk County Zoning Ordinance (PCZO) Sections 111.275 and 115.050
POLK COUNTY STAFF CONTACT:	Eric Knudson; Phone: (503) 623-9237, Email: knudson.eric@co.polk.or.us

I. PROJECT AND PROPERTY DESCRIPTION

PROJECT DESCRIPTION:

The applicant is requesting a Comprehensive Plan amendment and a Zoning Map amendment for a property approximately 22.1 acres in size. The subject property is currently designated Agriculture on the Comprehensive Plan Map and Exclusive Farm Use (EFU) on the Zoning Map. The applicant is proposing to change the Comprehensive Plan designation of the subject property to Farm Forest and the zoning to Farm Forest Overlay (FFO). The FFO zone is a mixed-use zone and permits the same uses as the Farm Forest (FF) Zone found in Polk County Zoning Ordinance (PCZO) Chapter 138.

The applications were submitted on May 26, 2023. On June 22, 2023, Planning Staff placed the applications on hold and sent the applicant a letter requesting additional information. The applicant provided the requested information on September 25, 2023, and subsequently requested for the applications to be accepted as complete and for Planning Staff to schedule these applications for a public hearing before the Polk County Hearings Officer.

In response to staff's letter dated June 22, 2023, the applicant provided a second narrative on September 25, 2023 to further address the applicable review and decision criteria. Throughout the report, the applicant's findings are broken into two (2) sections where applicable. The sections labeled "Applicant Findings (May 26, 2023)" refer to findings that were originally submitted by the applicant. The sections labeled "Applicant Findings (September 25, 2023)" refer to findings made by the applicant that were in response to staff's letter from June 22, 2023. Staff relies upon both sets of findings in this report. In addition, the applicant prepared a 2,000 acre impacts analysis that was submitted as part of this application. This analysis is referred to hereafter as the "impacts analysis." The 2,000 acre study area evaluated in the impacts analysis is hereafter referred to as the "study

area.”

Table 1. Comprehensive Plan Map and Zoning Map Designations for the Subject Property and Contiguous Properties

Location	Comprehensive Plan Designation	Zoning Designation
Subject Property	Agriculture	Exclusive Farm Use
Property North	Agriculture	Exclusive Farm Use
Property South	Agriculture	Exclusive Farm Use
Property East	Urban Reserve/ City of Salem	Suburban Residential/City of Salem
Property West	Agriculture	Exclusive Farm Use

PROPERTY DESCRIPTION:

The subject property is located one property north of 3010 Brush College Road NW, Salem (Tax Assessment Map T7S, R3W, Section 7, Tax Lot 1601), and is approximately 22.1 acres in size. According to the 2023 Polk County Assessor’s Report, the subject property contains one (1) agriculture structure.

The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance (PCSO) 91.950(1)(a), as evidenced by the special warranty deed recorded in Polk County Deed Volume 166, Page 484, dated November 1957. The subject property is currently described in the bargain and sale deed recorded in Polk County Clerk Document 2005-021394, dated December 16, 2005.

According to the National Wetlands Inventory (NWI) Map, Salem West Quadrangle, there are inventoried freshwater forested and shrub wetlands located on the subject property that are associated with Brush College Creek. According to the Polk County Significant Resource Area (SRA) map, Brush College Creek is an inventoried significant fish bearing stream. The applicant is not proposing any development as part of these applications, nevertheless, this report serves as notice to the property owners of the presence of fish habitat and significant wetland areas on the subject property, and the possible need for State or Federal permits. Prior to any development activity within a significant resource riparian area on the subject property, the property owner shall coordinate a management plan with the Oregon Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) if the activity is identified in PCZO Section 182.070(A) and (C) as a conflicting use. If a management plan is required, the property owner shall submit the management plan coordinated with DSL, ODFW, and any other appropriate State and Federal agencies to the Polk County Planning Division prior to issuance of permits for the development activity pursuant to PCZO 182.040 and 182.050. Structural development shall be prohibited within the riparian and significant wetland setback area. Within the setback area, all trees and at least 50 percent of the understory shall be retained, excluding the exceptions authorized pursuant to PCZO Section 182.050(B)(1)(a-e). The riparian setback area shall be measured from the bank top perpendicular to the stream and shall average three times the stream width and shall be a minimum of 25 feet but not more than 100 feet. Prior to any future development activities within the wetland area, the property owner shall obtain necessary State and Federal permits. Such permits may include but are not limited to, a Removal/Fill Permit from DSL.

Based on a review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate

Map (FIRM) panel numbers 41053C0277F and 41053C0276F, dated December 18, 2006, the subject property is not located within the Special Flood Hazard Area (SFHA). Based on a review of the Polk County SRA Map, the subject property does not contain any other inventoried significant resources. There are no identified historic sites, or Willamette River Greenway areas on the subject property.

Table 2: Soil characteristics of the subject property as identified in the Natural Resources Conservation Service (NRCS) Soil Survey of Polk County, Oregon utilizing the Polk County Geographic Information System (GIS)¹

Soil Type	Soil Name	Soil Class	High Value	Forest Productivity	Acres
77C	Woodburn Silt Loam, 3 to 12 percent slopes	IIE	Yes	Unknown	5.1
48A	McAlpin Silty Clay Loam, 0 to 3 percent slopes	IIW	Yes	Unknown	4.7
52C	Nekia Silty Clay Loam, 2 to 12 percent slopes	IIE	Yes	157	3.0
52D	Nekia Silty Clay Loam, 2 to 12 percent slopes	IIIE	Yes	157	4.7
52F	Nekia Silty Clay Loam, 30 to 50 percent slopes	VIE	No	157	2.1
36C	Jory Silty Clay Loam, 2 to 12 percent slopes	IIE	Yes	172	2.6
TOTAL:					22.1 acres

Based on Polk County’s soil report depicted in Table 2 above, at least 90.1% of the subject property contains soils that are considered high value (Class I-IV). At least 56.1% of the subject property contains soils that are considered productive forestry soils. Those soils are capable of annually producing approximately 157 cubic feet of wood fiber per acre.

NOTIFICATION:

Notice of the February 20, 2024 public hearing before the Polk County Hearings Officer was provided as required by PCZO 111.340-111.370. The Department of Land Conservation and Development (DLCD) was sent notice of the applications on January 16, 2024. Notice was mailed to property owners located within 750 feet of the outside perimeter of the subject property on January 31, 2024. Notice was printed in the local Itemizer-Observer Newspaper on January 31, 2024. Notice was posted on the subject property on or prior to January 31, 2024.

SERVICES:

- Access:** The subject property has frontage along and direct access to Brush College Road, a Major Collector as identified in the Polk County Transportation Systems Plan, Figure 3.
- Services:** The subject property is served by a private well. It does not appear that the subject property contains an on-site sewage disposal system (septic system).
- School:** Salem SD #32J
- Fire:** Spring Valley RFPD

¹ Disclaimer: Information is based on NRCS soil information & Polk County Tax Assessment data. This information is provided for land use planning purposes only. Polk County is not responsible for map errors, omissions, misuse, or misinterpretation. The data in Table 2 does not account for approximately 2.3 acres of land on the subject property.

Police: Polk County Sheriff

II. COMMENTS RECEIVED

No comments were received as of the writing of this staff report.

III. REVIEW & DECISION CRITERIA

The review and decision criteria for a Polk County Comprehensive Plan (PCCP) Map amendment and a Zoning Map amendment are provided under Polk County Zoning Ordinance (PCZO) Sections 115.050 and 111.275. Under those criteria, the Hearings Officer conducts a public hearing pursuant to PCZO 111.190 and 115.030 and makes a recommendation to the Polk County Board of Commissioners. The Board of Commissioners conducts a public hearing pursuant to PCZO 111.200 and 115.030 and makes a final local decision. The applicant provided findings that are included below, followed by staff's findings and analysis.

1. Findings for Comprehensive Plan Map Amendment; File PA 23-01:

Amendments to the Comprehensive Plan Map must meet one or more of the following criteria: [PCZO 115.050(A)]

- A. **The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error, or** [PCZO 115.050(A)(1)]
- B. **The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and** [PCZO 115.050(A)(2)]

Applicant Findings (May 26, 2023): The current Agriculture designation does not correctly reflect how the majority of the Subject Property is currently or has historically been managed. Currently, approximately 12 acres are being managed for forest use, which was regenerated with new seedlings in 2005 and which is professionally thinned periodically. Historical aerial photographs of the Subject Property indicate that these 12 acres have been consistently managed for this use, at least as far back as 1955, see aerial photographs attached hereto as Exhibit 109. The remaining acreage is dedicated to access roads and wetlands, leaving approximately seven acres available for agricultural use. These acres are currently being used for grazing a small herd of cattle. Since the Subject Property is predominately dedicated to forest use, a Farm/Forest designation is a more accurate and appropriate designation for the Subject Property.

Additionally, the topography of the Subject Property is more consistent with Polk County's (the "County's") Farm/Forest designation than Agriculture. The Property is approximately 22.11 acres in size and is located in Eola Hills. The Subject Property contains predominantly Class I-IV soils, see soils map attached hereto as Exhibit 110. A steep slope characterizes the west end of the property, reaching an elevation of 480 feet with a grade between 30%-50%, as shown on the topography map attached hereto as Exhibit 111.

Based on Polk County Comprehensive Plan's Justification Report, Farm/Forest Review, the average parcel size for Farm/Forest designated land equals approximately 29-acres, whereas Agriculture designated land averages approximately 70-acres in size. Polk County Comprehensive Plan (July 1, 2009), p. 143. Additionally, the County's Farm Forest designation is for land that is "mainly located in the foothills of the coast range" and "[m]ost areas exhibit steep slopes, soils which are on the lower range of the commercial agricultural scale, located adjacent to rural residential uses, vegetative overgrowth and mixed hardwood stands and small, irregular shaped parcels." Id. With the exception of having high value soils, the Subject Property's characteristics are consistent with those characteristics that Polk County has designated as Farm/Forest. In particular, the Subject Property's steep slopes, existing hardwood, small parcel size and proximity to rural residential use indicate that a Farm/Forest designation is appropriate for the Subject Property.

Additionally, when the original PCCP was adopted, the County did not consider the topographical restrictions on the Subject Property that prevented it from being highly productive if only used for agriculture. The steep ridgeline on the west end and the heavily timbered acres reduce the farmable area to only a narrow panel at the south. Although there is a less timbered area at the east end of the Subject Property, that area is closest in proximity to the Salem UGB and is segmented by wetlands and access roads which provide access to a cluster of nine (9) AR-5 zoned residential dwellings on adjacent properties, rendering that portion of the Subject Property unusable for agricultural use and leading the Applicant to exclude that portion from the remainder of the Subject Property via fencing in order to prevent the Applicant's cattle from impacting the wetlands. The Applicant has provided an aerial depiction of the property showing the roads and the configuration of the properties in the vicinity. Because this parcel is already considerably smaller than the average for agriculture designated properties, the loss of farmable acreage on this property significantly reduces its agricultural productivity.

The Applicant operates a show cattle operation with a consistent herd of approximately 100 cattle (excluding calves under one (1) year). This operation is spread over several properties in the vicinity. Due to the size and constraints of the Subject Property, it is only able to sustain ten (10) of the Applicant's cattle at any given time and houses calving mothers in the fall, segregation of individual cattle from the herd, or for strategic breeding of particular breeding pairs. The cattle operation requires the use of adjacent lands and it would not be possible to use the Subject Property independently for a herd of more than ten (10) cattle.

Compounding this issue, the Subject Property directly abuts the Salem UGB on the west and is approximately only 260' north of Acreage Residential 5 Acre Minimum Zoned (AR-5) property. When the Polk County Comprehensive Plan was first adopted, the County requested an exception for the land located 260' south of the Subject Property. Among the reasons for requesting the exception, Polk County explained that the area is situated on a hillside with a 30-60 percent slope, is immediately adjacent to the West Salem Urban Growth Boundary (UGB), and a large subdivision had been developed in the vicinity. PCCP, p.83. Additionally, Polk County determined that the overall impact of allowing rural residential development to occur was expected to be minimal, because a predominance of nonfarm uses already existed in that general area. Id.

Because the Subject Property is located just 175'-260' from this exception area, it faces substantially similar challenges to agricultural productivity that should have been considered at the time of the adoption of the PCCP. However, unlike those properties within the exception area, the Subject Property is 22.11 acres compared to the median 5-acre parcel in AR-5 exception area. Because the size of the parcel and the existing timber enables the Subject Property to be marginally more productive as forest use than those in the exception area as well as allowing for incidental grazing of the Applicant's cattle on the Subject Property, designating the Subject Property Farm/Forest is appropriate.

The PCCP explains that the intent of the Farm/Forest designation is "to define and protect areas identified as less highly productive agricultural lands in the comprehensive plan, including some lands identified as agricultural or forest land in the statewide planning goals." Polk County Comprehensive Plan (July 1, 2009), pg. 66. The purpose of the Farm/Forest designation is to "preserve such lands as long as possible for the production of agricultural and forest products, and to insure that the conversion of such lands to urban or nonfarm rural uses ... occurs in an orderly and economical manner." Id. Because of the challenges with the topography and surrounding residential and nonfarm rural uses discussed above, the Subject Property has historically been a less highly productive agricultural property. However, because the property is capable of being managed for forest and for the Applicant's small high-value cattle operation, designating the Subject Property as Farm Forest will support Polk County's goal of preserving such lands for as long as possible by emphasizing the more productive and accurate forest use for the Subject Property.

Alternatively, the Applicant proposes that to the extent the agricultural Comprehensive Plan designation is not erroneous, the designation is no longer appropriate due to the changing conditions in the surrounding area and that the purpose of the Comprehensive Plan will be carried out through

approval of the proposed Comprehensive Plan Amendment.

The increase in residential development and resulting traffic have made it more difficult for the Subject Property to be highly productive for agricultural use alone. The Farm/Forest designation better reflects the actual use and productivity of the Subject Property and the surrounding area. The Polk County Comprehensive Plan section regarding Forest Lands emphasizes the role of forest lands in the preservation and protection of watersheds, fish and wildlife habitats and other resource elements. As the surrounding area has become increasingly developed with residential uses, there has been associated habitat loss and relatedly residential development often destabilizes topsoil, which then poses a threat to adjacent agricultural uses. The shift in the urban-rural interface in this area supports the Applicant's argument that the management and conservation of forest lands in this area must be prioritized in order to offset the topsoil destabilization, increase in adjacent traffic, and the importance of forest lands in this area to help filter run off from adjacent residential uses before it enters the wetlands and ground water in the area, preserving natural resources in the vicinity in a manner that is consistent with the policies of the Farm/Forest designation, but which is not addressed or emphasized within the County's Agricultural designation.

Applicant Findings (September 25, 2023): The Goals and Policies in the Polk County Comprehensive Plan and the permitted uses in each zone have similarities, but as outlined in the Applicant's written statements, the emphasis in each of the comprehensive plan designations has key differences that are highlighted by the Subject Property. The goals and policies within the Agricultural designation focus on the economically productive use and protection of lands within the county for economically viable farm operations. The existing farm operation on the Subject Property is a small component of the total farm operation associated with the cattle. The farm is used for segregation of members of the herd or for breeding purposes. The entirety of the herd could not be properly cared for, or graze upon, the Subject Property, if the Applicant was unable to access other lands in the area. The pen associated with the barn on the Subject Property and a small amount of the adjacent pasture area is the only portion of the Subject Property that is usable for the cattle operation. This would be similarly true for other livestock operations within the meaning of a "Commercial Farm Enterprise" due to the steep sloping of the Subject Property and the wetlands that require buffering from livestock use, both to protect the riparian area and to prevent injury of the animals. While it is possible that some of the timber area could be converted into pasture land, the steep slopes in that portion of the Subject Property would still inhibit the ability to fully utilize that area for livestock, and while it may be possible to grow some crops in that portion of the Property, the risks of erosion and landslides would be elevated by the removal of the trees, putting the area of the Subject Property currently used by the Applicant and the existing dwellings in the area at risk. Due to these constraints on the Subject Property, the goals and policies focused on productive farming do not adequately reflect the use of the Subject Property and the Agricultural designation should not have been initially applied to the Subject Property.

Further, the use of the Subject Property, by necessity, requires the use and management of the Subject Property in a manner that actively manages the soil, water, fish and wildlife resources on the Subject Property. This awareness of and focus on natural resources is not present in the Goals and Policies in the Agricultural Designation, and, without the natural resource focus, ignores the fact that a significant amount of the Subject Property is unusable due to natural features. This is supported by further examination of a larger swath of the designations and zoning in the surrounding area. Enclosed with this letter is an excerpt of the county zoning map of the adjacent area, showing the zoning of the surrounding county properties along with an aerial depiction of the same area. When evaluating these two images together, you can see that many of the properties in the surrounding areas with similar topography and acreage size are designated either Urban Reserve, Acreage Residential or Farm Forest. This is especially true in segments to the northwest and southwest of the Subject Property, where there are ridge lines similar to the ones on the Subject Property and where the proportion of those slopes to farmable area would similarly restrict the ability to farm those parcels. Equally apparent is that the neighboring properties that are designated Agriculture are significantly less constrained by slopes, or, where heavily sloped like the Subject Property, those areas comprise a much smaller proportion of that property. Due to the proportion of

natural constraints that minimize the area usable for farming, the Subject Property should have originally be designated as Farm/Forest rather than Agriculture and the approval of the Application will correct this error.

In addition to the evidence provided by the Applicant in its written statement regarding the changes in the area due to the adjacent subdivision and the intensification of neighboring urban uses, the Applicant is providing as part of this response the current aerial depiction of the adjacent area noted above along with an aerial depiction of adjacent area from 1994. These aerials show that the surrounding area has shifted significantly over the period from 1994 to today, with a significant number of additional dwellings being added both within the adjacent UGB and on the parcels surrounding the Subject Property. While the Agricultural Comprehensive Plan and Policies focus primarily on the economic viability and efficiency of agricultural uses and lands, the Farm/Forest Policies focus on preservation and intentional transition into urban uses. Because the surrounding area is, by virtue of the surrounding residential uses, a transitional area, the continuing viability of any significant agricultural use in line with the Polk County Comprehensive plan is no longer possible. As outlined above, farming on the Subject Property is not economically viable, however, the Applicant has been able to consistently harvest timber from the Subject Property, which is less intensive in terms of labor and inputs, making it more compatible with the transitioning residential area. There have been significant changes in the surrounding area over the past approximately 30 years and the Farm/Forest Comprehensive Plan Goals and Policies better reflect this change in circumstances.

The fact that the existing uses on the Subject Property are permitted under both the existing and the proposed designation and zoning is not the focus of the applicable approval criteria, staff should be focused on whether the goals and policies can be carried out under the existing designation and zoning. When evaluating the differences between the two designations and zones, while both farm and forest uses are permitted, the focus on implementing the goals and policies of the designation and the intent and purpose of the zone is the primary inquiry. Applicant previously provided findings regarding the policies and goals associated with both Agricultural and Forest lands, as addressed in detail below, where a designation or a zone contains a mixture of farm and forest use, the goals and policies in both sections apply. In this instance the primary issue related to the Subject Property remaining solely within the Agricultural designation is that it fails to acknowledge the constraints of the neighboring residential uses as well as the limitations placed on the use of the Subject Property for a commercial farm enterprise.

The Applicant's position is that when weighing the factors in this particular instance, the Subject Property is best classified as "forestland" and that the designation and zoning should align with the predominate features of the Subject Property.

Staff Findings: This criteria is intended to evaluate whether the original PCCP designation that Polk County assigned to the subject property was erroneous and should be corrected to a more appropriate designation, or whether the changing conditions to the surrounding area constitute the need for a change to a more appropriate PCCP designation. The applicant is proposing a Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest. The applicant asserts that the criteria listed in PCZO 115.050(A)(1) and 115.050(A)(2) are both relevant to this request.

In evaluating whether the original Agriculture PCCP designation was erroneous, staff must evaluate the purpose and intent of the designation and how it relates to the historic management and conditions of the subject property. In addition, staff must then determine whether the Farm Forest PCCP designation would be the appropriate designation to correct this error.

According to Section 4 of the Polk County Comprehensive Plan, the areas designated Agriculture "*occur mainly in the eastern and central sections of the County. These areas are characterized by large ownerships and few non-farm uses. Topography in these areas is usually gentle, including bottom lands, central valley plains and the low foothills of the Coastal Range.*" The Plan further states that "*the areas designated for agriculture have a predominance of agricultural soils (SCS capability class I-IV).*" The intended purpose of the Agriculture Plan designation is to "*to preserve*

*agricultural areas and separate them from conflicting non-farm uses. Toward that end, the County will discourage the division of parcels and the development of non-farm uses in a farm area (Only those non-farm uses considered essential for agriculture will be permitted)."*²

Alternatively, the Farm Forest Plan designation applies to lands "*which, for the most part, are situated between the relatively flat agricultural areas and the foothills of the coast range.*" The intended purpose of the Farm Forest Plan designation is to "*provide an opportunity for the continuance of large and small scale commercial farm and forestry operations.*" The Plan further states that "*these lands are generally hilly, heavily vegetative, and have scattered residential development.*"³

The applicant states that Polk County's original designation of Agriculture was erroneous because the subject property has historically been predominately in forest use, there are substantial topographical characteristics that limit the subject property's ability to be managed predominately for farm use, and there has historically been scattered rural residential development in the area. The applicant provided a 1994 aerial photograph of the subject property that depicts a similar ratio of forest use to pastureland compared to what is observed on the property today, which could be described as an approximate 1:1 ratio. As depicted in Table 2 of this report, at least 56.1% of the subject property contains soils that are considered productive forestry soils capable of annually producing approximately 157 cubic feet of wood fiber per acre, and at least 90.1% of the soils on the property are considered to be high-value farmland soils. However, there isn't forest productivity data for approximately 9.8 acres of the subject property; therefore, these percentages could be higher.

According to the 2023 Assessor's report, the subject property currently receives a farm tax deferral. According to the applicant, the topographical characteristics of the subject property, such as steep slopes, existing hardwood, small parcel size and the presence of wetlands, limits the area that could be effectively managed for agricultural use to approximately 7.0 acres, whereas approximately 12.0 acres of the subject property are forested and have extensive slopes. The remaining acreage is dedicated to access roads and contains wetland areas. The applicant states that the 7.0 acres of pastureland is used to isolate up to 10 cattle at a time from a larger operation of approximately 100 cattle that is predominately managed on other properties in the vicinity. The 12.0 acres of forest land is managed for timber production and wetland enhancement and preservation. Based on the information provided by the applicant, staff finds that there is evidence in the record to support the applicant's conclusion that the subject property has historically been predominately in forest use.

The applicant asserts that the Agriculture PCCP designation does not account for the limitations discussed above, and thus, is erroneous. Consequently, the applicant contends that the Farm Forest PCCP designation would be more appropriate as it would better reflect the predominant forest use and the mixed farm and forest characteristics of the subject property. As discussed in more detail later in this report, the applicant provided an impacts analysis that characterizes the agricultural enterprise of the surrounding area. This analysis describes the area as containing significant patterns of rural residential development and small-scale farm and forest operations that more closely match the type of land use patterns that would be observed under the Farm Forest PCCP designation.

Although high-value soils are a component of what constitutes agricultural lands, staff concurs with the applicant that the Agriculture PCCP designation does not entirely reflect how the subject property has historically been managed, nor does it take into account the topographical features that may limit the ability for the subject property's high-value farmland soils to be effectively utilized for commercial farm use. The Agriculture PCCP designation is implemented in the PCZO through the Exclusive Farm Use (EFU) zone. While the EFU zone permits the propagation or harvesting of forest products and accessory buildings and structures related to the use and management of forest lands, the Agriculture designation does not reflect the predominance of forest use on the subject property or the physical limitations on the ability to manage the subject property for commercial

² Comprehensive Plan, pp. 55

³ Comprehensive Plan, pp. 59-60

farm use. Staff concurs with the applicant that the original Agriculture PCCP designation was erroneous to the extent that it does not best reflect the size, topography, and historical management of the subject property and does not account for the existing patterns of rural residential development in the surrounding area. For these reasons, staff finds that that the historic and existing conditions constitute the need to change the PCCP designation.

The applicant indicates that the criteria listed PCZO 115.050(A)(1) and 115.050(A)(2) are both relevant to this request; although, the criterion listed in Section 115.050(A) does not require compliance with both of these standards. As discussed above, staff finds the applicant has provided substantial evidence to demonstrate compliance with PCZO 115.050(A)(1); nevertheless, the applicant has asserted that this application also complies with PCZO 115.050(A)(2).

The applicant states that the Agriculture PCCP designation is no longer appropriate due to the changing conditions in the surrounding area. Specifically, the applicant asserts that the increase in residential development and resulting traffic have made it more difficult for the Subject Property to be highly productive for agricultural use alone and that the Farm/Forest designation better reflects the actual use and productivity of the Subject Property and the surrounding area. The applicant provided aerial photographs from 1994 and 2022 that depicts an increase in residential development to the surrounding area. Specifically, the establishment of a new subdivision in the incorporated city limits of Salem, located to the east of the subject property and Brush College Road. Staff reviewed Tax Assessor's records and Polk County Community Development records and found that in addition to the fact that the subject property is in close proximity to a subdivision located within the City of Salem to the east, each of the surrounding adjacent properties also contains at least one (1) single-family dwelling. Based on this review, staff concurs with the applicant that there has been a change in conditions to the surrounding area caused by an increase in residential development, which more closely aligns with the Farm Forest PCCP designation. As result, the Agriculture PCCP designation is no longer the most appropriate designation.

It is the applicant's belief that a Farm Forest PCCP designation would be the most appropriate designation for the subject property. OAR 660-006-0057 is applicable to this request, which states:

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

It is the specific intent of the Farm/Forest PCCP designation *"to ensure that land-use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan."* Goal 2 of the Forest Lands PCCP designation is intended *"to conserve and protect watersheds, fish and wildlife habitats, riparian areas and other such uses associated with forest lands."* The applicant asserts that the shift in the urban-rural interface of the surrounding area has resulted in habitat loss and topsoil destabilization that directly impacts the wetlands and riparian areas associated with Brush College Creek; therefore, the management and conservation of forest lands in this area must be prioritized in order to offset the impact caused by the shift in the surrounding area. The applicant states that the forest lands in on and around the subject property help filter run off from adjacent residential uses before it enters the wetlands and ground water in the area, preserving natural resources in the vicinity in a manner that is consistent with the policies of the Farm/Forest designation, but which is not addressed or emphasized within the County's Agricultural designation.

Based on the information provided by the applicant, staff finds that there is substantial evidence in the record to support the conclusion that neither Goal 3 nor Goal 4 can be applied alone to the subject property and that the mixed Farm/Forest designation would be the most appropriate PCCP designation to correct the erroneous designation and changing conditions to the surrounding area. Staff finds that the applicant's property and land management goals would be consistent with this proposed designation.

Based on the above findings, the application complies with these criteria.

- C. The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following: [PCZO 115.050(A)(3)]**
- 1. Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation. [PCZO 115.050(A)(3)(a)]**
 - a. Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts. [PCCP Section 2, Agricultural Lands Policy 1.1]**
 - b. Polk County will place lands designated as agriculture on the Comprehensive Plan Map consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33 in an exclusive farm use zoning district. [PCCP Section 2, Agricultural Lands Policy 1.2]**
 - c. Polk County will apply standards to high-value farmland areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. [PCCP Section 2, Agricultural Lands Policy 1.3]**
 - d. Polk County will provide for the protection of productive forest lands. Designated forest lands will be areas defined as one of the following:**
 - i. Predominately Forest Site Class I, II and III, for Douglas Fir as classified by the U.S. Soil Conservation Service;**
 - ii. Suitable for commercial forest use;**
 - iii. In predominately commercial forest use and predominately owned by public agencies and private timber companies;**
 - iv. Cohesive forest areas with large parcels;**
 - v. Necessary for watershed protection;**
 - vi. Potential reforestation areas; and**
 - vii. Wildlife and fishery habitat areas, potential and existing recreation areas or those having scenic significance. [PCCP Section 2, Forest Lands Policy 1.1]**
 - e. Polk County shall designate forest lands on the Comprehensive Plan Map consistent with Goal 4 and Oregon Administrative Rules Chapter 660, Division 6. [PCCP Section 2, Forest Lands Policy 1.2]**
 - f. Polk County shall zone forest lands for uses allowed pursuant to Oregon Administrative Rules Chapter 660, Division 6. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in Oregon Revised Statute 527.722, Polk County shall allow in the forest environment the following general types of uses:**
 - i. Uses related to, and in support of, forest operations;**
 - ii. Uses to conserve soil, water and air quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate for the forest lands;**
 - iii. Locally dependent uses such as communication towers, mineral and aggregate resources use, etc.;**
 - iv. Forest management dwellings as provided for in Oregon Administrative Rule 660-06-027; and**

- v. **Other dwellings under prescribed conditions.** [PCCP Section 2, Forest Lands Policy 1.4]
- g. **Polk County will encourage the conservation and protection of watersheds and fish and wildlife habitats on forest lands in Polk County in accordance with the Oregon Forest Practices Act.** [PCCP Section 2, Forest Lands Policy 1.8]
- h. **It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.**

It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan. The Farm/Forest Plan designation will be implemented through the use of the Farm/Forest (F/F) Zone which includes areas designated as Farm/Forest Overlay on the zoning map. [PCCP Section 4].

Applicant Findings (May 26, 2023): More than 50% of the Subject Property is currently being managed for forest use, predominately the growth and harvesting of Douglas Fir. The Applicant has provided a Soil Map for the Subject Property as part of its application which identifies the following soil classifications, which have the following levels of Forest Productivity per cubic feet per acre per year: [Staff note: Table is included in the record]

Approximately 19.56 acres of the Subject Property is mapped with high class soils, however, there are significant slopes over the property that make the soils less productive for typical row crops, with the approximately 12 acres currently in timber best suited for forest use.

The Polk County Comprehensive Plan acknowledges that the demand for timber and associated forest products has increased significantly over the past several years and is expected to continue to be a strong economic driver for Polk County going forward. This is especially true for the type of timber that is grown on the Subject Property which is often used primarily as framing and finishing lumber in housing, which has been a consistently strong commodity of the past decade, as demand for housing and the associated construction inputs continue to rise. The Subject Property has demonstrated through the existing timber use that the Subject Property it is suitable for commercial forest use and the continued management and possible expansion of the existing timber use on the Subject Property will help implement the goals and policies of the County to preserve and protect productive forestlands. In addition to the commercial forest uses on the Subject Property, the existing timber plays a critical role in filtering the water that runs across the Subject Property to the wetlands that constrain broad portions of the Subject Property. This watershed protection is a specific focus of the goals and policies of the PCCP for forestland which would not be met if the Subject Property were primarily used for farm use, which often requires the use of fertilizers and pesticides that can contaminate water when over utilized. The change in the designation of the Subject Property from agriculture to farm forest will allow the classification to adequately reflect and which meets the purpose and intent of the County's goals and policies better than the existing designation.

Staff Findings: The applicant is requesting the Farm Forest designation, which is an "agricultural/forest" designation as referenced in OAR 660-006-0015(2). As described by the applicant, the proposed Farm Forest Plan designation and corresponding FFO zoning would better reflect the topography and predominant forest use of the subject property and assist in the creation

and continuance of large and small scale commercial forest operations. The proposed FFO zone, which implements the Farm Forest Comprehensive Plan land designation, has an 80 acre minimum parcel size. That is the same as the current EFU zone. Consequently, the proposed change would not increase the potential parcel density of the subject property. The subject property is currently designated Agriculture on the Comprehensive Plan map. As a result, the subject property has already been determined to comply with the PCCP Agriculture Lands' goals and policies.

In order to determine whether the subject property could comply with the Goals and Policies of the Farm Forest PCCP designation, staff must evaluate whether the subject property can be identified as forest lands. OAR 660-006-0005(7) defines "Forest Lands" as follows:

(7) "Forest lands" as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:

- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and
- (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.

Based on the NRCS soil data for the subject property listed in Table 2 of this report, at least 90.1% of the subject property contains soils that are considered high value (Class I-IV) and at least 56.1% of the subject property contains soils that are considered productive forestry soils. Those soils are capable of annually producing approximately 157 cubic feet of wood fiber per acre. The applicant states that approximately 12.0 acres of the subject property are forested, with a portion of the forested area functioning as a natural watershed for Brush College Creek that helps to maintain the fish and wildlife resources that rely on the creek. Staff finds that the soil characteristics and the current and historic management practices of the subject property is consistent with the definition of "forest lands" in OAR 660-006-0005(7) and Goal 4. The applicant has provided significant evidence demonstrating that the subject property is considered forest land.

Based on the information submitted by the applicant, staff concurs with the applicant that the Farm Forest Plan designation is appropriate. The Farm Forest Plan designation, which would be implemented by the FFO zone, would allow the subject property to be used for an array of both commercial forestry and agricultural purposes.

As stated in Section 4 of the PCCP, it is the intent of the Farm Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that new permitted structures not pose limitations upon the existing farm and forest practices in the surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.

OAR 660-006-0015(2) is applicable to this request, which states:

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

Based on the findings above, staff concludes that applying the proposed Farm Forest Comprehensive Plan designation to the subject property would be consistent with the goals and policies of the PCCP. This analysis assumes that the FFO zone would implement the Farm Forest designation. The applicant has concurrently applied for a zone change on the subject property from EFU to FFO in application ZC 23-01. These applications shall be dependent on the approval of one another.

Based on the evidence submitted by the applicant and discussed above, the application complies with this criterion.

D. Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and [PCZO 115.050(A)(3)(b)]

Applicant Findings (May 26, 2023): A Comprehensive Plan Amendment from Agriculture to Farm/Forest does not require a goal exception if the corresponding zone designation is Farm/Forest Overlay. However, the proposed amendment must be compliant with the Statewide Planning Goals and related Oregon Administrative Rules.

Goal 1 - Citizen Involvement

Polk County has an established land use system which sets forth a procedure for amendments to the Polk County Comprehensive Plan and the Polk County Zoning Ordinances. This Amendment is subject to the notice and comment period set forth in the procedures code for land use applications and this Application will require a public hearing. The comprehensive plan amendment process includes opportunities for participation from the public. This goal is satisfied.

Goal 2 - Land Use Planning

Polk County has an established land use planning process and policy framework through the adoption of the Polk County Comprehensive Plan and the associated Polk County Zoning Ordinance which includes a process for reviewing and approving applications of this nature. This goal is satisfied.

Goal 3 -Agricultural Lands

The purpose of Statewide Planning Goal 3 (herein "Goal 3") is to preserve and maintain agricultural lands. Agricultural lands should be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space.

While both Farm/Forest (F/F) and Exclusive Farm Use (EFU) have been acknowledged as consistent with Goal 3, the decision to change the existing plan and zoning designations must comply with the Statewide Planning Goals. DLCD v Polk County, 21 Or LUBA 463 (1991).

In considering a plan and zone designation change, "one of the most important aspects of compliance with Goal 3 is satisfying the requirement that minimum lot sizes be 'appropriate for the continuation of the existing agricultural enterprise in the area.'" Dobson v. Polk County, 22 Or LUBA 701 (1992). Likewise, when a proposed amendment will cause the Subject Property to subject to a potential increase in nonfarm uses, findings must demonstrate that those uses must not impact the existing agricultural enterprise of the area. See DLCD v. Polk County, 27 Or LUBA 345 (1994). To satisfy this part of Goal 3, an Applicant must explain the "existing agricultural enterprise in the area" such that the County "may be in a position to adopt findings explaining why applying a zone which may allow the subject parcel to be further divided is consistent with the Goal 3 requirement that the minimum lot size used by the county in its exclusive farm use zones be appropriate for the continuation of the existing agricultural enterprises in the area." DLCD v. Polk County, 21 Or LUBA 463 (1991). To determine the existing agricultural enterprises in the area, it is not required that the applicant "identify each agricultural enterprise in excruciating detail" but should explain the "nature of the agricultural enterprises in the affected area in such a manner as to enable an analysis of whether rezoning the subject parcels from EFU to F/F would allow the continuation of the identified existing agricultural enterprises." DLCD v. Polk County, 22 Or LUBA 701, n.4 (1992). As stated above, Applicant has conducted an impacts analysis of a 2,000-acre study area surrounding the Subject Property and prepared an impact analysis. The study area was selected to include the most accurate sampling of farm practices surrounding the Subject Property. As the properties to the east, northeast, and, south of the Subject Property are developed with residential property, the majority of the farm practices that have been surveyed are located to the west of the property, as those are the enterprises that the Applicant must demonstrate the Application will not impact to a degree that continuation of the enterprise would not be possible.

The surrounding area includes a mix of both EFU and F/F zoned lands. Of the 102 parcels in the surrounding area, 68 parcels are zoned EFU and 34 parcels are zoned F/F. The agricultural use on these properties includes a mix of both large and small scale farming operations. The largest commercial agricultural operations surrounding the Subject Property include Ditchen Land Company, Byers Farm Holdings, Roserock, LLC that has approximately 140 acres of vineyards; and Shudel Enterprises, a Christmas Tree operation that owns approximately 198 acres to the Southwest of the property. Smaller scale commercial farming operations include Whitman Nursery; Meyer Nursery & Orchards, with about 80 acres dedicated to growing fruit, nut, shade, and flowering trees; Northridge Vineyard, and X Novo Vineyard. In addition to these established commercial farming uses, the Applicant's family members' own and lease to the Applicant approximately 24.05 acres across Brush College Road NW, which it uses for grazing of its cattle operation. Due to the size and constraints that exist on the Subject Property, the cattle spend significant time on the adjacent property, which are further from the residential uses surrounding the Subject Property and the adjacent 24 acres. The Subject Property is used primarily for isolating segments of the herd and for breeding purposes.

The Applicant is not proposing a modification of the established use on the Subject Property as part of this application, rather, the Applicant is proposing the continuation of the existing farm use on the Subject Property and is requesting this change in order to better reflect the current and historic use of the Subject Property. While the requested modification could allow for some uses not permitted in the EFU Zone, the majority of the uses that are not permitted in the EFU zone would require the submittal of an application which would be subject to review and approval by the County and, potentially, the recordation of a declaration regarding the presence of farming operations in the vicinity, which would be executed and recorded prior to the construction of any such use on the Subject Property. One such use is a Forest Template Dwelling, which is a residential use which County's heavily restrict in the EFU Zone. However, single residential uses are restricted, but not prohibited, under the EFU, and while the Forest Template Dwelling might be easier to acquire approval for in this instance due to the existing timber use on the Subject Property, the Applicant could apply for and likely receive approval for a farm dwelling in the event the Subject Property was redeveloped in order to emphasize the farm use on the Subject Property. However, as stated above, the Subject Property is better suited for forest use due to the current and historic uses on the Subject Property, the significant slopes which constrain the ability to raise crops, and the presence of wetlands. A single residence added to the Subject Property, or the addition of any of the conditional uses permitted on the Subject Property, will require a demonstration by the future applicant that the proposed use will not adversely impact the resource uses in the vicinity.

Additionally, the County's Code will continue to restrict the Applicant's use of the Subject Property for non-farm/forest related uses, limiting the potential for urban and residential development through the adopted land use process. For example, if the Applicant were to apply for a Forest Template Dwelling, the Applicant would be required to demonstrate that the proposed dwelling would not: (1) force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use; (2) significantly increase the cost of farm or forest practices on surrounding lands devoted to farm and forest use; (3) materially alter the stability of the overall land use pattern of the area; or (4) dramatically change the cumulative impact of existing residential uses on the stability of the land use pattern in the area.

As outlined above, the area surrounding the Subject Property is best classified as a urban to rural transitional area, with urban and rural residential parcels to the east and south and farm/forest uses to the north and west. The addition of another residence in this area would not impact the adjacent farm and forest uses, especially as access to the Subject Property is already established. The adjacent uses that share the established access are primarily rural residential and the addition of a single residence will not impact any of the resource uses on the adjacent properties, as it would not be located on the portions of the Subject Property which are severely sloped, limiting the potential siting of an additional dwelling to the portions of the Subject Property adjacent to the existing residence on the abutting property. This clustering away from adjacent farm uses, combined with the rural residential nature of the surrounding area mean that the siting of a forest template dwelling on

the Subject Property would not force a significant change on the adjacent farm or forest uses in the vicinity.

Similarly, the addition of a Forest Template Dwelling on the Subject Property would not significantly increase the cost of farm or forest practices on the surrounding lands. In the event the Applicant, or a successor in interest, was interested in siting a dwelling on the Subject Property it would be sited near the existing residence on adjacent lands, buffering the residential use from farm or forest uses on adjacent lands. In addition to the fact that Oregon's right to farm laws limit the liability of farmers for the negative externalities typically associated with farming (dust, pesticide use, noise, smells, etc.) the most practical location for any proposed dwelling would be buffered, meaning that any mitigating efforts that might be voluntarily undertaken by adjacent landowners would be unnecessary. Further, as the access to and from the Subject Property is already established, and the use of that access is primarily constrained to adjacent residential users, there are not anticipated to be any cost increases for the adjacent farm uses stemming from the addition of a single dwelling clustered near other, similar rural residential uses.

The minimum lot size in the EFU is 80 acres which is the same minimum lot requirement in the requested Farm Forest Overlay designation. As indicated above, the Subject Property is approximately 22 acres in size, which is a substandard parcel under either designation, or the implementing zones associated with those designations. The Applicant is not proposing further division of the Subject Property, and, due to the 80 acre minimum in the Farm Forest Overlay, additional parcelization under the Farm Forest Overlay will be restricted in the same manner as it is under the current designation. In addition, even assuming the Applicant decided to add a template dwelling on the Subject Property, the configuration of the parcel will remain the same and that dwelling would be able to use the existing access roads already developed on the Subject Property serving the rural residentially zoned properties to the south and southwest. Furthermore, siting a single dwelling on the Subject Property would have a relatively minimal impact on the forested area, which is the portion of the Subject Property that is heavily sloped.

As outlined above and confirmed by Applicant's analysis of the study area, the land development pattern is consistent with a urban to rural transitional zone, with a pattern that shifts from rural residential to larger farm and forest operations as you move west from the City's UGB. The potential addition of a single residence (template dwelling) to a substandard parcel that will remain in Farm/Forest does not materially change the character of the area, especially when the most practical location for siting a dwelling is adjacent to existing residential uses on an abutting property. Within this context, an additional dwelling in this location would be consistent with the nature of the area, rural residential uses associated with smaller farm/forest operations which are reflective of the parcelized nature of the surrounding area. Further, under the Forest Template Dwelling criteria, additional residences added in the future would not change the likelihood of other dwellings being added to the vicinity, barring changes in the zoning of the surrounding properties because it could not be used to justify a future division or the siting of additional dwellings within a resource zone. Due to these restrictions inherent in the proposed zoning, a single additional template forest dwelling will not materially alter the stability of the overall land use pattern of the area or dramatically change the cumulative impact of existing residential uses on the stability of the land use pattern in the area.

The topography of the site, continuance of the existing farm/forest uses on the Subject Property, and the restrictions placed on the Subject Property by the proposed zoning and comprehensive plan designation {including restrictions on further division of the Subject Property} will ensure that the Therefore, changing the existing plan and zoning designations for this parcel will not impact the existing agricultural enterprises in the area. The proposal is consistent with Goal 3.

Goal 4 - Forest Lands

The purpose of Statewide Planning Goal 4 is to conserve forest lands for forest uses. As discussed in detail above, more than 50% of the Subject Property has consistently been managed for forest use. Those areas not managed for forest are suitable for agricultural purposes, which is a permitted use in the Farm Forest Overlay. A shift in the designation of the Subject Property to Farm Forest

will allow for a designation that better aligns with the established forest use on the Subject Property. The Application is consistent with Goal 4.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces

Applicant is not proposing development as part of this Application and while there are wetlands on the Subject Property, a shift from one resource designation to another is not anticipated to impact wetlands or riparian corridors. Moreover, timber lands have been acknowledged as an important component in the filtration of water and in the prevention of erosion, helping protect the natural resources on the Subject Property. There are no scenic or historic areas or open spaces on the Subject Property. The Application is consistent with Goal 5.

Goal 6 - Air, Water, and Land Resources Quality

Applicant's request will not present any greater impact with regards to air, water, and land resource quality of the state than any discharges that result from customary farm uses. This Application will not result in development on the Subject Property and any subsequent development would be subject to review by the County for any proposed impact on air, water, or land quality. Because no issue regarding air, water, and land resource quality is presented by the Application, it is consistent with Goal 6.

Goal 7 - Areas Subject to Natural Hazards

There are no identified natural hazards on the Subject Property. Goal 7 is not applicable.

Goal 8 - Recreational Needs

The Application is a change from Exclusive Farm Use to Farm Forest and properties set aside for recreational purposes. Goal 8 is not applicable.

Goal 9 - Economic Development

The Application proposes a shift to a land use designation that better fits the existing economic use of the Subject Property. Shifting to a Farm Forest designation will allow for the highest and best economic use of the Subject Property. The Application is consistent with Goal 9.

Goal 10 - Housing

The Amendment would only affect parcels located outside of adjacent city limits and urban growth boundaries and is therefore not subject to Goal 10.

Goal 11 - Public Facilities and Services

The Application does not affect the need for public facilities and services in the vicinity. The Application is consistent with Goal 11.

Goal 12 - Transportation

The Amendment would not significantly impact any existing or planned transportation facility as the use on the Subject Property will remain the same and there is no proposed development on the Subject Property at this time. The Application is consistent with Goal 12.

Goal 13 - Energy Conservation

The Amendment would not significantly affect the use of energy resources on the Subject Property. The Application is consistent with Goal 13.

Goal 14 - Urbanization

The Application proposes a change from one natural resource designation to another. The use on the Subject Property will continue to be a resource use on rural land and does not affect urban or urbanizable land. The Application is consistent with Goal 14.

Goal 15 - 19 Willamette River Greenway, Estuarine Resources, Coastal Shore Lands, Beaches and Dunes, and Ocean Resources.

Goals 15-19 are not applicable because the Subject Property is not within the Willamette River Greenway nor an ocean or coastal related resource.

OAR 660-006-0057 is applicable to this Application and states:

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

As discussed in detail above, more than fifty (50%) percent of the Subject Property has been managed for forest purposes since at least 1955. The remaining usable acres on the Subject Property have been managed for farm purposes. The FFO zone, which implements the Farm Forest Plan designation and Goals 3 and 4, is appropriate because it would allow for both farm and forestry uses on the Subject Property, allowing for the property to be more highly productive for both agricultural and forestry use. Due to the topography and existing and historic timber use on the Subject Property, application of solely Goal 3 is not appropriate in this instance and due to the existing and historic farm use on the Subject Property, the application of solely Goal 4 is not appropriate. This Application is consistent with OAR 660-006-0057.

Applicant Findings (September 25, 2023): The requested amendment to the Polk County Comprehensive Plan is a change from the Agricultural Designation/EFU Zone to the Farm Forest Designation/Zone. As the Applicant is proposing a change from a farm use zone to a mixed use zone (e.g. Farm/Forest), under OAR 660-006-0057 requires a demonstration that the Subject Property "contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone." OAR 660-006-0057.

In this instance, the Subject Property has historically been primarily used for forest use, as shown in a historical images provided by Applicant as part of this incomplete response which contrasts with a current aerial of the Subject Property, also enclosed. The aerial images of the Subject Property show that vast majority of the Subject Property has been in timber since at least 1994, while the Applicant believes that the majority of the area has always been in timber due to the steep slopes throughout the Subject Property in combination with the wetlands associated with the creek that divides a portion to the north east corner from the existing barn that is used for the Applicant's cattle operation. Due to these natural constraints, regardless of the high class soils, it is highly unlikely that the Subject Property can independently support agricultural uses and, while some forestry uses are permitted under the existing zoning and comprehensive plan designation, the emphasis remains on farm use, which is not the highest and best use for the Subject Property. This is supported by the fact that only a small facet of the Applicant's cattle operation is able to be operated on the Subject Property, there are no circumstances under which the totality of the cattle operation could be operated on the Subject Property, independent of leased properties in the surrounding area. Similarly, commercial crop farm uses are not feasible on the Subject Property due to slopes and the presence of the wetlands. While there are some particularized agricultural uses that may be commercially viable on the Subject Property, a mix of farm/forest with an emphasis on forestry uses better represents the characteristics of the Subject Property and allows for better consistency with the comprehensive plan policies in that zone, which focus on the commercial use of a combination of farm and forest uses and which better provide for the maintenance and restoration of the creek and associated wetlands which are a predominate feature on the Subject Property and which are not addressed as permitted uses in the EFU Zone. In instances where the predominate use on the Subject Property is a forest use, redesignation to a mixed farm/forest zoning and comprehensive plan designation is consistent with both Goals 3 and 4 and is more accurate than the existing EFU zoning and Agricultural designation.

In the County's Incomplete Letter, staff referenced LUBA Case 91-044 stating that the Applicant "must address Goal 3 because the zone change could result in additional parcelization and residential development that would not otherwise be permitted in the EFU zone." Any land division permitted in the FFO would be limited to those permitted under PCZO 138.130. When the partitions that would also be permitted under PCZO 136.070, which allows for partitions in the EFU, from

this list the following divisions would be permitted PCZO 138.130(H) or (J), however, PCZO 138.130(J) requires a minimum lot size of 35 acres, which is larger than the Subject Property.

The land divisions permitted in PCZO 138.130(H) focus primarily on the ability to create substandard parcels for utilities (telecommunications infrastructure), roadways and public infrastructure, and alternative energy source siting (geothermal, wind, etc.), however, there are several uses that focus on the use of the Subject Property as "forestland," including timber processing facilities and storage and repair facilities for logging equipment. In order to receive approval of a division further dividing the Subject Property, an Applicant would be required to demonstrate that (1) the use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and (2) the use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. PCZO 138.100.

Due to the proximity of the Subject Property to the City of Salem's UGB, the significant amount of residential uses in the area, and the developed network of roads and utilities it seems unlikely that barring significant changes in the vicinity, the majority of these uses would be able to provide the justification needed to support the establishment of a substandard parcel in this area. This is especially true given the manner in which access is provided to the Subject Property, which crosses Brush College Creek, and the presence of wetlands on the Subject Property. Any Applicant seeking to establish a logging equipment storage or repair facility or a timber processing facility would need to establish that the increased traffic associated with the proposed use would not interfere with the adjacent farm properties and would need to demonstrate that they would be able to operate their use without a risk to the adjacent wetlands. It is highly unlikely that under the current zoning restrictions, further division of the Subject Property below the current acreage would be approved by the County and if they were approved, it would first require a finding by the County that the proposed division was consistent with Goal 3.

The Subject Property is a substandard parcel and any approved development would be constrained by the steep slopes, heavily wooded areas, and the presence of a stream and its associated wetlands, which encumber a significant amount of the flattest area on the Subject Property. Such limitations, in combination with the restrictions on use and division discussed above, mean that the ability to divide the Subject Property is already sufficient to meet Goal 3 while any uses developed on the Subject Property would be so limited as to not have the type of off-site impacts that would lead to significant barriers to the operation of farm uses or lead to significant costs to such operations. While there are agricultural enterprises in the surrounding area, as identified in Applicant's written statement, the majority of these uses are physically adjacent to, but geographically separated from the Subject Property in terms of both the transportation system and access to any public infrastructure in the area. The steep slopes provide extensive buffering along the western side of the Subject Property and Brush College Creek separates the Subject Property from the properties to the north, all of which are substandard parcels. Due to this physical separation, development that is consistent with the permitted and conditional uses in the FFO zone would be unlikely to impact any agricultural uses with the possible exception of the farm uses to the immediate north and south of the Subject Property, which is addressed in detail below. The proposed change from EFU to FFO will not allow for additional division of the Subject Property or the possibility for the development of uses that do not comply with Goal 3 or which have a significant impact on the surrounding Agricultural uses.

With these additional findings, the Applicant has demonstrated that the Subject Property will be subject to the minimum lot size standard (80 acres in the FFO) to the same degree that it would have been under the current EFU zoning, in compliance with the standard set put in LUBA Case 91-044.

Additionally, the Applicant would like to note that in the time between the issuance of LUBA Case 91-044, the FFO has been adopted by the County and acknowledged by DLCD as consistent with the Statewide Planning Goals. This was not the case in 1991 when that case was decided. Therefore, permitted and conditional uses in the FFO are per se compliant with Goal 3 and Goal 4, provided they meet the applicable approval criteria. While the Applicant is required to explain why its

particular proposal is consistent with Goal 3 and will not impact the stability of land use patterns in the area and the way in which the change to the Subject Property does not risk non-compliance of the vicinity with Goal 3, reading LUBA Case 91- 044 as requiring the Applicant to demonstrate that each and every use that would be permitted on the Subject Property is consistent with Goal 3 is an overstatement of LUBA's holding. The Applicant has provided sufficient evidence in the record that its proposal is consistent with Goal 3.

3. Applicant's 2,000 Acre Study Demonstrates Goal 3 Compliance

The County identifies in its Incomplete Letter that in order to receive approval of a non-farm dwelling in the EFU, the Applicant would be required to provide a cumulative impact statement that evaluates the impact on the adjacent farm uses as well as the impact of the existing non-farm dwellings in the area. As stated above in response to a request for additional findings related to Compliance with Goal 3, the Applicant is required to demonstrate why Applicant's current proposal complies with Goal 3, under Hood River Valley PRO v. Hood River County, 67 Or LUBA 314 (2013), where the types of farm uses in the vicinity are homogenous, an analysis of the potential impact on these agricultural enterprises can be generalized in nature, the Applicant is not obligated to provide the type of cumulative impact analysis Staff is requesting, rather, because any future use on the Subject Property requires a factual scenario that is largely dependent on the actual proposed use, Applicant's obligation to provide such findings can be generalized when (1) the property is largely homogenous in nature; and (2) the record reflects that there are no significant impacts on farm practices on adjacent or more proximate parcels. Sisters Forest Planning Committee v. Deschutes County, 48 Or LUBA 78, 84 (2004). As part of this response the Applicant has provided an updated Surrounding Property Inventory, Exhibit 108-2, which is attached hereto and incorporated herein by this reference, which identifies the predominate use on the various properties in the study area identified by the Applicant in its written statement. Below, the Applicant provides the findings addressing the generalized agricultural uses on the surrounding properties which are indicative of the type of impacts that may result from the development of conditional uses in the FFO, in line with its obligation under Goal 3. It is the Applicant's position that the development of a forest template dwelling provides a meaningfully proxy for the types of impacts that might occur under a conditional use permit in the FFO and that the findings set forth in this Incomplete Response adequately address Applicant's obligation to provide generalized findings regarding potential future impact on the Agricultural Enterprises in the vicinity, which are homogenous in nature. The Applicant's study area demonstrates that approval of the Application is in compliance with Goal 3.

4) Supplemental Evidence Regarding Impact of Potential Future Non-Farm Template Dwelling Impacts

a) Impacts on Existing Agricultural Enterprise of the Area

As previously provided by the Applicant, the majority of the existing commercial farm enterprises in the vicinity are somewhat insulated from the Subject Property due to the topography of the vicinity, which is characterized by rolling hills and forested areas. These natural buffers isolate the Subject Property to an area that is characterized predominately as rural residential with several small scale, owner operated, farm operations in the immediate vicinity. As detailed in applicant's written statement, several of these properties are leased by the Applicant as part of its cattle operation, suggesting that the location of an additional forest template dwelling would enhance, rather than negatively impact, the timber and farm uses on the Subject Property, which comprise a portion of the main agricultural enterprise in the area. While the Applicant will discuss in detail below the impacts on the immediately adjacent properties, the bigger picture impact on the agricultural enterprise in the area is expected to be minimal. To the extent there are unique farm operations in the area, they are small parcel operations that co-exist with rural residential uses as a byproduct of being located in an area that has transitioned from purely agricultural to one that is best characterized as rural reserve, with disjointed pockets of urban levels of residential development throughout the vicinity. As a result of this residential development, any farm operations in the area have already been required to operate in a way that accounts for urban levels of traffic and

residential uses, especially those agricultural uses adjacent to the Subject Property which would necessarily be required to choose between taking their goods through West Salem or taking a longer route west through rural Polk County. The addition of a single family residential dwelling on the Subject Property would not impact the adjacent agricultural enterprises in any articulable way, rather, the addition of a dwelling on the Subject Property would largely conform to the character of the area, which is comprised of smaller parcel resource use, the vast majority of which appear to be developed with a residence for the owner of each parcel.

b) Impacts on Current Farm Operation on the Subject Property

As previously discussed, the Applicant is likely to submit an application for a Forest Template Dwelling upon approval of this Application. The reason for applying for an additional dwelling on the Subject Property would be to provide the Applicant's daughter with a residence that is in the proximity of the farm and timber operations on the Subject Property, to allow for more assistance in the management of these operations and to facilitate the type of generational transfer that is common in farm families. By providing an additional dwelling unit that is located on the Subject Property, a template dwelling will allow for onsite management of the cattle that are segregated onto the Subject Property and better support the timber use by providing a physical presence on the Subject Property in instances of emergency. Besides the addition of a house on the Subject Property, which is proposed in an area adjacent to the existing dwelling on the neighboring property, there would be minimal, if any, impact on the surrounding farm uses.

As previously noted by the Applicant, there are established access roads and utilities in this area which are available to serve an additional dwelling without any impact to the adjacent areas, meaning that the impact of development would be restricted to the footprint of the house itself.

Regarding additional traffic, the standard used in the ITE Manual for a single residential dwelling is the addition of ten (10) additional trips per day, which is not significant, and is well below the "reasonable worst-case scenario" that would be used as a point of comparison for permitted uses in the zone, meaning that while it is possible that the addition of a house will increase traffic beyond the current farm/forest use, if the Applicant were to develop the Subject Property as a more intensive permitted farm use, there are many permitted uses that would be significantly more disruptive to the adjacent farm uses than the addition of a single template dwelling.

Regarding additional noise, there would be minimal measurable noise impact on the surrounding area. While the construction of an additional dwelling may, for a short period of time, be unpleasant to the adjacent land owners, the only farm animal operation in the area is owned by the Applicant, meaning that there may be some disruption to the adjacent humans, but not enough to meaningfully impact any of the adjacent farm uses. Further, both forest and farm uses are acknowledged to be noisy, dusty, and associated with unpleasant odors, requiring the execution of declaratory statements acknowledging that residential uses in these areas are expected to bear such impacts. The short term construction period will be consistent with the noises associated with any commercial farm development associated with the Subject Property.

The Applicant acknowledges that the primary concern of the County is likely focused on the addition of an additional dwelling unit in the vicinity providing a basis for future determinations that the area is committed to rural residential uses, focusing on some of the same arguments that the Applicant is making in this Application. However, it is the Applicant's position that this is not necessarily the case.

Unlike the other parcels in the area that might be eligible for a forest template dwelling, the Subject Property is proximate to Brush College Road NW, has developed access, is proximate to utilities, and is immediately adjacent to the Urban Growth Boundary. This mix of factors and the adjacent residential development makes the Subject Property an anomaly in this area, with the other parcels of similar size and similar zoning already being developed with existing dwellings. In the event a forest template dwelling were approved on the Subject Property, it would not serve as a basis for allowing additional rural residential development in the surrounding area, not least because under the state statutory scheme such a determination is explicitly prohibited by the forest template test.

The Applicant is proposing a shift from one resource zone to another, in the interest of supporting the existing forest and farm uses on the Subject Property. Beyond the addition of a dwelling to facilitate the management of those operations, there will not be a negative impact on the adjacent farm uses, rather, the additional supervision and management by family members residing on the Subject Property has the potential to enhance the forest/farm operations and to allow for better management of those operations.

Impacts of Future Template Dwelling would not Commit Additional Surrounding EFU zoned properties to non-farm use, especially those immediately to the north and south of the Subject Property

The farm uses to the north and south of the Subject Property are not managed in conjunction with the farm or timber uses on the Subject Property, each of these operations are managed individually by the owners of each property.

While there is visual overlap for portions of the pastures along the common property lines, these areas are not under common management, but rather emphasize the degree to which the Subject Property can not be meaningfully farmed efficiently by the owners of the Subject Property. The Bartruff Family to the south mows their area, which abuts a road that runs along the southern portion of the Subject Property. There is not any overlap with this property. The property adjacent to the northeast corner of the Subject Property, which is segregated from the remainder of the Subject Property by Brush Creek, is not utilized by Stephen Blackburn as part of a farm operation, rather the Applicant mows Mr. Blackburn's property in exchange for the hay on that Property, which the Applicant either uses or sells. In the event a forest template dwelling were located on the Subject Property, it would be located as closely as possible to the improved access road along the western edge of the Subject Property, which is not in the vicinity of either of these portions of the Subject Property. Rather, the Blackburn Family has an existing Dwelling in the vicinity of the proposed location, away from its own farm use, and as stated above, Brush College Creek and the associated wetlands would buffer the Blackburn property from any impact by an additional dwelling.

The only commercial farm operation that is accessed via Brush College Road NW is the land owned by Jackson Family Investments III LLC, an approximately 75.44 acre parcel to the SW of the Subject Property. This property is currently being logged but appears to be split fairly evenly between farm and forest uses and it is unlikely that the addition of a residence on the Subject Property would impact any farm operation on this property, especially given the number of residences adjacent to that parcel. Additionally, this property is zoned Acreage Residential and is not designated for protection as EFU property.

The vicinity has developed in a way that will allow for the siting of an additional forest template dwelling on the Subject Property in a manner that will not impact the surrounding farm uses.

Staff Findings: The applicant is proposing a Comprehensive Plan Map amendment and Zoning Map amendment with the primary intention of having a PCCP designation that better reflects the historical topography and management of the subject property. The applicant indicates that they would possibly pursue a small tract forest "template" dwelling on the subject property in the future if these applications were approved. Although farm and nonfarm dwellings can be authorized in the EFU zone, subject to review and approval of a land use application, PCZO Chapter 136 does not list forest template dwellings as a criteria that can be utilized to authorize a dwelling in the EFU zone. Findings pertaining to each of the Oregon Statewide Planning Goals are listed below.

Goal 1 - Citizen Involvement

Polk County has an established land use system which sets forth a procedure for amendments to the Polk County Comprehensive Plan and the Polk County Zoning Ordinances. This application requires two (2) public hearings and is subject to the notice requirements listed in PCZO Chapter 111. Citizen involvement is advanced by providing appropriate notice and an opportunity to comment on this application. Notice for comments and of any and all public hearings will be mailed appropriately and timely by staff pursuant to the requirements listed in PCZO 111.340-111.370. The

comprehensive plan amendment process includes opportunities for participation from the public. Staff concurs with the applicant and finds that the application would be in compliance with Goal 1.

Goal 2 - Land Use Planning

The applicant states that Polk County has an established land use planning process and policy framework through the adoption of the Polk County Comprehensive Plan and the associated Polk County Zoning Ordinance which includes a process for reviewing and approving applications of this nature. Staff concurs with the applicant and finds that the application would be in compliance with Goal 2.

Goal 3 -Agricultural Lands

OAR 660-006-0057 is also applicable to this request, and states the following:

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

As described by the applicant, the subject property has historically been predominately managed for forest use. In addition, the property owner manages portions of the pastureland on the subject property for the segregation of cattle associated with a small-scale cattle operation that is primarily managed on another property in the vicinity. The applicant states that due to the limited pastureland, extensive slopes, and the presence of Brush College Creek and associated wetlands, the property owner is unable to manage the cattle operation entirely on the subject property and predominately manages the subject property for timber production.

Because the proposed PCCP designation is a mixed agriculture/forestry designation that implements both Goals 3 and 4, there would be additional uses that could be permitted on the subject property that would not otherwise be allowed under the current Agriculture designation. As depicted in Table 2 of this report, the subject property is classified as high-value farmland. Although many of these new uses are not allowed on high-value farmland in the EFU zone, PCZO Chapter 138 does not specifically restrict land uses based on soil types, other than dwellings, so some conditional uses permitted in the FFO zone would not be allowed on high value farm land in the EFU zone. However, the local ordinance is precluded by State law when it can be interpreted as being less restrictive than State law. Because the applicant is requesting a Comprehensive Plan amendment to a mixed agriculture/forest designation, both Agriculture and Forest Goal policies must be applied to all land uses other than dwellings, as evidenced by OAR 660-006-0050(1) and (2), which state:

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

The application of this administrative rule by Marion County was evaluated by the Oregon Land Use Board of Appeals (LUBA) in its ruling of *Silver Creek Solar, LLC vs. Marion County* (LUBA Case No. 2023-045). In this case, LUBA found that “if a use is authorized in ORS Chapter 215 and in OAR 660-006-0025, requirements of both sections may apply under OAR 660-006-0050(2) because both sections are applicable to the use.” Based on this opinion, it is understood that if a use other than a dwelling is not allowed on high-value farmland in the EFU zone, the county must also apply the high-value farmland restriction to that same use in the FFO zone. Although PCZO Chapter 138 does not explicitly make this clear, the opinion from LUBA in the above referenced case states that the Goal 3 standards pertaining to high-value soils restrictions must apply to uses in the FFO zone.

The applicant provided a chart comparing those uses in the EFU (on high-value farmland) and FFO zones that are permitted outright or subject to review and approval of a land use application. Many of the additional uses identified by the applicant that would be allowed on the subject property under the Farm/Forest designation are primarily conditional uses that are limited to lands not classified as high-value farmland, thus, would not be permitted on the subject property as a result of the proposed Comprehensive Plan and Zoning Map amendment. Consequently, most of the additional permitted uses would be related to forestry management, such as log scaling and weigh stations, forest management research and experimentation facilities, and temporary portable facilities for the primary processing of forest products.

Further to this point, the applicant states that Polk County's mixed farm/forest PCCP designation and FFO zone have been acknowledged by DLCD as consistent with the Statewide Planning Goals 3 and 4. Therefore, permitted and conditional uses in the FFO zone are per se compliant with Goal 3 and Goal 4, provided they meet the applicable approval criteria. Staff concurs with the applicant on the basis of this contention, and because any uses allowed on the subject property, other than dwellings, would still be subject to Goal 3 regulations listed in ORS Chapter 215 and OAR Chapter 660 Division 33, the proposed Comprehensive Plan designation would be in compliance with Goal 3.

While the majority of the property would continue be managed for timber production and the small-scale cattle operation, the applicant indicates that the property owner would likely pursue a "Small Tract Template Dwelling" application, which is a criteria that could be utilized to apply for a dwelling in the FFO zone, but not in the EFU zone. Farm dwellings are permitted uses under the Agriculture PCCP designation. In order to establish a primary farm operator dwelling, the primary farm operator would need to demonstrate compliance with the criteria listed in PCZO 136.040(A), which in part is based on a gross income standard from the sale of farm products. However, nonfarm dwellings in the EFU zone require extensive analysis to determine compliance with Statewide Planning Goal 3.

As referenced above, OAR 660-006-0050(2) indicates that the county shall apply either OAR Chapter 660, Division 6 or 33 standards for the siting of a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993. As discussed in this report, the applicant has asserted that the subject tract is predominately in forest use. When proposing to change a Zoning/ Comprehensive Plan designation that could result in the ability to utilize a different set of criteria for a nonfarm dwelling, such as a future forest template dwelling, an applicant would need to show consistency with Goal 3; otherwise an exception to Goal 3 would be required. LUBA made this determination in *DLCD vs. Polk County* (LUBA Case 91-044). In that case, LUBA found that a proposal to change the zone from EFU to FF must address Goal 3 because the zone change could result in additional parcelization and residential development that would not otherwise be permitted in the EFU zone. Although the EFU zone and FFO zone have the same minimum parcel size, which would not result in additional parcelization, additional types of non-farm dwelling applications could potentially be pursued in the FFO zone that would not otherwise be permitted in the EFU zone. Therefore, demonstrating compliance with Goal 3 is required, including findings to demonstrate that a future non-farm dwelling would not impact the existing agricultural enterprise of the area.

The land division standards for the EFU zone and FFO zone are listed under PCZO 136.070 and 138.130, respectively. The applicant's narrative indicates that based on the current conditions of the subject property, any applicable land division that could be permitted under PCZO 138.130 could also be permitted under PCZO 136.070, except for those land divisions authorized by PCZO 138.130(H) and (J).

PCZO 138.130(H) is intended to allow for the division of mixed agriculture/forest lands for nonfarm uses, except dwellings, pursuant to OAR 660-006-0055(2)(a), for uses set out under OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o), provided that such uses have been approved by the Planning Director. The division of agricultural land for nonfarm uses is also authorized by State law, pursuant to OAR 660-033-0100(6), for uses set out under ORS 215.213(1)(c) or (2) and

ORS 215.283(1)(c) or (2), provided that these uses have been approved. These uses set out in State law for agricultural lands and mixed agricultural/forest lands refer to the same land uses for the creation of substandard sized parcels; therefore, staff finds that the land division standards listed under PCZO 138.130(H) could not lead to any additional parcelization that would not otherwise be allowed on lands designated for Agriculture in the PCCP. Further, the applicant states that establishing a use that would allow for the division of the subject property under this criteria would be unlikely due to the significant amount of residential development, roads, and utilities in the vicinity of the vicinity.

PCZO 138.130(J) is intended to allow for the division of mixed agriculture/forest lands to facilitate a forest practice, as defined in ORS 527.620. The applicant's narrative pertaining to PCZO 138.130(J) states:

“When the partitions that would also be permitted under PCZO 136.070, which allows for partitions in the EFU, from this list the following divisions would be permitted PCZO 138.130(H) or (J), however, PCZO 138.130(J) requires a minimum lot size of 35 acres, which is larger than the Subject Property.”

Staff understands the applicant to be asserting that a land division permitted under PCZO 138.130(J) limits the resultant parcel to 35 acres; however, this claim isn't entirely accurate. These land division regulations derive from OAR 660-006-0055(2)(c), which states:

To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of section (1). Parcels created pursuant to this subsection:

- (A) Are not eligible for siting of a new dwelling;*
- (B) May not serve as the justification for the siting of a future dwelling on other lots or parcels;*
- (C) May not, as a result of the land division, be used to justify redesignation or rezoning of resource land; and*
- (D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:
 - (i) Facilitate an exchange of lands involving a governmental agency; or*
 - (ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.**

As listed under subsection (D) of this rule, land divisions permitted under PCZO 138.130(J) may result in the creation of a parcel less than 35 acres under specific circumstances. Therefore, additional parcelization could hypothetically occur on the subject property under the proposed designation, if the division was for public benefit or if the property was part of a much larger forestland tract. As discussed above, in *DLCD vs. Polk County* (LUBA Case 91-044), LUBA determined that a change from EFU to FF must demonstrate compliance with Goal 3 if additional parcelization could be allowed as a result of the change. This case was evaluated through the lens of whether the additional parcelization could lead to additional residential development and impede the existing agricultural enterprise in the area. LUBA found it was vital for the county to make findings explaining “whether the minimum lot size standard that will be imposed under the F/F zone is sufficient to comply with the requirement of Goal 3 that the minimum lots size “be appropriate for the continuation of the existing commercial agricultural enterprise of the area.””

As discussed above, the standards listed under OAR 660-006-0055(2)(c) are intended to allow for the creation of parcels to facilitate a forest practice. As discussed in this report, the impacts analysis submitted by the applicant indicates that in addition to the existing agricultural enterprise, small and

large-scale forestry operations are a common land practice within the study area. In addition, there are many forest-management related uses that are permitted in the EFU zone, such as the propagation or harvesting of a forest product or accessory buildings or structures related to the use and management of forest lands. Based on LUBA's opinion, the nature of the land division standards listed under OAR 660-006-0055(2)(c), and the applicant's narrative, staff finds that there is substantial evidence in the record to demonstrate that any additional land divisions that could be permitted as a result of the proposed Comprehensive Plan Amendment would be appropriate for the continuation of the existing commercial agricultural enterprise of the area, thus, in compliance with Goal 3.

In *Dobson v. Polk County* (LUBA Case No. 91-148 and 149) LUBA determined that in order to sufficiently demonstrate that a Comprehensive Plan Amendment from Agriculture to Farm Forest and Zoning Map Amendment from EFU to FF would be in compliance with Goal 3, the applicant must explain the "nature of the agricultural enterprises in the affected area in such a manner as to enable an analysis of whether a Comprehensive Plan Amendment from Agriculture to Farm Forest would allow the continuation of the identified existing agricultural enterprises." To address how the proposed Farm Forest PCCP designation would be in compliance with Goal 3, the applicant prepared an impacts analysis that was selected to include the most accurate sampling of farm practices in the surrounding area and evaluate the addition of one (1) nonfarm dwelling on the subject property. The applicant indicates that if a forest template dwelling were to be pursued on the subject property under the FFO zone, it would likely be established on the southeastern portion of the property due to the location of the existing access on the subject property, its proximity to existing utilities and development in the surrounding area, and the fact that it would be buffered from surrounding resource-zoned properties by Brush College Creek and forested areas. The applicant relies on the tentative location of the potential forest template dwelling for portions of the impacts analysis, however, staff acknowledges that nothing in this application would ensure that a future dwelling would be limited to the location identified by the applicant. Nevertheless, the location identified by the applicant appears to be a rational location for a dwelling based on the factors identified by the applicant.

The impacts analysis provided by the applicant indicates that the resource lands in the surrounding area are located to the north and west of the subject property, with the incorporated city limits of Salem to the east and south, along with properties that are designated in the PCCP as Rural Lands (Acreage Residential- Five Acre (AR-5) Zone) and Urban Reserve (Suburban Residential (SR) Zone). Within the 2,000 acre study area, the impacts analysis identified 98 resource-zoned (EFU and FF) tax lots. Of these 98 tax lots, 63 are identified as Agricultural lands within the EFU zone and 35 are identified as Farm Forest lands within the FF zone. For each tax lot, the applicant provided a brief description of how the property is predominately managed. Based on the impacts analysis, the most common practices on Agricultural lands in the study area are vineyards, orchards, pasture land, and row crops. The most common practices on Farm/Forest lands in the study area are timber management, pasture land, and row crops. The applicant states that many of the farm and forest practices on lands in the study area are homogeneous in nature and that the land management on the properties adjacent to the subject property are representative of the enterprise of the surrounding area. For this reason, the applicant asserts that the impacts to the surrounding area can be generalized by evaluating the potential impact of the adjacent properties, and justifies this stance by citing LUBA's opinions in *Hood River Valley PRO v. Hood River County*, 67 Or LUBA 314 (2013) and *Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78, 84 (2004).

The LUBA cases cited by the applicant are related to the application of ORS 215.296(1)(a) and (b), which pertain to the standards for conditional use permits that evaluate whether the proposed use would force a significant change in accepted farm or forest practices on surrounding lands devoted for farm or forest use; or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted for farm use. ORS 215.296(1) is only applicable to uses that are allowed under ORS 215.213(2) or (11) or ORS 215.283(2) or (4), which are uses that Polk County identifies as conditional uses in PCZO Chapter 136 and 138. A forest template dwelling is not a conditional use because it is a use that is allowed under OAR 660-006-0027(3) and ORS 215.750(2); therefore,

ORS 215.296(1) is not applicable to the analysis of a forest template dwelling. While the cases referenced by the applicant may not be entirely relevant, staff concurs with the applicant to the extent that potential impacts to adjacent lands can be indicative of impacts to the general study area due to the fact that many of the uses are homogeneous in nature.

In addressing the potential impacts of one (1) nonfarm dwelling to the existing adjacent properties, the applicant asserts that the impacts would be minimal, as the farm enterprises in the vicinity are insulated from the subject property by natural buffers such as creeks, rolling hills, steep ridges, and forested areas. The applicant states that if a nonfarm dwelling were established on the subject property, it would likely be established in the southeastern portion of the property due to the location of the existing access on the subject property, its proximity to existing utilities and development in the surrounding area, and the fact that it would be buffered from surrounding resource-zoned properties by Brush College Creek and forested areas. The applicant states this location would be the most viable due to inhibiting topographical characteristics that prevent most of the property from being developed on.

The applicant's impacts analysis indicates that the majority of the properties in the study area can be characterized predominately as rural residential with several small-scale, owner-operated farm operations. The two (2) adjacent tax lots to the north are managed predominately for timber, with small portions of pastureland. The property to the south is managed predominately for pastureland and contains a forested area on the western portion. The adjacent property directly to the west is an approximately 124.0 acre tract that contains approximately 80.0 acres dedicated to a nursery and orchard that grows fruit, nuts, and flowering trees. The applicant identified the larger scale agricultural operations located within the study area, which include Ditchen Land Company (approximately 951.3 acres predominately managed for pastureland), Byers Farm Holdings (approximately 156.9 acres predominately managed for pastureland and timber), Roserock, LLC (approximately 140 acres of vineyards), and Shudel Enterprises (approximately 198.3 acres predominately managed for a Christmas Tree operation). The applicant also identified the smaller scale commercial farming operations in the study area such as Whitman Nursery, Northridge Vineyard, and X Novo Vineyard.

With the incorporated city limits of Salem, UGB, and AR-5 exception lands to the east and south of the subject property, the commercial farm operations identified by the applicant are all located to the north and the west. In addition, the future dwelling would be accessed from Brush College Road to the east, which is a road that serves many properties that are zoned SR, AR-5, or within the incorporated city limits of Salem, whereas all of the commercial farm operations identified in the study are accessed using different roads further to the west and north of the subject property. This suggests that any additional traffic generated from a future dwelling would have limited impacts on the commercial farm operations in the study area. The impacts analysis further indicates that the addition of one (1) forest template dwelling could enhance the timber and farm uses on the subject property, which comprise a portion of the main agricultural enterprise of the study area, by allowing the primary operator of these farm and forest practices to live on-site.

The impacts analysis cites the existing level of residential development in the surrounding area and the manner in which residential development has historically co-existed with the surrounding farm and forest operations as evidence that any potential impacts of one (1) dwelling would be minimal because the farm operators in the area have historically had to account for these mixed rural-residential patterns, including urban levels of traffic and utilities. For these reasons, the applicant states that an addition of one (1) nonfarm dwelling would not negatively impact the agricultural enterprise of the surrounding area and would largely conform to the character of the area.

In determining whether the addition of one (1) nonfarm dwelling on the subject property would be consistent with Goal 3, staff must consider the existing and historical residential development patterns of the surrounding area. Of the 98 tax lots in the study area, the study identified 52 tax lots that contain at least one (1) dwelling. Of those 52 tax lots, 41 contained at least one (1) dwelling in 1993, whereas 11 of the tax lots have had dwellings established sometime after 1993. This does not account for replacement dwellings established after 1993; therefore, there could have been

additional tax lots developed with dwellings prior to 1993. Many of the properties identified in the impacts analysis are substandard sized tax lots for the EFU and FF zones. Specifically, 55 of the 63 tax lots located within the EFU zone are below the minimum parcel size of 80.0 acres and 33 of the 35 tax lots located within the FF zone are below the minimum parcel size of 40.0 acres. Staff acknowledges that tax lots are not entirely indicative of the legal parcel sizes and configurations and that some of these tax lots may be a part of larger tracts. Specifically, there are a total 13 tax lots that compose a total of four (4) different EFU tracts over 80.0 acres in size, and a total of four (4) tax lots that compose one (1) FF tract over 40.0 acres in size. When these larger tracts are taken into account, there are 71 tax lots in the study area that are substandard sized properties for their respective zones.

Staff reviewed Polk County Assessor's records, Polk County Community Development records, and Polk County GIS, and confirmed that the applicant has appeared to accurately characterize the surrounding land uses and property ownership within the 2,000 acre study area. Based on the impacts analysis provided, staff concurs with the applicant that the study area can be characterized as a transitional area that has been largely committed to mixed rural-residential uses despite the underlying PCCP designation and zoning of the area.

The purpose of this analysis is to determine whether a Comprehensive Plan change from Agriculture to Farm Forest would be in compliance with Goal 3, which is determined by evaluating whether the requested Amendment would allow for the continuation of the identified existing agricultural enterprises of the surrounding area. Based on the impacts analysis provided by the applicant, it is evident that the surrounding area contains a mixture of large and small scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Based on the subject property's proximity to the City of Salem and the natural buffers that isolate the subject property from the identified commercial farm operations, together with the existing and historical patterns of rural residential development and utilities in the surrounding area that the agriculture enterprise is already oriented to account for, staff finds that there is substantial evidence in the record to support the conclusion that the addition of one (1) potential future nonfarm dwelling on the subject property would not materially alter the overall land use pattern of the surrounding area and would allow for the continuation of the identified agricultural enterprises of the area.

For the reasons described above, staff concurs with the applicant and finds that the proposed Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest would be in compliance with Goal 3.

Goal 4 - Forest Lands

The purpose of Statewide Planning Goal 4 is to conserve forest lands for forest uses. As discussed in this report, the applicant has asserted that at least 50% of the Subject Property has consistently been managed for forest use. The applicant also states that those areas not managed for forest are suitable for agricultural purposes, which is a permitted use in the Farm Forest Overlay. The Farm Forest Plan designation, which would be implemented by the FFO zone, would allow the subject property to be used for an array of both commercial forestry and agricultural purposes. The FFO zone has been acknowledged by DLCD to be consistent with both Goals 3 and 4.

Staff concurs with the applicant and finds that the application would be in compliance with Goal 4.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces

According to the National Wetlands Inventory (NWI) Map, Salem West Quadrangle, there are inventoried freshwater forested and shrub wetlands located on the subject property that are associated with Brush College Creek. According to the Polk County SRA map, Brush College Creek is an inventoried significant fish bearing stream, which is a Goal 5 resource. The applicant is not proposing any development as part of these applications, nevertheless, this report serves as notice to the property owners of the presence of fish habitat and significant wetland areas on the subject property, and the possible need for State or Federal permits. Prior to any development activity within a significant resource riparian area on the subject property, the property owner shall

coordinate a management plan with the Oregon Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) if the activity is identified in PCZO Section 182.070(A) and (C) as a conflicting use. If a management plan is required, the property owner shall submit the management plan coordinated with DSL, ODFW, and any other appropriate State and Federal agencies to the Polk County Planning Division prior to issuance of permits for the development activity pursuant to PCZO 182.040 and 182.050. Structural development shall be prohibited within the riparian and significant wetland setback area. Within the setback area, all trees and at least 50 percent of the understory shall be retained, excluding the exceptions authorized pursuant to PCZO Section 182.050(B)(1)(a-e). The riparian setback area shall be measured from the bank top perpendicular to the stream and shall average three times the stream width and shall be a minimum of 25 feet but not more than 100 feet.

While there are wetlands on the subject property, a shift from one resource designation to another is not anticipated to impact wetlands or riparian corridors. Moreover, timber lands have been acknowledged as an important component in the filtration of water and in the prevention of erosion, helping protect the natural resources on the Subject Property. There are no scenic or historic areas or open spaces on the Subject Property.

Staff concurs with the applicant and finds that the application would be in compliance with Goal 5.

Goal 6 - Air, Water, and Land Resources Quality

The applicant states that this request would not present any greater impact with regards to air, water, and land resource quality of the state than any discharges that result from customary farm uses. The applicant further asserts that this application will not result in development on the subject property and any subsequent development would be subject to review and approval of a land use application, including a review of any proposed impact on air, water, or land quality. The applicant concludes that no issue regarding air, water, and land resource quality is presented by the application, it is consistent with Goal 6.

Staff concurs with the applicant and finds that the application would be in compliance with Goal 6.

Goal 7 - Areas Subject to Natural Hazards

Based on a review of tools accessed through Polk County GIS, staff finds that the subject property is not located within an inventoried natural hazard area.

Staff concurs with the applicant and finds that the application would be in compliance with Goal 7.

Goal 8 - Recreational Needs

The subject property is not within an identified or inventoried recreational area. There are no parks or other recreational designations involved with the subject property. Staff finds that the application would be in compliance with Goal 8.

Goal 9 - Economic Development

The applicant states that this application proposes a shift to a land use designation that better fits the existing economic use of the Subject Property. The applicant asserts that shifting to a Farm Forest designation will allow for the highest and best economic use of the Subject Property. Staff concurs with the application and finds that the application would be in compliance with Goal 9.

Goal 10 - Housing

The applicant states that the Comprehensive Plan Amendment would only affect parcels located outside of adjacent city limits and urban growth boundaries. The subject property is therefore not subject to Goal 10.

Staff concurs and finds that the application would be in compliance with Goal 10.

Goal 11 - Public Facilities and Services

The Application does not affect the need for public facilities and services in the vicinity. Staff concurs and finds that the application would be in compliance with Goal 11.

Goal 12 - Transportation

The applicant asserts that the Comprehensive Plan Amendment would not significantly impact any existing or planned transportation facilities as the management on the subject Property would remain the same and there is no proposed development on the subject property at this time. Uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could be established under the current EFU zone of the subject property. Staff does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, staff does not believe that the proposed change would create a significant impact on traffic use on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

Staff concurs and finds that the application would be in compliance with Goal 12.

Goal 13 - Energy Conservation

The Amendment would not significantly affect the use of energy resources on the Subject Property. Staff concurs and finds that the application would be in compliance with Goal 13.

Goal 14 - Urbanization

The Application proposes a change from one natural resource designation to another. The applicant asserts that the use on the Subject Property will continue to be a resource use and would not affect urban or urbanizable land. Staff concurs and finds that the application would be in compliance with Goal 14.

Goal 15 - 19 Willamette River Greenway, Estuarine Resources, Coastal Shore Lands, Beaches and Dunes, and Ocean Resources.

Goals 15-19 are not applicable because the Subject Property is not within the Willamette River Greenway nor an ocean or coastal related resource.

For the reasons described above, staff finds that the applicant has provided substantial evidence to demonstrate that the proposed Comprehensive Plan Amendment would be in compliance with all relevant Oregon Revised Statutes, Oregon Administrative Rules, and Statewide Planning Goals. The applicant has addressed all applicable Oregon Statewide Planning Goals. No goal exception is necessary in order to approve these applications.

The application complies with this criterion.

- E. Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.**
[PCZO 115.050(A)(3)(c)]

Applicant Findings (May 26, 2023): The Subject Property is adjacent to the City of Salem's Urban Growth Boundary. The shift from one resource use designation to another resource use does not violate any applicable intergovernmental agreements. The proposed change is not expected to add traffic to the surrounding transportation system or require the expansion of public or private services or utilities in the area. The proposed change satisfies this approval criterion.

Staff Findings: The subject property is not located within an urban growth boundary or within an incorporated city. As a result, no intergovernmental agreements are applicable to this application. This criterion is not applicable to the proposed amendment.

2. Findings for Zone Change, File ZC 23-01:

- A. A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation to another, after the proposed change has been reviewed and a**

recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. [PCZO 111.110]

Staff Findings: The authorization for a zone change is provided under PCZO 111.275. A zone change is subject to recommendation by the Hearings Officer after holding a public hearing pursuant to PCZO 111.190 and 115.030 and decision by the Polk County Board of Commissioners after holding a public hearing pursuant to PCZO 111.200 and 115.030. Planning Division staff reviews the proposed zone change, and prepares a report and recommendation for the Hearings Officer. The Hearings Officer makes a recommendation to the Polk County Board of Commissioners for a final local decision. This application has been processed in accordance with these procedural requirements of the PCZO.

B. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- 1. The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275(A)]**
 - a. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.**

It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan. The Farm/Forest Plan designation will be implemented through the use of the Farm/Forest (F/F) Zone which includes areas designated as Farm/Forest Overlay on the zoning map. [PCCP Section 4]

Applicant Findings (May 26, 2023): The Applicant is requesting as part of this Application a change in the Subject Property's Comprehensive Plan Designation from "Agriculture" to "Farm/Forest." The purpose of the Farm/Forest zone is "to provide for the full range of agricultural and forest uses for such lands" and providing conformity with the Farm/Forest objectives and policies of the Polk County Comprehensive Plan." PZCO 138.010. Applicant's corresponding request to change the zoning of the Subject Property from "Exclusive Farm Use" to "Farm/Forest Overlay" will ensure that the uses on the Subject Property will be consistent with the comprehensive plan designation. Upon approval of the Application, this criterion will be satisfied.

Staff Findings: As described in Section 4 of the PCCP, the Farm Forest Plan designation is implemented by both the FF and FFO zones. The purpose of the FFO zone is to provide *“for the full ranges of agricultural and forest uses while providing for the maximum property tax benefits that*

are available.”⁴ The single difference between the FF and FFO zones is that the FF zone has a 40 acre minimum parcel size and the FFO zone has an 80 acre minimum parcel size. The subject parcel is currently zoned EFU, which has an 80 acre minimum parcel size; therefore, zoning the subject property FFO would not allow for additional parcel density beyond what is currently permitted. However, the subject property could be divided by utilizing the land division standards listed in PCZO 138.130(H) or (J). As discussed under subsection (1)(D) of this report, staff finds that any additional land divisions that could be permitted as a result of the proposed Comprehensive Plan amendment and zone change would be appropriate for the continuation of forestry operations and/or the commercial agricultural enterprise of the area, thus, in compliance with Goal 3.

The uses in the FFO zone have already been determined to be consistent with the Farm Forest Plan designation, and the management of the subject property for timber management, a small-scale cattle operations. The materials provided by the applicant demonstrate that the subject property is suited to be managed consistently with the purpose and policies of the Farm/Forest Plan designation. Therefore, staff concludes that the application complies with this criterion.

C. The proposal conforms with the purpose statement of the proposed zone; [PCZO 111.275(B)]

- a. The Farm/Forest (F/F) Zone is designed to provide for the full range of agricultural and forest uses for such lands, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral, wildlife habitat, etc.) and conformity with the Farm/Forest objectives and policies of the Polk County Comprehensive Plan.**

Upon periodic revision of the Polk County Comprehensive Plan, the lands within the F/F designation shall be reviewed by the County Commissioners as to their continued appropriateness in such a designation or, alternatively rezoning to a more appropriate category.

As with other natural resource zones, there are isolated lands within the F/F Zone which have no actual or potential use for agricultural or forest purposes. In those cases, other non-natural resource uses may be permitted only as provided in this Chapter and in the Polk County Comprehensive Plan. Such uses must not be adverse to accepted agricultural or forest practices. Further, consistent with the diverse character of this zone and recognizing that the actual and potential land use conditions vary from intensive to extensive cultivation and use, the Board of County Commissioners has adopted this zone to deal with myriad potential uses, while recognizing the primary orientation of this zone towards farm and forest uses. [PCZO 138.010]

Applicant Findings (May 26, 2023): As discussed above, more than 50% of the Subject Property is managed for forest use. The remaining acreage is used for grazing for the Applicant’s small cattle operation. The proposed FFO zone allows for “farm use” and “use and management of forest lands” as outright permitted uses on a unified property, allowing consistency with the goals and policies associated with both resource uses. As shown above, the Subject Property is currently employed in both Agricultural and Timber uses, but shifting the zoning to acknowledge the mix of uses on the Subject Property will better allow the uses on the Subject Property to comply with both the Polk County Comprehensive Plan policies and goals and Statewide Planning Goals 3 and 4, by acknowledging that the Subject Property is intended to provide for the implementation of both resource zones. As the historic and existing uses on the Subject Property are consistent with the purpose statement of the FFO and the Applicant is not proposing a change of use in association with this Application, no adverse impacts are anticipated as a result of the change. In the event development is proposed in the future, it would be restricted to the uses permitted in the FFO zone,

⁴ PCZO 138.010.

requiring, in most cases, a demonstration that the future development would not adversely impact the surrounding properties in resource use. The Application satisfies this criterion.

Staff Findings: The applicant has proposed a zone change from EFU to FFO. The FFO zone is contained in chapter 138 of the Polk County Zoning Ordinance. The stated purpose of the Farm Forest Zone is to *"provide for the full range of agricultural and forest uses for such land, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral etc.) and with the Farm/Forest objectives and policies of the Comprehensive Plan."*⁵ Thus, the proposed FFO zone allows "farm use" and "use and management of forest lands" as outright permitted uses.

The subject property is currently managed for timber production and the cattle-ranching associated with a small-scale cattle operation managed on another property in the vicinity. Although the underlying zone of the property is EFU and the subject property currently receives a farm tax assessment, the applicant has asserted that the subject property has historically been in forest use, and that there are topographic conditions that limit the property's ability to be managed entirely for farm use. The applicant is proposing to continue to current management practices on the subject property, but states that the current EFU zone and Agriculture PCCP designation are not entirely reflective of the topographical characteristics and management of the subject property, whereas, the FFO zone and Farm Forest PCCP designation more closely reflect these characteristics and practices. The Farm Forest Zone was adopted by Polk County to accommodate property owners who want to manage their land in both farm and forest types of uses. Based on the current and historical management and topography of the subject property, staff finds that the proposed zone change would conform to the purpose and intent of the FFO zone.

Future development of the subject property would be restricted to the uses permitted in the FFO zone. The applicant indicates that they would likely to pursue a forest template dwelling on the subject property in the future upon approval of these applications. As discussed in this report, the PCZO Chapter 136 allows for some types of farm and nonfarm dwellings to be established in the EFU zone. However, the criteria for a Forest template dwelling cannot be utilized to establish a nonfarm dwelling in the EFU zone, but it could be utilized in the proposed FFO zone, subject to review and approval of a land use application.

The applicant has proposed future uses on the property that are either outright permitted in the FFO zone, or could be permitted through an administrative review process. If the applicant seeks to establish a forest template dwelling in the future, the applicant would need to submit an application and address all applicable criteria listed for a small tract "template" dwelling.

Staff concludes that the applicant's proposal is consistent with the purpose and intent of the FFO zone.

D. The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275(C)]

Applicant Findings (May 26, 2023): As discussed above, the surrounding area is comprised of a mixture of farming and forest activities. The adjacent land uses are either agricultural or timber uses, as shown in the Applicant's inventory, with some residential uses within the neighboring City of Salem's UGB. Lands adjacent to urban growth boundaries are often seen as transitional zones, with residential properties abutting the UGB larger than a typical urban single family residential property. This is true of the adjacent single family residential properties to the east of the Subject Property, the majority of which are around five acres in size, and which are separated from the Subject Property buffered by an approximately 8.03 acre strip of property belonging to the United States government. These residential properties are well buffered from the existing farm and forest uses on the Subject Property.

The Applicant has submitted as part of this Application a comparison of uses between EFU and FFO Zones, See Exhibit. The majority of the uses designated as "Permitted Uses" are allowed in

⁵ PCZO 138.010.

both zones, with the primary difference between the two being that the uses permitted in the FFO Zone include conservation and wildlife activities which are not explicitly permitted in the EFU Zone. This emphasis on conservation activities better aligns with the Applicant's existing use on the Subject Property, which includes wetland preservation, timber management, and staging of the Applicant's cattle.

The Applicant is not proposing a modification of the existing and historic uses on the Subject Property, which are consistent with the various uses on the adjacent property. Further, under ORS 30.930, there is a statutory right for the owners of resource properties to continue resource uses, even when those resource uses are adjacent to residential properties. The "right to farm" laws apply to the Subject Property under the existing zoning and will not change under the proposed FFO zoning. The uses permitted in the FFO zone are consistent with the land use pattern in the surrounding area, where resource uses are expected and will not be modified via this Application. Therefore, the change in the zoning will not significantly adversely affect the allowed uses on the surrounding lands. This criterion is satisfied.

Staff Findings: The applicant is proposing a Zoning Map Amendment to change the zoning of the subject property from EFU to FFO. The subject property is approximately 22.1 acres in size. As depicted in Table 2 of this report, the subject property is classified as high-value farmland. Based on a review of the Polk County Zoning Map, the properties contiguous to the subject property are zoned EFU, SR, or within the City of Salem. The surrounding area also includes properties zoned AR-5 and FF. The subject property is currently managed for a forest operation and cattle-ranch. The applicant indicates that they intend to continue these management practices.

The FFO zone is intended to provide for the full range of agricultural and forest uses for such land, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral etc.). The FFO zone is also intended to facilitate the Farm/Forest objectives and policies of the Comprehensive Plan. Thus, with limited exceptions, the FFO zone permits those uses that are allowed in both the TC and EFU zones. It is commonly accepted that properties that have the same permitted uses are generally compatible with one another; therefore, those uses permitted in the FFO that are also permitted in the EFU zone would generally be compatible with one another.

The EFU zone permits some uses that are intended to support forestry activities, such as the propagation or harvesting of forest products and accessory buildings and structures related to the use and management of forest lands. However, there are other uses that would be allowed under the FFO zone that are not permitted in the EFU zone, some of which are related to forestry activities and others that are not related to resource management.

The applicant provided a chart comparing those uses in the EFU (on high-value farmland) and FFO zones that are permitted outright or subject to review and approval of a land use permit. Those uses that would be permitted outright in the FFO zone include firearms training facilities that existed prior to 1992, caretaker residence for parks and hatcheries, and private fee hunting operations without any accommodations. Those uses subject to a conditional use permit and related to forest management include log scaling and weigh stations, forest management research and experimentation facilities, and temporary portable facilities for the primary processing of forest products.

PCZO Chapter 138 does not specifically restrict land uses based on soil types, other than dwelling, so some conditional uses permitted in the FFO zone would not be allowed on high value farm land in the EFU zone. However, the local ordinance is precluded by State law when it can be interpreted as being less restrictive than State law. Because the applicant is requesting a Comprehensive Plan amendment to a mixed agriculture/forest designation, both Agriculture and Forest Goal policies must be applied to all land uses other than dwellings, as required by OAR 660-006-0050(1) and (2), which state:

- (1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR Chapter 660, divisions 6 and 33.

- (2) Uses authorized in Exclusive Farm Use zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993.

The application of this statute by Marion County was evaluated by the Oregon Land Use Board of Appeals (LUBA) in its opinion in *Silver Creek Solar, LLC vs. Marion County* (LUBA Case No. 2023-045). LUBA found that “if a use is authorized in ORS Chapter 215 and in OAR 660-006-0025, requirements of both sections may apply under OAR 660-006-0050(2) because both sections are applicable to the use.” Based on this opinion, it is understood that if a use other than a dwelling is not allowed on high-value farmland in the EFU zone, the county must also apply the high-value farmland restriction to that same use in the FFO zone. Although PCZO Chapter 138 does not explicitly make this clear, the opinion from LUBA in the above referenced case states that the Goal 3 standards pertaining to high-value soils restrictions also apply to uses in mixed Farm/Forest zones.

The applicant has not indicated that they would establish any of those uses. Those conditional uses that are allowed on high-value farmland would require an application with the County, and the applicant would need to demonstrate how their specific proposal would comply with all conditional use standards, including a demonstration that “[t]he use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands” [PCZO 138.100(A)]. That analysis and opportunity for public involvement through the conditional use permitting process would ensure that conditional uses would not significantly adversely affect allowed uses on adjacent lands.

As discussed, the 2,000 acre study area provided by the applicant identifies 35 tax lots that are zoned FF. The FF zoned properties in the study area are adjacent to properties that are zoned AR-5, SR, and EFU, and the City of Salem, similar to that of the subject property. This suggests that if the subject property were to be rezoned to FFO, it would remain within the character of, and in harmony with, the surrounding area. The study area provides substantial evidence that there are already a significant number of properties designated for FF that have not adversely affected any allowable uses on properties zoned AR-5, SR, EFU, FF, or within the City of Salem.

In consideration of the above factors, staff finds that the application complies with this criterion.

E. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property;
[PCZO 111.275(D)]

Applicant Findings (May 26, 2023): The only existing improvement on the Subject Property is a loft barn that is approximately 1,368 square feet in size, meaning that the need for public facilities are fairly limited and adequate for the Subject Property as it is currently developed. The Subject Property is located within the Willamette Educational Service District, served by the Salem-Keizer School District and Chemeketa Community College, and is located within the Spring Valley Rural Fire Protection District. The demand for and availability of these services will not be impacted by the proposed zone change as the Applicant is not proposing development of the Subject Property in association with this Application.

Regarding future development, in the FFO Zone, development is limit to a small subset of uses which are typified by a requirement to provide on-site water, storm water, and waste management. In the event such development is proposed in the future, that applicant will be required to demonstrate that proposed development can be adequately supported by public facilities, services, and transportation networks in place, ensuring that any future development will be required to either demonstrate that either the requisite public and private infrastructure will be sufficient for the proposed development or that it can be provided concurrently with the development. This criterion is satisfied.

Staff Findings: The applicant is proposing to change the zoning of the subject property from EFU to FFO. With limited exceptions, the FFO zone permits the uses allowed in both the EFU and TC

zones. The FFO zone allows limited residential development, and commercial development is largely restrained to activities in conjunction with farm and forest use on the subject property.

The applicant states that they are likely to pursue a forest template dwelling on the subject property if this application is approved. Similar to a host of other permitted uses in the TC, EFU, and FFO zones, a dwelling requires road access, electricity, water, and the disposal of wastewater. The applicant would be responsible for obtaining all necessary permits from the Polk County Environmental Health and Building Divisions and the Polk County Public Works Department. The subject property is not located within a public water utility district. Based on the information provided, it appears the subject property contains an existing well. Nevertheless, permits may also be needed from the Oregon Department of Water Resources if the applicant plans to drill a well or collect and use surface water. These permits may place limitations on water intensive uses that are out of scale with the land and water resources available on the subject property. As discussed, the subject property is in an area that is adjacent to the City of Salem, and is located within the area served by Spring Valley Rural Fire Protection District and Salem School District #32J.

The subject property has frontage along and direct access to Brush College Road, a Major Collector as identified in the Polk County Transportation Systems Plan, Figure 3. If the proposed Comprehensive Plan amendment and Zoning Map amendment are approved, the applicant would be able to establish the uses permitted in the FFO zone, assuming all applicable development standards could be met. Uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could be established under the current EFU zone of the subject property. Staff does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, staff does not believe that the proposed change would create a significant traffic impact on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

Based on the above information, staff concludes that there are adequate public facilities, services, and transportation networks in place to support the proposed zone change. Approval of this proposed zone change and Comprehensive Plan amendment would not authorize the applicant to establish a use that would exceed transportation, water and/or sewage disposal services until such services are planned or available. There have been no identified effects on local schools as a result of the proposed change.

The application complies with this criterion.

F. The proposed change is appropriate taking into consideration the following:

- a. Surrounding land uses,**
- b. The density and pattern of development in the area,**
- c. Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(1-3)]**

Applicant Findings (May 26, 2023): The surrounding land uses in the area include agriculture, forest, and residential use. As outlined above the surrounding uses are primarily large parcel residential uses, rural residential uses, and primarily farm operations. A change from the existing EFU Zoning to the proposed FFO Zoning is not anticipated to impact the surrounding uses as the types of uses on the Subject Property are not anticipated to change as a result of this change, but rather to acknowledge the predominant use and the existing natural features on the Subject Property.

The zone change to Farm/Forest with a Farm/Forest Overlay is consistent with the density and pattern of development in the area, which transitions from urban uses to acreage residential to small farm/forest parcels similar in type to those on the Subject Property. This development pattern is consistent with areas where there is a transition from urban to residential lands, where there is more of a likelihood for substandard parcels which are primarily in resource use, with varying levels of productivity. The Subject Property is adjacent to rural residential uses as well as other resource uses,

as discussed above. It is anticipated that this area serve as an urban transitional zone, where the urban-rural interface allows for a mixture of uses that resemble the pattern in the area, with the potential to shift over time from rural to urban uses, however, there are not currently planned expansions of the Salem-Keizer urban growth boundary in this area. A shift from EFU to FFO will better reflect the existing uses on the Subject Property and will be consistent with the surrounding uses and the density of the surrounding parcels and the pattern of development in the area. This criterion is satisfied.

Staff Findings: As discussed above, the applicant provided an impacts analysis that describes the prominent land practices and agricultural enterprise of the area surrounding the subject property. Staff reviewed Polk County Assessor's records, Polk County Community Development records, and Polk County GIS, and confirmed that the applicant has appeared to accurately characterize the surrounding land uses and property ownership within the 2,000 acre study area.

The impacts analysis provided by the applicant identifies 98 resource-zoned tax lots 63 of which are within the EFU zone and 35 of which are within the FF zone. Based on the impact analysis, the most common practices on Agricultural lands in the study area are vineyards, pasture land, orchards, and row crops. The most common practices on Farm/Forest lands in the study area are timber management, pasture land, and row crops. The impacts analysis identified 52 tax lots that contain at least one (1) dwelling. In addition, many of the properties identified in the study area are substandard sized tax lots for the EFU and FF zones. Specifically, 55 of the 63 tax lots located within the EFU zone are below the minimum parcel size of 80.0 acres and 33 of the 35 tax lots located within the FF zone are below the minimum parcel size of 40.0 acres. Staff acknowledges that tax lots are not entirely indicative of the legal parcel sizes and configurations and that some of these tax lots are part of larger tracts. Specifically, there are a total 13 tax lots that compose a total of four (4) different EFU tracts over 80.0 acres in size, and a total of four (4) tax lots that compose one (1) FF tract over 40.0 acres in size. When these larger tracts are taken into account, there are 71 tax lots in the study area that are substandard sized properties for their respective zones.

The applicant's impacts analysis indicates that the majority of the properties in the study area can be characterized predominately as rural residential with several small-scale, owner-operated farm and forest operations. The impacts analysis identified the larger scale agricultural operations located within the study area, which include Ditchen Land Company (approximately 951.3 acres predominately managed for pastureland), Byers Farm Holdings (approximately 156.9 acres predominately managed for pastureland and timber), Roserock, LLC (approximately 140 acres of vineyards), and Shudel Enterprises (approximately 198.3 acres predominately managed for a Christmas Tree operation). The impacts analysis also identified the smaller scale commercial farming operations in the study area such as Whitman Nursery, Meyer Nursery & Orchards (approximately 80 acres dedicated to growing fruit, nut, shade, and flowering trees), Northridge Vineyard, and X Novo Vineyard.

Based on the applicant's impacts analysis that evaluates the addition of one (1) potential future nonfarm dwelling (template dwelling) to the subject property, it is evident that the surrounding area contains a mixture of large and small-scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Staff concurs with the applicant's findings that the proposed Zoning Map Amendment would be consistent with the development pattern that is commonly observed in areas where there is an evident transition from urban to rural uses. Due to the similar nature of the uses permitted in the FFO zone and the EFU zone, staff finds that the proposed FFO zoning would be generally compatible with surrounding land uses. The FFO zone has an 80 acre minimum parcel size, which is the same as the EFU zone. The proposed zoning would not change the current potential parcel density of the area. Based on the information provided by the applicant, staff finds that the proposed zone change of the subject property to FFO would be appropriate because it would remain in harmony with the character and patterns of the surrounding area and its land uses.

The application complies with this criterion.

G. The proposal complies with any applicable intergovernmental agreement

pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275(F)]

Applicant Findings (May 26, 2023): The proposed change from one resource zone to another resource zone, without any proposed development, does not violate any intergovernmental agreement pertaining to urban growth boundaries or urbanizable land. While the Subject Property is in the proximity of the City of Salem’s Urban Growth Boundary, it is not abutting the UGB and the Subject Property will remain in resource use, requiring the application for, and approval of, an exception to the Statewide Planning Goals or some other legislative action in order to be developed for “urban” use, consistent with the existing jurisdictional agreements regarding land in the vicinity. This criterion is satisfied.

Staff Findings: The subject property is not located within an Urban Growth Boundary. There are no intergovernmental agreements that apply to this property. This criterion does not apply.

H. The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275(G)]

Applicant Findings (May 26, 2023): As discussed above in response to the applicable approval criteria for Applicant's requested Comprehensive Plan Amendment, the proposed zone change is consistent with the applicable statutes, rules, and regulations. Applicant is requesting a change from the Subject Property's existing EFU Designation and Zoning to the County's Farm/Forest Designation and FFO Zoning, which is permitted without requiring a Goal Exception, and the Applicant's proposed findings above are responsive to this criterion as well as the provision it mirrors, above. As addressed in detail above, Applicant's request to change the Comprehensive Plan Designation and Zone Change.

Staff findings: The applicant is proposing a Zoning Map Amendment with the primary intention of having a zoning and plan designation that better reflect the topography and historical management of the subject property.

The proposal would change the zone from EFU which implements Goal 3, to FFO, which implements both Goals 3 and 4. The subject property is currently zoned EFU, which has an 80 acre minimum parcel size, and the applicant is proposing the FFO zone which also has an 80 acre minimum parcel size. Consequently, the applicant’s proposal could not result in any additional land divisions or parcelization of the subject property, therefore, would not require an exception to Goals 3, 4 or 14 on that basis.

Because the proposed FFO zone is a mixed agriculture/forestry zone that implements both Goals 3 and 4, there would be additional uses that could be permitted on the subject property that would not otherwise be allowed under the current EFU zone designation. As discussed above in Subsection (1)(D) of this staff report, staff concluded that because Polk County’s mixed FFO zone has been acknowledged by DLCD to be in compliance with all of the Statewide Planning Goals, and in addition found that because any uses allowed on the subject property, other than dwellings, would still be subject to Goal 3 policies found in ORS Chapter 215 and OAR Chapter 660 Division 33, the proposed Comprehensive Plan designation would be in compliance with Goal 3.

While the majority of the property would continue be managed for the forest operation and the small-scale cattle operation, the applicant indicates that the property owner would like to establish a “Small Tract Template Dwelling” on the subject property, which is permitted under the FFO zone. OAR 660-006-0050(2) indicates that the county shall apply either OAR Chapter 660, Division 6 or 33 standards for siting of a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993. As discussed in this report, the applicant has asserted that the subject tract is predominately in forest use. When proposing to change a Zoning/ Comprehensive Plan designation that could result in additional parcelization or the ability to utilize a different set of criteria for a nonfarm dwelling, such as a future forest template dwelling, an applicant would need to show consistency with Goal 3; otherwise an exception to Goal 3 would be required. Although the

EFU zone and FFO zone have the same minimum parcel size, which would not result in additional parcelization, additional types of non-farm dwellings could potentially be pursued in the FFO zone that would not otherwise be permitted in the EFU zone. Therefore, demonstrating compliance with Goal 3 is required, including findings to demonstrate that a potential future non-farm dwelling (template dwelling) would not impact the existing agricultural enterprise of the area.

As discussed above in subsection (1)(D) of this report, the applicant prepared a 2,000 acre impacts analysis that was selected to include the most accurate sampling of farm practices in the surrounding area and evaluate the addition of one (1) nonfarm dwelling on the subject property. As discussed, staff concluded that based on the impacts analysis provided by the applicant, it is evident that the surrounding area contains a mixture of large and small scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Based on the subject property's proximity to the City of Salem and the natural buffers that isolate the subject property from the identified commercial farm operations, together with the existing and historical patterns of rural residential development and utilities in the surrounding area that the agriculture enterprise is already oriented to account for, staff finds that there is substantial evidence in the record to support the conclusion that the addition of one (1) nonfarm dwelling on the subject property would not materially alter the overall land use pattern of the surrounding area and would allow for the continuation of the identified agricultural enterprises of the area. Therefore, staff finds that the proposed Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest, which would allow the property owner to utilize Goal 4 policies instead of Goal 3 policies to pursue a nonfarm dwelling on the subject tract, would be in compliance with Goal 3.

For the reasons described above and in subsection (1)(D) of this report, staff finds that the applicant has provided substantial evidence to demonstrate that the proposed Comprehensive Plan Amendment would be in compliance with all relevant Oregon Revised Statutes, Oregon Administrative Rules, and Statewide Planning Goals. The applicant has addressed all applicable Oregon Statewide Planning Goals. No goal exception is necessary in order to approve these applications.

The application complies with this criterion.

- I. **The road function, classification, capacity and existing and projected traffic volumes have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [PCZO 111.275(H)]**

Applicant Findings (May 26, 2023): The Subject Property has access onto Brush College Road NW, which is a County road along the Subject Property's frontage. Brush College Road NW is classified by the County as a Minor Arterial and is classified by the City of Salem as a Minor Arterial where it crosses into the City limits. The Applicant is not proposing additional development of the Subject Property at this time, meaning that the proposal will not have an impact on the road functionality or planned capacity of the surrounding transportation system. If any development is proposed in the future, the County will have the opportunity to review that subsequent development application and determine whether the transportation system in the vicinity is sufficient to support the development that is proposed at that time. This criterion is satisfied.

Staff findings: The subject property is accessed from Brush College Road, which is under Polk County's jurisdiction and is managed by the Polk County Public Works Department. According to the Polk County Transportation Systems Plan (TSP), Figure 3, Brush College Road is identified as a Major Collector. As discussed, the applicant indicates that they would likely pursue a forest template dwelling on the subject property if the proposed zone change is approved. Single-family dwellings are permitted uses in both the EFU and FFO zones, subject to review and approval of either an administrative review or conditional use permit. In addition, uses permitted in the FFO

zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could also be established under the current EFU zone of the subject property. Staff does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, staff does not believe that the proposed change would create a significant impact on traffic use on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

The FFO zone permits additional nonfarm and non-forest uses that are not permitted in the EFU zone. Under the circumstances that the property owner were pursue one of these nonfarm uses, a conditional use review would be required, where staff would evaluate the size and scale of the proposed use to ensure it would be in harmony with the purpose and intent of the zone. For the reasons listed above, staff finds that the Comprehensive Plan and Zoning Map amendments would not result in any more traffic that what is currently permitted in the EFU zone and would be consistent with the current road classification and traffic volume of the area.

The application complies with this criterion.

IV. CONCLUSION & RECOMMENDATIONS

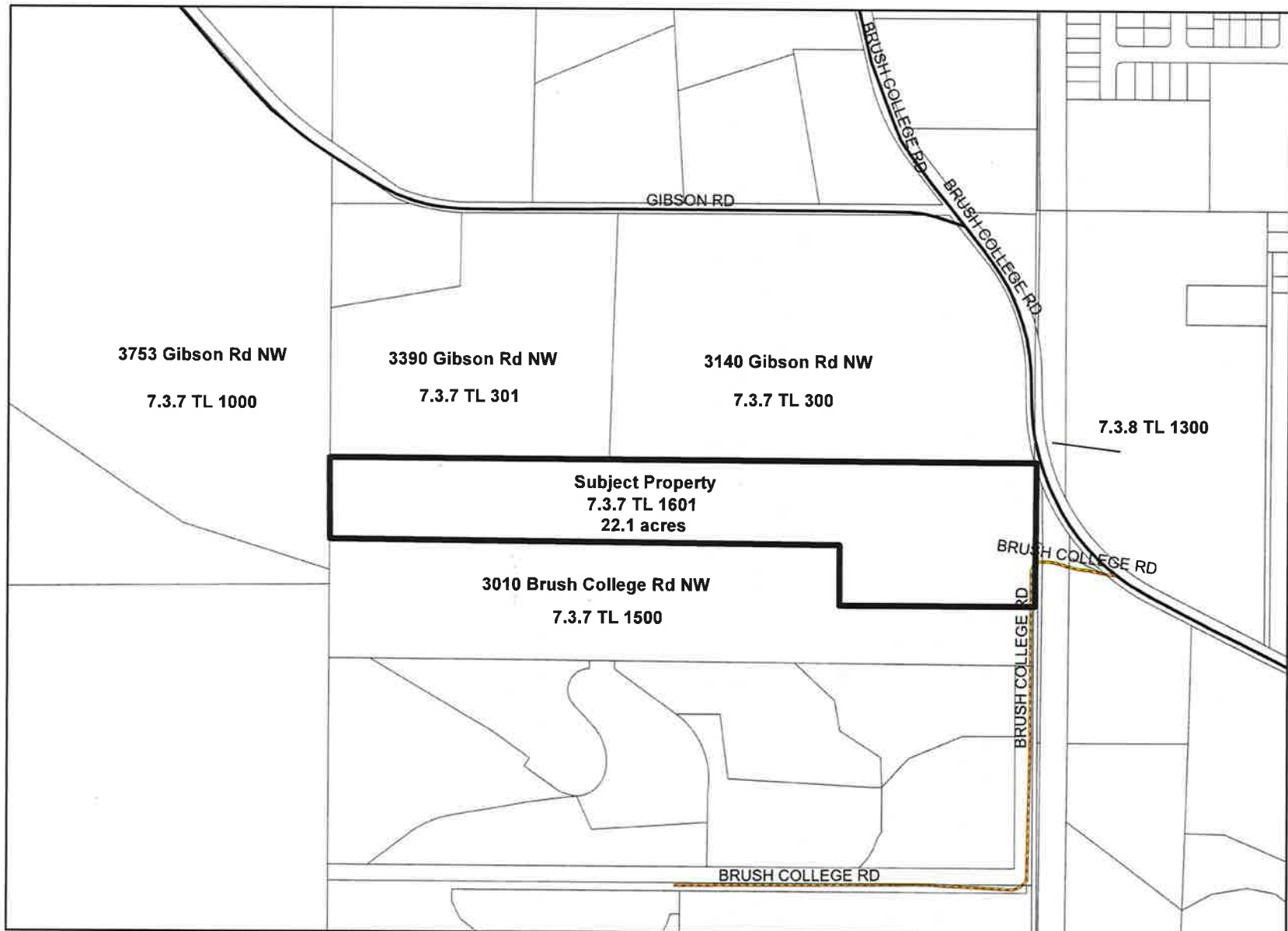
Based on the information submitted into the record, and the findings presented above, staff recommends that the Hearings Officer recommend that the Board of Commissioners **approve** applications PA 23-01 and ZC 23-01. These applications shall be dependent on the approval of one another. Future development on the subject property would be subject to the use and development standards listed in the PCZO. These include the standards for the Farm Forest Overlay zone listed in PCZO Chapter 138.

V. ATTACHMENTS

- Attachment A: Map of the subject property
- Attachment B: Current Comprehensive Plan map
- Attachment C: Current zoning map
- Attachment D: 2022 aerial photograph

STAFF MAP FOR PA 23-01 & ZC 23-01

ATTACHMENT A

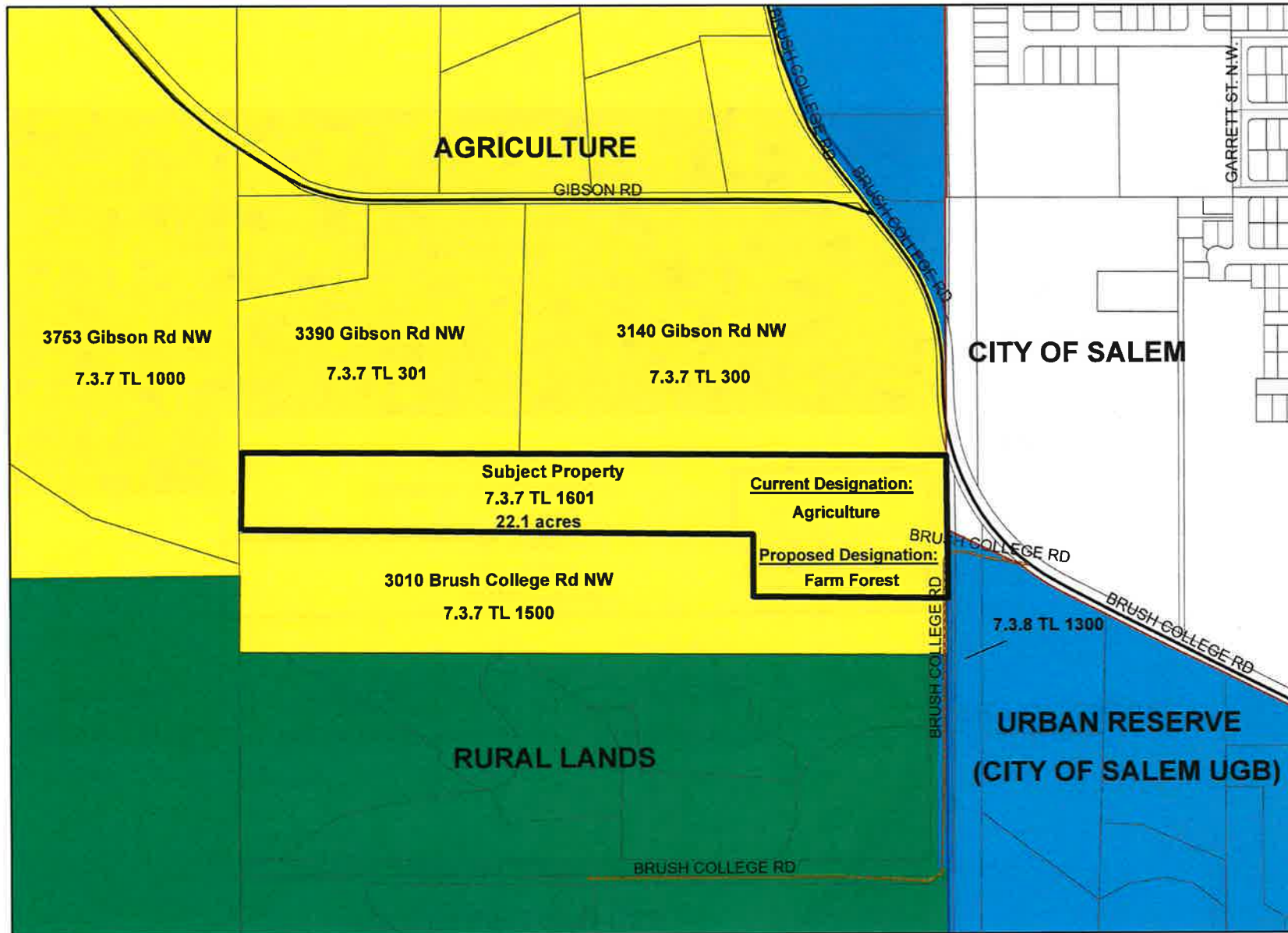


Date: 1/24/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

COMPREHENSIVE PLAN MAP OF SUBJECT PROPERTY (PA 23-01)

ATTACHMENT B

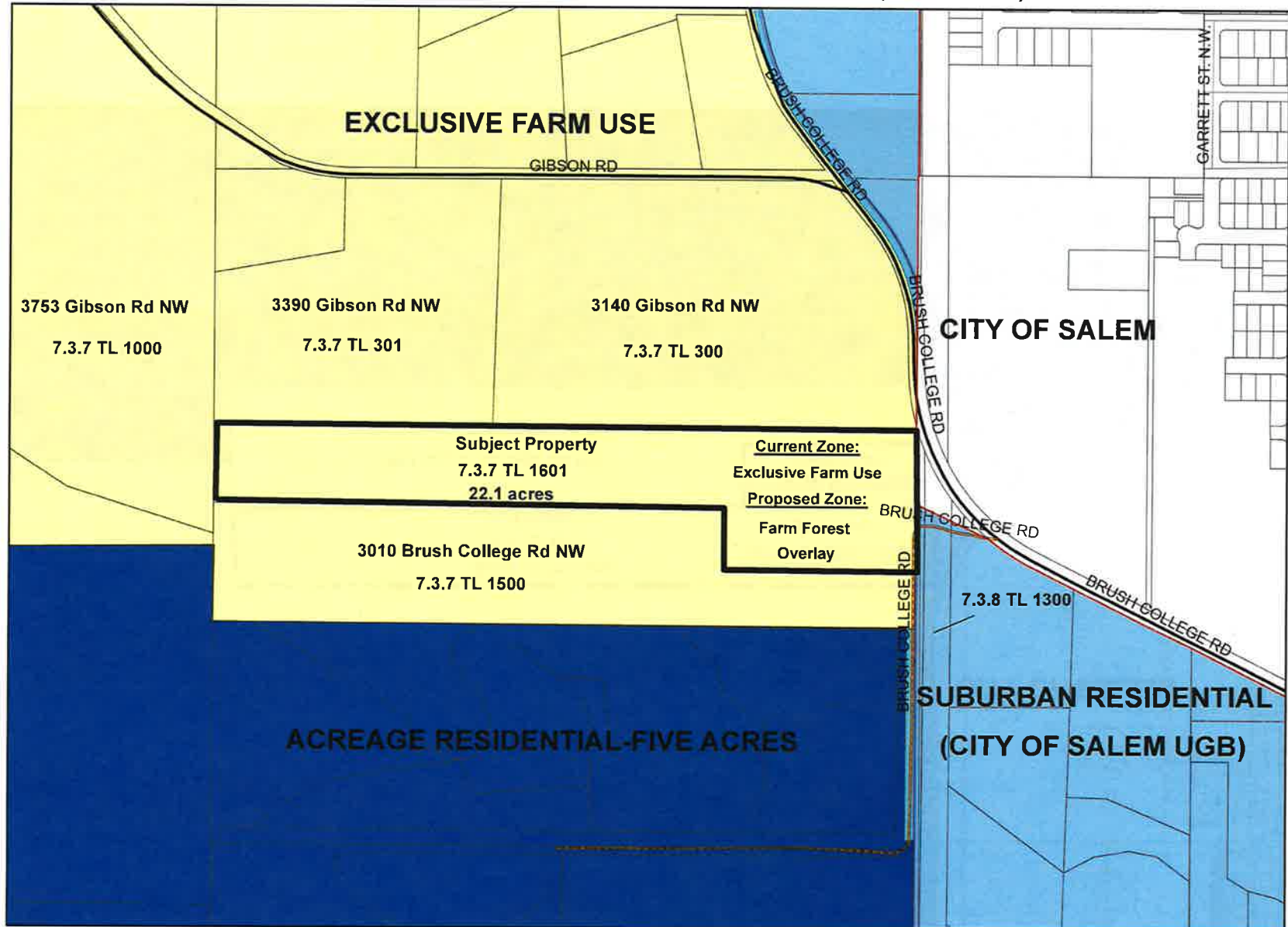


Date: 2/13/2024

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ZONING MAP OF SUBJECT PROPERTY (ZC 23-01)

ATTACHMENT C



Date: 2/13/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

2022 AERIAL PHOTOGRAPH OF SUBJECT PROPERTY (PA 23-01 & ZC 23-01) ATTACHMENT D



Date: 2/13/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

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

In the Matter of Designating)
The Month of May 2024)
Older Americans Month)

PROCLAMATION NO. 24-02

WHEREAS, this year, the Administration for Community Living designed the 2024 Older American Month theme, Aging Unbound, as an opportunity to explore diverse aging experiences and discuss how communities can combat stereotypes.

WHEREAS, Polk County recognizes the need to create a community that provides the services and supports older adults need to thrive and live independently for as long as possible.

WHEREAS, Polk County can work to build an even better community for older adults by:

- Planning programs that encourage independence.
- Promoting community and civic engagement opportunities.
- Increasing access to services that support aging in place.
- Ensuring activities are responsive to individual needs and preferences.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Polk County Board of Commissioners do hereby proclaim May 2024 to be Older Americans Month. We urge every resident to take time during this month to recognize older adults and the people who serve them as essential and valuable members of our community.

Dated: May 1, 2024 at Dallas, Oregon.

POLK COUNTY BOARD OF COMMISSIONERS

Craig Pope, Chair

Lyle Mordhorst, Commissioner

Jeremy Gordon, Commissioner

Approved as to Form:

Morgan Smith
County Counsel



POLK COUNTY

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237

COMMUNITY DEVELOPMENT

AUSTIN M^CGUIGAN
Director

TO: Board of Commissioners
FROM: Austin McGuigan, Solid Waste Administrator; Christina Tisdell, Env. Health
DATE: April 26, 2024
SUBJECT: Order # 24-04 – Solid Waste Rate Increase

Wednesday, May 1, 2024 - Consent

RECOMMENDATION: Adopt Order No. 24-04 to ratify the Hearings Officer's decision for a solid waste rate increase for Brandt's Sanitary Service. Inc.

ISSUE: Should a rate increase for solid waste collection services be approved for Brandt's Sanitary Service Inc?

BACKGROUND: Brandt's has proposed a rate increase to offset rising operating costs and declining revenue. Brandt's is proposing a residential rate adjustment increase of 4.2% to all collection services.

The Hearings Officer conducted the public hearing on Friday April 19, 2024. The Hearing Officer's recommendation is attached with findings, conclusions and recommendations. Based on the staff report and the testimony received at the hearing, the Hearing Officer has recommended the rate increase. Unless a majority of the Board wants to open the record, your decision, pursuant to Polk County Code Chapter 70, must be based on the record developed through the hearing held on Friday April 19, 2024.

DISCUSSION / ALTERNATIVES:

1. Ratify rate increases as proposed by Brandt's.
2. Modify the Hearing Officer's decision.
3. Rescind the Hearing Officer's decision.
4. Remand the decision back to the Hearing Officer for reconsideration.

FISCAL IMPACT:

Brandt's will impact approximately 670 customers by increasing their solid waste collection service rates by 4.2 %. Rates are proposed to be effective June 5, 2024

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4 **BEFORE THE BOARD OF COMMISSIONERS FOR**
5 **POLK COUNTY, OREGON**
6

7
8 In the matter of Solid Waste Collection)
9 Rate Increase by Brandt’s Sanitary Service Inc.)
10

11 **ORDER NO. 24-04**
12
13

14
15 **WHEREAS**, the above matter came before the Polk County Board of Commissioners as a
16 decision from the Polk County Hearings Officer for approval of a solid waste collection rate increase
17 for Brandt’s Sanitary Service Inc; and
18

19 **WHEREAS**, Polk County Code Chapter 70 regulates the criteria and procedures for a rate
20 increase request; and
21

22 **WHEREAS**, the Polk County Hearings Officer conducted a public hearing on this matter on
23 April 19, 2024; and
24

25 **WHEREAS**, the Polk County Hearings Officer considered the information provided by the
26 applicant and staff report and recommendation provided by the Solid Waste Administrator; and
27

28 **WHEREAS**, the Polk County Hearings Officer found that the rate increase will be just, fair,
29 reasonable, and sufficient to provide service to the public; now, therefore:
30

31 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDERS AS FOLLOWS:**
32

33 Sec.1 The application for a solid waste collection rate increase for Brandt’s Sanitary Service Inc.
34 is **ratified**.
35

36 Sec.2 The findings labeled as **EXHIBIT A** and conclusions and rate schedule as determined by
37 the Hearings Officer are hereby adopted.
38

39 Sec.3 The effective date of June 5 2024, as determined by the Hearings Officer is **ratified**.
40

41 Dated this 1st day of May, 2024, at Dallas, Oregon.
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POLK COUNTY BOARD OF COMMISSIONERS

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Craig Pope, Chair

Lyle Mordhorst, Commissioner

Jeremy Gordon, Commissioner

Approved as to Form

Morgan Smith
County Counsel

**BEFORE THE COMMUNITY DEVELOPMENT DEPARTMENT
FOR POLK COUNTY, OREGON**

In the Matter of the Application of:

**BRANDT'S SANITARY SERVICE
INC.**

**ORDER RE: APPLICATION FOR
ANNUAL RATE INCREASE
(PCCO CH. 70)**

I. SUMMARY OF PROCEEDINGS

Brandt's Sanitary Service Inc. ("Brandt's"), a Polk County Solid Waste Collection Franchisee has requested a rate increase for solid waste collection services pursuant to Polk County Code of Ordinances (PCCO) 70.0801. Brandt's serves approximately 670 customers in unincorporated Polk County. Residential customers account for approximately 92% of operations by service and commercial customers account for 8% of operations. The last rate increase by Brandt's was on April 1, 2019, when the collection rate increase of 14.6% was approved.

Brandt's applied for the current annual rate adjustment on March 7, 2024. Brandt's proposed calculated rate adjustment is a flat rate increase of 4.2% to all collection services.

Polk County Code of Ordinances (PCCO) Chapter 70.0801 allows a Solid Waste Collection Franchisee to apply for an annual rate increase. The Polk County Board of Commissioners designated Hearings Officer may approve and establish rates filed by applicants for franchises if it finds that such rates are not demonstratively unreasonable and are not substantially higher than those charged generally in the County under similar service requirements and for the same or similar quality of service, or it may establish a different rate schedule. The Hearings Officer may also increase or decrease rates based on the cost of doing business.

II. PUBLIC HEARING

A duly advertised public hearing was held in the Polk County Courthouse on April 19, 2024. Brandt's was represented by its employee, Josh Brandt and its Solid Waste Management Consultant, Estle Harlan. The Hearings Officer announced that she had no interest (financial or personal) in the matter nor any *ex parte* contact with any involved party. Polk County Staff summarized its report. Ms. Harlan agreed with the Staff Report's recommendation and provided additional information about Brandt's business. There was no one in attendance who wished to speak for or against the application. There was no request for a continuance, or for the Record to be left open for submission of further evidence. There being no further business, the Hearings Officer declared the Record closed and adjourned the meeting. Leslie Howell, Polk County Hearings Officer, presided. She has authority to make a recommendation to the Board of Commissioners on this matter.

III. APPLICABLE LAW

In determining rates, the Administrator and the Hearings Officer shall make a finding that the rates will be just, fair, reasonable, and sufficient to provide proper service to the public. The Administrator and the Hearing Officer may consider rates charged by other persons performing the same or similar service in the same or other areas. The Administrator and the Hearings Officer shall give due consideration to:

- (a) The investment in facilities and equipment.**

- (b) The services of management.**
- (c) Local wage scales.**
- (d) The concentration of customers in the area served.**
- (e) Methods of storage, collection, transportation and disposal, salvage, recycling, or reuse.**
- (f) A reasonable return to the franchisee.**
- (g) The length of haul to disposal facilities.**
- (h) The cost of disposal.**
- (i) The use of transfer stations or transfer systems and the added costs.**
- (j) The cost of alternate methods of disposal.**
- (k) The future service demands of the service area or disposal site which must be anticipated in equipment, facilities, personnel, or land.**
- (l) Extra charges for special pickups or pickups on days where service is not normally provided on a collection route.**
- (m) Extra charges where the type or character of waste or solid waste, including but not limited to wastes with peculiarly offensive odors, requires special handling or service.**
- (n) Extra charges for providing janitorial services on the premises where service is provided.**
- (o) In addition, with respect to disposal sites, the type of site, whether the site is open to the public, and hours, type of waste disposed of, and method of disposal.**
- (p) Cost of compliance with laws, ordinances or regulations and rules of public agencies or bodies having jurisdiction.**
- (q) Other factors that may, in the opinion of the Administrator and the Board, necessarily affect the rates to be charged.**

IV. FINDINGS

Polk County has previously considered the rate determination factors listed above in establishing the collection rates for this franchise area. Brandt's is proposing a 4.2% rate increase adjustment across all currently offered services.¹ Brandt's is proposing to expand their miscellaneous service fees to include larger carts in addition to their 35-gallon cart. Brandt's is also proposing to add a sharps disposal service to the services currently being offered. Brandt's has not identified future service demands that would justify a rate increase. Brandt's has not identified any changes to laws, ordinances or regulations that have increased the cost of compliance. Brandt's has identified inflationary increase in fuel, labor, and disposal cost as well as the general cost of doing business as justification for the proposed rate increase. Brandt's is also requesting a reasonable return to the franchisee.

Annual average inflation based on the Urban Consumer Price Index (CPI-U) for West Size Class B/C increased 3.2 % between 2023 and 2024. Brandt's net income before tax as percent of sales for the unincorporated Polk County portion of their earnings decreased from 12% in the 2021/2022 fiscal year to 5.7% during the 2022/2023 fiscal year. 2022/2023 fiscal year actual results indicate that the largest operational expenses were repairs and maintenance and disposal fees. From the

¹ Brandt's currently offered cart service for Rural, Rural (Pocket Areas) and Distant Rural customers does not include curbside recycling. Brandt's rate request application did not include a request to add this new service nor was it analyzed by the Hearings Officer. References to "recycling" as a current service included with cart service for Rural, Rural (Pocket Areas), and Distant Rural were erroneously included and were not considered as part of this Solid Waste Rate Request Adjustment.

2021/2022 fiscal year to the 2022/2023 fiscal year, the total direct costs of operations increased by 8.7%, cost of repairs and maintenance increased by 83% and disposal costs increased by 17.2%. Brandt's 2024/2025 ProForma projects that the total direct cost of operations will increase by 3.8% from the 2023/2024 fiscal year. The 2024/2025 fiscal year repair and maintenance costs are projected to increase by 2% and disposal fees are projected to increase by 10%. 2023/2024 fiscal year net income as percent of sales is projected to be 3.8% which is down from 5.7 % earned in the 2022/2023 fiscal year. Brandt's projects that with the rate increase, the 2024/2025 fiscal year net income as percent of sales before tax will increase to 4.2% which is up from the 3.8% projected to be earned in the 2023/2024 fiscal year. Without the rate increase, the 2024/2025 fiscal year net income as a percent of sales before tax is projected to be 0.13%.

In summary, the direct costs of total operations are projected to increase by 3.8% for the 2024/2025 fiscal year from 2.1% in the 2023/2024 fiscal year. Staff finds, and the Hearings Officer concurs that a projected 4.2% return as percent of sales is reasonable to the franchisee and lower than the returns for other Polk County Franchisees. The cost of disposal, wages, and management services are all factors that the Hearings Officer considers when making a rate increase determination. The Hearings Officer finds that Brandt's has demonstrated that the cost of doing business has increased.

The Hearings Officer and the Board may compare rates charged by others performing the same or similar service in the same or other areas. Attached to the Staff Report are rate comparison charts compiled by Polk County Staff in order to review other solid waste collection rates both inside and surrounding Polk County. The surrounding counties included in this comparison are Benton, Lincoln, Marion, Tillamook, Yamhill and Washington.

A review of Brandt's proposed rural rate structure finds that some of their container rates are lower than the average of the franchisees in Polk County and lower than the surrounding counties rural solid waste collection rates. In particular, the average rural rates within Polk County but outside the Brandt's franchise area are \$21.60 for a 32/35-gallon cart and \$33.85 for a 90/95-gallon cart. Brandt's is proposing \$21.30 for a 32/35-gallon cart and \$41.00 for the 90/95-gallon cart. Brandt's proposed 32/35-gallon cart rate is 1.4 % lower than the average Polk County franchise rate and Brandt's 90/95-gallon carts rate are 17.4% higher than the average Polk County Franchise rates. The average rates in surrounding counties are \$30.33 for a 32/35-gallon cart and \$48.69 for a 90/95-gallon cart. Brandt's proposed rates for the 32/35-gallon and 90/95-gallon carts are 42.38% and 15.79% lower than the surrounding counties. Brandt's proposed rural rate for a 2-yard drop box container is on average 5.63% lower than other Polk County franchises and 20.28% lower than surrounding counties. The Hearings Officer finds the proposed rural rates are just, fair, and reasonable compared to other Polk County franchises in the local area.

A review of Brandt's proposed urban rate structure finds that their container rates are higher than the average of the franchisees in Polk County and lower than the surrounding counties urban solid waste collection rates. In particular, the average urban rates within Polk County but outside Brandt's franchise area are \$21.28 for a 32/35-gallon cart and \$32.06 for a 90/95-gallon cart. Brandt's is proposing \$21.75 for a 32/35-gallon cart and \$40.95 for the 90/95-gallon cart. Brandt's proposed rates for the 32/35-gallon and 90/95-gallon carts are 2.16% and 21.70% higher than the average Polk County Franchise rates. The average rates in surrounding counties are \$29.30 for a 32/35-gallon cart and \$47.18 for a 90/95-gallon cart. Brandt's proposed rates for the 32/35-gallon and 90/95-gallon carts are 34.70% and 15.22 % less than the surrounding counties. Brandt's proposed urban rate for a 2-yard drop box container is on average 5.03% higher than other Polk County franchises and 13.15% lower than surrounding counties. The Hearings Officer finds the proposed urban rates are just, fair, and reasonable compared to other Polk County franchises in the local area.

A review of Brandt's proposed expansions of miscellaneous fees to include larger carts in addition to the standard 35-gallon cart reveals addition charges such as: extra dump fees, overfill fees, on

call fees, up-to-the house fees, off-street premium service distance fees, as well as exchange, delivery, and redelivery fees. In particular the Brandt's overfill fee for their 35-gallon cart is \$5.75, with the rate adjustment, the fee would increase to \$6.00, with corresponding fees of \$9.00 for a 65-gallon cart and \$12.00 for a 95-gallon cart. Brandt's on-call fee for their 35-gallon cart is \$9.40, with the rate adjustment, the fee would increase to \$10.00, with corresponding fees of \$15.00 for a 65-gallon cart and \$20.00 for a 95-gallon cart. The pricing structure for these fees are justified due to labor, staff time, fuel cost, and higher disposal costs due to additional weight of larger carts. The pricing structure for these services are based on the cost of service.

A review of Brandt's proposed sharps disposal service rates are lower than the average of franchisees in Polk County. In particular, the average rural rates within Polk County outside Brandt's Franchise area are \$36.59 for sharps container/disposal services. Brandt's is proposing \$15.00 for a new service and \$15.00 for the disposal. Brandt's proposed rates for sharps are 21.98% less than the average Polk County Franchise rates. The availability of sharps disposal options are diminishing in Polk County due to many pharmacies discontinuing acceptance. The proposed fee reflects the cost associated with labor, staff time, and the higher disposal fees incurred due to the classification of sharps as medical waste. The fee is determined based on cost of service and is an essential service to ensure the safe and proper disposal of sharps, addressing the need within Polk County.

V. CONCLUSIONS

Based on the analysis above, Staff and the Hearings Officer finds justification in approving a rate adjustment at this time as the cost of doing business has increased. Brandt's is requesting a 4.2% increase across all services which is higher than the 3.2% Bureau of Labor CPI-U statistic for inflation between 2023 and 2024. However, Brandt's last rate adjustment was in 2019, the CPI-U inflation rate between 2019 and 2024 is 23.71%.

Brandt's proposed container rates are lower in rural areas but higher in urban areas than what other Polk County franchises charge; but both are significantly lower than the average rates in surrounding counties. Brandt's 2-yard container rates are lower in rural areas but higher in urban areas than what other Polk County franchises charge; but both are lower than the average in surrounding counties respectfully. Brandt's projects that, without the proposed rate increase, the net income as a percent of sales before tax for the unincorporated Polk County portion of their business would be 0.13% for the 2024/2025 fiscal year; up from 3.38% 2023/2024 fiscal year. With the proposed rate adjustment increase, Brandt's projects a 4.2 % return.

Brandt's applied for the current annual rate adjustment on March 7, 2024. The application requested an effective date of July 1, 2024. At the public hearing, the Applicant requested an effective date of June 1, 2024. PCCO 70.0801(3) provides that an annual rate increase must be submitted 90 days prior to the effective date of the proposed rate change. Thus, the Hearings Officers finds an effective date of June 5, 2024, satisfies this requirement.

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VI. RECOMMENDATION

Based on the findings in this report, the Hearings Officer concludes that the proposed rate increase is just, fair, reasonable, and sufficient to provide proper service to the public and a reasonable rate of return for the franchisee.

The Hearings Officer recommends that the Board of Commissioners APPROVE the proposed rate adjustment effective 06/05/24.

This 26 day of April, 2024.

Leslie Howell

Leslie Howell
Dallas, Oregon
Polk County Hearings Officer

2024 SURROUNDING COUNTIES RURAL COMPARISON

Container Size	Brandt's Proposed Polk County	Benton County	Linn County	Marion County	Tillamook County	Yamhill County	Washington County	Average
32/35 GAL	\$21.30	\$35.11	\$25.31	\$31.89	\$32.28	\$27.98	\$29.39	\$30.33
65 GAL	\$32.05	\$43.68		\$39.84			\$43.08	\$42.20
90/95 GAL	\$41.00	\$53.74	\$38.53	\$48.53	\$53.88	\$46.63	\$50.83	\$48.69
2 YARD	\$171.85	\$182.58	\$205.86	\$160.88	\$266.92	\$299.29	\$177.83	\$215.56

2024 POLK COUNTY RURAL FRANCHISE RATE COMPARISON

FRANCHISE	<u>32 GAL/35 GAL</u>	<u>90/95 GAL</u>	<u>2 YARD</u>
Recology	\$22.97	\$38.26	\$224.56
Republic Service-Dallas	\$27.49	\$33.62	\$193.47
Republic-Polk Co.	\$19.05	\$34.62	\$169.80
Valley Recycling/Disposal	\$16.90	\$28.90	\$138.30
Polk Franchise Avg.	\$21.60	\$33.85	\$181.53
Brandt's Proposed Rates	\$21.30	\$41.00	\$171.85

Note: Polk County Avg is calculated outside of Brandt's service area

Note: Brandt's is using a 95-gal cart versus a 90-gal cart

2024 SURROUNDING COUNTIES URBAN RATE COMPARISON

Container Size	Brandt's Proposed Polk County	Benton County	Linn County	Marion County	Tillamook County	Yamhill County	Washington County	Average
32/35 GAL	\$21.75	\$35.11	\$32.31	\$30.37	\$22.05	\$26.53	\$29.42	\$29.30
65 GAL	\$32.15	\$43.68		\$40.39	\$44.10		\$41.80	\$42.49
90/95 GAL	\$40.95	\$53.74	\$38.53	\$47.45	\$50.10	\$44.22	\$49.05	\$47.18
2 YARD	\$171.85	\$182.58	\$205.86	\$145.90	\$179.40	\$284.01	\$168.91	\$194.44

2024 POLK COUNTY URBAN FRANCHISE RATE COMPARISON

FRANCHISE	<u>32 GAL/35 GAL</u>	<u>90/95 GAL</u>	<u>2 YARD</u>
Recology	N/A	N/A	N/A
Republic Service-Dallas	\$27.49	\$33.62	\$193.47
Republic-Polk Co.	\$19.05	\$34.62	\$169.80
Valley Recycling/Disposal	\$17.30	\$27.95	\$126.35
Polk Franchise Avg.	\$21.28	\$32.06	\$163.21
Brandt's Proposed Rates	\$21.75	\$40.95	\$171.85

Note: Polk County Avg is calculated outside of Brandt's service area

Note: Brandt's is using a 95 gal. cart versus a 90-gal cart



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 2550

Department: Health Services: Behavioral Health Consent Calendar Date: May 01, 2024

Contractor Name: Marion County Health Department

Address: 3180 Center St NE

City, State, Zip: Salem, OR 97301

Effective Dates - From: May 01, 2024 Through: June 30, 2025

Contract Amount: \$17,506.00

Background:

Marion County has agreed to provide Occupational Therapy services to referred Polk County Behavioral Health individuals. Occupational Services are required by the Oregon Health Authority for EASA program clients. This is amendment 1 to contract No. 21-54.

Discussion:

This amendment is for the continuation of services that Marion County has been providing for our EASA program, that extends the current agreement an additional 14 months. There is a \$61 increase to the monthly rate, which was expected as a COLA adjustment. No other changes noted.

Fiscal Impact:

The NTE amount for this contract was increased to \$58,876 from \$41,280 to allot for the next 14 months for a total amendment amount of \$17,506. The Behavioral Health Services budget has sufficient expenditure authority to accommodate this amendment and the Behavioral Health Outpatient budget was prepared in anticipation of it.

Recommendation:

It is recommended that Polk County sign this first amendment with Marion County.

Copies of signed contract should be sent to the following:

Name: Rosana Warren E-mail: hs.contracts@co.polk.or.us

Name: _____ E-mail: _____



**AMENDMENT 1 to HE-4028-21 the
INTERGOVERNMENTAL AGREEMENT
between
MARION COUNTY and POLK COUNTY, OR**

The Intergovernmental Agreement, entered into pursuant to ORS Chapter 190, as may be amended from time to time, the "Agreement," between Marion County "County", a political subdivision of the State of Oregon, and Polk County, OR, dated May 1, 2021.

The Agreement is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by ~~striketrough~~):

3. TERM AND TERMINATION

3.1 This agreement shall be effective for the period of May 1, 2021 through ~~April 30, 2024~~
June 30, 2025 unless sooner terminated or extended as provided herein.


4. FUNDING AND BILLING

4.1 The total amount paid under this contract shall not exceed ~~\$41,208.00~~ \$58,876.00.
Payments under this contract shall be made on a monthly basis at \$1,089.00 per month for
.10 FTE licensed Occupational Therapy (OT) services. The monthly rate shall include
mileage. The monthly amount will increase on May 1, 2022 to \$1,144.00 for 12 months and
to \$1,201.00 on May 1, 2023 for 12 months and to \$1,262.00 on May 1, 2024 for 12 months.

Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. The Parties certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

--Signatures on following page--

MARION COUNTY SIGNATURES

Authorized Signature:  4/2/2024
DocuSigned by:
7D28A787656F458...
 Department Director or designee Date

Authorized Signature:  4/9/2024
DocuSigned by:
1E984034585E453...
 Chief Administrative Officer Date

Reviewed by Signature:  4/3/2024
DocuSigned by:
AFD8EB7C0923416...
 Marion County Legal Counsel Date

Reviewed by Signature:  4/2/2024
DocuSigned by:
E4592AF8CAA542C...
 Marion County Contracts & Procurement Date

POLK COUNTY, OR

Authorized Signature: _____ Date: _____

Title: _____



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 2550

Department: Health Services: Behavioral Health Consent Calendar Date: May 01, 2024

Contractor Name: Salem Health West Valley

Address: PO Box 378

City, State, Zip: Dallas, OR 97338

Effective Dates - From: April 01, 2024 Through: June 30, 2024

Contract Amount: Varies

Background:

Salem Health West Valley (SHWV) has agreed to pay Polk County Health Services (PCHS) for screening of mental health patients presenting at Salem Health West Valley Emergency Department. This is amendment 4 to contract No. 22-100.

Discussion:

This Amendment 4 is a continuation of the services PCHS has been providing for SHWV. This amendment extends the current agreement an additional 3 months while negotiation discussions continue and services can remain uninterrupted.

Fiscal Impact:

The Behavioral Health Services budget has sufficient expenditure authority to accommodate this amendment and the Behavioral Health Services budget was developed with anticipation of this contract being in place.

Recommendation:

It is recommended that Polk County sign this fourth amendment with Salem Health West Valley.

Copies of signed contract should be sent to the following:

Name: Rosana Warren E-mail: hs.contracts@co.polk.or.us

Name: _____ E-mail: _____

**AMENDMENT NO. 4
to the
AGREEMENT (Polk County Contract No. 22-100)**

THIS Amendment No. 4 (“Amendment”), effective as of the last signature date below, amends the Agreement for mental health screening services in the Emergency Department, (“Agreement”) dated July 1, 2022, by and between **Salem Health West Valley**, an Oregon non-profit corporation organized and existing pursuant to the law of the State of Oregon and exempt from taxation pursuant to Sections 501(c)(3) and 509 of the Internal Revenue Code of 1986, as amended (the “Hospital”) and **Polk County Health Services** (the “County”).

Both Parties agree to amend the Agreement with the following changes effective April 1, 2024:

- 1. Extend the term of the Agreement ninety (90) days to June 30, 2024.

Other than the above listed changes, all other terms and conditions of the Agreement shall remain the same. If there is any conflict with the terms and conditions of the original Agreement, this Amendment will prevail as it relates to the specific items contained herein.

IN WITNESS WHEREOF, the undersigned Parties have executed this Amendment as of the last signature date below.

HOSPITAL

COUNTY

Amie M. Wittenberg

Amie Wittenberg, MSN, BSN, NE-BC
Vice President
Clinical Operations

Signature

Printed Name/Title

3/28/24

Date

Date

J Parr

James Parr
Executive Vice President of Operations and
Chief Financial Officer

Morgan Smith
County Counsel

3/27/24

Date

Date