



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

June 8, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Benton County Plan Amendment
DLCD File Number 002-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: June 26, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

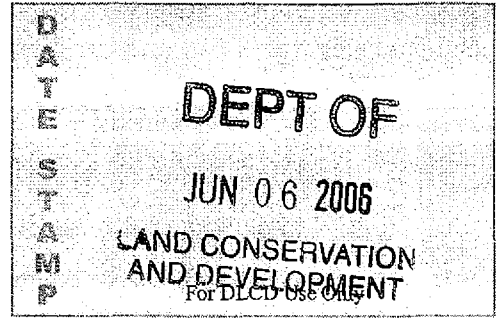
***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Steven Santos, DLCD Economic Development Planning Specialist
Marguerite Nabeta, DLCD Regional Representative
Greg Verrett, Benton County

<paa> ya/

2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Benton County Local file number: LU-06-023

Date of Adoption: 5/30/2006 Date Mailed: 6/5/2006

Date original Notice of Proposed Amendment was mailed to DLCD: 3/2/2006

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: Goal Exception

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

Re-zone a 2-acre parcel from Exclusive Farm Use to Industrial. Uses and size limited through application of a Use Overlay, to ensure developed site is consistency with the concept of rural land.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Use Overlay limits size of industrial uses to 20,000 square feet; limits uses so as to not allow "vehicle and manufactured dwelling sales and/or repair", "vocational school" and "junkyards".

Plan Map Changed from: Agriculture to: Industrial

Zone Map Changed from: EFU to: Industrial/Use Overlay

Location: T11S R4W S8 Tax Lot 100 Acres Involved: 1.99

Specify Density: Previous: N/A New: 2-ac minimum parcel size

Applicable Statewide Planning Goals: 3, 4, 14

Was an Exception Adopted? YES NO

DLCD File No.: 002-06(15051)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (45) days prior to first evidentiary hearing? Yes No
If no, do the statewide planning goals apply? Yes No
If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

ODOT.

Local Contact: Greg Verret Phone: (541) 766-6294 Extension: _____
Address: 360 SW Avery Ave City: Corvallis
Zip Code + 4: 97333- Email Address: greg.j.verret@co.benton.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY
STATE OF OREGON**

In the Matter of Amending the Benton County Comprehensive Plan Map and Zoning Map.)))	ORDINANCE No. 2006-0213
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WHEREAS, the applicant's agent, Rich Catlin, submitted an application for a Comprehensive Plan Map Amendment, Zoning Map Amendment, and Goal Exception on February 24, 2006, for a 1.99-acre parcel identified as Township 11 South, Range 4 West, Section 8, Tax Lot 100; and

WHEREAS, the requested action would change the property's designation on the Benton County Comprehensive Plan Map from Agriculture to Industrial, and would change the property's designation on the Benton County Zoning Map from Exclusive Farm Use to Industrial with a Use Overlay zone; and

WHEREAS, the requested action would cause an exception to Statewide Planning Goals 3 and 4 to be adopted into the Benton County Comprehensive Plan; and

WHEREAS, the Benton County Planning Commission held a duly advertised public hearing on April 18, 2006, and voted to recommend that the Board of Commissioners approve the Zoning Map Amendment, Comprehensive Plan Map Amendment and Goal Exception; and

WHEREAS, the Benton County Board of Commissioners held a duly advertised public hearing on May 9, 2006, to consider the request; and

WHEREAS, the Board of County Commissioners finds that the proposed Map Amendments comply with the criteria of Benton County Code 53.505 through 53.525 and Oregon Administrative Rules 660-004-0018, 660-004-0028 and 660-012-0060, and are consistent with the applicable policies and procedures of the Comprehensive Plan; and

WHEREAS, the Benton County Board of Commissioners has considered the staff report, the application materials, the testimony of witnesses, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the application for a Comprehensive Plan Map and Zoning Map Amendment and Goal Exception, and conducted the First Reading of the proposed Ordinance on May 9, 2006; and

WHEREAS, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on May 30, 2006.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

PART I: Short Title. Amendments to the Zoning Map and Comprehensive Plan Map.

PART II: Authority. The Board of County Commissioners of Benton County has authority to amend the Zoning Map and Comprehensive Plan Map pursuant to ORS Chapter 215 and the Benton County Charter.

- PART III. The Zone Change Application No. LU-06-023 is hereby approved, based on the Findings and Conclusions contained in the attached "Exhibit 4" and hereby adopted and incorporated herein.
- PART IV. Benton County Comprehensive Plan Map is hereby amended to identify the property described on the attached "Exhibit 1" as Industrial. This property is also shown on the map in "Exhibit 2".
- PART V. Benton County Zoning Map is hereby amended to identify the property described on the attached "Exhibit 1" as Industrial with a Use Overlay. This property is also shown on the map in "Exhibit 2".
- PART VI. A Use Overlay shall be applied to the subject property, with the following effect:

Permitted Uses. All uses listed in BCC 72.105 shall be allowed except "vehicle and manufactured dwelling sales and/or repair" and "vocational school". "Vehicle sales and repair" of farm vehicles/machinery shall be allowed.

Conditional Uses. All uses listed in BCC 72.205 shall be allowed as conditional uses except junkyards.

Siting Standards. Industrial uses shall be limited to a structure or structures totaling no more than 20,000 square feet.

The text of Chapter 72 (Industrial Zone) of the Benton County Development Code shall be modified to reflect the Use Overlay adopted for the subject property. The modifications are shown in "Exhibit 3".

- PART VII. The effective date for these amendments to the Benton County Comprehensive Plan Map and Zoning Map will be:

First Reading: May 9, 2006
 Second Reading: May 30, 2006
 Effective Date: June 29, 2006

BENTON COUNTY BOARD OF COMMISSIONERS

[Signature]
 Chair
[Signature]
 Commissioner
[Signature]
 Commissioner

Approved as to Form:
[Signature] 5-30-06
 County Counsel
[Signature]
 Recording Secretary

Exhibit 1

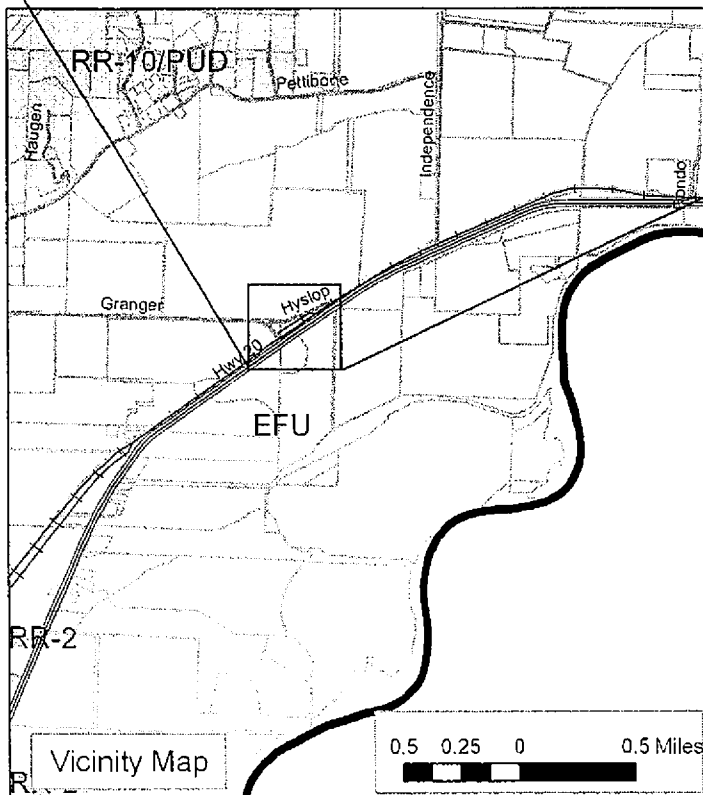
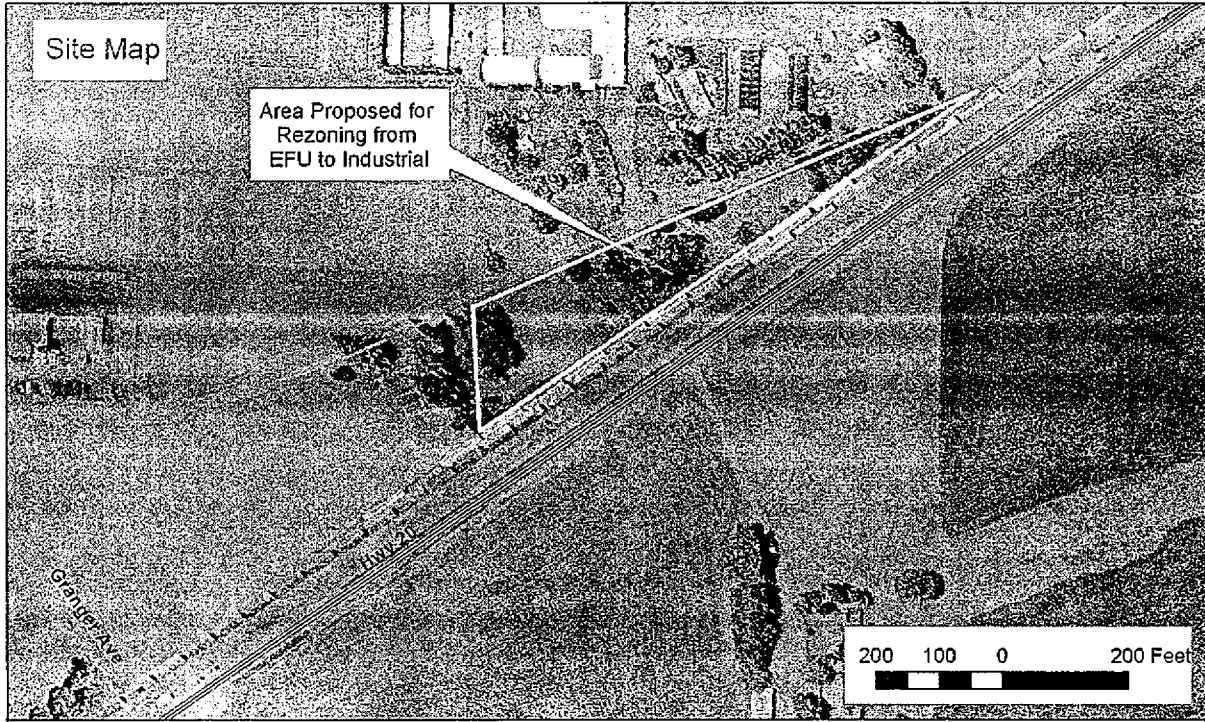
Legal Description of Zone Change Area
Starr Zone Change; File No. LU-06-023

The following described real property in the County of Benton and State of Oregon:

That certain real property situated in the County of Benton, State of Oregon, described as follows:
Beginning at the intersection of the North line of the Union Pacific Railroad Company's railroad right of way with the East line of the David D. Stroud Donation Land Claim No. 44 in Section 8, Township 11 South, Range 4 West of the Willamette Base and Meridian, Benton County, Oregon, which point is 4.10 feet North 2°57'18" East of the Southeast corner of said Stroud Claim; thence North 2°57'18" East along the East line of said Claim 223.03 feet to a ¾ inch iron pipe in the center of County Road No. 25; thence North 64°06'47" East along the center of said County Road 885.69 feet to the North line of said railroad right of way; thence South 52°59'08" West along said right of way line 1012.31 feet to the point of beginning.

Exhibit 2

Map of Zone Change Area
Starr Zone Change; File No. LU-06-023



File No.
LU-06-023
Zone Change
from EFU
to Industrial

Applicant:
Starr



Exhibit 3

Development Code Text Amendment to Implement Use Overlay
Starr Zone Change; File No. LU-06-023

[New Text is Underlined.]

Chapter 72
Industrial (I)

72.005 Purpose. The Industrial Zone shall provide areas where manufacturing or other industrial activities can occur within Benton County. [Ord 26, Ord 90-0069]

72.010 Application. The Industrial Zone shall apply to areas designated Industrial on the adopted Comprehensive Plan Map. [Ord 26, Ord 90-0069]

72.050 Use Overlay Zone. A Use Overlay Zone designation (/U) is applied to areas that have special restrictions on permitted and conditional uses. Uses on these properties have been restricted to comply with the requirements for Exceptions to Statewide Planning Goals (OAR 660-004-0018) or other specified rules and statutes. Permitted and conditional uses within a Use Overlay Zone are listed in the ordinance(s) listed below, and supersede those listed in this Chapter. All other provisions of this Chapter are applicable. Use Overlay designations have been applied to the following areas:

(a) Hyslop Road Industrial Site – Ordinance 2006-_____.

72.105 Permitted Uses. The following uses are allowed in the Industrial Zone:

- (1) Research facility, testing laboratory and facility for the manufacturing, processing and/or assembling of products, provided a permit is not required from the Oregon Department of Environmental Quality.
- (2) Vehicle and manufactured dwelling sales and/or repair.
- (3) Transportation terminals and warehouses.
- (4) Vocational school.
- (5) Aggregate processing, and concrete and asphalt batch plants.
- (6) Outside storage of materials, except junkyards.
- (7) One dwelling required for the employer or employee for management or safeguarding of the industrial use.
- (8) Farm use and forest use.
- (9) Accessory use or structure. [Ord 26, Ord 90-0069, Ord 2001-0172]

72.205 Conditional Uses.

- (1) A research facility, correctional and law enforcement facilities, junkyard, or testing laboratory or facility for the manufacturing, fabrication, processing or assembly of products which requires a permit from the Oregon Department of Environmental Quality may be allowed in the Industrial Zone by conditional use permit approved by the Planning Official. The decision to approve a conditional use permit shall be based on findings that the public health and safety will not be substantially affected by the proposed use when considering smoke, dust, odor, gas, fumes, glare, vibration, noise water pollution, radiation hazard or other noxious impacts.

(2) Mining of aggregate or mineral resources may be allowed in the Industrial Zone by conditional use permit approved by the Planning Commission, pursuant to BCC 53.215 through 53.235. In addition to the conditional use criteria of BCC 53.215, approval requires the Planning Commission make the following findings:

- (a) Mining will not significantly diminish the ability of the land to be used for other industrial uses in the future; and
- (b) The mined land will be reclaimed to a topographic character and stability comparable to, or more conducive to general, non-mining industrial uses than, the characteristics existing prior to mining.

[Ord 26, Ord 90-0069, Ord 99-0146, Ord 2001-0172]

* * *

Exhibit 4

Findings of Fact and Conclusions of Law Starr Zone Change; File No. LU-06-023

A. GENERAL FINDINGS

The applicant proposes a zone change to Industrial. The applicant's stated plan is to construct a warehouse of approximately 10,500 square feet.

The subject property is a triangular, 2-acre parcel bordered on its north side by Hyslop Road and on its south side by the Pacific and Western Railroad. In addition to the main Albany-Corvallis line, the railroad in this location includes a siding which the applicant hopes to utilize for the proposed warehouse. Highway 20 is parallel and adjacent to the railroad on its south side. At its widest (the west end), the subject property is approximately 220 feet in width.

Hyslop Road is a paved, County road. The road dead-ends near the east end of the subject property's northern property line.

Across Hyslop Road to the north is the Oregon State University agricultural research field laboratory, and the KOAC radio station building. To the south across the railroad and highway is farmland and facilities of the Autumn Seed Company.

Abutting the subject property to the west is a small portion of the OSU property containing older wooden structures that do not appear to be in active use. Beyond this is approximately 3.7 acres owned by the Ropp farm; this is currently bare land.

The applicant's submittal provides a thorough description of the location, vicinity, and history of the site. In summary, the subject property has apparently never been farmed. It was owned until 2004 by the Union Pacific Railroad Company and was used for railroad maintenance activities. For a period in the 1960s the site was leased for storage of propane distribution supplies.

The property has two main open areas, separated by an area of trees and brush. The open areas are approximately 0.4 and 0.8 acres in size. The soils on the site are mapped by the Soil Conservation Service as almost entirely Woodburn silt loam (a Class II agricultural soil). A small area in the southwest corner is mapped as Willamette silt loam (a Class I agricultural soil). However, staff observed substantial gravel mixed with the topsoil on much of the site, likely a result of past industrial uses of the property.

The past industrial uses of the property do not establish nonconforming use status because the uses have been too sporadic and are not occurring at the present time.

B. GOAL EXCEPTION FINDINGS

To change the zoning from Exclusive Farm Use to Industrial requires an exception to Goal 4 be taken pursuant to Oregon Administrative Rules (OAR) Chapter 660, Division 4. OAR 660-004-0000(2) states that "an exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals.... The documentation for an exception must be set forth in a local government's comprehensive plan." Thus, in approving the exception, the Board of Commissioners amends the Comprehensive Plan to include the Goal Exception Findings.

A. OAR 660-004-0028

EXCEPTION REQUIREMENTS FOR LAND IRREVOCABLY COMMITTED TO OTHER USES

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable....

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

- (a) The characteristics of the exception area;**
- (b) The characteristics of the adjacent lands;**
- (c) The relationship between the exception area and the lands adjacent to it; and**
- (d) The other relevant factors set forth in OAR 660-040-0028(6).¹**

¹ OAR 660-040-0028(6) requires that findings of fact for a committed exception address the following factors:

- (a) Existing adjacent uses;
- (b) Existing public facilities and services (water and sewer lines, etc.);
- (c) Parcel size and ownership patterns of the exception area and adjacent lands:

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

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are

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

(a) Farm use as defined in ORS 215.203;

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; [Note: The referenced OAR contains the uses authorized on Agricultural Lands, including "propagation or harvesting of a forest product," with no further elaboration] and

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a). [Note: The referenced OAR reads: The following uses pursuant to the Forest Practices Act (ORS Chapter 527) and Goal 4 shall be allowed in forest zones: (a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;]

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule² and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area. [emphasis added]

Findings: To summarize, the administrative rule stipulates that a goal exception is justified if the characteristics of the exception area and adjacent lands, the relationship between the exception area and adjacent lands, and other relevant factors render the following impracticable: farm use, forest product propagation or harvesting, and forest operations or practices.

The Oregon Court of Appeals has further clarified that "the fundamental test for an irrevocable commitment exception...requires surrounding areas and their relationship to the exception area

more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

(d) Neighborhood and regional characteristics;

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

(f) Physical development according to OAR 660-040-0025; and

(g) Other relevant factors.

² See Footnote 1 on Page 5 for the list of factors.

to be the basis for determining whether the exception is allowable. (*DLCD v. Curry County*, 151 Or.App. 7, 947 P.2d 1123) "...[T]o give exclusive or 'preponderant' weight to the characteristics of the exception area alone... would be contrary to [that fundamental test]." In other words, the focal point of the justification must be that the relationship between the subject property and adjacent lands somehow commits the resource land to non-resource use.

Findings: The application submittal (pages 7-10) describes the characteristics of the subject property and adjacent lands, and discusses the relationship between those areas. This analysis finds that the relationship between the proposed exception area and adjacent lands is one of physical isolation: adjacent resource lands are disconnected from the site by roads and railroad, buildings and trees.

The applicant defines "impracticability" as a situation where "site limitations diminish the ability to carry out standard farming practices to the extent that there is no reasonable return on the investment." The applicant finds that the property is too small to be a viable farm unit, based on average sizes of farms in Benton County and based on the finding that there is no farm commodity that could produce sufficient income on 2 acres to justify a farm dwelling. The applicant further states that the substantial cost to clear and prepare the site for agriculture would not be overcome by income from farming. The site has never been farmed, has never been part of the OSU research farm, and cannot be added to another farm operation because it is too costly to clear and prepare, too small, irregular in shape, and too distant from other farmland.

Analysis and Conclusions: To recapitulate, the County must find that farm use and forestry activities are rendered impracticable due to the character of surrounding lands and their relationship to the subject property (primary factor), and due to conditions of the subject property and other relevant factors (secondary factors).

The standard of "impracticability" is not tied to return on investment or commercial levels of production, but rather to whether the uses included in the definition of farm use are capable of being put into practice.³ Even at this higher standard, the Board of Commissioners finds that production of agricultural crops or livestock is not practicable on this property. The subject property is not directly adjacent to land that is producing crops or livestock, and this isolation, when combined with the small size and the legacy of past modifications of the site, would make it very difficult to convert the subject property to such production.

There are farm uses other than crop production that are not as clearly "impracticable". On this point, OAR 660-004-0000(2) requires that the goal exception justify "why the proposed use not allowed by the applicable goal or why a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use should be provided for." [emphasis added]

A warehouse or processing facility related to farm use is allowed by Goal 3. However, in Mr. Starr's case, it appears that the subject property cannot comply with the approval standards for

³ According to Webster's II New Riverside University Dictionary: "*Impracticable* applies to that which is not capable of being carried out or put into practice. *Impractical* refers to that which is not sensible or prudent. A plan may be *impractical* because it involves undue cost or effort and yet it may not be *impracticable*." From this understanding, agricultural activities aimed at obtaining gross receipts may be practicable in many instances where it might not be practical to undertake farming with the intent of making a living at it or obtaining a net profit.

either a “facility for processing farm crops” or “commercial activities in conjunction with farm use.” Both of these uses appear to be allowed only where the facility will be located on a farm.⁴ The site is not located on a farm. The subject property could potentially be used in conjunction with either the agricultural research facility to the north across Hyslop Road or the processing facility planned by Mr. Ropp on property adjacent to the west. However, the subject property has remained largely unused for many years and there appears to be no demand to expand onto this land on the part of either OSU or the Ropp farm (both submitted letters supporting the proposed zone change for Mr. Starr).

The Board of Commissioners concludes that the inability to put the subject property to farm use by itself and the lack of adjacent complementary use combine to make farm use impracticable. The subject property could potentially become part of a larger farm operation and be put to processing or commercial use in conjunction with that farm operation. However, to hold the property idle until some unknown future time when an adjacent farm (there are only two) might desire it appears to be wasteful of land. The property is not capable of even small-scale farm use in the interim.

Forest use is impracticable due to the small size, and proximity of other uses. The long, narrow shape does not afford sufficient interior for growing a stand of timber, leaving it susceptible to windthrow. The proximity of roads, railroad and other facilities would make windthrow have hazardous consequences. There is no nearby forestland which this piece could be managed in conjunction with; therefore economies of scale also contribute to impracticability.

Conclusion: This criterion is met.

Conclusion (Goal Exception Criteria): The Board of Commissioners concludes that a goal exception has been justified.

B. OAR 660-004-0018

PLANNING AND ZONING FOR EXCEPTION AREAS

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule. [emphasis added]

⁴ Commercial activities in conjunction with farm use is an ambiguous category in the EFU statute and administrative rule. Neither applicable law nor the caselaw staff reviewed clearly stated that farm use must occur on the subject property in order for commercial activity to be “in conjunction with” that use. Nonetheless, as much is implied by the caselaw and by the wording “in conjunction with farm use”. A “facility for processing farm crops” is clearly required by administrative rule to be located on a farm.

(2) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size...

Findings: The application proposes an "irrevocably committed" exception. The proposed zoning is Industrial, which has a minimum parcel size of two acres.

...and shall limit uses, density, and public facilities and services to those:

(a) Which are the same as the existing land uses on the exception site; or

Findings: Uses will not be limited to the existing land uses. Therefore, (b) below must be met.

(b) Which meet the following requirements:

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

Findings: Because the zone change would allow changes from the existing types of uses and densities on the subject property, the provisions of this section apply. Industrial uses on rural lands must be less intensive than those allowed inside urban growth boundaries (UGBs) and unincorporated communities (UCs) in order to comply with this standard. Industrial uses occurring in a building or buildings of 40,000 square feet or less are allowed in unincorporated communities; therefore, "rural" industrial uses must be limited to something less than 40,000 square feet. The Benton County Development Code does not currently differentiate industrial zoning in rural areas from that inside UGBs and UCs. The applicant is proposing a warehouse of 10,500 square feet, which would comply with the requirement to maintain the land as "Rural Land". However, the zone change by itself is not specific to the applicant's proposed use. Once the zoning is changed to Industrial, any use listed in Chapter 72 of the Development Code is allowed. The uses allowed through this zone change can be limited if a Use Overlay is simultaneously adopted. This has been done in two previous zone changes. The Use Overlay is applied to, and is specific to, the subject property. The overlay specifies which uses can occur in that particular instance of the Industrial zone, and includes any other limitations (such as size of structures) that apply.

Conclusion: To demonstrate compliance with this criterion, the zone change is accompanied by a Use Overlay limiting the property to an industrial use occurring in a building or buildings not exceeding 20,000 square feet. **Through adoption of a Use Overlay, this criterion is met.**

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

Findings: The proposed industrial use will be similar to and compatible with the nearest uses, which are the agricultural research facility and the proposed farm processing facility. Other resource uses are sufficiently distant that the zoning and uses on the subject property will not commit them to nonresource use.

Conclusion: The proposed development will not commit nearby resource land to nonresource use. **This criterion is met.**

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

Findings: Public service needs of the proposed development are limited to fire protection and law enforcement, and roads. Any potential road improvements necessary to authorize the proposed use will have no negative impact on nearby resource uses. The proposed use itself will be similar in nature to the closest neighboring uses, and is anticipated to be fully compatible. Letters from the two close property owners (OSU and Autumn Seed) indicate support for the proposal. However, the Industrial zone allows a variety of uses in addition to the general warehouse or manufacturing the applicant proposes. In order to ensure that potential industrial uses would be compatible with nearby resource uses, the Board of Commissioners concludes it is necessary to prohibit the following uses through application of a Use Overlay: junkyards; vocational school; manufactured dwelling sales and/or repair; vehicle sales and/or repair other than farm vehicles/machinery.

Conclusion: The proposed use, along with the necessary public facilities and services, are compatible with neighboring resource uses when limited through application of a Use Overlay.

Conclusion (OAR 660-004-0018): The Board of Commissioners concludes that the proposed rezoning will be consistent with the rural status of the area (if a Use Overlay is included), will not commit additional resource land to nonresource use, and will be compatible with nearby resource uses. **This criterion is met.**

C. FINDINGS APPLYING TRANSPORTATION PLANNING RULE

OAR 660-012-0060

PLAN AND LAND USE REGULATION AMENDMENTS

(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:

- (a) **Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;**
- (b) **Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;**
- (c) **Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or**
- (d) **Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.**

(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of an existing or planned transportation facility;**
- (b) Changes standards implementing a functional classification system;**
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
- (d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.**

Findings: The first test is to determine what effect the proposed zone change will have on transportation facilities, and then determine whether that effect is significant.

The zone change would allow any use listed in the Industrial zone. The use would access the property from Hyslop Road, a paved County local access road. After a short distance, the traffic would enter Granger Avenue, a County major collector. Traffic would then either turn east, cross the railroad tracks and enter Highway 20, a State principal arterial, or would travel several miles west and intersect Highway 99W, a State principal arterial.

The applicant submitted a trip generation analysis prepared by Steve Perone of PTV America, a transportation planning consultant. This analysis describes the likely traffic that could result from uses allowed in the EFU zone, then compares this with traffic that could result from uses allowed in the Industrial zone. Uses allowed in the EFU zone that could generate substantial traffic include wineries, farm stands, and facilities for the processing of farm crops. These uses do not have established trip-generation estimates in the standard manual used for such purposes. Mr. Perone correlates wineries and farm stands with wholesale nurseries, which has trip generation estimates for the peak hour of 5.17 trips per 1,000 square feet of gross floor area, and correlates facilities for the processing of farm crops with general light industrial 0.98 which has trip generation estimates for the peak hour of 1,000 square feet of gross floor area. He therefore concludes that General Light Industrial is the best category for comparison purposes.

Looking at trip generation from uses allowed in the Industrial zone, the analysis finds that vehicle sales are rated at 2.64 peak-hour trips per 1,000 square feet of gross floor area. However, this is for new car sales which is unlikely at this location. Furthermore, this trip generation is significantly less than would be expected from commercial use such as a farm stand (allowed in the EFU zoning). Truck terminals and vocational schools have unreliable trip generation estimates. The suitable comparison, according to Mr. Perone, is the General Light Industrial category. This fits the use the applicant is intending to establish.

Because of differences in setback requirements between the EFU and Industrial zones which therefore impact the size of facility that can be established, the analysis estimates 34 peak-hour trips from General Light Industrial in the EFU zone, compared to 23 peak-hour trips from General Light Industrial in the Industrial zone. Based on this analysis, Mr. Perone concludes that the proposed zoning will have negligible impact on traffic.

A Use Overlay can limit the potential uses and thereby the range of impacts that could occur. If this by itself does not reduce the impact below the level of "significant", then mitigation must occur.

Analysis and Conclusion: The trip generation by the proposed use will likely result in an increase above the trip generation that has been associated with this property in the past. It is less clear that the proposed zone change would allow an increase in trip generation compared to the trip generation potential under the current zoning. Public Works staff concurs with Mr. Perone's determination of negligible traffic impacts from the proposed zone change, particularly if a use overlay limits the size and types of industrial uses allowed. Although the intersection of Granger and Highway 20 is at or over capacity, the proposed zone change will not alter the potential trip generation from this site. Therefore, the Board of Commissioners concludes that the proposed zone change would not: change the functional classification of an existing or planned roadway; change standards implementing a functional classification system; allow types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.

The Board of Commissioners concludes this criterion is met.

D. FINDINGS APPLYING DEVELOPMENT CODE CRITERIA and COMPREHENSIVE PLAN POLICIES

53.505 Zone Change Criteria. The Official Zoning Map may be amended if:

(1) The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied;

Findings: As the applicant states, the property has been in industrial use for many years, either associated with the railroad or the propane supplier. There is no evidence or history of the land having been put to farm or forest use. Modifications to the property during its industrial use, namely the addition of crushed rock, would make farm use much more difficult to establish. The site is not viable to farm.

By contrast, the applicant finds that the site is well-suited to industrial use. It fronts on a paved local access road, near to a state highway. The site abuts a railroad siding, which would enable loading and unloading of rail freight. For these reasons, the applicant concludes the site is better suited to industrial zoning than to farm zoning.

Analysis and conclusion: The subject property is not well-suited to agricultural use. The types of uses most likely to work at this site (indeed, the uses that have occurred here in the past) are industrial in nature. Under farm zoning, the focus is on agricultural use; industrial use can occur if it is tied to agriculture. Under industrial zoning, industrial use is the focus and there are no limitations to types of industry. Farm use and forest use are allowed in the Industrial zone.

For these reasons, the Board of Commissioners concludes that the Industrial zone is more appropriate for the subject property than is the current EFU zone. **This criterion is met.**

(2) The impact on adjacent properties will be minimal;

Findings in favor: The applicant addresses this point in substantial detail on pages 15 and 16 of the application submittal. In summary, potential impacts to adjacent properties can be minimized through two stages of review: the current zone change request, and then the subsequent industrial site development plan review. Potential impacts such as noise, dust, glare and emissions will be substantially mitigated on properties to the south by the intervening 120 feet of highway and railroad right-of-way. Properties to the north will experience similar, though lesser, mitigation by the 40-foot Hyslop Road right-of-way. Buildings and vegetation will limit attenuate noise. Setbacks in the Industrial zone require the building to be at least 60 feet from Hyslop Road, which will mitigate impacts to the north. The past industrial use of the site has been compatible with adjacent uses.

Analysis and Conclusion: The applicant's proposed use (a warehouse) is unlikely to have substantial impacts to neighboring properties. A Use overlay that limits this instance of the Industrial zone to warehousing and activities with similar impacts would remove the potential for a more-impactful industrial use being established. The nearest neighbors have submitted letters supporting the zone change.

The Board of Commissioners concludes that impacts will be minimal. **This criterion is met.**

(3) Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area; and

Findings: Public services provided include law enforcement, fire suppression and roads. There will not be a significant increase in the demand for law enforcement or fire suppression. Traffic impacts were discussed under Section C of these findings. The memo from Laurel Byer, Benton County Public Works, states that Hyslop Road does not meet the applicable road standard, and that road improvements would be required at the time of building permit review. The improvements are relatively minor; therefore adequate roads can be made available to the area.

In the absence of public sewer and water, the facility will need to operate on an on-site sewage disposal system and a well. Prior to approval of an industrial use, adequate sewage disposal and water will need to be demonstrated. For an industrial use such as the one proposed (warehouse) involving low numbers of employees, it is highly likely that adequate water and septic system could be developed.

Conclusion: The increase in demand for public road usage will be negligible and can be accommodated through minor road improvements at the time of building permit review. Other

public service increases are not significant and can be made available to the area. **The Board of Commissioners concludes this criterion is met.**

(4) The proposed zone change is consistent with the policies of the Comprehensive Plan.

Findings: The application submittal addresses several Comprehensive Plan policies on pages 16-18 of the application submittal. The Board of Commissioners concurs with the applicant's findings relating to these policies. Additionally, several policies from the Goal 12 Transportation element of the Comprehensive Plan apply. (These policies were adopted in 2001 as part of the County's adoption of a Transportation System Plan.)

Policy #11: Traffic impacts of development will be mitigated by requiring:

- a. A traffic analysis that identifies adverse impacts to transportation flow caused by development and demonstrates how adverse impacts will be mitigated.**
- b. Rights-of-way dedication of land where existing rights-of-way are inadequate or are needed for future roadways as development occurs.**
- c. Developers to make roadway improvements for their portion of the roadway based on: 1) existing conditions, 2) rough proportionality to the impacts of the development and 3) the functional classification of the road.**
- d. Bonding or agreement to participate in future improvements when the development has a significant impact that is identified through a traffic analysis and which impact cannot be mitigated in conjunction with or through design of the particular development.**

Findings: The trip generation analysis demonstrates that a traffic impact analysis is not warranted because the potential uses under the proposed zoning would have virtually the same traffic generation as the potential uses under the current zoning. Details of any right-of-way dedication or road improvements would be determined and required at the time of the site development plan review.

Policy #14. Land use actions affecting state highways shall be consistent with the Oregon Highway Plan.

Findings: Staff has conferred with Oregon Department of Transportation regarding the compliance of the proposal with the Oregon Highway Plan. The Board of Commissioners determines that the applicant's trip generation analysis demonstrates consistency with the Oregon Highway Plan.

Policy #15. Benton County shall use volume/capacity ratios and spacing standards from the Oregon Highway Plan (OHP) for projects and development proposals affecting state highway facilities. Decisions on alternatives shall be evaluated in accordance with the OHP.

Findings: This refers to the County's review of the applicant's traffic information, which is addressed in the findings for Policy #14.

Policy #26. Comprehensive Plan amendments affecting land use designations, densities and design standards shall be consistent with capacities and levels of service of facilities identified in the Benton County TSP.

Findings: The Benton County TSP identifies the intersection of Granger and Highway 20 as at a "Level of Service" of "F", which means it is at full capacity or is over-capacity, particularly during the P.M. peak hour. Warrants have been met for establishing a traffic signal at this location; however, due to the rural location, the TSP recommends alternative mitigation methods also be considered.

The situation at this intersection is complex. Changing the zoning to facilitate development may result in additional traffic, but that traffic generation is expected to be marginal when considered relative to the existing traffic flow. The mitigation solutions for this intersection are large-scale projects, such as installing traffic signals, adding extra lanes, or re-routing Granger to the northeast to intersect with Independence Highway. The share of such a solution proportional to the subject property's traffic generation would be small, and there is no mechanism by which the County could exact that share now, given that the mitigation solutions are controlled by ODOT.

Based on the traffic generation analysis, the Board of Commissioners concludes that the proposed zoning, when limited by the Use Overlay to 20,000 square feet, will be consistent with the County TSP.

Policy #28. Benton County shall promote the use of freight rail and air service to reduce trucking activity on County roads.

Finding: The proposed industrial zoning would facilitate development that is oriented to freight rail.

Analysis and Conclusion: The applicant's trip generation analysis demonstrates minimal potential for increased traffic resulting from the proposed zone change. Based on this analysis and the above findings, the Board of Commissioners concludes that the proposal is consistent with the policies of the Comprehensive Plan. **This criterion is met.**

E. FINDINGS FOR AMENDING THE COMPREHENSIVE PLAN MAP

Chapter V of the Benton County Comprehensive Plan contains the procedures and criteria for amending the Comprehensive Plan Map:

Map amendments may be considered when compliance with all elements of the Comprehensive Plan and with statewide land use planning goals can be shown and a public need exists for the proposed amendment.

Map amendments requiring goal exceptions shall comply with procedure and standards of OAR 660 Division 4 and State goals.

Findings: Compliance with the elements of the Comprehensive Plan is addressed in the previous section of these findings; compliance with the statewide goals is addressed in Section B

The applicant cites a public need in the lack of industrial-zoned land in the vicinity, an area where natural-resource-related industrial use is in demand. The proposal also addresses a public need for a diversified employment base in rural Benton County. A public need also could be found to exist in that appropriate zoning of property enables efficient utilization of land. If the land cannot be put to resource use, and its conversion to industrial use would not burden available facilities or impact nearby uses, the public is served by allowing other use of the property.

Conclusion: The proposed Comprehensive Plan Map amendment from Agriculture to Industrial has been found consistent with the Comprehensive Plan and statewide goals. A public need has been shown to exist. The Board of Commissioners concludes this criterion has been met.

G. SUMMARY AND CONCLUSION

The Board of Commissioners' findings and conclusions are:

Goal Exception Criteria: An "irrevocably committed" goal exception has been justified. The inability to put the subject property to farm use by itself, and the lack of adjacent complementary use combine to make farm use impracticable. Forest use is impracticable due to the small size, and proximity of other uses.

Planning and Zoning for Exception Areas (OAR 660-004-0018): The proposed rezoning will be consistent with the rural status of the area, will not commit additional resource land to nonresource use, and will be compatible with nearby resource uses.

Compliance with Transportation Planning Rule: The applicant's analysis demonstrates that the zone change will not result in significant impact to a transportation facility; therefore the proposal complies with the provisions of the Transportation Planning Rule (OAR 660-012-0060).

Development Code Zone Change Criteria: The proposal meets the Development Code criteria. The proposed zoning is more appropriate than the current zoning, the impact on adjacent properties will be minimal, and the proposal complies with applicable policies of the Comprehensive Plan.

Criteria for Amending the Comprehensive Plan Map: A public need can be demonstrated, and consistency with Comprehensive Plan policies and statewide goals has been demonstrated.

Overall Conclusion: A goal exception has been justified, and the criteria for zone change and Comprehensive Plan Map amendment have been met. Therefore, the Board of Commissioners approves the request.

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