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8 **BEFORE THE BOARD OF COMMISSIONERS**  
9 **FOR THE COUNTY OF POLK, STATE OF OREGON**

10  
11 In the matter of Plan Amendment 23-01 and )  
12 Zone Change 23-01: A Comprehensive Plan Map )  
13 amendment and a Zoning Map amendment )  
14 for an approximately 22.1 acre parcel identified as )  
15 T7S, R3W, Section 7, Tax Lot 1601 and located )  
16 in unincorporated West Salem near Brush College )  
17 Road and Gibson Road. )  
18  
19  
20

21 **ORDINANCE NO. 24-03**

22  
23 **WHEREAS**, on May 26, 2023, applications Plan Amendment (PA) 23-01 and Zone  
24 Change (ZC) 23-01 were submitted by the applicant; and  
25

26 **WHEREAS**, on February 13, 2024, Planning Staff provided the Polk County Hearings  
27 Officer with their Staff Report and issued a recommendation of approval for PA 23-01 and ZC  
28 23-01; and  
29

30 **WHEREAS**, on February 20, 2024, the Polk County Hearings Officer conducted a duly  
31 noticed public hearing and received public testimony for Planning Files PA 23-01 and ZC 23-01;  
32 and  
33

34 **WHEREAS**, on March 17, 2024, the Polk County Hearings Officer considered all of the  
35 testimony and evidence in the record and issued a recommendation of approval for PA 23-01 and  
36 ZC 23-01 to the Board of Commissioners; and  
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38 **WHEREAS**, on May 1, 2024, the Board of Commissioners conducted a duly noticed  
39 public hearing and received public testimony for Planning Files PA 23-01 and ZC 23-01; and  
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41 **WHEREAS**, the Board reviewed and considered all of the testimony and evidence that  
42 were submitted into the record after the Hearings Officer's recommendation was issued and  
43 passed a motion to approve Planning Files PA 23-01 and ZC 23-01; now therefore,  
44

45 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

46  
47 Sec. 1. That Polk County adopts the Hearings Officer's findings for Plan  
48 Amendment PA 23-01 and Zone Change ZC 23-01, as included in Exhibit A.  
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50 Sec. 2. That Polk County amends the Polk County Comprehensive Plan Map for  
51 the approximately 22.1 acre parcel located north of 3010 Brush College Road NW, Salem,  
52 Oregon and identified on the Assessment Map as T7S, R3W, Section 7, Tax Lot 1601. The  
53 Comprehensive Plan Map shall be amended from Agriculture to Farm Forest. The total area to be  
54 amended is approximately 22.1 acres, as shown on Attachment B of Exhibit A.


1           Sec. 3           That Polk County amends the Polk County Zoning Map for the  
2 approximately 22.1 acre parcel located north of 3010 Brush College Road NW, Salem, Oregon  
3 and identified on the Assessment Map as T7S, R3W, Section 7, Tax Lot 1601. The Zoning Map  
4 shall be amended from Exclusive Farm Use (EFU) to Farm Forest Overlay (FFO). The total area  
5 to be amended is approximately 22.1 acres, as shown on Attachment C of Exhibit A.  
6

7           Sec. 4.           Polk County amends the Polk County Zoning Ordinance (PCZO) text so  
8 that the effective date of the Official Zoning Map listed under PCZO 111.090(A) is changed to  
9 May 22, 2024, as shown on Exhibit B.  
10


11           Sec. 5           That Polk County determines that an emergency related to the economic  
12 welfare of the citizens of Polk County is declared and this ordinance is effective immediately  
13 upon passage.  
14

15 Dated this 22<sup>nd</sup> day of May 2024 at Dallas, Oregon.  
16  
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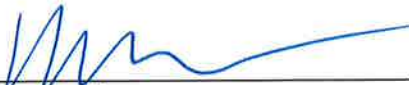
18                                   **POLK COUNTY BOARD OF**  
19                                   **COMMISSIONERS**  
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23 Craig Pope, Chair  
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27 Jeremy Gordon, Commissioner  
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31 Lyle Mordhorst, Commissioner  
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37 Approved as to Form:  
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40                                   \_\_\_\_\_  
41 Morgan Smith  
42 County Counsel  
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44 First Reading:           n/a          

45 Second Reading:           n/a          

46 Recording Secretary:                       
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**BEFORE THE PLANNING DIVISION  
FOR POLK COUNTY, OREGON**

**In the Matter of:**

**DAVID KNIELING TRUST**

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

**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:**

<b>Location</b>	<b>Comprehensive Plan Designation</b>	<b>Zoning Designation</b>
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)**<sup>1</sup>

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

<sup>1</sup> 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
				<b>TOTAL:</b>	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).”*<sup>2</sup>

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.”*<sup>3</sup>

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

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<sup>2</sup> Comprehensive Plan, pp. 55

<sup>3</sup> 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 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 agriculture/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 a 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 DLCD 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."*<sup>4</sup> 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*

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<sup>4</sup> PCZO 138.010.

*space deferral etc.) and with the Farm/Forest objectives and policies of the Comprehensive Plan.”<sup>5</sup> 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.

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<sup>5</sup> 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

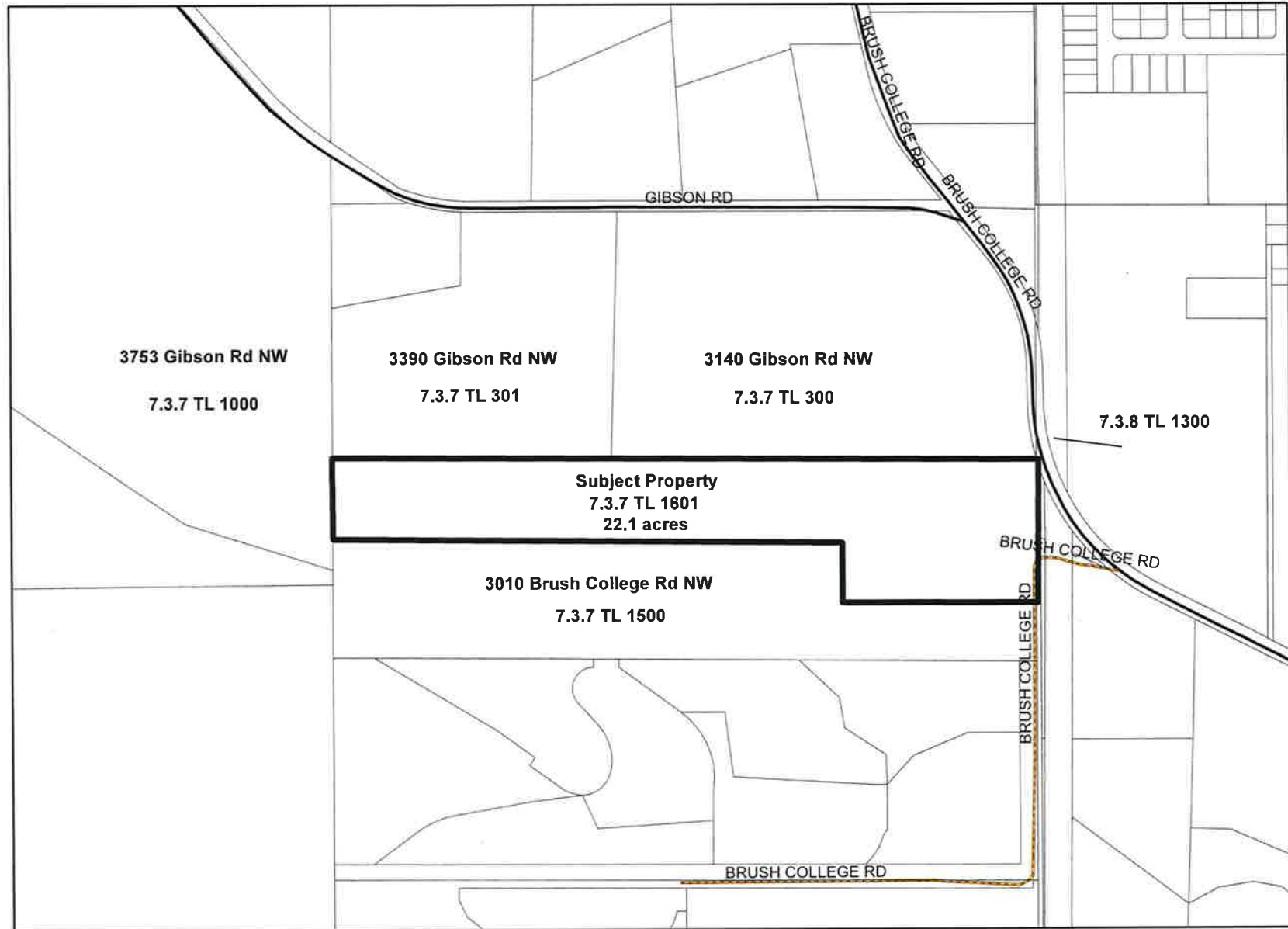
Dallas, Oregon, March 17<sup>th</sup>, 2024.

*Leslie Howell*

Leslie Howell  
Polk County Hearings Officer

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

ATTACHMENT A

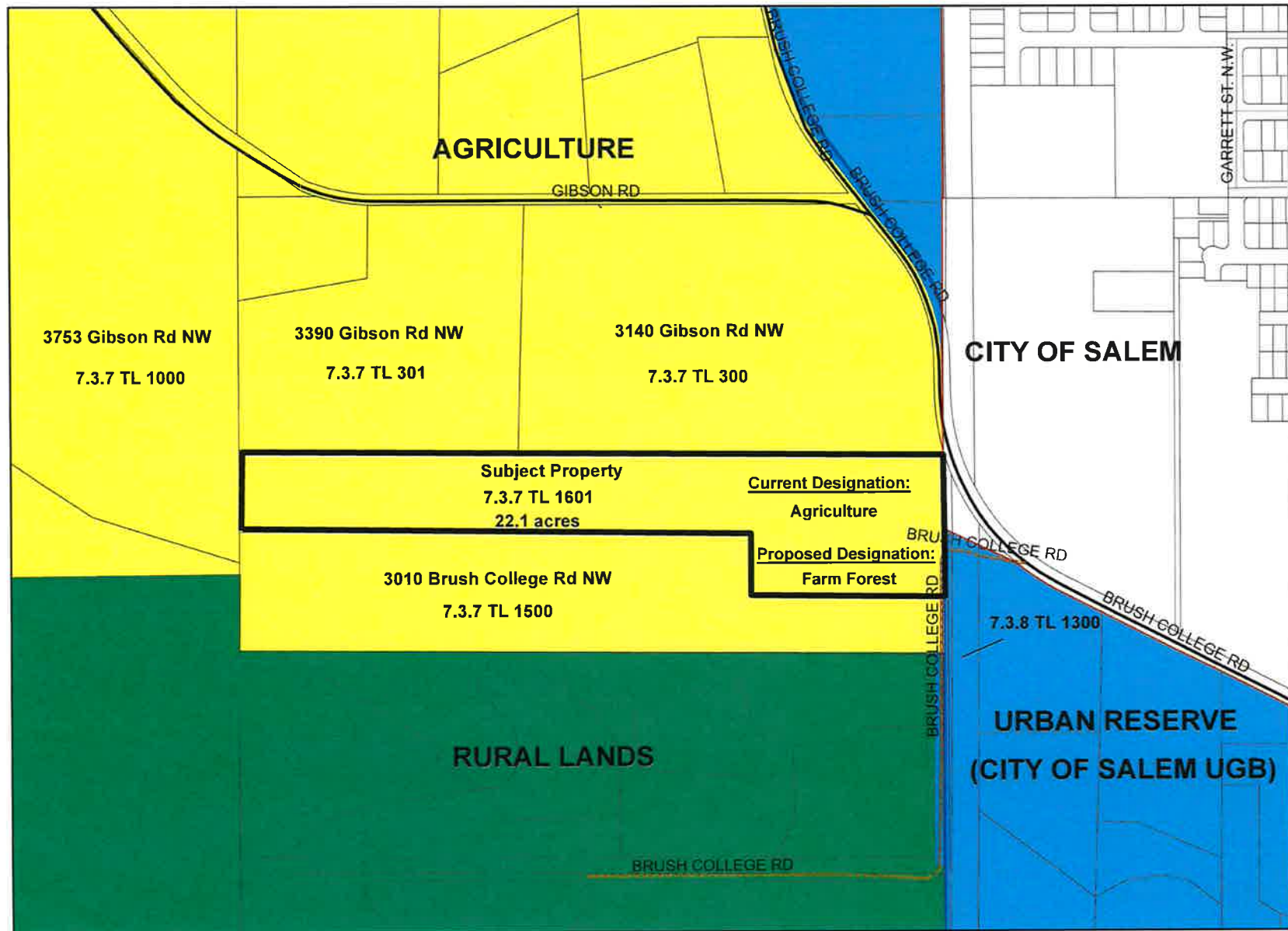


Date: 1/24/2024

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

ATTACHMENT B

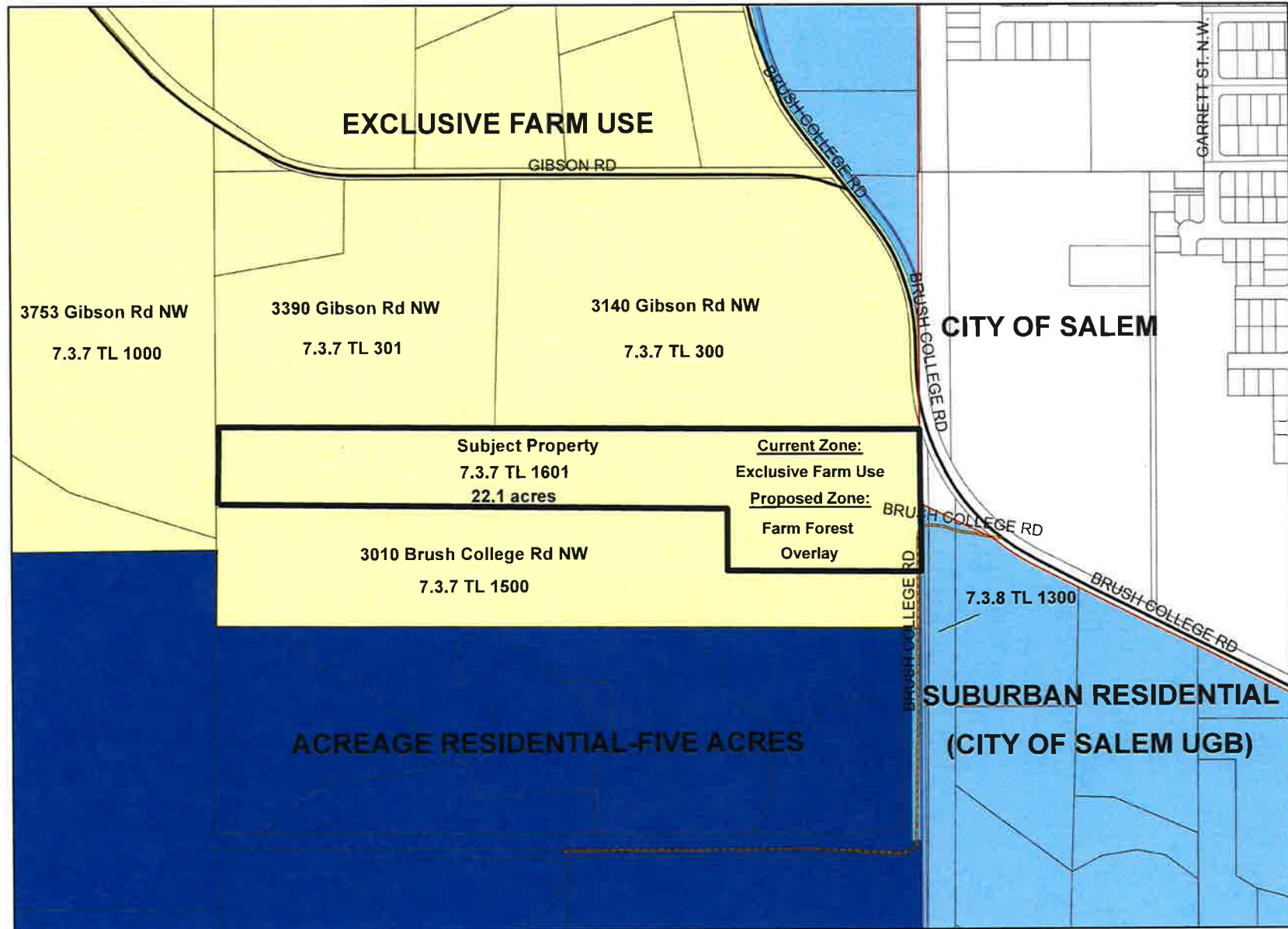


Date: 2/13/2024

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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

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.



Amendment to Polk County Zoning Ordinance Chapter 111. Proposed text additions are double underlined. Proposed deletions are ~~striketrough~~.

**111.090. OFFICIAL ZONING MAP.**

- (A) The Official Zoning Map adopted with an effective date of ~~June 27, 2018~~ May 22, 2024, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [~~Amended by Ordinances 11-02, 11-04, 12-06, and 13-03, 18-03, and 24-03~~]