



**Oregon**

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



**NOTICE OF ADOPTED AMENDMENT**

09/20/2011

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** Marion County Plan Amendment  
DLCD File Number 002-10

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:** Thursday, October 06, 2011

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

**Cc:** Sterling Anderson, Marion County  
Jon Jinings, DLCD Community Services Specialist

<paa> YA/I

**FORM 2**

**DLCD 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

(See second page for submittal requirements)

DEPT OF  
SEP 16 2011  
LAND CONSERVATION  
AND DEVELOPMENT

Jurisdiction: Marion County  
number, use none)

Local File No.: ZC/CP10-002  
(If no

Date of Adoption: 9/14/11  
(Must be filled in)

Date Mailed: 9/15/11  
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 9/13/10

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

(Please Specify Type of Action)

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

Change zone from Exclusive Farm Use to Industrial, change the Comprehensive Plan designation from Primary Agriculture to Industrial, with exception to Statewide Planning Goal 3.

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". Same.

Plan Map Changed from: Primary Agriculture to: Industrial

Zone Map Changed from: Exclusive Farm Use to: Industrial

Location: 19447 Grim Rd Ne Acres Involved: 4.28

Specify Density: Previous: na New: na

Applicable Statewide Planning Goals: 3

Was an Exception Adopted? Yes:  No:

Does Adopted Amendment affect the areas in unincorporated Marion County where the

Zoning Code applies? Yes  No

DLCD File No.: 002-10 (18521) [16763]

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes:  No:

If no, do the Statewide Planning Goals apply. Yes:  No:

If no, did The Emergency Circumstances Require immediate adoption. Yes:  No:

Affected State or Federal Agencies, Local Governments or Special Districts: none

Local Contact: Les Sasaki

Area Code + Phone Number: 503-588-5038

Address: 5155 Silverton Rd NE

City: Salem

Zip Code+4: 97305

Email Address:lsasaki@co.marion.or.us

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## 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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of the	)	Case No. ZC/CP10-002
	)	
Application of:	)	Clerk's File No. 5657
	)	
Jose Madriz	)	

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1319

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Jose Madriz to change the zone from EFU (Exclusive Farm Use) to I (Industrial), to change the Comprehensive Plan designation from Primary Agriculture to Industrial, and to take exception to Statewide Planning Goal 3 (Agricultural Lands) on 4.28 acres located at 19447 Grim Road NE, Aurora, Oregon (T4S; R1W; Section 26BB; tax lot 100).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on November 10, 2010. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On April 26 2011, the Hearings Officer issued a report recommending the Board deny the request. The Board held a duly noticed public hearing on the application on June 8, 2011. The hearing was closed and the record was left open for written testimony until June 27, 2011. At its regular session on July 6, 2011, the Board considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Primary Agriculture to Industrial is hereby **GRANTED**. The requested zone change from EFU (Exclusive Farm Use) to I-LU (Industrial – Limited Use Overlay) zone is hereby **GRANTED**, subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.


The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

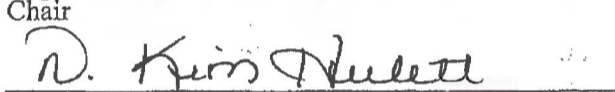
SECTION V. Effective Date

Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 14<sup>th</sup> day of September,  
2011, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

  
Chair

  
Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

**EXHIBIT A**  
Findings and Conclusions

The following findings and conclusions are adopted in support of the Ordinance approving Comprehensive Plan Amendment/Zone Change Case No. CP/ZC 10-002. Each of the findings are based on substantial evidence contained in the record of these proceedings:

1. This approval amends the comprehensive plan designation from Agriculture to Industrial and takes a physically developed and committed exception to the goals, and thereafter changes the zone from Exclusive Farm Use (EFU) to Industrial (I). Conditions of approval, including a limited use overlay are imposed.
2. The subject property is 4.28 acres in size and located at 19447 Grim Road NE, Aurora, Oregon. The property is further identified as Tax Lot 100 on Marion County Assessor's Map 4.1W.26BB. The entire property is subject to this approval and to the limited use overlay.
3. The property is midway between Hubbard and Aurora and located along Highway 99E, even though it is addressed off its cross street - Grim Road. The site is just south of the Wilsonville-Hubbard Cutoff.
4. The property is generally flat and has no identified wetlands, floodplain or hazard areas. There are no historic or natural areas identified on or near the site.
5. There is a house, mobile home, shop, and garage located on the property in which the applicant and his family reside. A large portion of the site is graveled to accommodate ingress and egress and for storage of equipment. A little less than half the subject property is planted in Christmas trees, however the production of trees is very limited due to factors emanating from surrounding properties and uses.
6. The property is bounded by Highway 99E along its entire eastern side, and access is provided to the property directly onto the highway. The northern boundary of the property is Grim Road, and there is an access driveway there as well. The southern boundary is bordered by another parcel and the western boundary is bordered by the Union Pacific Railroad. The soil on the subject property is predominately Woodburn silt loam, which is a Class II soil identified as High Value Farm Land.
7. Properties to the north, west and east are designated and zoned for Industrial uses. The property to the south is zoned EFU, but has a Resolution of Intent to be rezoned to an Industrial use. There are significant areas along Highway 99E nearby that are zoned and designated for commercial use, and there are pockets of Acreage Residential (AR) and Single Family Residential (RS) to the northwest and south. The city of Hubbard is a short distance to the south and the city of Aurora is a short distance to the north.
8. There are industrial uses on the industrial zoned tracts to the northwest and the southeast. On the large tract to the northwest, just across the railroad tracks from the subject property, is an industrial complex owned by Elixir Industries (TL300, Map 4.1W.27A) and Quikrete (TL300A1, Map 4.1W.27A), which site includes two large industrial buildings, large parking area, outdoor storage and truck and equipment parking.

9. Elixir Industries is one of the nation's largest independent suppliers to a wide variety of market sectors, with 12 operating divisions throughout the United States. One of these is the aluminum extrusion division supplying the construction, transportation, machinery and equipment, electrical, consumer durables, and recreational markets with linear and fabricated components. Since the company's founding in 1948, Elixir's product line has been expanded to include, in part: metal roofing and siding, entrance and utility doors, roof vents and domes, frame parts, putty tape, sealants, and aluminum extrusions.
10. Quikrete is a fast setting home based and packaged concrete product used in building fences, setting a mailbox or anchoring a basketball goal or play set. The Fast-Setting Concrete does not require mixing or tools, the dry mix is poured from the bag into the hole, then water is added.
11. Immediately across Highway 99E is Sun Gro Horticulture, which has one large industrial building, several smaller buildings, together with outdoor storage, parking and areas for truck and equipment parking. Sun Gro is North America's largest producer of horticultural-grade peat and the largest distributor of peat moss and peat and bark-based growing mixes. The property to the southwest has a residence combined with a large industrial building, several smaller buildings, a large graveled area used for outdoor storage, truck and equipment parking, turn around areas, all of which are also a part of Sun Gro Horticulture.
12. There are several residences in the general vicinity in the farm zone, and a residential subdivision nearby. The area along Highway 99E, and especially that area in between the railroad tracks and the highway, is characterized by a predominance of industrial and commercial uses on tracts 10 acres in size and under. Larger scale farming does not take place until east of Highway 99E, with some larger scale farming in areas between the railroad tracks and I-5 which is located a short distance to the west.
13. The subject property has historically been used predominately for commercial and industrial purposes. The applicant has owned the property for several years and has intermittently operated a small trucking operation from the site. Between the applicant and his family and related companies, they own nine truck/tractors, one of which is used only on the property and is not part of the trucking business, and four others are not licensed and not operable and do not leave the site. The applicant also owns nine trailers, but one is used only for the property, three are inoperable and not used at all and the other five are used in the trucking business.
14. As with most small trucking operations, the tractor trucks and trailers are out on the road and are seldom at the subject property. Repairs and maintenance are done on this equipment in the large garage building on site. As independent truckers, they hire themselves as drivers and their equipment out to companies to move freight around on the west coast.
15. Trucks are dispatched and arrangements for freight are made by cell phone. The accounting for the business is done by a business accounting service in Keizer, Oregon. The applicant is affiliated with Interstate Trucking, and the business location for the applicant's business is 12164 Ehlen Road NE in Aurora. Aside from a small computer, no business activities take place in the residence on the subject property.
16. The application process and approval criteria for a quasi-judicial comprehensive plan amendment are the same as that for a zone change, except that in addition to the normal criteria, the statewide goals and guidelines must be addressed. Marion County Comprehensive Plan, Plan Amendments, Policy 2.

17. The approval criteria therefore, from MCZO 17.123.060, with justification for the plan amendment and the zone change combined are as follows:

I. Consistency - The Industrial plan designation and zone are appropriate for this property, and is consistent with the goals and policies of the Comprehensive Plan. The subject property is nestled in a unique area that is surrounded by Industrial zoning, a rail line and a large commercial operation. The property is bordered by Grim Road and Highway 99E. Essentially the site is a small island of EFU amongst a sea of industrial and commercial activity and transportation corridors.

The subject property is appropriate for conversion to use for industrial purposes. By virtue of the surrounding uses, farming is impracticable. The land is predominately developed, intensive farming is not practical due to the size and shape of the tract, and it is located between the rail line and the highway and near the adjacent industrial and commercial uses.

Approval of this application directly complies with the Economic goals expressed in the Marion County Comprehensive Plan. The allowance for industrial uses here would allow the trucking business to continue, which provides for increased employment opportunities, not only for the applicant but indirectly in the business community that benefits from competitive freight availability and rates. Marion County major economic goal (a). Further, the plan goal (e) is to provide for sufficient areas for industrial use, which this application would do. This criterion is complied with.

II. Appropriateness - The change to Industrial is appropriate considering the surrounding commercial and industrial land uses, the rail line and the density and pattern of development in the area.

The industrial complex that includes Elixir and Quikrete is located immediately to the northwest of the subject property, just across the rail line. Sun Gro borders the property to the south, and is also located directly across the highway. The property is bordered by the rail line on one side, Grim Road on another, Highway 99E on another and by Sun Gro Horticulture on the last side.

The general area along Highway 99E is dominated by commercial and industrial uses. Some small tract rural residences are in the area together with platted and zoned subdivisions and the cities of Hubbard and Aurora and the Aurora Airport, a major commercial and industrial center in the north county. The primary farming exists in between the developed areas, and then extends to the east, and to a certain degree between Highway 99E and the I-5 freeway. This criterion is complied with.

III. Public Facilities - There are adequate public facilities, services, and transportation network in place to serve the subject property. No sewer or water is needed for this change in plan and zone designations. No new buildings are proposed and no proposed use would require any services other than that which is already on site. This criterion is complied with.

IV. Other Lands - There are no other lands in the county already designated for the proposed use that are either available or not as well suited for the anticipated uses due to location, size or other factors. The subject property is very unique. There are few properties in the county that are bordered on one entire side of the property by a rail line, long enough that a spur would be feasible. In addition, the uniqueness of the subject property lies in its central location between Hubbard and Aurora and having another of its entire boundaries bordering on a major highway



such as 99E. In addition, Grim Road is an excellent east/west cross road, and the Wilsonville-Hubbard Cut Off provides an alternate north/south route for easy access to the airport and the freeway. The applicant performed an Other Lands Study, the scope and findings of which are deemed to be satisfactory and in compliance with MCRZO 17.123.060(D), which provides that:

*The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors;*

The concept behind this criterion is to ensure that new plan designations and zones do not crop up in areas where there already exist lands suitably zoned and available to satisfy the proposed use. Essentially, a party is required to look within a suitable area for land already suitably zoned before making application to change a zone to the new designation.

The inventory analysis begins with an identification of what zone and plan designation is needed for the proposed trucking operation. Once the needed planning information is designated, then the inventory can move forward with the accumulation of supporting data.

In this case, the applicant operates a small home-based trucking operation. A review of the Marion County Rural Zone Code reveals that the only zone and plan designation which allows this kind of use is the Industrial zone and plan designation. That the Industrial designation is the appropriate zone and plan designation for the use identified by this applicant has never been an issue in this case.

The search for other lands begins with a determination of the study area, followed by a review of all industrially designated lands within that study area to verify that no other lands are available to the applicant for his use. The scope of the study was coordinated in a conversation with planners and includes a study of all lands that lie north of the City of Woodburn's UGB; east of Butteville Road (excluding urban areas); south of the Marion County line; and west of the Marion County line. This basically includes the entire north portion of Marion County, and is an appropriate study area for the proposed use based on the geography of the county.

Within the study area, there are a total of only six tracts that are zoned and planned for Industrial use. Of the six, five are fully developed and operational for existing industries, and the sixth tract is held for investment purposes and is not available for sale or lease.

What this study reveals is that there are very few sites with an Industrial designation in the north county area. The study area is large, yet there are few acres allowed outside urban areas for industrial uses. The total industrial acreage is 26.61 acres, less than two of which are not fully developed and in production. Even those two acres are held by a small business for expansion when that business grows. A review of the urbanizable lands inside the UGB, but outside the city limits of Aurora, Donald and Hubbard reveal no land designated for industrial use under county jurisdiction. Therefore, within the Marion County planning jurisdiction in the entire north county area, there is little land zoned for industrial use, and none is available for lease or purchase from the owners.

Based on the findings developed in this detailed inventory, there are no other lands in the county already designated for the proposed use that are available to which this applicant can move his business. Because there are no other lands already suitably zoned, it makes the most sense for the subject property to be re-zoned to allow the use.

This study re-emphasizes the fact that of the six industrial properties already zoned for industrial uses, two of those are in the immediate vicinity of the subject property. One is separated from the subject property only by the railroad tracks, the other by Highway 99. A third site is located less than a mile to the south. It is also important to note that four of the six industrial sites are located either right on or very near to Highway 99. One of the other sites is located on Butteville Road, another major north south arterial. The other site is located to the east of Hubbard, but is less than one mile from Highway 99 at Hubbard with the ability to then access the county to the north or south, or gain quick and easy access to the interstate highway.

The largest tract currently zoned Industrial is 8 acres and the smallest is less than 2 acres. The average size of the six industrial tracts is 4.43 acres. The subject property is very similar in all of these characteristics to those properties already zoned Industrial. The subject property is located on Highway 99, with good cross access to Grim Road. This site is nested between two areas already designated for industrial use, and is among a cluster of similar industrial-type uses that are not industrially zoned. The subject property is 4.28 acres in size, just below the average size of tracts currently zoned for industrial use, and is in the median range, being larger than half the tracts industrially zoned, and smaller than the other half.

Based on location and size, as well as the surrounding uses, the subject property is best suited for conversion to the Industrial zone and plan designation. There is no other land available for this use that carries the appropriate zone currently. To allow this use requires a zone change and comprehensive plan amendment. The subject property is the most suited for this use. There are no other lands similarly situated that already have the appropriate zone for use as the base of operation for this trucking business. This criterion is complied with.

V. Intensive Uses Impact - Although the Industrial zone will clearly allow uses more intensive than are allowed currently in the EFU zone, the new Industrial designation will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

On the adjacent lands there already are a concrete manufacturing and production facility; a metal fabrication and manufacturing facility; and a major peat moss production facility. In addition, there is the major north/south rail line running the entire western boundary of the subject property. The surrounding uses, and the buffer provided by Highway 99E and Grim Road, all make this the perfect location for additional industrial-type uses, such as the applicant's trucking business.

Marion County has already determined that the presence of the rail line and the central location and good road access system are ideal for industrial uses in zoning the surrounding properties. This approval simply is an extension of that concept.

In addition, the imposition of conditions and the limited use overlay ensure that if any portion of the subject property converts to a more intensive use, Marion County will have the opportunity to review that by way of a conditional use application to mitigate any impacts that might be generated by the new use.

18. All of the criteria for approval of the change in zone from EFU to Industrial have been satisfied and the zone change should be granted.

19. The following findings and conclusions address compliance with Statewide Goals and Guidelines:

I. Goal 1 - Citizen Involvement - This quasi-judicial land use process involved two public hearings in which the public actively participated. This goal is satisfied.

II. Goal 2 - Land Use Planning - The built on and committed exception is justified and demonstrated in these findings. This goal is satisfied.

III. Goal 3 - Agricultural Lands - This goal is satisfied by Exception.

IV. Goal 4 - Forest Lands - This goal is either not applicable as the land is not forest land, or is alternatively satisfied by Exception.

V. Goal 5 - Natural Resources - There are no Goal 5 resources identified on the subject property or in the immediate vicinity. The property is on a main arterial and surrounded by commercial and industrial uses as well as a rail line, therefore there is no impact on open space or scenic resources. There are no historic areas identified on the site or nearby. This goal is satisfied.

VI. Goal 6 - Air and Water Quality - This application is seeking to allow the trucking operation that has been going on at the site for years without controversy or impacts. No new buildings or factories are proposed that would impact air quality and the property already has a functional well and no new water needs are generated by approval of this application. This goal is satisfied.

VII. Goal 7 - Natural Hazards - There are no natural hazards that impact the subject property. The site is flat and has no wetlands or floodplains identified on it. This goal is satisfied.

VIII. Goal 8 - Recreation Needs - The subject property is situated along a major arterial and amongst commercial and industrial uses. There are adequate open spaces, parks and other recreational opportunities in the area. Approval of this application will have no detrimental impact on recreation in Marion County. This goal is satisfied.

IX. Goal 9 - Economy - This application allows a small family owned business to continue. The operation is small and cannot afford an offsite office/dispatch/parking location. There are no employees and only a few pieces of equipment. The owner/operator does the driving and most of the maintenance and repair himself. Family assists with scheduling and dispatch, on a part time as needed basis. The business provides a service to the business community and offers competitive freight rates. By staying in business there is a positive economic impact on the community through the goods and services used by the applicant, but also in making available freight hauling at competitive rates, which stimulates the other small and medium sized businesses that use the applicant's services. This goal is satisfied.

X. Goal 10 - Housing - This application is not for housing, and none is involved here. There have been historically two dwellings on the property (stick built and mobile), neither of which will be affected by this application. There is no plan to add more housing. This goal is satisfied.

XI. Goal 11 - Public Facilities - The trucking operation does not utilize public facilities other than the road system, for which motor rate taxes are paid to the State of Oregon. There is no need for sewer or water or storm drainage facilities. The existing well and septic tank are sufficient,

and this application will not put pressure on the county to extend new public facilities to this site or area. This goal is satisfied.

XII. Goal 12 - Transportation - The trucks involved here are already on the road and accounted for in the existing traffic. No expansion of the business is proposed. There is adequate ingress and egress to the site from both Grim Road and Highway 99E. There has been no adverse impact on the transportation system from the existing operation, and that zero impact will continue. In addition, Marion County is imposing two conditions of approval which satisfactorily address future traffic impacts. First, a limited use overlay will limit the total number of trips generated by the subject property to 25 trip ends per day. If the use were to intensify, traffic mitigation may be required in the future. Second, a trip cap of not more than 50 average daily trips (ADT) sets the maximum number of ADT permissible absent further study. This goal is satisfied.

XIII. Goal 13 - Energy - This application positively affects energy consumption as the applicant operates his trucks from his home, thereby eliminating extra vehicle trips from home to a dispatch location and back. By using a home-based trucking operation routing and exchange of tractors and trailers is facilitated in the most efficient way possible. This goal is satisfied.

XIV. Goal 14 - Urbanization - This application does not generate urbanization. This application is not for any land division and does not involve an urban growth boundary. This goal is satisfied.

XV. Goals 15-19 - Greenway and Coastal Goals - These goals are not applicable to this application as the subject property is neither on the river nor the sea.

20. The subject property is entitled to an exception from application of the applicable goals due to its physically developed and committed status. The property is predominately physically developed with several buildings, two homes and rocked roads and equipment storage areas. The property is further committed to non-resource development by virtue of the surrounding industrial and commercial uses, and the transportation facilities. The property is bounded on one full side by the rail line, on another by Highway 99E, and on the third side by Grim Road. The final boundary is common with Sun Gro Horticulture. Across the rail line are two large industrial manufacturing facilities. These uses all commit the subject property to non-resource use due to the restrictions on farming practices that these uses place on the site.

A property that is physically developed to the extent it is no longer available for resource use may be exempted from the application of the resource goals (3 and 4). OAR 660-004-025(1).

The physically developed exception is site specific, and must be clearly mapped. The nature of the physical development must be detailed. OAR 660-004-025(2). In this case, the area to which the exception applies is identified as the entire tax lot owned by the applicant (TL100, Map 4.1W.26BB), a total of 4.28 acres.

All the development was lawfully established on the site. The houses and buildings were all sited with appropriate permits and were outright permitted uses. The level of physical development is such that it precludes use of the site for resource purposes. It is impracticable and uneconomical to remove the gravel and buildings from the site in order to return them to resource use.

The presence of the roads, the rail lines and the surrounding industrial and commercial development make farm uses allowed in the EFU zone impracticable. The characteristics of the

subject property (the exception area) are predominantly physically developed. The site is also an elongated shape and bordered by heavily traveled roads and a rail line. The characteristics of the surrounding properties are discussed in detail above, but include the roads, rail, and industrial and commercial uses that completely surround the subject property. The relationship between the exception area and the adjacent lands are that the exception is surrounded and the surrounding uses make normal agricultural uses impracticable. Dust, noise and spraying activities in the exception area have to be reduced, restricted or eliminated altogether. Use of chemicals that might drift to adjoining uses could have a detrimental impact on the manufacture and packaging of peat moss, which could lead to significant liability. The same is true as to Elixir and Quikrete, as to both manufacturing (although to a lesser extent because manufacturing occurs mostly inside) and to outside storage. Similarly, the presence of the road system and rail deter such normal practices as irrigation because no irrigation water should leave the site, and dust can not cloud the highway as it is also a liability issue.

Other relevant factors that support this Exception include the parcel size and configuration, and the ownership patterns in the area. Parcel sizes and separate ownership patterns, as well as the industrial and commercial uses taking place on those lands are contributing factors for justification of this exception. OAR 660-004-0028(6).

All of the criteria for approval of the subject property as a physically developed exception have been satisfied and the exception should be granted. OAR 660-004-0025.

21. In addition, the criteria for an irrevocably committed exception have been satisfied, and the exception is justified on that basis. OAR 660-004-0028. The subject property has two residences and several outbuildings. The two dwellings are used in conjunction with one another for family and together generate less than the average 8 ADT calculated in the Trip Generation Manual for such single-family homes. It is estimated that currently there are an average of 10 daily traffic trips associated with the combined two residences. These are normal passenger car and light pickup type vehicles normally associated with rural living.
22. The applicant has a number of heavy trucks/trailers, however only two are operational. Applicant is an independent mid to long-range hauler, who averages 4-5 days out on a haul. When the trucks are on site, they are either parked, or being serviced or repaired in the outbuildings that are located on-site. Therefore, the only trips associated with these two trucks are the trips out onto the road, and the return trip. Considering one trip in and one trip out every 4-5 days, that accounts for less than 20 trips per month per truck, or a total of 40 cumulative for both trucks. Rounding that number up to account for seasonal fluctuations and miscellaneous trips, to a cumulative 60 trips per month, and reducing that to the ADT figure, puts the truck contribution to traffic generated from the site currently at 2 ADT (1 ADT per truck) - using the statistical average.
23. Combining the 10 ADT from the dwellings with the additional 2 ADT truck traffic, there is a total of 12 ADT currently being generated from the subject property.
24. Almost all the existing traffic utilizes the entrance to the property located on Grim Road. However, there is an existing road approach onto Highway 99E that is primarily used as a secondary access to the Grim Road access. The highway access is actually located on the cut-off road, and in a location that has good visibility and no conflicts in either direction. The Grim Road access has good visibility in both directions from the subject property side of the road. The access point is generally undefined, and there is no issue with truck and trailer ingress and egress.

from the subject property onto Grim Road. There is a stop sign on Grim Road at the cut-off, and a rail crossing in the opposite direction. There is a slight bend in Grim Road along the subject property, but this has not adversely affected either passenger or truck traffic.

25. Grim Road is also used by truck traffic serving the industrial uses across the railroad tracks. Grim Road has sufficient capacity for the existing neighborhood traffic, and sufficient capacity for growth for the future. The quality of the road is excellent, and it has held up well under the current traffic patterns. Neither the applicant nor any of the other industrial users in this area have ever had any difficulty or conflict between truck and car traffic, accidents, or back up or slow down at driveways or at the intersection of Grim Road and the cut-off. A condition of approval requires the applicant to address some improvements on Grim Road.
26. Many of the truck trips currently generated by the applicant exit the subject property making a right turn onto Grim Road and proceeding to the stop sign at the cut-off. Nearly all of the truck trips then make a left-hand turn onto the cut-off and make their way to I-5 and on to their destination. Only occasionally would a truck turn left on Grim Road, as almost all the hauling is done on I-5. A small percentage of the truck trips will turn right onto the cut-off, and those are mainly trips that are going southbound on I-5, and then normally only when traffic or other exigent factors come into play. Passenger cars generally follow the same route, although they are more likely to turn left onto Grim Road, and to turn right onto the cut-off for access to the Woodburn area for shopping or services.
27. The applicant has generally observed truck traffic in this neighborhood and the pattern used by adjoining industrial uses, and reports that those truck traffic patterns are very similar to what he conducts from his property.
28. At most this applicant might be expected to double his truck usage in the long term. Considering that this haul operation involves few trips in and out of the subject property, doubling that number is not significant as you move from 2 ADT to 4 ADT. Even assuming the doubling of the existing operation in size and scope, the additional traffic is minimal and presents no impact to the transportation system. A condition of approval imposing a trip cap on site generated traffic directly addresses and mitigates this issue.
29. There are already two houses on the subject property, and no more are proposed and no more would be allowed by the new zoning, therefore the expectation is that the dwelling ADT will not significantly increase either. It is possible that the second home could become an independent dwelling, not in conjunction with the primary dwelling. In that case, each dwelling would be expected to generate 8 ADT, for a total of 16 ADT, only 6 more ADT than present. This additional traffic is not significant and would have no impact to the transportation system.
30. On the adjacent lands there already are a concrete manufacturing and production facility, a metal fabrication and manufacturing facility, and a major peat moss production facility. In addition, there is the major north/south rail line running the entire western boundary of the subject property. The surrounding uses, and the buffer provided by Highway 99E and Grim Road, all make this an excellent location for additional industrial-type uses, such as the applicant's trucking business, and demonstrates that truck, passenger and light truck traffic in much higher volumes than is generated from the subject property can be handled by the current road system and facilities.

31. The applicant has proposed an Industrial zone for the subject property, primarily because in that zone his existing trucking operation is allowed as a permitted use. In reviewing the potential uses that are allowed outright in the Industrial zone (MCRZO 17.165.020) there are few uses listed that would be feasible on this size property, and many of those uses would find the rail frontage and potential for a spur to be an appealing attribute. If rail were used, fewer truck trips would be generated. Also in reviewing the permitted uses, MCRZO specifically identifies that such uses are only permitted at an appropriate scale, which further acts as a restriction to keep any industrial use that might locate on the subject property in the future small and close in size and scale to the industrial uses that are already taking place on adjoining lands.
32. With these restrictions and limitations in mind, some of the potential uses on the property in the new zone could include:
- A. Agricultural services and forestry (SIC 07 and 08); which would be allowed in the current zone and, therefore, would not pose any additional traffic impact.
  - B. Contracting and service facilities (SIC 15, 16, 17); such uses would be scaled to the size of the site and traffic generation, would not generate more traffic than adjoining properties, and given the small size of the site and therefore the limited nature of uses, it would be expected that traffic would not create any impact on the system.
  - C - G. Tobacco, textile, printing and rubber manufacturing; none of which are realistic for this site given the lack of sewer or water and the small size of the site. Given the nature of these kinds of facilities, it is highly unlikely that any will locate in Marion County in the foreseeable future.
  - H. Cement, clay, glass and stone products manufacturing facilities (SIC 32, except 323); this is the type of use occurring next door, and on a smaller scale could fit on the subject property. The trip generation from such a facility is small as evidenced by the adjoining facility and the addition of another similar plant would not adversely impact the transportation system.
  - I. Metal fabrication; electrical product manufacturing, sawmills and coal dealers; none of which are realistic, except for a wood fuel dealer. A wood fuel dealer would involve bringing firewood in a truck to the site and then having customers periodically come by to pick up the wood, or for customers to buy the wood and have the dealer deliver wood. Given the site size, and the market and availability of wood, it is estimated that 100 to 150 cord of firewood could be stored and marketed from the site. Delivery of this wood to site would typically be in a heavy truck that would have a capacity to haul 5 cord of wood. This would generate between 20 and 30 truck trips to and from the site. Most sales of firewood are in one cord increments, although deliveries are generally done by a larger truck that coordinates several cord deliveries to several customers. If it were assumed that a fuel dealer sold the entire inventory every month, this would equate to 30 truck trips a month for bringing the wood in, and twice that many for deliveries of the wood out to customers. Add in another 10 trips for miscellaneous or customer u-hauls, there would be approximately 100 truck trips per month from this type of operation, or less than 4 truck trips per day. This low volume would present no adverse impacts to the existing transportation system.
  - M. Transportation equipment, manufacture and repair; because this category includes rail, and with the potential of a rail spur, it is possible that some sort of rail car repair could happen on site. However, any such use would mostly be rail dependent. The only traffic movements associated with this type of use would be personnel movements and deliveries of parts or materials, which would no doubt be fewer traffic trips than is allowed under the current zoning.

N-P. Professional, scientific equipment manufacturing (SIC 38), wholesale and metal working equipment; simply are not realistic for this site due to the size and lack of sewer and water.

P-3. Utilities-primary equipment and storage yard; this type of use would not be too different from what is going on now, and the existing level of equipment and truck movement and storage has no adverse impact on the transportation system.

P-4. Auction house or market; it is highly unlikely such a business would locate on the subject with the presence of the Woodburn Auction Yard and Woodburn Livestock Auction being located just a few miles down the road.

Other listed uses range from cleaning and laundry plants to fire stations, and are not practical for this site because of the combination of its small size, the lack of sewer and water or other facilities. For example, a fire station has to be located within a district and be sized accordingly. According to the Aurora RFPD, a fire station has to be a minimum of 10 acres in size and have sufficient utilities for training and on-site living quarters, none of which can be accommodated on this site, even if it were in a location that is suitable for a fire district to be able to serve its population.

33. According to the 5<sup>th</sup> Edition of the Trip Generation Manual, a light industrial-type use might be suitable for the subject property if approved as to scale by the county; and would generate approximately 3 ADT per employee, dropping down to less than 1 ADT for larger heavier industries. Manufacturing facilities generate just over 2 ADT; and warehousing type activities are under 4 ADT.
34. Given the small size of the subject property and its lack of municipal services, it is anticipated that the most intense industrial activity that could take place given the limitations of the zone and the uses that are permitted would have no more than 10-12 employees. This would mean a range of 10 ADT for heavier industries, to 30 ADT for lighter industries, to 20 ADT for manufacturing and to a maximum of 40-45 ADT for warehousing. Subtracting from these totals the existing traffic on site of 10 ADT, plus 2 ADT truck traffic, total of 12 ADT, the most intensive new industrial use would add approximately 30 new ADT to the road system. Grim Road, the cut-off, and Highway 99 all have sufficient capacity to accommodate these small number of additional traffic trips. The combination of the trip cap and limited use overlay provisions will ensure that sight generated traffic will not adversely impact the surrounding area or the road system.
35. The applicant in this case did not apply for establishment of a non-conforming use; however, the substantial evidence submitted indicates that the applicant's use of the property for his trucking business matches closely to the historic use of the subject property. Although this matter is not a part of this application, considerable evidence on the subject was presented, and findings on that evidence is presented here for the purposes of addressing all issues raised in this proceeding.
36. Applicant purchased the property from Arnold E. Ballweber in 2006. Mr. Ballweber was the original inventor and creator of truck mounting carpet cleaning equipment. Mr. Ballweber's design and construction of commercial size and quality steam carpet cleaning was the first of its kind. Mr. Ballweber began his business at this site in 1958 and remained there in operation continuously until he sold the property to the applicant.
37. Mr. Ballweber operated his business from the subject property over the years using the various business names: Ballweber Hydra Carpet Cleaners; Ballweber Industries; and Ballweber Carpet



Cleaning. The Secretary of State Business Registry shows Ballweber Industries, Inc. having been registered since June 4, 1979, and a predecessor corporation (Ballweber Steam Clean Systems of Oregon, Inc) having been registered since October 7, 1971. It is understood that for the period from 1958 through October 7, 1971 that Mr. Ballweber operated his business as a sole proprietorship, or that the state did not have records that preceded 1971 available online.

38. Zoning was not attached to the subject property until the mid to late 1970's, after Mr. Ballweber established and operated his business.
39. The applicant's use of the property and buildings is substantially similar in scope to that of Mr. Ballweber. Both involve the use of the buildings on the property for storage, maintenance and carrying out office and administrative functions. Both also involved the use of trucks as the primary equipment in the business. Mr. Ballweber ran multiple trucks from the subject property, as well as manufacturing and outfitting trucks with mobile carpet cleaning apparatus for others. The level of truck traffic has not changed appreciably from the Ballweber use to the applicant's use, and, in fact, the number of trips is probably less than it was under Ballweber because the Ballweber use might involve two or three trips per truck from the property a day to attend to cleaning jobs in the North Marion County area.
40. The carpet cleaning innovation that Mr. Ballweber came up with was a truck-mounted carpet cleaning system utilizing big trucks with this equipment mounted on it, and he would make and repair that equipment from the subject property just like the applicant rebuilds and repairs trucks. Ballweber would then sell this equipment, and customers would bring the equipment back to him periodically for him to fix. The applicant does the same thing, bringing trucks back to the shop and fixing them. Ballweber had large trucks bringing materials and supplies to the site, similar to applicant driving his trucks onto the site and off the site. When Ballweber would make sales, these trucks would be brought onto the premises and he would mount the steam cleaning equipment onto the trucks and they would come and go from the property just like applicant does. In addition, Ballweber operated two different businesses. The first being the manufacture and repair of the equipment, and second being his own use of that equipment in his own carpet cleaning business. This also would account for why there are different business names with Ballweber Hydra Cleaning being the carpet cleaning business and Ballweber Industries or Ballweber Steam Clean Systems of Oregon being the equipment manufacturer. In the carpet cleaning business, the trucks resided on the subject property and would be dispatched by Mr. Ballweber out in the community to perform carpet services. When those services were performed, the trucks were returned to the subject property and the act of trucks coming and going from the subject property, as well as being dispatched, are identical to what the applicant does.
41. When applicant bought the property, arrangements were made with Mr. Ballweber to transition in applicant's trucking business and transition out his carpet cleaning business. Originally, the agreement was for a shared use of the shop and surrounding areas for two months. That shared use continued well into 2008 before Mr. Ballweber became sick and closed the business. During the shared use time there was only one shop employee who was part time and on an irregular schedule, and at least one employee who operated a carpet cleaning van and did external carpet cleaning services. Mr. Ballweber was routinely on the property operating and supervising his business during that shared use period, and often times stayed overnight in an RV he had parked on the property as an office for his carpet cleaning business. The telephone line installed by the telephone company from the shop to the location where the RV was parked remains on the property to this date.

42. At no time prior to applicant's acquisition of the property on February 27, 2006, did he occupy the premises or operate his business from those premises. Prior to purchasing the subject property, applicant's business was located for many years in the Salem and Keizer area.
43. It has been noted that Mr. Ballweber's corporation, entitled Ballweber Industries, Inc., was dissolved in 1993. The fact that Mr. Ballweber dissolved his corporation has no bearing on his business use of the subject property. In applicant's personal discussions with Mr. Ballweber, he indicated that he had been doing the manufacturing business on the property since the 1960's, and applicant is personally aware of him having done business there from 2005 through 2008. A website identifying manufacturers in the area show that Arnie Ballweber started his carpet cleaning business in 1958, and later invented and began manufacturing his truck-mounted carpet cleaning equipment. The corporate data was submitted for the purpose of showing the existence of Ballweber Industries not for the purpose of establishing dates of use of the subject property. The Ballweber business was incorporated in 1971, several years after it started, and was dissolved in 1993, yet continued to operate for 15 years thereafter. It may very well be that Mr. Ballweber originally operated the business as sole proprietor, and reverted to sole proprietor status in 1993 when the corporation was involuntarily dissolved by the State. A sign for Mr. Ballweber's business in which he indicates that he first manufactured truck-mounted carpet cleaning units in 1969 was still on the subject property in 2006 shortly before applicant purchased the property. The sign stayed up for approximately 18 months after applicant purchased the property during the time when Mr. Ballweber and applicant shared use of the shop area and he continued to run his business from the subject property. In the summer or fall of 2008, after Mr. Ballweber had closed the business, and ultimately passed away, Applicant removed the sign. However, the posts upon which the sign was erected still remain. The applicant still receives mail for Mr. Ballweber's business.
44. At no time has applicant had a cessation of business activity operating from the subject property. As is most likely what happened with Mr. Ballweber changing business entities, applicant also dissolved his corporation and currently operates as a sole proprietorship. How a business is organized and registered with the appropriate government is not evidence of use of the particular piece of land.
45. While it is acknowledged that applicant has had conversations with code enforcement, applicant has worked with code enforcement in good faith, and has not been convicted of any code violation.
46. Applicant's business is as an independent contract hauler, primarily for Universal Forest Products, Inc., a Michigan company with its northwest operations in Woodburn, Oregon. Applicant has no ownership interest or control of Universal Forest Products, Inc.
47. Universal Forest is a supplier of lumber and wood related products to retail stores such as Lowe's, Home Depot, etc. Applicant's contract for hauling lumber and wood products for Universal Forest involves applicant having trailers available at the Universal Forest site in Woodburn. When a contract comes up, Universal Forest pulls the trailer to a loading area and loads it. Contact is then made to applicant who brings a tractor to Universal Forest to hook on to the fully loaded trailer. The tractor and trailer are then driven on the route assigned by Universal Forest, and the trailer is then returned empty to the Universal Forest storage lot to await its next load out.

48. Once applicant's trailer is fully loaded, applicant, or one of his contract drivers, will arrive with a tractor, hook up to the trailer and depart. Almost all of applicant's contracts are long haul and involve trips to northern and eastern Washington and southern and eastern Oregon. Depending on the route, a single trip will have a tractor/trailer combination on the road for an average of three days.
49. Tractors and trailers that are not in the immediate process of loading are parked in Universal Forest's back lot and retrieved as and when necessary for loading. During those times when one of applicant's trailers are awaiting a load out but are not yet ready to actually be loaded, those trailers are parked on the Universal Forest lot in Woodburn.
50. Universal Forest is a large company and employs several small independent haulers such as this applicant. Most of the applicant's business involves one customer, and that customer requires most of the trailers owned by the applicant to be at the Universal Forest facility and ready for load out. Universal Forest hauls never depart from or arrive at the applicant's property - it is always at the Universal Forest warehouse in Woodburn. Essentially, a tractor that may be at the applicant's property would leave without a trailer, drive the three miles to Woodburn, pick up the trailer, the route slip and bill of lading and then depart from there fully loaded to locations specified by Universal Forest. When empty the trailer is taken back to Universal Forest and parked there to await the next haul contract.
51. Occasionally, applicant will find a return load at a location near the end of his route with Universal Forest. On those few occasions the trailer will be loaded on the return trip, and the initial arrival point will be the destination of the return load. After the return load is delivered to its final destination, the trailer goes to Universal Forest and repeats the cycle. It should be noted that at the time of the Hearings Officer's site visit, the load of cardboard on the trailer that was reported during the hearing was one of these return loads. In that case, which does happen on occasion, the return load was destined for the Oregon coast to be delivered to a recycling firm. On the return trip, the drive time limitations provided under Oregon law did not provide sufficient time to allow the trailer to be moved all the way to the coast for delivery that day. A rest period for the driver was required by law, and since this was a load that the applicant himself was driving, he stopped at home for his rest period instead of a rest area.
52. The applicant, being an independent contractor, also has hauls contracted from other companies in order to keep his equipment on the road and producing income. Applicant has a trucking consultant that assists him in management of loads, equipment, and in brokering independent hauls for hire. The consultant is Interstate Trucking Consultants, Inc., and the applicant does all his business through the offices of that consultant. Applicant has no ownership interest or control in Interstate Trucking Consultants, Inc.
53. Independent hauls (other than the Universal Forest business) are not routine, but do occur on a fairly regular basis. Because of this, applicant keeps one or two trailers at the subject property in reserve. For these other hauls, the routine is very similar to that at Universal Forest. Applicant will be contacted by the consultant on behalf of a shipper, and the tractor and trailer leave the subject property empty to go to the shipper location for load out, and are on the road from the shipper location to the ultimate product destination. The return haul, empty or full, follows the same basic pattern as that for Universal Forest.
54. Applicant keeps normal 8:00 a.m. to 6:00 p.m. working hours during the week days. Periodically there will be equipment movement on a weekday, but that is rare. Movement of equipment after

6:00 p.m. and before 8:00 a.m. happens only in the case of emergency.

55. The Quikrete plant involves a huge tower facility, several large manufacturing buildings, outdoor storage of pallets and materials and a huge trucking lot and loading area. This facility is the predominant feature in this area; both visually and regarding use impacts from traffic, especially truck traffic. The truck traffic from Quikrete makes up almost all of the truck traffic complained about during the hearing process, as far as frequency, noise and trailer tracking on Grim Road. Applicant's truck traffic is minimal compared to that of Quikrete.
56. The urban density subdivision along Lakewood Drive to the northwest of the subject property is a subdivision where most of those testifying in opposition to this application live. Although the concerns of the neighbors are real and certainly understood, it appears their concerns with regard to truck traffic are directed towards other local industries and not the low-volume trucking activities of this applicant.
57. The pattern of development along the state highway and at its various intersections is one of strip commercial, industrial, and residential uses along the highway, behind which lie EFU uses. There are dense commercial developments to the south on small parcels zoned variously as industrial, commercial, public and residential.
58. The area surrounding the subject property is devoted to heavy industrial and commercial uses that flank the state highway, and provide much more significant impacts than are generated by this use.
59. Testimony was provided regarding Grim Road and the applicant's driveway. As was previously discussed, the majority of the adverse impacts testified to relate to other trucks and not the applicant. To begin with, there was much discussion of the condition of the road and a large puddle. The problems identified are on the north side of Grim Road and are due to drainage difficulties in the county road, and is not due to anything caused by this applicant. Grim Road has a slope to the north such that stormwater has a tendency to collect at the lowest point. This problem is not caused by the applicant, or negatively impacted by him. Existing vehicular traffic attempt to avoid the puddle by crossing over the yellow line, again a circumstance that is caused by the condition of the road and not by the applicant.
60. The applicant's driveway entrance onto Grim Road has a sufficient turning radius for his trucks to enter and exit Grim Road without encroaching on the opposite lanes of traffic.
61. Some discussion has taken place with regard to the uncertainty of ODOT approval for the direct access onto the state highway from the subject property. An asphalt apron was installed by ODOT over a culvert (also installed by ODOT) as part of the highway facility. This construction is a strong indicator that there is, in fact, approval for this access to the subject property. Historically, culverts and access aprons are not installed by ODOT for access points that are not approved and authorized by ODOT.
62. Applicant has the right of access directly onto the State highway by access grant from the State Highway Commission in 1967, which runs with the property, and currently vests those access rights in applicant. As part of the grant of access to the state highway, ODOT constructed a road approach as a part of its widening of the State highway with funds paid for by the predecessor in title. The approach includes the culvert and asphalt apron. The Indenture of Access dated April 25, 1967, and recorded at Vol. 645, Page 721, demonstrate that applicant has a 35 foot wide

indentured right of access to the state highway that is not restricted in use. The applicant has the right to use his access apron to the state highway for any purposes he chooses, including ingress and egress by his trucks.

63. There are three types of exceptions under Statewide Land Use Planning Goal 2 in Oregon law. The first is where the property is predominately developed to the point where resource use is impracticable. This exception is generally referred to as the Physically Developed Exception, and is governed by OAR 660-004-0025. The second is where the subject property is not necessarily predominately developed, but where the development on surrounding lands makes saving the subject property for resource use impracticable. This type of exception is generally referred to as the Irrevocably Committed Exception, and is governed by OAR 660-004-0028. The third is where there are reasons that exist why the resource goals should not be applied to a particular tract of land. This type of exception is generally referred to as the Reasons Exception and is governed by OAR 660-004-0022.
64. This application involves a request for a Physically Developed Exception based on the predominant nature of the development of the site. In the alternative, the applicant requests an Irrevocably Committed exception based on the surrounding industrial and commercial uses. There is no request here for a Reasons Exception.
65. The applicant's property is predominantly in non-resource use currently. Over 50% of the subject property is physically developed with non-resource use development. There are some Christmas trees planted on the site, however, they occupy less than 50% of the land. The trees are actually separated from both the state highway and the railroad tracks by a gravel driveway, and there is a gravel drive down the middle of the trees. Where a tract is more than 50% physically developed, it qualifies for a Physically Developed Exception.
66. The fact that the property could qualify as a non-conforming use does not exempt it from qualification for an Exception. A non-conforming use is lawful, but lawful under the grandfather right rules and not because it is allowed by either Goal 3 or the EFU zone. The subject property qualifies for a Physically Developed Exception.
67. In addition, the subject property qualifies for an Irrevocably Committed Exception.
68. For a use to be "impracticable" under the Irrevocably Committed Exception, the use does not have to be impossible. Whether uses allowed by the goals are impracticable depends upon the characteristics of (1) the exception area; (2) the adjacent lands; (3) the relationship between the exception area and the adjacent lands; and (4) other relevant factors. OAR 660-004-0028(2). Findings need not demonstrate that every use allowed by the goal is "impossible." OAR 660-04-0028(3). In addition, OAR 660-004-0028(6) sets forth a number of factors the local government must consider in taking an irrevocably committed exception, which include (1) existing adjacent land uses; (2) existing public facilities and services; (3) parcel size and ownership patterns of the exception area and adjacent lands; (4) neighborhood and regional characteristics; (5) natural or man-made features or other impediments separating the exception area from adjacent resource land; (6) physical development under OAR 660-004-0025; and (7) other relevant factors.
69. A comment was received during the hearings process that a Traffic Impact Analysis (TIA) should have been required in this case. The law only requires a TIA be performed where there is evidence that the land use change proposed would cause a significant impact on a traffic facility. There is no reasonable argument that this change in the plan and map will have a significant

impact on Grim Road or the State Highway. No new truck traffic that will be immediately generated from this property by granting this application. As previously noted, the size and shape and lack of utilities to the site make it impossible to use for any high intensity uses that would potentially impact traffic. No TIA was required in this case, because the Marion County Department of Public Works understood that the requirements for a TIA were not met here.

70. It was suggested that this application must include an exception to Goal 12. An Exception is only needed in this case to Goal 3 - the agriculture goal. This application complies with Goal 12, therefore no exception is required.
71. This minor modification fully complies with all the Marion County Comprehensive Plan Goals and Policies as follows:

A. Agricultural Land Policy #3 - Provides that non-farm uses on high value farmland should be allowed only when they do not cause adverse impacts on farm uses. The subject property is predominantly a Woodburn soil classified as high value, which is not much different than any parcel of land in the north county area. In this case a use already exists, and a similar non-resource use has existed on the subject property since the late 1950's. There is no evidence from this 50 year history of non-farm uses taking place on the subject property that those uses have caused any adverse impacts on farm uses.

Over the years since the 1960's non-resource uses have proliferated along the state highway corridor. Other uses, such as the Quikrete plant, and the Lakewood Drive subdivision, as well as the Sun Gro plant have all been permitted and began operating. Although there are no farm uses taking place on adjoining properties, there are some berries and hops in the general area. The low intensity trucking operation proposed here will not impact those uses. There is no water requirement for the proposed use, so there will be no impact on irrigation or wells. There is no manufacturing so there is no noise or dust or vibration that could affect farming. The trucks and trailers that are used in this operation are licensed for on-road travel, and therefore meet DEQ standards for emissions. This proposed use will not adversely impact farm uses in this area, and therefore this policy is complied with.

B. Rural Industrial Policy #2 - Requires that rural industrial uses should be compatible and be low intensity in the number of employees, environmental impacts and not require heavy truck traffic through residential areas or on unimproved roads.

The proposed use is very low impact. Aside from the applicant and his wife, there are no employees. The contract drivers are few in numbers and visit the site only a couple of times per week. As noted earlier, an industrial kind of use has been operating continuously from this property for 50 years without complaint, and that is primary evidence of compatibility. This small trucking firm does not generate environmental impacts as all the trucks are DEQ compliant for travel on the public roads and highways. Truck routing from the subject property is directly onto Grim Road, and then to the state highway, and does not travel on either unimproved roads, or through residential areas. Trucking from Universal Forest, which is in the industrial park of Woodburn, is on main roads and does not use unimproved roads or travel through residential subdivisions. This proposed use is very low impact, and does not create transportation problems, and therefore this policy is complied with.

C. Rural Industrial Policy #3 - Requires an analysis of rural industrial uses so that the proposal meets county and state goals and that the subject property is the most suitable for the use given a

review of lands in the UGB or on rural non-resource lands.

Most of the trucking operations from this use take place within the UGB of the City of Woodburn at Universal Forest. However, there are no lands available currently in Woodburn that are properly zoned to handle this trucking operation. Such a site has to be approximately three acres, and have direct and easy access to a main access road to the freeway. Woodburn states that it has no such lands, and that it is in the process of attempting to expand its UGB in order to provide lands of this type, primarily because none currently exist. Similarly, neither Hubbard nor Aurora nor Donald has available lands suitable for this use, inside their UGB, properly zoned and available.

Viewing the north county area, along the freeway corridor, there are no rural industrial areas that are suitable and properly zoned, where this kind of use can operate lawfully. It is well recognized that Marion County does not have vacant industrial lands in the rural areas. All of those parcels are occupied or held for expansion by existing businesses. The application complies with the statewide goals and guidelines as found above. This proposed use is appropriate for this tract of land, and there are no other properly zoned lands in the north county area, either inside the UGBs, or in exception areas, that are available to place this use, therefore this policy is complied with.

D. Rural Service Policy #1 - Requires a review of existing services, and the potential need for additional services caused by the proposed development.

The proposed trucking operation needs no urban services. There is a well on the property and a septic tank that provide all the water and sanitary waste disposal that are needed for this use. There are no storm water drainage facilities (except for some ditching). Because this use does not need an urban level of services, nor does its future use create the potential need for urban services, this policy is complied with.

E. Rural Service Policy #2 - Discourages rural uses that increase the potential for needing urban services.

The proposed use here does not increase the potential for needing urban services, and therefore this policy is complied with.

F. Transportation Development and Access Policy #7 - Requires a review of the road classifications, as well as present and anticipated safety issues in light of the proposed change in mapping.

The applicant worked with the Marion County Department of Public Works on impacts to Grim Road. The conditions of approval requested by Public Works address all concerns. This policy is complied with.

72. The evidence in this record demonstrates the subject property is not resource land. The file in CU 99-22 (a prior land use case on a neighboring tract) also recognizes that there is no agricultural use being made on the subject property and that it was a commercial carpet cleaning business at that time.
73. The subject property currently has Christmas trees located on slightly less than half of the subject property. These trees were originally planted by former owner Mr. Ballweber and were included in the sale price when applicant purchased the property in 2006. Mr. Ballweber represented to

applicant at the time of sale that there were 2,600 Christmas trees planted. It is unknown when the trees were planted. Since applicant's purchase of the property, the death rate of these Christmas trees has reached nearly fifty percent. Trees adjacent to the railroad tracks and facing the cement plant have the highest death ratio. While applicant is not a horticulturalist, he has been told the fugitive dust from the nearby cement plant migrates onto the trees causing disease and ultimately death of the trees. The 2010 Christmas tree season was the first time applicant had any marketable Christmas trees. Applicant harvested 600 trees, 300 of which were diseased and unsaleable. These trees are currently piled on the subject property awaiting disposal. The 300 trees remaining were sold at a steep discount. Of the approximately 2,000 trees left, applicant estimates that at least half of those trees are sick, not salvageable, and ultimately will have to be destroyed. The soil in this area is good and under different circumstances, Christmas trees should thrive. However, given the chemical activities at Sun Gro, the fugitive cement dust from Quikrete, and the dilution from regular train traffic, all these factors contribute to the inability of this tract of land to be agriculturally productive. Given the size, shape and location of the subject parcel, applicant is unable to aerially spray the property, and even backpack spraying is severely limited given the necessity to stay back from the State highway, the railroad, and the Sun Gro property. Applicant has employed the best management practices he can under the circumstances and cannot retain more than fifty-percent of these trees in good saleable condition. It is simply not economical or profitable to utilize this area for agricultural production. At best, the area could be used for a home garden or other use in conjunction with a family residence.

74. Applicant turned in a petition in support of his application signed by eleven different people who live in the area. These eleven different signatures represent eleven different properties in the area. The petition was attached to his supplemental justification statement submitted on December 28, 2010, and referenced during the Hearings Officer's public hearing. Each of these property owners attested that they were aware of the existing conditions on the property and further stated that they have experienced no adverse impact from the trucking business. These signatories further recognize that this property has had industrial uses extending back many years when the property was owned by Mr. Ballweber. These signatures were given freely and voluntarily without duress or coercion. There is no reason not to believe these signatures are true and accurate, or that the signers appropriately attested to the information cited to in the petition. No one has submitted any letters into this record challenging any of these signers, nor was there any such challenge made during the course of the public hearing process. Testimony was received at the Board hearing that substantiates the legitimacy of this petition.
75. There has been some confusion during the course of this entire application with regard to the number of trucks and trailers applicant owns, where they are located, and if they are licensed or operable. Because of the confusion on the part of the applicant, applicant's attorney, and planning staff, as well as the Marion County Department of Public Works, applicant's attorney obtained a printout from the Oregon Department of Motor Vehicles, and from that printout applicant's attorney created a table listing all the trucks and trailers, their license number, VIN number, where the trucks are housed on a regular basis and if the trucks are licensed and/or operational. This table is set forth in the record, and is hereby found to be complete and accurate.
76. There are questions raised by the Hearings Officer in her recommendation regarding a building permit that applicant received several years ago. This was a building permit for an addition to the shop on the subject property. The shop was designated for personal use, and applicant uses this addition for storage. The addition for which the building permit was issued is unfinished and not insulated. The addition has no electricity or water connected. This building permit has nothing to do with the application here.



77. At the Hearings Officer hearing photographs were submitted by an opponent showing several trucks on the subject property. The date those photographs were taken was January 5, 2011. As applicant indicated to the Hearings Officer at the hearing, that date was part of the holiday week at Universal Forest, where trucking operations were shut down. Applicant took advantage of that shut down period to do maintenance and repairs of his trucks and trailers. This opportunity presents itself only once a year; and he took advantage of it in order to run an efficient economical business.
78. To the extent there has been conflicting testimony or evidence submitted in this case, the evidence tendered by the applicant and his representative is deemed to be selected over the conflicting evidence.
79. The applicant has agreed that all the conditions of approval, including the limited use overlay, are acceptable and satisfactory conditions that are necessary in order to implement the land use changes approved here.

## **EXHIBIT B**

The Marion County Board of Commissioners adopts the following conditions in ZC/CP10-002/Madriz:

### **CONDITIONS OF APPROVAL:**

Pursuant to the Marion County Zone Code 17.123.070, the following conditions apply to the I-LU (Industrial – Limited Use Overlay) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The I-LU zoning significantly intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

1. A limited use (LU) overlay shall apply to the property. Only the following use shall be permitted: Local Trucking With Storage (SIC 4214). All other uses identified in the I zone shall require conditional use approval.
2. The applicant shall comply with the provisions of MCC 17.165.080 regarding property development standards for the industrial zone.
3. The traffic generated by the entire parcel shall be limited to no more than 25 trip ends per day.
4. Improve the Grim Road NE property frontage to current County standards for a Minor Collector road.
5. Provide evidence that Oregon Department of Transportation requirements regarding access to SR 99E have been satisfied.
6. Apply for a county Access Permit and construct any improvements required by the permit.

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of the	)	Case No. ZC/CP10-002
	)	
Application of:	)	Clerk's File No. 5657
	)	
Jose Madriz	)	

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1319

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Jose Madriz to change the zone from EFU (Exclusive Farm Use) to I (Industrial), to change the Comprehensive Plan designation from Primary Agriculture to Industrial, and to take exception to Statewide Planning Goal 3 (Agricultural Lands) on 4.28 acres located at 19447 Grim Road NE, Aurora, Oregon (T4S; R1W; Section 26BB; tax lot 100).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on November 10, 2010. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On April 26 2011, the Hearings Officer issued a report recommending the Board deny the request. The Board held a duly noticed public hearing on the application on June 8, 2011. The hearing was closed and the record was left open for written testimony until June 27, 2011. At its regular session on July 6, 2011, the Board considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Primary Agriculture to Industrial is hereby **GRANTED**. The requested zone change from EFU (Exclusive Farm Use) to I-LU (Industrial – Limited Use Overlay) zone is hereby **GRANTED**, subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

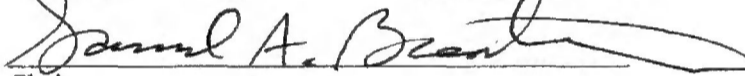
The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 14<sup>th</sup> day of September,  
2011, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

**EXHIBIT A**  
*Findings and Conclusions*

The following findings and conclusions are adopted in support of the Ordinance approving Comprehensive Plan Amendment/Zone Change Case No. CP/ZC 10-002. Each of the findings are based on substantial evidence contained in the record of these proceedings:

1. This approval amends the comprehensive plan designation from Agriculture to Industrial and takes a physically developed and committed exception to the goals, and thereafter changes the zone from Exclusive Farm Use (EFU) to Industrial (I). Conditions of approval, including a limited use overlay are imposed.
2. The subject property is 4.28 acres in size and located at 19447 Grim Road NE, Aurora, Oregon. The property is further identified as Tax Lot 100 on Marion County Assessor's Map 4.1W.26BB. The entire property is subject to this approval and to the limited use overlay.
3. The property is midway between Hubbard and Aurora and located along Highway 99E, even though it is addressed off its cross street - Grim Road. The site is just south of the Wilsonville-Hubbard Cutoff.
4. The property is generally flat and has no identified wetlands, floodplain or hazard areas. There are no historic or natural areas identified on or near the site.
5. There is a house, mobile home, shop, and garage located on the property in which the applicant and his family reside. A large portion of the site is graveled to accommodate ingress and egress and for storage of equipment. A little less than half the subject property is planted in Christmas trees, however the production of trees is very limited due to factors emanating from surrounding properties and uses.
6. The property is bounded by Highway 99E along its entire eastern side, and access is provided to the property directly onto the highway. The northern boundary of the property is Grim Road, and there is an access driveway there as well. The southern boundary is bordered by another parcel and the western boundary is bordered by the Union Pacific Railroad. The soil on the subject property is predominately Woodburn silt loam, which is a Class II soil identified as High Value Farm Land.
7. Properties to the north, west and east are designated and zoned for Industrial uses. The property to the south is zoned EFU, but has a Resolution of Intent to be rezoned to an Industrial use. There are significant areas along Highway 99E nearby that are zoned and designated for commercial use, and there are pockets of Acreage Residential (AR) and Single Family Residential (RS) to the northwest and south. The city of Hubbard is a short distance to the south and the city of Aurora is a short distance to the north.
8. There are industrial uses on the industrial zoned tracts to the northwest and the southeast. On the large tract to the northwest, just across the railroad tracks from the subject property, is an industrial complex owned by Elixir Industries (TL300, Map 4.1W.27A) and Quikrete (TL300A1, Map 4.1W.27A), which site includes two large industrial buildings, large parking area, outdoor storage and truck and equipment parking.

9. Elixir Industries is one of the nation's largest independent suppliers to a wide variety of market sectors, with 12 operating divisions throughout the United States. One of these is the aluminum extrusion division supplying the construction, transportation, machinery and equipment, electrical, consumer durables, and recreational markets with linear and fabricated components. Since the company's founding in 1948, Elixir's product line has been expanded to include, in part: metal roofing and siding, entrance and utility doors, roof vents and domes, frame parts, putty tape, sealants, and aluminum extrusions.
10. Quikrete is a fast setting home based and packaged concrete product used in building fences, setting a mailbox or anchoring a basketball goal or play set. The Fast-Setting Concrete does not require mixing or tools, the dry mix is poured from the bag into the hole, then water is added.
11. Immediately across Highway 99E is Sun Gro Horticulture, which has one large industrial building, several smaller buildings, together with outdoor storage, parking and areas for truck and equipment parking. Sun Gro is North America's largest producer of horticultural-grade peat and the largest distributor of peat moss and peat and bark-based growing mixes. The property to the southwest has a residence combined with a large industrial building, several smaller buildings, a large graveled area used for outdoor storage, truck and equipment parking, turn around areas, all of which are also a part of Sun Gro Horticulture.
12. There are several residences in the general vicinity in the farm zone, and a residential subdivision nearby. The area along Highway 99E, and especially that area in between the railroad tracks and the highway, is characterized by a predominance of industrial and commercial uses on tracts 10 acres in size and under. Larger scale farming does not take place until east of Highway 99E, with some larger scale farming in areas between the railroad tracks and I-5 which is located a short distance to the west.
13. The subject property has historically been used predominately for commercial and industrial purposes. The applicant has owned the property for several years and has intermittently operated a small trucking operation from the site. Between the applicant and his family and related companies, they own nine truck/tractors, one of which is used only on the property and is not part of the trucking business, and four others are not licensed and not operable and do not leave the site. The applicant also owns nine trailers, but one is used only for the property, three are inoperable and not used at all and the other five are used in the trucking business.
14. As with most small trucking operations, the tractor trucks and trailers are out on the road and are seldom at the subject property. Repairs and maintenance are done on this equipment in the large garage building on site. As independent truckers, they hire themselves as drivers and their equipment out to companies to move freight around on the west coast.
15. Trucks are dispatched and arrangements for freight are made by cell phone. The accounting for the business is done by a business accounting service in Keizer, Oregon. The applicant is affiliated with Interstate Trucking, and the business location for the applicant's business is 12164 Ehlen Road NE in Aurora. Aside from a small computer, no business activities take place in the residence on the subject property.
16. The application process and approval criteria for a quasi-judicial comprehensive plan amendment are the same as that for a zone change, except that in addition to the normal criteria, the statewide goals and guidelines must be addressed. Marion County Comprehensive Plan, Plan Amendments, Policy 2.

17. The approval criteria therefore, from MCZO 17.123.060, with justification for the plan amendment and the zone change combined are as follows:

I. Consistency - The Industrial plan designation and zone are appropriate for this property, and is consistent with the goals and policies of the Comprehensive Plan. The subject property is nestled in a unique area that is surrounded by Industrial zoning, a rail line and a large commercial operation. The property is bordered by Grim Road and Highway 99E. Essentially the site is a small island of EFU amongst a sea of industrial and commercial activity and transportation corridors.

The subject property is appropriate for conversion to use for industrial purposes. By virtue of the surrounding uses, farming is impracticable. The land is predominately developed, intensive farming is not practical due to the size and shape of the tract, and it is located between the rail line and the highway and near the adjacent industrial and commercial uses.

Approval of this application directly complies with the Economic goals expressed in the Marion County Comprehensive Plan. The allowance for industrial uses here would allow the trucking business to continue, which provides for increased employment opportunities, not only for the applicant but indirectly in the business community that benefits from competitive freight availability and rates. Marion County major economic goal (a). Further, the plan goal (e) is to provide for sufficient areas for industrial use, which this application would do. This criterion is complied with.

II. Appropriateness - The change to Industrial is appropriate considering the surrounding commercial and industrial land uses, the rail line and the density and pattern of development in the area.

The industrial complex that includes Elixir and Quikrete is located immediately to the northwest of the subject property, just across the rail line. Sun Gro borders the property to the south, and is also located directly across the highway. The property is bordered by the rail line on one side, Grim Road on another, Highway 99E on another and by Sun Gro Horticulture on the last side.

The general area along Highway 99E is dominated by commercial and industrial uses. Some small tract rural residences are in the area together with platted and zoned subdivisions and the cities of Hubbard and Aurora and the Aurora Airport, a major commercial and industrial center in the north county. The primary farming exists in between the developed areas, and then extends to the east, and to a certain degree between Highway 99E and the I-5 freeway. This criterion is complied with.

III. Public Facilities - There are adequate public facilities, services, and transportation network in place to serve the subject property. No sewer or water is needed for this change in plan and zone designations. No new buildings are proposed and no proposed use would require any services other than that which is already on site. This criterion is complied with.

IV. Other Lands - There are no other lands in the county already designated for the proposed use that are either available or not as well suited for the anticipated uses due to location, size or other factors. The subject property is very unique. There are few properties in the county that are bordered on one entire side of the property by a rail line, long enough that a spur would be feasible. In addition, the uniqueness of the subject property lies in its central location between Hubbard and Aurora and having another of its entire boundaries bordering on a major highway

such as 99E. In addition, Grim Road is an excellent east/west cross road, and the Wilsonville-Hubbard Cut Off provides an alternate north/south route for easy access to the airport and the freeway. The applicant performed an Other Lands Study, the scope and findings of which are deemed to be satisfactory and in compliance with MCRZO 17.123.060(D), which provides that:

*The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors;*

The concept behind this criterion is to ensure that new plan designations and zones do not crop up in areas where there already exist lands suitably zoned and available to satisfy the proposed use. Essentially, a party is required to look within a suitable area for land already suitably zoned before making application to change a zone to the new designation.

The inventory analysis begins with an identification of what zone and plan designation is needed for the proposed trucking operation. Once the needed planning information is designated, then the inventory can move forward with the accumulation of supporting data.

In this case, the applicant operates a small home-based trucking operation. A review of the Marion County Rural Zone Code reveals that the only zone and plan designation which allows this kind of use is the Industrial zone and plan designation. That the Industrial designation is the appropriate zone and plan designation for the use identified by this applicant has never been an issue in this case.

The search for other lands begins with a determination of the study area, followed by a review of all industrially designated lands within that study area to verify that no other lands are available to the applicant for his use. The scope of the study was coordinated in a conversation with planners and includes a study of all lands that lie north of the City of Woodburn's UGB; east of Butteville Road (excluding urban areas); south of the Marion County line; and west of the Marion County line. This basically includes the entire north portion of Marion County, and is an appropriate study area for the proposed use based on the geography of the county.

Within the study area, there are a total of only six tracts that are zoned and planned for Industrial use. Of the six, five are fully developed and operational for existing industries, and the sixth tract is held for investment purposes and is not available for sale or lease.

What this study reveals is that there are very few sites with an Industrial designation in the north county area. The study area is large, yet there are few acres allowed outside urban areas for industrial uses. The total industrial acreage is 26.61 acres, less than two of which are not fully developed and in production. Even those two acres are held by a small business for expansion when that business grows. A review of the urbanizable lands inside the UGB, but outside the city limits of Aurora, Donald and Hubbard reveal no land designated for industrial use under county jurisdiction. Therefore, within the Marion County planning jurisdiction in the entire north county area, there is little land zoned for industrial use, and none is available for lease or purchase from the owners.

Based on the findings developed in this detailed inventory, there are no other lands in the county already designated for the proposed use that are available to which this applicant can move his business. Because there are no other lands already suitably zoned, it makes the most sense for the subject property to be re-zoned to allow the use.



This study re-emphasizes the fact that of the six industrial properties already zoned for industrial uses, two of those are in the immediate vicinity of the subject property. One is separated from the subject property only by the railroad tracks, the other by Highway 99. A third site is located less than a mile to the south. It is also important to note that four of the six industrial sites are located either right on or very near to Highway 99. One of the other sites is located on Butteville Road, another major north south arterial. The other site is located to the east of Hubbard, but is less than one mile from Highway 99 at Hubbard with the ability to then access the county to the north or south, or gain quick and easy access to the interstate highway.

The largest tract currently zoned Industrial is 8 acres and the smallest is less than 2 acres. The average size of the six industrial tracts is 4.43 acres. The subject property is very similar in all of these characteristics to those properties already zoned Industrial. The subject property is located on Highway 99, with good cross access to Grim Road. This site is nested between two areas already designated for industrial use, and is among a cluster of similar industrial-type uses that are not industrially zoned. The subject property is 4.28 acres in size, just below the average size of tracts currently zoned for industrial use, and is in the median range, being larger than half the tracts industrially zoned, and smaller than the other half.

Based on location and size, as well as the surrounding uses, the subject property is best suited for conversion to the Industrial zone and plan designation. There is no other land available for this use that carries the appropriate zone currently. To allow this use requires a zone change and comprehensive plan amendment. The subject property is the most suited for this use. There are no other lands similarly situated that already have the appropriate zone for use as the base of operation for this trucking business. This criterion is complied with.

V. Intensive Uses Impact - Although the Industrial zone will clearly allow uses more intensive than are allowed currently in the EFU zone, the new Industrial designation will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

On the adjacent lands there already are a concrete manufacturing and production facility; a metal fabrication and manufacturing facility; and a major peat moss production facility. In addition, there is the major north/south rail line running the entire western boundary of the subject property. The surrounding uses, and the buffer provided by Highway 99E and Grim Road, all make this the perfect location for additional industrial-type uses, such as the applicant's trucking business.

Marion County has already determined that the presence of the rail line and the central location and good road access system are ideal for industrial uses in zoning the surrounding properties. This approval simply is an extension of that concept.

In addition, the imposition of conditions and the limited use overlay ensure that if any portion of the subject property converts to a more intensive use, Marion County will have the opportunity to review that by way of a conditional use application to mitigate any impacts that might be generated by the new use.

18. All of the criteria for approval of the change in zone from EFU to Industrial have been satisfied and the zone change should be granted.

19. The following findings and conclusions address compliance with Statewide Goals and Guidelines:
- I. Goal 1 - Citizen Involvement - This quasi-judicial land use process involved two public hearings in which the public actively participated. This goal is satisfied.
  - II. Goal 2 - Land Use Planning - The built on and committed exception is justified and demonstrated in these findings. This goal is satisfied.
  - III. Goal 3 - Agricultural Lands - This goal is satisfied by Exception.
  - IV. Goal 4 - Forest Lands - This goal is either not applicable as the land is not forest land, or is alternatively satisfied by Exception.
  - V. Goal 5 - Natural Resources - There are no Goal 5 resources identified on the subject property or in the immediate vicinity. The property is on a main arterial and surrounded by commercial and industrial uses as well as a rail line, therefore there is no impact on open space or scenic resources. There are no historic areas identified on the site or nearby. This goal is satisfied.
  - VI. Goal 6 - Air and Water Quality - This application is seeking to allow the trucking operation that has been going on at the site for years without controversy or impacts. No new buildings or factories are proposed that would impact air quality and the property already has a functional well and no new water needs are generated by approval of this application. This goal is satisfied.
  - VII. Goal 7 - Natural Hazards - There are no natural hazards that impact the subject property. The site is flat and has no wetlands or floodplains identified on it. This goal is satisfied.
  - VIII. Goal 8 - Recreation Needs - The subject property is situated along a major arterial and amongst commercial and industrial uses. There are adequate open spaces, parks and other recreational opportunities in the area. Approval of this application will have no detrimental impact on recreation in Marion County. This goal is satisfied.
  - IX. Goal 9 - Economy - This application allows a small family owned business to continue. The operation is small and cannot afford an offsite office/dispatch/parking location. There are no employees and only a few pieces of equipment. The owner/operator does the driving and most of the maintenance and repair himself. Family assists with scheduling and dispatch, on a part time as needed basis. The business provides a service to the business community and offers competitive freight rates. By staying in business there is a positive economic impact on the community through the goods and services used by the applicant, but also in making available freight hauling at competitive rates, which stimulates the other small and medium sized businesses that use the applicant's services. This goal is satisfied.
  - X. Goal 10 - Housing - This application is not for housing, and none is involved here. There have been historically two dwellings on the property (stick built and mobile), neither of which will be affected by this application. There is no plan to add more housing. This goal is satisfied.
  - XI. Goal 11 - Public Facilities - The trucking operation does not utilize public facilities other than the road system, for which motor rate taxes are paid to the State of Oregon. There is no need for sewer or water or storm drainage facilities. The existing well and septic tank are sufficient,

and this application will not put pressure on the county to extend new public facilities to this site or area. This goal is satisfied.

XII. Goal 12 - Transportation - The trucks involved here are already on the road and accounted for in the existing traffic. No expansion of the business is proposed. There is adequate ingress and egress to the site from both Grim Road and Highway 99E. There has been no adverse impact on the transportation system from the existing operation, and that zero impact will continue. In addition, Marion County is imposing two conditions of approval which satisfactorily address future traffic impacts. First, a limited use overlay will limit the total number of trips generated by the subject property to 25 trip ends per day. If the use were to intensify, traffic mitigation may be required in the future. Second, a trip cap of not more than 50 average daily trips (ADT) sets the maximum number of ADT permissible absent further study. This goal is satisfied.

XIII. Goal 13 - Energy - This application positively affects energy consumption as the applicant operates his trucks from his home, thereby eliminating extra vehicle trips from home to a dispatch location and back. By using a home-based trucking operation routing and exchange of tractors and trailers is facilitated in the most efficient way possible. This goal is satisfied.

XIV. Goal 14 - Urbanization - This application does not generate urbanization. This application is not for any land division and does not involve an urban growth boundary. This goal is satisfied.

XV. Goals 15-19 - Greenway and Coastal Goals - These goals are not applicable to this application as the subject property is neither on the river nor the sea.

20. The subject property is entitled to an exception from application of the applicable goals due to its physically developed and committed status. The property is predominately physically developed with several buildings, two homes and rocked roads and equipment storage areas. The property is further committed to non-resource development by virtue of the surrounding industrial and commercial uses, and the transportation facilities. The property is bounded on one full side by the rail line, on another by Highway 99E, and on the third side by Grim Road. The final boundary is common with Sun Gro Horticulture. Across the rail line are two large industrial manufacturing facilities. These uses all commit the subject property to non-resource use due to the restrictions on farming practices that these uses place on the site.

A property that is physically developed to the extent it is no longer available for resource use may be exempted from the application of the resource goals (3 and 4). OAR 660-004-025(1).

The physically developed exception is site specific, and must be clearly mapped. The nature of the physical development must be detailed. OAR 660-004-025(2). In this case, the area to which the exception applies is identified as the entire tax lot owned by the applicant (TL100, Map 4.1W.26BB), a total of 4.28 acres.

All the development was lawfully established on the site. The houses and buildings were all sited with appropriate permits and were outright permitted uses. The level of physical development is such that it precludes use of the site for resource purposes. It is impracticable and uneconomical to remove the gravel and buildings from the site in order to return them to resource use.

The presence of the roads, the rail lines and the surrounding industrial and commercial development make farm uses allowed in the EFU zone impracticable. The characteristics of the

subject property (the exception area) are predominantly physically developed. The site is also an elongated shape and bordered by heavily traveled roads and a rail line. The characteristics of the surrounding properties are discussed in detail above, but include the roads, rail, and industrial and commercial uses that completely surround the subject property. The relationship between the exception area and the adjacent lands are that the exception is surrounded and the surrounding uses make normal agricultural uses impracticable. Dust, noise and spraying activities in the exception area have to be reduced, restricted or eliminated altogether. Use of chemicals that might drift to adjoining uses could have a detrimental impact on the manufacture and packaging of peat moss, which could lead to significant liability. The same is true as to Elixir and Quikrete, as to both manufacturing (although to a lesser extent because manufacturing occurs mostly inside) and to outside storage. Similarly, the presence of the road system and rail deter such normal practices as irrigation because no irrigation water should leave the site, and dust can not cloud the highway as it is also a liability issue.

Other relevant factors that support this Exception include the parcel size and configuration, and the ownership patterns in the area. Parcel sizes and separate ownership patterns, as well as the industrial and commercial uses taking place on those lands are contributing factors for justification of this exception. OAR 660-004-0028(6).

All of the criteria for approval of the subject property as a physically developed exception have been satisfied and the exception should be granted. OAR 660-004-0025.

21. In addition, the criteria for an irrevocably committed exception have been satisfied, and the exception is justified on that basis. OAR 660-004-0028. The subject property has two residences and several outbuildings. The two dwellings are used in conjunction with one another for family and together generate less than the average 8 ADT calculated in the Trip Generation Manual for such single-family homes. It is estimated that currently there are an average of 10 daily traffic trips associated with the combined two residences. These are normal passenger car and light pickup type vehicles normally associated with rural living.
22. The applicant has a number of heavy trucks/trailers, however only two are operational. Applicant is an independent mid to long-range hauler, who averages 4-5 days out on a haul. When the trucks are on site, they are either parked, or being serviced or repaired in the outbuildings that are located on-site. Therefore, the only trips associated with these two trucks are the trips out onto the road, and the return trip. Considering one trip in and one trip out every 4-5 days, that accounts for less than 20 trips per month per truck, or a total of 40 cumulative for both trucks. Rounding that number up to account for seasonal fluctuations and miscellaneous trips, to a cumulative 60 trips per month, and reducing that to the ADT figure, puts the truck contribution to traffic generated from the site currently at 2 ADT (1 ADT per truck) - using the statistical average.
23. Combining the 10 ADT from the dwellings with the additional 2 ADT truck traffic, there is a total of 12 ADT currently being generated from the subject property.
24. Almost all the existing traffic utilizes the entrance to the property located on Grim Road. However, there is an existing road approach onto Highway 99E that is primarily used as a secondary access to the Grim Road access. The highway access is actually located on the cut-off road, and in a location that has good visibility and no conflicts in either direction. The Grim Road access has good visibility in both directions from the subject property side of the road. The access point is generally undefined, and there is no issue with truck and trailer ingress and egress.

from the subject property onto Grim Road. There is a stop sign on Grim Road at the cut-off, and a rail crossing in the opposite direction. There is a slight bend in Grim Road along the subject property, but this has not adversely affected either passenger or truck traffic.

25. Grim Road is also used by truck traffic serving the industrial uses across the railroad tracks. Grim Road has sufficient capacity for the existing neighborhood traffic, and sufficient capacity for growth for the future. The quality of the road is excellent, and it has held up well under the current traffic patterns. Neither the applicant nor any of the other industrial users in this area have ever had any difficulty or conflict between truck and car traffic, accidents, or back up or slow down at driveways or at the intersection of Grim Road and the cut-off. A condition of approval requires the applicant to address some improvements on Grim Road.
26. Many of the truck trips currently generated by the applicant exit the subject property making a right turn onto Grim Road and proceeding to the stop sign at the cut-off. Nearly all of the truck trips then make a left-hand turn onto the cut-off and make their way to I-5 and on to their destination. Only occasionally would a truck turn left on Grim Road, as almost all the hauling is done on I-5. A small percentage of the truck trips will turn right onto the cut-off, and those are mainly trips that are going southbound on I-5, and then normally only when traffic or other exigent factors come into play. Passenger cars generally follow the same route, although they are more likely to turn left onto Grim Road, and to turn right onto the cut-off for access to the Woodburn area for shopping or services.
27. The applicant has generally observed truck traffic in this neighborhood and the pattern used by adjoining industrial uses, and reports that those truck traffic patterns are very similar to what he conducts from his property.
28. At most this applicant might be expected to double his truck usage in the long term. Considering that this haul operation involves few trips in and out of the subject property, doubling that number is not significant as you move from 2 ADT to 4 ADT. Even assuming the doubling of the existing operation in size and scope, the additional traffic is minimal and presents no impact to the transportation system. A condition of approval imposing a trip cap on site generated traffic directly addresses and mitigates this issue.
29. There are already two houses on the subject property, and no more are proposed and no more would be allowed by the new zoning, therefore the expectation is that the dwelling ADT will not significantly increase either. It is possible that the second home could become an independent dwelling, not in conjunction with the primary dwelling. In that case, each dwelling would be expected to generate 8 ADT, for a total of 16 ADT, only 6 more ADT than present. This additional traffic is not significant and would have no impact to the transportation system.
30. On the adjacent lands there already are a concrete manufacturing and production facility, a metal fabrication and manufacturing facility, and a major peat moss production facility. In addition, there is the major north/south rail line running the entire western boundary of the subject property. The surrounding uses, and the buffer provided by Highway 99E and Grim Road, all make this an excellent location for additional industrial-type uses, such as the applicant's trucking business, and demonstrates that truck, passenger and light truck traffic in much higher volumes than is generated from the subject property can be handled by the current road system and facilities.

31. The applicant has proposed an Industrial zone for the subject property, primarily because in that zone his existing trucking operation is allowed as a permitted use. In reviewing the potential uses that are allowed outright in the Industrial zone (MCRZO 17.165.020) there are few uses listed that would be feasible on this size property, and many of those uses would find the rail frontage and potential for a spur to be an appealing attribute. If rail were used, fewer truck trips would be generated. Also in reviewing the permitted uses, MCRZO specifically identifies that such uses are only permitted at an appropriate scale, which further acts as a restriction to keep any industrial use that might locate on the subject property in the future small and close in size and scale to the industrial uses that are already taking place on adjoining lands.
32. With these restrictions and limitations in mind, some of the potential uses on the property in the new zone could include:
- A. Agricultural services and forestry (SIC 07 and 08); which would be allowed in the current zone and, therefore, would not pose any additional traffic impact.
  - B. Contracting and service facilities (SIC 15, 16, 17); such uses would be scaled to the size of the site and traffic generation, would not generate more traffic than adjoining properties, and given the small size of the site and therefore the limited nature of uses, it would be expected that traffic would not create any impact on the system.
  - C - G. Tobacco, textile, printing and rubber manufacturing; none of which are realistic for this site given the lack of sewer or water and the small size of the site. Given the nature of these kinds of facilities, it is highly unlikely that any will locate in Marion County in the foreseeable future.
  - H. Cement, clay, glass and stone products manufacturing facilities (SIC 32, except 323); this is the type of use occurring next door, and on a smaller scale could fit on the subject property. The trip generation from such a facility is small as evidenced by the adjoining facility and the addition of another similar plant would not adversely impact the transportation system.
  - I. Metal fabrication; electrical product manufacturing, sawmills and coal dealers; none of which are realistic, except for a wood fuel dealer. A wood fuel dealer would involve bringing firewood in a truck to the site and then having customers periodically come by to pick up the wood, or for customers to buy the wood and have the dealer deliver wood. Given the site size, and the market and availability of wood, it is estimated that 100 to 150 cord of firewood could be stored and marketed from the site. Delivery of this wood to site would typically be in a heavy truck that would have a capacity to haul 5 cord of wood. This would generate between 20 and 30 truck trips to and from the site. Most sales of firewood are in one cord increments, although deliveries are generally done by a larger truck that coordinates several cord deliveries to several customers. If it were assumed that a fuel dealer sold the entire inventory every month, this would equate to 30 truck trips a month for bringing the wood in, and twice that many for deliveries of the wood out to customers. Add in another 10 trips for miscellaneous or customer u-hauls, there would be approximately 100 truck trips per month from this type of operation, or less than 4 truck trips per day. This low volume would present no adverse impacts to the existing transportation system.
  - M. Transportation equipment, manufacture and repair; because this category includes rail, and with the potential of a rail spur, it is possible that some sort of rail car repair could happen on site. However, any such use would mostly be rail dependent. The only traffic movements associated with this type of use would be personnel movements and deliveries of parts or materials, which would no doubt be fewer traffic trips than is allowed under the current zoning.

N-P. Professional, scientific equipment manufacturing (SIC 38), wholesale and metal working equipment; simply are not realistic for this site due to the size and lack of sewer and water.

P-3. Utilities-primary equipment and storage yard; this type of use would not be too different from what is going on now, and the existing level of equipment and truck movement and storage has no adverse impact on the transportation system.

P-4. Auction house or market; it is highly unlikely such a business would locate on the subject with the presence of the Woodburn Auction Yard and Woodburn Livestock Auction being located just a few miles down the road.

Other listed uses range from cleaning and laundry plants to fire stations, and are not practical for this site because of the combination of its small size, the lack of sewer and water or other facilities. For example, a fire station has to be located within a district and be sized accordingly. According to the Aurora RFPD, a fire station has to be a minimum of 10 acres in size and have sufficient utilities for training and on-site living quarters, none of which can be accommodated on this site, even if it were in a location that is suitable for a fire district to be able to serve its population.

33. According to the 5<sup>th</sup> Edition of the Trip Generation Manual, a light industrial-type use might be suitable for the subject property if approved as to scale by the county; and would generate approximately 3 ADT per employee, dropping down to less than 1 ADT for larger heavier industries. Manufacturing facilities generate just over 2 ADT; and warehousing type activities are under 4 ADT.
34. Given the small size of the subject property and its lack of municipal services, it is anticipated that the most intense industrial activity that could take place given the limitations of the zone and the uses that are permitted would have no more than 10-12 employees. This would mean a range of 10 ADT for heavier industries, to 30 ADT for lighter industries, to 20 ADT for manufacturing and to a maximum of 40-45 ADT for warehousing. Subtracting from these totals the existing traffic on site of 10 ADT, plus 2 ADT truck traffic, total of 12 ADT, the most intensive new industrial use would add approximately 30 new ADT to the road system. Grim Road, the cut-off, and Highway 99 all have sufficient capacity to accommodate these small number of additional traffic trips. The combination of the trip cap and limited use overlay provisions will ensure that sight generated traffic will not adversely impact the surrounding area or the road system.
35. The applicant in this case did not apply for establishment of a non-conforming use; however, the substantial evidence submitted indicates that the applicant's use of the property for his trucking business matches closely to the historic use of the subject property. Although this matter is not a part of this application, considerable evidence on the subject was presented, and findings on that evidence is presented here for the purposes of addressing all issues raised in this proceeding.
36. Applicant purchased the property from Arnold E. Ballweber in 2006. Mr. Ballweber was the original inventor and creator of truck mounting carpet cleaning equipment. Mr. Ballweber's design and construction of commercial size and quality steam carpet cleaning was the first of its kind. Mr. Ballweber began his business at this site in 1958 and remained there in operation continuously until he sold the property to the applicant.
37. Mr. Ballweber operated his business from the subject property over the years using the various business names: Ballweber Hydra Carpet Cleaners; Ballweber Industries; and Ballweber Carpet

Cleaning. The Secretary of State Business Registry shows Ballweber Industries, Inc. having been registered since June 4, 1979, and a predecessor corporation (Ballweber Steam Clean Systems of Oregon, Inc) having been registered since October 7, 1971. It is understood that for the period from 1958 through October 7, 1971 that Mr. Ballweber operated his business as a sole proprietorship, or that the state did not have records that preceded 1971 available online.

38. Zoning was not attached to the subject property until the mid to late 1970's, after Mr. Ballweber established and operated his business.
39. The applicant's use of the property and buildings is substantially similar in scope to that of Mr. Ballweber. Both involve the use of the buildings on the property for storage, maintenance and carrying out office and administrative functions. Both also involved the use of trucks as the primary equipment in the business. Mr. Ballweber ran multiple trucks from the subject property, as well as manufacturing and outfitting trucks with mobile carpet cleaning apparatus for others. The level of truck traffic has not changed appreciably from the Ballweber use to the applicant's use, and, in fact, the number of trips is probably less than it was under Ballweber because the Ballweber use might involve two or three trips per truck from the property a day to attend to cleaning jobs in the North Marion County area.
40. The carpet cleaning innovation that Mr. Ballweber came up with was a truck-mounted carpet cleaning system utilizing big trucks with this equipment mounted on it, and he would make and repair that equipment from the subject property just like the applicant rebuilds and repairs trucks. Ballweber would then sell this equipment, and customers would bring the equipment back to him periodically for him to fix. The applicant does the same thing, bringing trucks back to the shop and fixing them. Ballweber had large trucks bringing materials and supplies to the site, similar to applicant driving his trucks onto the site and off the site. When Ballweber would make sales, these trucks would be brought onto the premises and he would mount the steam cleaning equipment onto the trucks and they would come and go from the property just like applicant does. In addition, Ballweber operated two different businesses. The first being the manufacture and repair of the equipment, and second being his own use of that equipment in his own carpet cleaning business. This also would account for why there are different business names with Ballweber Hydra Cleaning being the carpet cleaning business and Ballweber Industries or Ballweber Steam Clean Systems of Oregon being the equipment manufacturer. In the carpet cleaning business, the trucks resided on the subject property and would be dispatched by Mr. Ballweber out in the community to perform carpet services. When those services were performed, the trucks were returned to the subject property and the act of trucks coming and going from the subject property, as well as being dispatched, are identical to what the applicant does.
41. When applicant bought the property, arrangements were made with Mr. Ballweber to transition in applicant's trucking business and transition out his carpet cleaning business. Originally, the agreement was for a shared use of the shop and surrounding areas for two months. That shared use continued well into 2008 before Mr. Ballweber became sick and closed the business. During the shared use time there was only one shop employee who was part time and on an irregular schedule, and at least one employee who operated a carpet cleaning van and did external carpet cleaning services. Mr. Ballweber was routinely on the property operating and supervising his business during that shared use period, and often times stayed overnight in an RV he had parked on the property as an office for his carpet cleaning business. The telephone line installed by the telephone company from the shop to the location where the RV was parked remains on the property to this date.



42. At no time prior to applicant's acquisition of the property on February 27, 2006, did he occupy the premises or operate his business from those premises. Prior to purchasing the subject property, applicant's business was located for many years in the Salem and Keizer area.
43. It has been noted that Mr. Ballweber's corporation, entitled Ballweber Industries, Inc., was dissolved in 1993. The fact that Mr. Ballweber dissolved his corporation has no bearing on his business use of the subject property. In applicant's personal discussions with Mr. Ballweber, he indicated that he had been doing the manufacturing business on the property since the 1960's, and applicant is personally aware of him having done business there from 2005 through 2008. A website identifying manufacturers in the area show that Arnie Ballweber started his carpet cleaning business in 1958, and later invented and began manufacturing his truck-mounted carpet cleaning equipment. The corporate data was submitted for the purpose of showing the existence of Ballweber Industries not for the purpose of establishing dates of use of the subject property. The Ballweber business was incorporated in 1971, several years after it started, and was dissolved in 1993, yet continued to operate for 15 years thereafter. It may very well be that Mr. Ballweber originally operated the business as sole proprietor, and reverted to sole proprietor status in 1993 when the corporation was involuntarily dissolved by the State. A sign for Mr. Ballweber's business in which he indicates that he first manufactured truck-mounted carpet cleaning units in 1969 was still on the subject property in 2006 shortly before applicant purchased the property. The sign stayed up for approximately 18 months after applicant purchased the property during the time when Mr. Ballweber and applicant shared use of the shop area and he continued to run his business from the subject property. In the summer or fall of 2008, after Mr. Ballweber had closed the business, and ultimately passed away, Applicant removed the sign. However, the posts upon which the sign was erected still remain. The applicant still receives mail for Mr. Ballweber's business.
44. At no time has applicant had a cessation of business activity operating from the subject property. As is most likely what happened with Mr. Ballweber changing business entities, applicant also dissolved his corporation and currently operates as a sole proprietorship. How a business is organized and registered with the appropriate government is not evidence of use of the particular piece of land.
45. While it is acknowledged that applicant has had conversations with code enforcement, applicant has worked with code enforcement in good faith, and has not been convicted of any code violation.
46. Applicant's business is as an independent contract hauler, primarily for Universal Forest Products, Inc., a Michigan company with its northwest operations in Woodburn, Oregon. Applicant has no ownership interest or control of Universal Forest Products, Inc.
47. Universal Forest is a supplier of lumber and wood related products to retail stores such as Lowe's, Home Depot, etc. Applicant's contract for hauling lumber and wood products for Universal Forest involves applicant having trailers available at the Universal Forest site in Woodburn. When a contract comes up, Universal Forest pulls the trailer to a loading area and loads it. Contact is then made to applicant who brings a tractor to Universal Forest to hook on to the fully loaded trailer. The tractor and trailer are then driven on the route assigned by Universal Forest, and the trailer is then returned empty to the Universal Forest storage lot to await its next load out.

48. Once applicant's trailer is fully loaded, applicant, or one of his contract drivers, will arrive with a tractor, hook up to the trailer and depart. Almost all of applicant's contracts are long haul and involve trips to northern and eastern Washington and southern and eastern Oregon. Depending on the route, a single trip will have a tractor/trailer combination on the road for an average of three days.
49. Tractors and trailers that are not in the immediate process of loading are parked in Universal Forest's back lot and retrieved as and when necessary for loading. During those times when one of applicant's trailers are awaiting a load out but are not yet ready to actually be loaded, those trailers are parked on the Universal Forest lot in Woodburn.
50. Universal Forest is a large company and employs several small independent haulers such as this applicant. Most of the applicant's business involves one customer, and that customer requires most of the trailers owned by the applicant to be at the Universal Forest facility and ready for load out. Universal Forest hauls never depart from or arrive at the applicant's property - it is always at the Universal Forest warehouse in Woodburn. Essentially, a tractor that may be at the applicant's property would leave without a trailer, drive the three miles to Woodburn, pick up the trailer, the route slip and bill of lading and then depart from there fully loaded to locations specified by Universal Forest. When empty the trailer is taken back to Universal Forest and parked there to await the next haul contract.
51. Occasionally, applicant will find a return load at a location near the end of his route with Universal Forest. On those few occasions the trailer will be loaded on the return trip, and the initial arrival point will be the destination of the return load. After the return load is delivered to its final destination, the trailer goes to Universal Forest and repeats the cycle. It should be noted that at the time of the Hearings Officer's site visit, the load of cardboard on the trailer that was reported during the hearing was one of these return loads. In that case, which does happen on occasion, the return load was destined for the Oregon coast to be delivered to a recycling firm. On the return trip, the drive time limitations provided under Oregon law did not provide sufficient time to allow the trailer to be moved all the way to the coast for delivery that day. A rest period for the driver was required by law, and since this was a load that the applicant himself was driving, he stopped at home for his rest period instead of a rest area.
52. The applicant, being an independent contractor, also has hauls contracted from other companies in order to keep his equipment on the road and producing income. Applicant has a trucking consultant that assists him in management of loads, equipment, and in brokering independent hauls for hire. The consultant is Interstate Trucking Consultants, Inc., and the applicant does all his business through the offices of that consultant. Applicant has no ownership interest or control in Interstate Trucking Consultants, Inc.
53. Independent hauls (other than the Universal Forest business) are not routine, but do occur on a fairly regular basis. Because of this, applicant keeps one or two trailers at the subject property in reserve. For these other hauls, the routine is very similar to that at Universal Forest. Applicant will be contacted by the consultant on behalf of a shipper, and the tractor and trailer leave the subject property empty to go to the shipper location for load out, and are on the road from the shipper location to the ultimate product destination. The return haul, empty or full, follows the same basic pattern as that for Universal Forest.
54. Applicant keeps normal 8:00 a.m. to 6:00 p.m. working hours during the week days. Periodically there will be equipment movement on a weekday, but that is rare. Movement of equipment after

6:00 p.m. and before 8:00 a.m. happens only in the case of emergency.

55. The Quikrete plant involves a huge tower facility, several large manufacturing buildings, outdoor storage of pallets and materials and a huge trucking lot and loading area. This facility is the predominant feature in this area; both visually and regarding use impacts from traffic, especially truck traffic. The truck traffic from Quikrete makes up almost all of the truck traffic complained about during the hearing process, as far as frequency, noise and trailer tracking on Grim Road. Applicant's truck traffic is minimal compared to that of Quikrete.
56. The urban density subdivision along Lakewood Drive to the northwest of the subject property is a subdivision where most of those testifying in opposition to this application live. Although the concerns of the neighbors are real and certainly understood, it appears their concerns with regard to truck traffic are directed towards other local industries and not the low-volume trucking activities of this applicant.
57. The pattern of development along the state highway and at its various intersections is one of strip commercial, industrial, and residential uses along the highway, behind which lie EFU uses. There are dense commercial developments to the south on small parcels zoned variously as industrial, commercial, public and residential.
58. The area surrounding the subject property is devoted to heavy industrial and commercial uses that flank the state highway, and provide much more significant impacts than are generated by this use.
59. Testimony was provided regarding Grim Road and the applicant's driveway. As was previously discussed, the majority of the adverse impacts testified to relate to other trucks and not the applicant. To begin with, there was much discussion of the condition of the road and a large puddle. The problems identified are on the north side of Grim Road and are due to drainage difficulties in the county road, and is not due to anything caused by this applicant. Grim Road has a slope to the north such that stormwater has a tendency to collect at the lowest point. This problem is not caused by the applicant, or negatively impacted by him. Existing vehicular traffic attempt to avoid the puddle by crossing over the yellow line, again a circumstance that is caused by the condition of the road and not by the applicant.
60. The applicant's driveway entrance onto Grim Road has a sufficient turning radius for his trucks to enter and exit Grim Road without encroaching on the opposite lanes of traffic.
61. Some discussion has taken place with regard to the uncertainty of ODOT approval for the direct access onto the state highway from the subject property. An asphalt apron was installed by ODOT over a culvert (also installed by ODOT) as part of the highway facility. This construction is a strong indicator that there is, in fact, approval for this access to the subject property. Historically, culverts and access aprons are not installed by ODOT for access points that are not approved and authorized by ODOT.
62. Applicant has the right of access directly onto the State highway by access grant from the State Highway Commission in 1967, which runs with the property, and currently vests those access rights in applicant. As part of the grant of access to the state highway, ODOT constructed a road approach as a part of its widening of the State highway with funds paid for by the predecessor in title. The approach includes the culvert and asphalt apron. The Indenture of Access dated April 25, 1967, and recorded at Vol. 645, Page 721, demonstrate that applicant has a 35 foot wide

indentured right of access to the state highway that is not restricted in use. The applicant has the right to use his access apron to the state highway for any purposes he chooses, including ingress and egress by his trucks.

63. There are three types of exceptions under Statewide Land Use Planning Goal 2 in Oregon law. The first is where the property is predominately developed to the point where resource use is impracticable. This exception is generally referred to as the Physically Developed Exception, and is governed by OAR 660-004-0025. The second is where the subject property is not necessarily predominately developed, but where the development on surrounding lands makes saving the subject property for resource use impracticable. This type of exception is generally referred to as the Irrevocably Committed Exception, and is governed by OAR 660-004-0028. The third is where there are reasons that exist why the resource goals should not be applied to a particular tract of land. This type of exception is generally referred to as the Reasons Exception and is governed by OAR 660-004-0022.
64. This application involves a request for a Physically Developed Exception based on the predominant nature of the development of the site. In the alternative, the applicant requests an Irrevocably Committed exception based on the surrounding industrial and commercial uses. There is no request here for a Reasons Exception.
65. The applicant's property is predominantly in non-resource use currently. Over 50% of the subject property is physically developed with non-resource use development. There are some Christmas trees planted on the site, however, they occupy less than 50% of the land. The trees are actually separated from both the state highway and the railroad tracks by a gravel driveway, and there is a gravel drive down the middle of the trees. Where a tract is more than 50% physically developed, it qualifies for a Physically Developed Exception.
66. The fact that the property could qualify as a non-conforming use does not exempt it from qualification for an Exception. A non-conforming use is lawful, but lawful under the grandfather right rules and not because it is allowed by either Goal 3 or the EFU zone. The subject property qualifies for a Physically Developed Exception.
67. In addition, the subject property qualifies for an Irrevocably Committed Exception.
68. For a use to be "impracticable" under the Irrevocably Committed Exception, the use does not have to be impossible. Whether uses allowed by the goals are impracticable depends upon the characteristics of (1) the exception area; (2) the adjacent lands; (3) the relationship between the exception area and the adjacent lands; and (4) other relevant factors. OAR 660-004-0028(2). Findings need not demonstrate that every use allowed by the goal is "impossible." OAR 660-04-0028(3). In addition, OAR 660-004-0028(6) sets forth a number of factors the local government must consider in taking an irrevocably committed exception, which include (1) existing adjacent land uses; (2) existing public facilities and services; (3) parcel size and ownership patterns of the exception area and adjacent lands; (4) neighborhood and regional characteristics; (5) natural or man-made features or other impediments separating the exception area from adjacent resource land; (6) physical development under OAR 660-004-0025; and (7) other relevant factors.
69. A comment was received during the hearings process that a Traffic Impact Analysis (TIA) should have been required in this case. The law only requires a TIA be performed where there is evidence that the land use change proposed would cause a significant impact on a traffic facility. There is no reasonable argument that this change in the plan and map will have a significant

impact on Grim Road or the State Highway. No new truck traffic that will be immediately generated from this property by granting this application. As previously noted, the size and shape and lack of utilities to the site make it impossible to use for any high intensity uses that would potentially impact traffic. No TIA was required in this case, because the Marion County Department of Public Works understood that the requirements for a TIA were not met here.

70. It was suggested that this application must include an exception to Goal 12. An Exception is only needed in this case to Goal 3 - the agriculture goal. This application complies with Goal 12, therefore no exception is required.
71. This minor modification fully complies with all the Marion County Comprehensive Plan Goals and Policies as follows:

A. Agricultural Land Policy #3 - Provides that non-farm uses on high value farmland should be allowed only when they do not cause adverse impacts on farm uses. The subject property is predominantly a Woodburn soil classified as high value, which is not much different than any parcel of land in the north county area. In this case a use already exists, and a similar non-resource use has existed on the subject property since the late 1950's. There is no evidence from this 50 year history of non-farm uses taking place on the subject property that those uses have caused any adverse impacts on farm uses.

Over the years since the 1960's non-resource uses have proliferated along the state highway corridor. Other uses, such as the Quikrete plant, and the Lakewood Drive subdivision, as well as the Sun Gro plant have all been permitted and began operating. Although there are no farm uses taking place on adjoining properties, there are some berries and hops in the general area. The low intensity trucking operation proposed here will not impact those uses. There is no water requirement for the proposed use, so there will be no impact on irrigation or wells. There is no manufacturing so there is no noise or dust or vibration that could affect farming. The trucks and trailers that are used in this operation are licensed for on-road travel, and therefore meet DEQ standards for emissions. This proposed use will not adversely impact farm uses in this area, and therefore this policy is complied with.

B. Rural Industrial Policy #2 - Requires that rural industrial uses should be compatible and be low intensity in the number of employees, environmental impacts and not require heavy truck traffic through residential areas or on unimproved roads.

The proposed use is very low impact. Aside from the applicant and his wife, there are no employees. The contract drivers are few in numbers and visit the site only a couple of times per week. As noted earlier, an industrial kind of use has been operating continuously from this property for 50 years without complaint, and that is primary evidence of compatibility. This small trucking firm does not generate environmental impacts as all the trucks are DEQ compliant for travel on the public roads and highways. Truck routing from the subject property is directly onto Grim Road, and then to the state highway, and does not travel on either unimproved roads, or through residential areas. Trucking from Universal Forest, which is in the industrial park of Woodburn, is on main roads and does not use unimproved roads or travel through residential subdivisions. This proposed use is very low impact, and does not create transportation problems, and therefore this policy is complied with.

C. Rural Industrial Policy #3 - Requires an analysis of rural industrial uses so that the proposal meets county and state goals and that the subject property is the most suitable for the use given a

review of lands in the UGB or on rural non-resource lands.

Most of the trucking operations from this use take place within the UGB of the City of Woodburn at Universal Forest. However, there are no lands available currently in Woodburn that are properly zoned to handle this trucking operation. Such a site has to be approximately three acres, and have direct and easy access to a main access road to the freeway. Woodburn states that it has no such lands, and that it is in the process of attempting to expand its UGB in order to provide lands of this type, primarily because none currently exist. Similarly, neither Hubbard nor Aurora nor Donald has available lands suitable for this use, inside their UGB, properly zoned and available.

Viewing the north county area, along the freeway corridor, there are no rural industrial areas that are suitable and properly zoned, where this kind of use can operate lawfully. It is well recognized that Marion County does not have vacant industrial lands in the rural areas. All of those parcels are occupied or held for expansion by existing businesses. The application complies with the statewide goals and guidelines as found above. This proposed use is appropriate for this tract of land, and there are no other properly zoned lands in the north county area, either inside the UGBs, or in exception areas, that are available to place this use, therefore this policy is complied with.

D. Rural Service Policy #1 - Requires a review of existing services, and the potential need for additional services caused by the proposed development.

The proposed trucking operation needs no urban services. There is a well on the property and a septic tank that provide all the water and sanitary waste disposal that are needed for this use. There are no storm water drainage facilities (except for some ditching). Because this use does not need an urban level of services, nor does its future use create the potential need for urban services, this policy is complied with.

E. Rural Service Policy #2 - Discourages rural uses that increase the potential for needing urban services.

The proposed use here does not increase the potential for needing urban services, and therefore this policy is complied with.

F. Transportation Development and Access Policy #7 - Requires a review of the road classifications, as well as present and anticipated safety issues in light of the proposed change in mapping.

The applicant worked with the Marion County Department of Public Works on impacts to Grim Road. The conditions of approval requested by Public Works address all concerns. This policy is complied with.

72. The evidence in this record demonstrates the subject property is not resource land. The file in CU 99-22 (a prior land use case on a neighboring tract) also recognizes that there is no agricultural use being made on the subject property and that it was a commercial carpet cleaning business at that time.
73. The subject property currently has Christmas trees located on slightly less than half of the subject property. These trees were originally planted by former owner Mr. Ballweber and were included in the sale price when applicant purchased the property in 2006. Mr. Ballweber represented to

applicant at the time of sale that there were 2,600 Christmas trees planted. It is unknown when the trees were planted. Since applicant's purchase of the property, the death rate of these Christmas trees has reached nearly fifty percent. Trees adjacent to the railroad tracks and facing the cement plant have the highest death ratio. While applicant is not a horticulturalist, he has been told the fugitive dust from the nearby cement plant migrates onto the trees causing disease and ultimately death of the trees. The 2010 Christmas tree season was the first time applicant had any marketable Christmas trees. Applicant harvested 600 trees, 300 of which were diseased and unsaleable. These trees are currently piled on the subject property awaiting disposal. The 300 trees remaining were sold at a steep discount. Of the approximately 2,000 trees left, applicant estimates that at least half of those trees are sick, not salvageable, and ultimately will have to be destroyed. The soil in this area is good and under different circumstances, Christmas trees should thrive. However, given the chemical activities at Sun Gro, the fugitive cement dust from Quikrete, and the dilution from regular train traffic, all these factors contribute to the inability of this tract of land to be agriculturally productive. Given the size, shape and location of the subject parcel, applicant is unable to aerially spray the property, and even backpack spraying is severely limited given the necessity to stay back from the State highway, the railroad, and the Sun Gro property. Applicant has employed the best management practices he can under the circumstances and cannot retain more than fifty-percent of these trees in good saleable condition. It is simply not economical or profitable to utilize this area for agricultural production. At best, the area could be used for a home garden or other use in conjunction with a family residence.

74. Applicant turned in a petition in support of his application signed by eleven different people who live in the area. These eleven different signatures represent eleven different properties in the area. The petition was attached to his supplemental justification statement submitted on December 28, 2010, and referenced during the Hearings Officer's public hearing. Each of these property owners attested that they were aware of the existing conditions on the property and further stated that they have experienced no adverse impact from the trucking business. These signatories further recognize that this property has had industrial uses extending back many years when the property was owned by Mr. Ballweber. These signatures were given freely and voluntarily without duress or coercion. There is no reason not to believe these signatures are true and accurate, or that the signers appropriately attested to the information cited to in the petition. No one has submitted any letters into this record challenging any of these signers, nor was there any such challenge made during the course of the public hearing process. Testimony was received at the Board hearing that substantiates the legitimacy of this petition.
75. There has been some confusion during the course of this entire application with regard to the number of trucks and trailers applicant owns, where they are located, and if they are licensed or operable. Because of the confusion on the part of the applicant, applicant's attorney, and planning staff, as well as the Marion County Department of Public Works, applicant's attorney obtained a printout from the Oregon Department of Motor Vehicles, and from that printout applicant's attorney created a table listing all the trucks and trailers, their license number, VIN number, where the trucks are housed on a regular basis and if the trucks are licensed and/or operational. This table is set forth in the record, and is hereby found to be complete and accurate.
76. There are questions raised by the Hearings Officer in her recommendation regarding a building permit that applicant received several years ago. This was a building permit for an addition to the shop on the subject property. The shop was designated for personal use, and applicant uses this addition for storage. The addition for which the building permit was issued is unfinished and not insulated. The addition has no electricity or water connected. This building permit has nothing to do with the application here.

77. At the Hearings Officer hearing photographs were submitted by an opponent showing several trucks on the subject property. The date those photographs were taken was January 5, 2011. As applicant indicated to the Hearings Officer at the hearing, that date was part of the holiday week at Universal Forest, where trucking operations were shut down. Applicant took advantage of that shut down period to do maintenance and repairs of his trucks and trailers. This opportunity presents itself only once a year; and he took advantage of it in order to run an efficient economical business.
78. To the extent there has been conflicting testimony or evidence submitted in this case, the evidence tendered by the applicant and his representative is deemed to be selected over the conflicting evidence.
79. The applicant has agreed that all the conditions of approval, including the limited use overlay, are acceptable and satisfactory conditions that are necessary in order to implement the land use changes approved here.



## **EXHIBIT B**

The Marion County Board of Commissioners adopts the following conditions in ZC/CP10-002/Madriz:

### **CONDITIONS OF APPROVAL:**

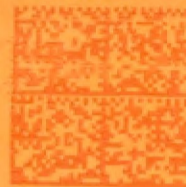
Pursuant to the Marion County Zone Code 17.123.070, the following conditions apply to the I-LU (Industrial – Limited Use Overlay) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The I-LU zoning significantly intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

1. A limited use (LU) overlay shall apply to the property. Only the following use shall be permitted: Local Trucking With Storage (SIC 4214). All other uses identified in the I zone shall require conditional use approval.
2. The applicant shall comply with the provisions of MCC 17.165.080 regarding property development standards for the industrial zone.
3. The traffic generated by the entire parcel shall be limited to no more than 25 trip ends per day.
4. Improve the Grim Road NE property frontage to current County standards for a Minor Collector road.
5. Provide evidence that Oregon Department of Transportation requirements regarding access to SR 99E have been satisfied.
6. Apply for a county Access Permit and construct any improvements required by the permit.

Marion County Planning Division  
5155 Silverton Rd. NE  
Salem, OR 97305

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Attn: Plan Amendment Specialist  
Dept. Land Conversation & Dev  
635 Capitol St NE Suite 150  
Salem OR 97301-2540