



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

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www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: 08/26/2014
Jurisdiction: Polk County
Local file no.: ZC 14-01
DLCD file no.: 004-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 08/21/2014. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 39 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us

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

☐ In person ☒ electronic ☐ mailed

DEPT OF

AUG 21 2014

**LAND CONSERVATION
AND DEVELOPMENT**

For DLCD Use Only

Jurisdiction: **Polk County**Local file number: **ZC 14-01**Date of Adoption: **8/20/2014**Date Mailed: **8/20/2014**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 5/30/2014☐ Comprehensive Plan Text Amendment☐ Comprehensive Plan Map Amendment☐ Land Use Regulation Amendment☒ Zoning Map Amendment☐ New Land Use Regulation☐ Other:

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

The applicants are requesting a Zoning Map amendment to change the zoning of an approximately 7.5-acre portion of their property from Suburban Residential (SR) to Light Industrial (LI). The property is located within the City of Monmouth's Urban Growth Boundary (UGB). The applicants operate a business which processes and recycles wood products for resale. The applicants have completed the process to change the City of Monmouth's Comprehensive Plan designation from Low Density Residential (LDR) to Industrial (I). Approximately 2.0 acres of State Highway 99W would also be rezoned IL as part of this application.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **No Change**to: **No Change**Zone Map Changed from: **SR**to: **IL**Location: **875 South Pacific Highway West, Monmouth**Acres Involved: **9.5**Specify Density: Previous: **9.5**New: **9.5**

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Sam Thomas**

Phone: (503) 623-9237 Extension:

Address: **850 Main Street**

Fax Number: **503-623-6009**

City: **Dallas**

Zip: **97338**

E-mail Address: **thomas.samuel@co.polk.or.us**

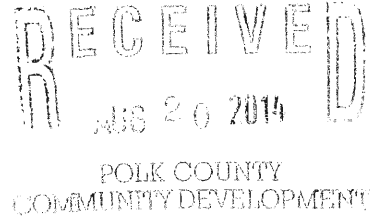
ADOPTION SUBMITTAL REQUIREMENTS

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

1. Send this Form and **TWO Complete Copies** (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



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

In the matter of Zone Change ZC 14-01)
Zoning Map Amendment on an)
approximately 7.5-acre property located at)
T8S, R4W, Section 30, a portion of Tax Lot)
1000 and adjacent right-of-way within)
State Highway 99W consisting of)
approximately 2.0 acres.)

ORDINANCE NO. 14-07

WHEREAS, the Board of Commissioners held a public hearing on August 6, 2014 with due notice of such public hearing having been given, and provided an opportunity for public comments and testimony; and

WHEREAS, the Board of Commissioners received a recommendation in support of Zone Change ZC 14-01 from the Polk County Hearings Officer based upon his public hearing and conclusions; and

WHEREAS, the Board of Commissioners received a recommendation in support of Zone Change ZC 14-01 from Polk County Planning staff based upon the findings and evidence in the record; and

WHEREAS, on August 6, 2014, the Board of Commissioners publicly deliberated and unanimously passed a motion to approve Zone Change ZC 14-01; now therefore,

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1. That Polk County adopts the findings for Zone Change ZC 14-01 located in the Hearings Officer's recommendation and staff report as shown on Exhibit A.

Sec. 2. That Polk County amends the Polk County Zoning Map for the 7.5 acre portion of the property located at 875 South Pacific Highway West (State Highway 99W), Monmouth, OR and identified on the Assessment Map as T8S, R4W, Section 30, Tax Lot 1000. The Zoning Map shall be amended from Suburban Residential (SR) to Light Industrial (IL) for this area which shall also include a 2.0-acre area west of the property located within State Highway 99W right-of-way. The total area to be rezoned is 9.5 acres as shown on Exhibit B. A detailed map of the portion of Tax Lot 1000 to be rezoned is shown on Exhibit C.

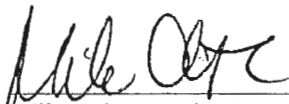
1 Sec. 3 Polk County amends the Polk County Zoning Ordinance text so that the
2 effective date of the Official Zoning Map listed under PCZO 111.090(A) is changed to August
3 20, 2014.

4
5 Sec. 4. An emergency is declared, and the provisions of this ordinance become
6 effective upon its adoption.

7
8 Dated this 20th day of August 2014 at Dallas, Oregon.

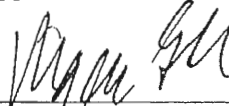
10
11 POLK COUNTY BOARD OF COMMISSIONERS

12
13 
14 _____
15 Craig Pope, Chair

16
17 
18 _____
19 Mike Ainsworth, Commissioner

20
21
22 Unavailable for signature
23 Jennifer Wheeler, Commissioner

24 Approved as to form:

25 
26 _____
27 Morgan Smith
28 County Counsel

30
31 First Reading: August 20, 2014

32 Second Reading: N/A

33 Recording Secretary: Heather Mornell

EXHIBIT A

BEFORE THE PLANNING DIVISION FOR POLK COUNTY, OREGON

JUL 21 2014

In the Matter of the Application of)
James R. and Penny L. Marr)

Zone Change 14-01 POLK COUNTY
COMMUNITY DEVELOPMENT

SUMMARY OF PROCEEDINGS

This matter arose on the application of James R. and Penny L. Marr for a zoning map amendment (zone change) for an approximately 7.5-acre portion of a property, from Suburban Residential (SR) to Light Industrial (IL). The subject property is located within the Urban Growth Boundary (UGB) of the City of Monmouth, Polk County, Oregon. The subject property is located at 875 South Pacific Highway West, Monmouth, and is legally described as T8S, R4W, Section 30, a portion of Tax Lot 1000. The applicable review and decision criterion is Polk County Zoning Ordinance (PCZO) 111.275.

As a result of this zone change, an approximately 2.0-acre portion of South Pacific Highway West (State Highway 99W) right-of-way would also be rezoned that is not calculated as part of the subject property. The subject property is part of a tract consisting of two parcels. Parcel 1 consists of approximately 15.9 acres and Parcel 2 consists of approximately 10.3 acres. The subject portion of Parcel 1 that would be rezoned as part of this application consists of approximately 7.5 acres. The approximately 7.5-acre portion of Parcel 1 to be rezoned shall be referred to hereafter in this staff report as the "subject property." The subject property is a portion of Tax Lot 1000 (T8S, R4W, Section 30), consisting of approximately 7.5 acres on the northwestern portion a 26.3-acre tract. See Attachment "A" of the staff report for an area map of the subject property.

Parcel 2 is currently zoned IL and is used to process and recycle wood products (e.g., bark dust) for resale. The applicant states that the reason for the proposed zone change is that the IL zone would allow the expansion of the existing business by moving the existing retail sale of bark dust to the approximately 7.5-acre portion currently zoned SR. The applicants were approved for a Comprehensive Plan Map Amendment with the City of Monmouth for the subject property as authorized by City of Monmouth Order Number 1331, approved November 5, 2013. The applicant further states that the zone change would bring the subject property in to conformance with the adopted Industrial plan designation in the City of Monmouth Comprehensive Plan

Current designations:

Location	Comprehensive Plan Designation	Zoning Designation
Subject Parcel	Urban Reserve	Suburban Residential
Property North	City of Monmouth	City of Monmouth
Property South	Urban Reserve	Light Industrial
Property East	Urban Reserve	Suburban Residential
Property West	Urban Reserve	Suburban Residential

Based on a review of Polk County Assessor's data, the subject property currently contains one accessory structure. The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance Section 91.950(1)(b) as result of a partition plat recorded authorized by land use application PT86-04, approved July 15, 1986. The subject property is identified as "Parcel 1" of the partition plat referenced as County Survey Number 11842, recorded in Polk County Book of Records 208, Page 1368 on March 12, 1987. The subject property is currently described on a warranty deed recorded as Polk County Book of Records 207, Page 1197, dated October 21, 1987.

Based on a review of the Polk County Significant Resource Areas (SRA) Map, the subject property does not contain inventoried significant resources. Based on a review of the National Wetland Inventory map, Monmouth Quadrangle, the subject property contains an inventoried wetland riparian area within the area that would be rezoned. The required setbacks near riparian areas shall average three times the stream width but shall not be less than 25 feet and not more than 100 feet pursuant to PCZO 182.050(B)(2). The subject property is not located within an identified floodplain pursuant to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map panel number 41053C0403F dated December 19, 2006. There are no identified historic, archeological or Willamette River Greenway areas on the subject property.

Notice of the July 8, 2014 public hearing before the Hearings Officer and the August 6, 2014 hearing before the Board of Commissioners was provided as required by PCZO 111.340 to 111.370. Staff provided a notice sign to the property owner on June 18, 2014. Notice was mailed to property owners located within 250 feet of the outside perimeter of the subject property on June 11, 2014. Notice was printed in the Dallas *Itemizer-Observer* newspaper on June 18, 2014. Notice of the proposed zone change was provided to DLCD on May 30, 2014.

The subject property has frontage along South Pacific Highway West, which is designated as a principal arterial in the *Polk County Transportation Systems Plan*, Figure 3. It receives potable water from the City of Monmouth, and has an on-site sewage disposal system.

PRE-HEARING WRITTEN COMMENTS

City of Monmouth:

The subject property is designated as Industrial on the City of Monmouth's Comprehensive Plan Map. The proposed zone change is consistent with the City's Comprehensive Plan.

Oregon Department of Transportation:

Dan Fricke's comment to the City of Monmouth on the comprehensive plan amendment for this property in included in the Record. Dan's letter mentions a future zone change and at the time of the comprehensive plan amendment ODOT reviewed the approach permit in regards to a future zone change for an expansion of the existing bark dust processing/sales business.

No other comments were received prior to the public hearing.

PUBLIC HEARING

A duly advertised public hearing was held in the Polk County Courthouse on July 8, 2014. Applicants were represented by Wallace W. Lien, P.C., an attorney experienced in land use proceedings. The Hearings Officer called the meeting to order and recited the admonitions required by law. There were no objections as to notice, jurisdiction, or conflict of interest. Staff summarized its findings, recited the applicable review and decision criteria, and recommended approval. Lien expressed agreement with the staff report, and introduced several persons supporting the application. He agreed with staff that the IL zone is most appropriate.

Eric Olsen, a resident of Monmouth, said the key question is, which PCZO zoning designation best implements the subject property's new designation under Monmouth's comprehensive plan. He believes there should be a new zone type, which recognizes the subject property's transition pursuant to Monmouth's Comprehensive Plan. He also urged that no change in zoning be considered until the subject property is brought into compliance with its existing zoning designation. In rebuttal, Lien argued creation of new zones is a legislative matter, not subject to action in the course of this proceeding. Olsen made a timely request that the record be left open for an additional seven calendar days for submission of additional written arguments. The Hearings Officer agreed, to this request and also granted Lien's request that the record be left open for an additional three days thereafter for submission of written rebuttal material. In summary, any

participant will have until 5 p.m. on July 15, 2014, to submit additional written testimony, and Lien will have until 5 p.m. July 18, 2014, limited to rebuttal of the additional written material. The Hearings Officer reminded participants that materials must be physically submitted to planning staff by the respective deadlines.

There being no further matters at hand, the Hearings Officer adjourned the meeting. Robert W. Oliver, Polk County Hearings Officer, presided. He was given authority by the Polk County Board of Commissioners to conduct the proceedings and make a recommendation to the Board.

POST-HEARING SUBMISSIONS

During the time allowed for submission of additional written testimony, Eric Olsen submitted a written argument that is attached hereto. He argued that the PCZO did not anticipate a condition "whereby a City would abdicate its responsibility to mitigate incompatible uses during the time in which a property remained outside the City limits but within the urban growth boundary." He recommended, first, that Polk County create a new transitional industrial zone which will better allow for mitigation of incompatibility with adjacent residential uses. Second, in effect Olsen insisted that the record of proceedings in the LUBA decision be folded into the current proceeding, and that Polk County revisit the issues raised in that case. Lien submitted a timely written rebuttal on July 16, 2014, also attached to this order. In the opinion of the Hearings Officer, any new kind of zone can only be created by the Polk County Board of Commissioners in an entirely separate proceeding. Additionally, the Hearings Officer does not agree that Polk County in this proceeding should reopen the matters already decided by LUBA. Consequently, no useful purpose would be served by incorporating the record of that proceeding into the record of this case.

FINDINGS

Authorization for a zone change is provided under PCZO111.275. Staff findings and analysis are included below. The applicant provided findings with the application that are included below and also as Attachment "E" of the staff report.

- 1. A zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [PCZO 111.140]**

The criteria for a zone change are provided under PCZO111.275. Procedurally, the Hearings Officer holds a public hearing pursuant to PCZO 111.190 and makes a recommendation to the Polk County Board of Commissioners. The Board then holds a public hearing pursuant to PCZO 111.200 and makes a final local decision. Planning Division staff reviewed the proposed zone change, and prepared this staff report and recommendation for the Hearings Officer. This application has been reviewed under the proper review process and complies with this criterion.

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

- a. The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275 (A)]**

- 3. Urban Reserve Land Designation (Applicable Sections)**

- a. The Urban Reserve designation addresses itself toward protecting the intent and integrity of the city's coordinated and adopted land use plan by limiting random development actions which could stand in the way of logical, planned development.**

The Urban Reserve designation recognizes that the provision of adequate levels of public facilities and services should guide urban development, and not the other way around.

- b. The Urban Reserve designation shall reflect and be in support of the County's Urban Land Development policies, and the policies and intent statements contained within the intergovernmental agreement adopted by Polk County and each municipality regarding the development and management of urbanizable lands.
- c. The Urban Reserve designation may be implemented through a number of zones, but primarily through the Suburban Residential (SR) zone or the Exclusive Farm Use (EFU) Zone. [PCCP, Section 4]

4. Urban Land Development; Applicable Goals and Policies

- a. To protect agricultural land from urban expansion and random development through containment of urban growth. [PCCP, Section 2, Element K, Goal 1]
- b. To provide for an orderly and efficient transition from rural to urban land use within designated growth areas. [PCCP, Section 2, Element K, Goal 2]
- c. Polk County will recognize that the type and form of development of urbanizable land is to be based upon each municipality's adopted land use and phased growth plan, a plan which has been coordinated with that of the County. [PCCP, Section 2, Element K, Policy 2.3]
- d. Polk County will provide the opportunity for each city to review and comment upon any proposed land use action within that municipality's urbanizable area prior to County action. [PCCP, Section 2, Element K, Policy 2.4]
- e. Polk County zoning will reflect and support the intent of a municipality's coordinated and adopted land use plan for the urbanizable area in order to protect that area from random development actions. [PCCP, Section 2, Element K, Policy 2.5]

PCZO.111.275(A) authorizes the IL zone as appropriate for the Industrial comprehensive plan designation on the property, and to be consistent with the purpose and policies of the Industrial plan designation. As noted above, the IL zone is an implementing zone for the Industrial plan designation. The Industrial designation is intended to provide sites for future industrial uses in zones that are close to cities and major arterial roads. The subject property meets this intent by being adjacent to the city limits of Monmouth, and with frontage on Highway 99, which is the main north south transportation route in the region. The further intent of the Industrial plan designation is to protect existing employment and provide new employment opportunities. The IL zone here will allow the existing business operation to expand and to continue to provide wood products, jobs and economic value to the county. The Industrial land use policies that form the foundation of Polk County's Industrial zoning designations are found in Section 4 of the Economic Development Element of Polk County's Comprehensive Plan.

Policy 4.1 encourages development of industrial lands within urbanized areas. This policy is satisfied, as the subject property is inside the UGB and outside the city limits, and therefore is considered to be urbanized lands.

Policy 4.2 requires the county to support location of industrial uses in accordance with the Intergovernmental Agreement (IGA) with Monmouth. This policy was complied with during the Monmouth comprehensive planning process where the IGA was followed. The process used for compliance with the IGA was affirmed at LUBA.

Policy 4.3 relates to unincorporated communities and is not applicable here, as the subject property is urbanizable land and is not located in an unincorporated community.

Policy 4.4 provides that industries of a similar type should be concentrated. This policy is

complied with here as this proposal is to allow expansion of the existing use, thereby ensuring that all aspects of the applicants' business are concentrated in the one location

Policy 4.5 provides that industrial uses should be placed in such a way as to minimize adverse social, economic and environmental impacts. In this regard Polk County should rely heavily on the comprehensive planning decision of the City of Monmouth, which found the Industrial plan designation to have minimal impacts socially, economically and environmentally. See the city's lengthy findings on these topics, particularly the fact that the subject property is buffered by 8.8 acres of SR zoned land to the east; Highway 99 and an industrial area to the west; the UGB and rural lands to the south; and a church to the north. In addition, as previously noted, the applicants' existing operation is in full compliance with all DEQ regulations.

Policy 4.6 relates to utility services provided to the construction of new industrial buildings. This policy is satisfied because all the necessary utilities for applicants' operation are already in place (including electric and water). In addition, at such time as the applicants do develop the subject property with new buildings, the site will be annexed to the City of Monmouth, and any remaining needed city services will then be extended.

Policy 4.7 relates to rural industries that are located outside a UGB, or are nonconforming uses. Neither situation applies to the subject property, making this policy inapplicable.

Policy 4.8 also relates to rural industrial uses in rural industrial zones outside of a UGB. Again, this is a situation that is not applicable to this application because the subject property is urbanizable land inside an UGB.

The applicant addressed Polk County's Industrial land goals and policies in the application. The subject property is designated Urban Reserve on the Polk County Comprehensive Plan (PCCP) Map. The subject property is located in the City of Monmouth's urban growth boundary (UGB). The Urban Reserve land designation applies to properties within a city's urban growth boundary, but outside city limits. The Urban Reserve designation is intended to provide a planned, orderly transition from rural lands within the UGB to urban uses. Land that would be used for urban uses must be supported by adequate public facilities and services. Management of the urban growth boundary is shared between the county and the city, and the city's Comprehensive Plan is the guiding land use planning document within the UGB. Polk County has an intergovernmental agreement with the City of Monmouth that regulates land use planning within the portion of Polk County in the UGB but outside city limits. This application's compliance with that agreement is discussed in greater detail below.

The subject property is currently zoned SR. Based on the statements in the application and on a review of the 2011 Polk County aerial photograph, the property is currently used as an access road and staging area for vehicles and equipment related to the wood product processing operation on the portion of the property zoned IL to the south. The subject property, upon further development, may require additional public services and facilities. If approved, the subject property may require water or sewage disposal services. However, if additional urban services are needed they would need to be obtained from the City of Monmouth. Based on the conditions in the City of Monmouth Ordinance Number 1331, annexation of the subject property into the City of Monmouth would be required prior to the approval of building permits. The proposal is unlikely to significantly change the property's need for police and fire protection services.

The applicant's proposal would change the zoning to IL, which provides for industrial uses that the current SR zone would not allow. The applicant has proposed to relocate the existing retail sales of bark dust to the public to the subject property, which is not likely to significantly increase traffic to the subject property. The subject property is contiguous to the City of Monmouth along its northern and eastern property lines, and does not border any agricultural land.

Planning staff provided the City of Monmouth notification of this land use application on June 11, 2014. The City submitted comments into the record that the proposed zoning of Light Industrial (IL) is consistent with the City's Comprehensive Plan designation as Industrial.

In order to ensure continued compliance with the PCCP, all future development on the subject property would need to comply with the applicable development standards in the PCZO. Prior to any future development of the subject property, the property owner should be required to obtain all necessary federal, state, and county permits. These permits may include a new or amended access permit to South Pacific Highway from the Oregon Department of Transportation (ODOT).

Based on the findings discussed above, the Hearings Officer finds that the application complies with this criterion.

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

Applicant argues that PCZO 111.275(B) requires an application for a zone change to conform to the purpose statement of the proposed zone. This is an odd criterion in this unique situation where the zone change is mandated in order to bring the zone into compliance with the Comprehensive Plan designation of the City of Monmouth. As is shown in the record, the IL zone proposed has been used within the UGB as an implementing zone for Monmouth's Industrial plan designation, and as shown above meets all Polk County industrial plan policies. As such the proposed new zone, which is the purpose and intent of this application to accomplish, does conform to both Monmouth and Polk County's Comprehensive Plans, which is inherent in the fact that the IL zone is identified as an implementing zone.

This criterion is also odd in that it asks for compliance with the purpose statement of the proposed zone; however, the IL zone does not contain a purpose statement so there is nothing to conform to. Using the allowable uses, as discussed above, the IL zone is the appropriate zone for this use and conforms to the purpose of the zone to allow light industrial uses of the type proposed by this application.

Staff notes that the applicant is proposing to change the zoning of the subject property to IL. The IL zone does not contain a purpose statement. In general, the uses permitted in the zone, especially the outright permitted uses, are consistent with the purpose of a zoning district even if a written purpose statement does not exist. In the IL zone, retail sales of outdoor plant and nursery supplies (e.g. bark dust) is an outright permitted use pursuant to PCZO 160.010(B)(4) and the subject property would be used to establish that use. For those reasons, staff concluded that the applicant's proposal conforms to the purpose and intent of the IL zone. The Hearings Officer finds that the application complies with this criterion.

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

Applicant contends that PCZO 111.275(C) provides that the uses allowed in the proposed IL zone will not significantly adversely affect allowed uses on adjacent lands. There is a mixture of zones on adjacent lands. The zone adjacent to the north of the subject property is LDR. Adjacent lands to the east include the 8.8-acre remnant portion of the applicants' ownership zoned SR, and beyond that is the City's Mixed Density Residential (MDR) zone. On adjacent lands to the south, also on applicants' own property is the IL zone, beyond which is the UGB and rural lands. To the west, adjacent to the subject property is the highway, and across from the highway is a mixture of IP and IL zones. The list of uses allowed in the IL zone is set forth in PCZO 161.010, and includes a variety of uses that are also allowed in PCZO 160.010 (allowed uses in the IP zone). These uses are generally considered to be low impact, with the higher impact industrial uses confined to the Heavy Industrial zone. Examples of allowed uses are metal fabricator, building contractor facilities, veterinary office and hospital and motor freight depot.

Impacts on the surrounding uses and uses allowed in the surrounding zones was the primary point of discussion before the City of Monmouth in the Comprehensive Plan amendment case. See the findings on pertinent issues noted above. Several public hearings were held to allow the public to provide testimony about such impacts. At the conclusion of that extensive hearings process, the city determined that there were little to no impacts to surrounding uses in a very wide study area.

The city's determination regarding this issue was affirmed by LUBA. The applicants refer here to the findings and conclusions of the city to demonstrate compliance with this criteria. See Exhibit "B" of the staff report.

Staff noted that, based on a review of the Polk County Zoning Map, approximately 10.0 acres of the subject tract is already zoned IL while the balance is zoned SR. The subject property is bordered to the north and east by properties within the city limits of the City of Monmouth and have been zoned by the city as Low Density Residential (LDR) and Mixed Density Residential (MDR).

The City of Monmouth's Comprehensive Plan designation for the subject property is Industrial. The Polk County zones that implement the Industrial designation include Light Industrial (IL), Industrial Park (IP), Industrial Commercial (IC), and Heavy Industrial (IH). The allowed uses in these industrial zones varies greatly in regard to potential off-site impacts to neighboring properties by creating additional traffic, dust, noise, and air pollution. Based on a review of allowed uses in those zones, the IP zone, generally, has the least potential off-site impacts and the IH zone, generally, has the most potential to create off-site impacts. Based on a review of the uses allowed in the IL zone, staff concluded that the IL zone is an appropriate zone based on the applicant's proposed use, relocating an existing retail bark dust sales area, and the proximity of the subject property to the City of Monmouth. The IL zone allows less intensive industrial uses compared to the IC and IH zones. Furthermore, as stated above, the property to the south is currently zoned IL. Additionally, staff noted that the IP zone would also allow the use proposed by the applicant in this application.

The industrial use proposed in this application, to relocate an existing retail sales area for bark dust, would be located adjacent to State Highway 99 West, is contiguous to neighboring industrial land and is consistent with Industrial designation in the City of Monmouth's Comprehensive Plan. Based on the above findings, the application complies with this criterion.

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

Applicant states that PCZO 111.275(D) requires a showing of adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property. This is another very similar criteria to the Comprehensive Plan amendment criteria determined satisfied by the City of Monmouth. See Exhibit "B" of the staff report, pages 12-13 where the city determined there were adequate public facilities to serve industrial uses on the subject property. With regard to transportation, the only access to the subject property is by way of the currently existing driveway. ODOT has approved use of that driveway for industrial development of the subject property. Additional discussion of the city's transportation plan, and compliance therewith is found in Exhibit "B" of the staff report, pages 11 and 12. City water is already extended to the site, as is electricity. Sewer is at the edge of the property to the north, and can be stubbed to the subject property once any buildings are constructed. Also note that once construction of buildings begins on the subject property it is required that the entirety of applicants' ownership be annexed. The city has adequate capacity to serve the site with each of the public facilities.

Staff reports that the applicant has proposed to change the zoning of the subject property from SR to IL. The subject property consists of approximately 7.5 acres that is physically developed as an access road and staging area for vehicles and equipment related to the wood processing facility on the southern portion of the property. If this zone change is approved, the applicant indicates that it would continue to be used as an access road with plans to expand the retail distribution of processed wood products, such as bark dust, to the public by establishing container bins to store processed wood products. Allowed uses in the IL zoning district are vast so future development may require additional services, such as adequate water and sewage disposal. Based on the proposed expansion of the retail sales portion of the wood processing facility, the level of fire and protective services required by the property are unlikely to significantly change. The subject property is located in the

Polk County Fire District #1 and receives protective services from the Polk County Sheriff's Department.

Staff anticipates that the amount of traffic traversing the subject property will not increase significantly if the existing retail sales of processed wood products (e.g., bark dust) use is relocated to the subject property. The subject property abuts South Pacific Highway West (State Highway 99 West). Access onto South Pacific Highway West is regulated by ODOT. The applicant would need to receive all necessary permits from ODOT, and complete any ODOT-required traffic mitigation, in order to permit traffic from the property to access South Pacific Highway West. If this application is approved, and the subject property is developed in conjunction with the property to the south, the applicant may be required to obtain a 1200-C stormwater permit from DEQ if more than one acre of land is disturbed.

City of Monmouth Ordinance Number 1331 concluded that adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.

Based on the above discussion, staff concluded that there are adequate public facilities, services, and transportation networks available at this time to serve the subject property, and the Hearings Officer concurs. Approval of the proposed zone change would not authorize the applicant to establish a use that would exceed the capacity of those services until such services are planned or available.

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

- a. Surrounding land uses, [PCZO 111.275(E)(1)]
- b. The density and pattern of development in the area, [PCZO 111.275(E)(2)]
- c. Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(3)]

Applicant states that PCZO 111.275(E) provides that the change from SR to IL is appropriate taking into consideration the following: 1) surrounding land uses, 2) density and pattern of development in the area, and 3) changes that may have occurred in the vicinity to support the proposed amendment. This is also an almost duplicate criteria to the Comprehensive Plan criteria applied by the City of Monmouth. For a complete discussion and affirmative finding regarding appropriateness of this zone with the surrounding land uses, see Exhibit B of the staff report, pages 15-16. Discussion of the surrounding neighborhood analysis is found at Exhibit B, pages 6-9. For discussion and affirmative findings regarding appropriateness with the density and pattern of development in the area, see Exhibit B, pages 15-16. For a complete discussion and affirmative finding regarding appropriateness with changes in the vicinity, see Exhibit B, pages 15-16. The applicants rely on the findings and conclusions of the City of Monmouth with regard to compliance with criteria. Even though the city was analyzing the change in Comprehensive Plan designation from Low Density Residential to Industrial, the proposed change in zone here from SR to IL carries with it the same issues, and the same analysis applies. Because the subject property must be zoned in conformance with the new Industrial plan designation, the same analysis concept is reinforced.

Staff concluded that the southern portion of the subject tract located south of the subject property is currently zoned IL. The City of Monmouth approved a change in the city's comprehensive plan designation from Low Density Residential to Industrial as evidenced by City of Monmouth Ordinance Number 1331, dated November 5, 2013. The subject property is located in the Monmouth UGB and the properties to the north and east are located within the city limits.

The applicant is proposing to change the zoning of the subject property to IL, which consists of approximately 7.5 acres. The IL zone does not have a minimum lot size. If the zone change is approved, the subject property could be partitioned further. The proposed zone change would; therefore, allow a variety of uses of the subject property, and could result in an increase of parcel density.

The applicant indicates that the impetus for this zone change request is to bring the City of Monmouth's Comprehensive Plan designation for the subject property of Industrial in alignment with an applicable implementing zone to be applied by Polk County, Light Industrial (IL). The proposed IL zone is an appropriate zone to apply to the subject property in order to allow the property to provide access to existing wood processing facility and to allow for that use to be expanded. Staff has not identified any other recent changes that have occurred in the vicinity of the subject property that are relevant to this application.

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

Applicant contends that PCZO 111.275(F) ensures that the zone change proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. The IGA between Monmouth and Polk County was used as the basis for the city's Comprehensive Planning process. How the IGA was to function in this instance was an issue brought before LUBA, who determined that the IGA was appropriately followed in the city process to change the plan designation. That same interpretation places the obligation on the county to apply an appropriate implementing zone to the subject property. Notice of this zone change proceeding was given to the City pursuant to the IGA, and the city provided its comments during the decision making process here.

Staff noted that the subject property is located in the City of Monmouth's UGB. Polk County has an intergovernmental agreement with the City entitled: *Intergovernmental Agreement Between Polk County and the City of Monmouth Regarding the Urban Growth Boundary*. The IGA acknowledges that the City of Monmouth's comprehensive plan is the guiding land use planning document for the UGB. Staff provided notice of the proposed zone change to the City of Monmouth, and they responded that the proposed zone change is consistent with the city's comprehensive plan. For these reasons, staff concluded that the proposed zone change is consistent with the IGA.

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

Applicant contends that PCZO 111.275(G) requires this zone change to comply with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. The subject property is urbanizable land and does not rely on an exception designation, therefore those rules are inapplicable here. There are no applicable ORS provisions that apply to this decision. The proposed rezone complies with all the statewide goals and guidelines on the same grounds and for the same reasons the city determined the plan change to Industrial complied. See Exhibit "B" of the staff report, pages 16-17 with regard to statewide goals, and pages 17-18 with regard to the Transportation Planning Rule compliance.

Staff reports that the subject property is designated as Urban Reserve on the Polk County Comprehensive Plan Map. The subject property contains approximately 7.5 acres. The subject property is located in an exception area, as defined in OAR 660-033-0020(6), and is no longer subject to Goals 3 (Agricultural Lands) or 4 (Forest Lands). The subject property is zoned SR which allows parcels to be established that are smaller than two acres. The subject property is already urban, so an exception is not required to comply with Goal 14 (Urbanization).

With respect to Goal 12 (Transportation), staff does not believe that a transportation impact analysis (TIA) would be needed to authorize this zone change based on comments received from ODOT and the applicant's proposal of relocating the existing retail sales of bark dust to the public to the subject property. OAR 660-012-0060(1), the Transportation Planning Rule (TPR), states the following:

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan. [OAR 660-012-0060(1)]

OAR 660-012-0060(1) requires a demonstration of compliance with additional state regulations when an amendment to a land use regulation would “significantly affect an existing or planned transportation facility.” In this case, the existing transportation facility is South Pacific Highway West (State Highway 99 West), which abuts the subject property. The applicant indicates the subject property will be developed to relocate the existing retail sales of wood products (e.g. bark dust) for sale to the public. Based on comments received from ODOT, the “proposed expansion of the bark dust facility would not result in a change of use of the approach road, as the term is used in OAR 734-051.”

The City of Monmouth Ordinance No. 1331 addressed the Transportation Planning Rule and applicable OAR sections and found that the Polk County Comprehensive Plan designation change from Low-Density Residential to Industrial would not “significantly affect” a transportation facility. For these reasons, staff does not believe that the proposed zone change would significantly affect South Pacific Highway West as discussed under OAR 660-012-0060(1).

South Pacific Highway West is State Highway 99 West, so the applicant would be required to obtain any necessary access permits from ODOT. ODOT may require traffic improvements where the subject property would access State Highway 99 West as a part of the access permitting process. Staff has not identified any sections of ORS or OAR that are directly applicable to this proposed zone change. The proposal would not require a goal exception; therefore, the Hearings Officer finds that the application complies with this criterion.

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

Applicant maintains that PCZO 111.275(H) requires the road function, classification, capacity and existing and projected traffic volumes to be considered, including road function, classification,

road capacity and existing and projected traffic volumes. The City of Monmouth determined that the change in plan designation to Industrial was consistent with and satisfied all the requirements of the Monmouth Transportation Systems Plan. See Exhibit "B" of the staff report, page 11 (finding 22.5.1). The city further determined that ODOT had primary jurisdiction over the only access to the subject property, and that ODOT had no objections to the change, and that no new access permit would even be required. Exhibit B, page 14 (finding 23.3). Finally, the city determined that the TPR did not apply to this change because the change would not create any impact on transportation facilities. These same findings and conclusions apply equally to this zone change. This proposal will generate little if any new traffic. There is no expansion of activities proposed, only the moving of one part of the business and allowing for improved safety and more coordinated parking in the vacated area. ODOT, which is the controlling jurisdiction over the Highway 99W access point to the property, has indicated that no new or modified access permitting is required, and that it has no objection to the proposal. No new access points onto any public street are being proposed. No functional classification of any public street is being changed. With the condition of approval requiring annexation prior to issuance of any building permit, Polk County and the city are assured that no structures will be constructed in locations on the property that conflict with roads that are proposed for the subject property in the TSP. Annexation, building permits, and other land use development permits will allow the city to control the growth on the subject property in such a way as to implement each and every plan, goal and policy of the TSP when development in the zone occurs.

This proposal should be compared to the transportation impact if the 7.46 acres of land proposed for re-zoning here, were developed into a single-family subdivision pursuant to the existing zone. Assuming four houses per acre, the 7.46 acres would allow for 30 homes. Single-family homes typically generate between eight and ten average daily trips (ADT). These trips, for the 30 homes would be a total of between 240 and 300 ADT. The prior impact of the residential plan and zone designations account for 240 - 300 ADT from this property, as compared to little to no traffic generation from this proposal. Further, if some other industrial uses allowed in the zone were to be proposed, it would still be required to satisfy ODOT, and use the singular driveway access. Any use allowed in the zone that did not require construction of a building would generate minimum traffic, most likely no different from the proposed expansion of the applicants' business, and certainly less than if the site were to be developed for houses. In the event some other industrial user became involved and proposed to build a building, then the property would be annexed and its transportation impacts would be judged and controlled by the city and ODOT.

Until annexation, there simply is no potential allowed use that could not be handled by the existing system. As to further development, considering the city's TSP, it shows future plans for an extension of Ash Creek Drive from Independence westerly across Highway 99W and connecting to Highway 51 on the western edge of the city. This planned extension is south of the subject property, and is generally planned along the southern most border of Tax Lot 1000 in a location that would not be impacted by this change. Next, the TSP shows the extension of Gwinn Street to be the major east/west collector to serve the Edwards Addition and lands in that area. The generalized planned location of this extension is well to the north of the subject property, as it will connect with Gwinn Street as it exists on the west side of Highway 99W to make a residential intersection. This extension is not located on the subject therefore nothing that goes on with this application will have any impact on that proposed street improvement. Finally, the TSP shows a southerly extension of Southgate Drive to a proposed intersection with the proposed Ash Creek Drive extension referenced above. This extension is proposed to be a frontage road to reduce local traffic on Highway 99W and to channel traffic entering Highway 99W to a new major intersection of Highway 99W and Ash Creek Drive. This extension is generally planned to be approximately 150 feet to the east of Highway 99W. The projected cost of this extension alone is \$1,100,000, with no funding identified and no projected timeline for construction. Of course this extension will not even be considered until and unless the Ash Creek Drive extension is developed, and that similarly is neither funded, nor is there any timeline for this new street system. Because there is no development planned in the way of the street extension, and because no development can be placed on the subject property

without annexation, this planned street extension is protected. There is nothing about this zone change that would adversely impact the future systems plan as stated in the city's TSP. The current proposal calls for no development on the subject property. No future development can occur without first annexing the property to the city. Nothing in this application commits the land to any use that would make it impossible for the City of Monmouth to acquire the right-of-way for Southgate Drive, and the Ash Creek Drive and Gwinn Street extensions are not located on the subject property, and therefore are not impacted at all.

Staff reports that the applicant is proposing to change the zone on an approximately 7.5-acre property from SR to IL. The subject property is currently accessed from South Pacific Highway West (State Highway 99W) which is classified as a principal arterial on the *Polk County Transportation Systems Plan*, Figure 3. The findings in City of Monmouth Ordinance No. 1331 stated that the proposed zone change would "generate little, if any, new traffic." Additionally, comments received from ODOT regarding City of Monmouth Ordinance No. 1331 indicate that no new or amended access permit is required if the existing access from South Pacific Highway West (State Highway 99W) is used. Furthermore, City of Monmouth Ordinance No. 1331 stated that "there is nothing about this plan amendment (to change the Comprehensive Plan designation from Low-Density Residential to Industrial) that would adversely impact the future systems plan as stated in the City of Monmouth Transportation Systems Plan (TSP). Based on the evidence above, staff concluded that the application complies with this criterion, and the Hearings Officer also so finds.

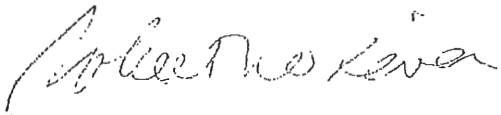
CONCLUSION

Based on the findings provided above, the proposed zone change has been reviewed following the proper process and complies with the applicable review and decision criteria. Based on the above findings, the Hearings Officer concludes that there are adequate public facilities, services, and transportation networks available at this time to support the proposed use of the property.

RECOMMENDATION

Based on the evidence and information submitted into the record at the time of completion of this staff report, the Hearings Officer RECOMMENDS that the Polk County Board of Commissioners APPROVE this application. However, the applicant shall comply with all applicable development standards pursuant to PCZO 112.410(C) and 182.050(B).

Dallas, Oregon, July 19, 2014.



Robert W. Oliver
Polk County Hearings Officer

ATTACHMENTS

Written additional testimony timely submitted by Eric Olsen.
Rebuttal Letter timely submitted by attorney for applicants.

Map Base
Outline
Query

8.4.30

ZC 14-01 AMENDED ZONING MAP

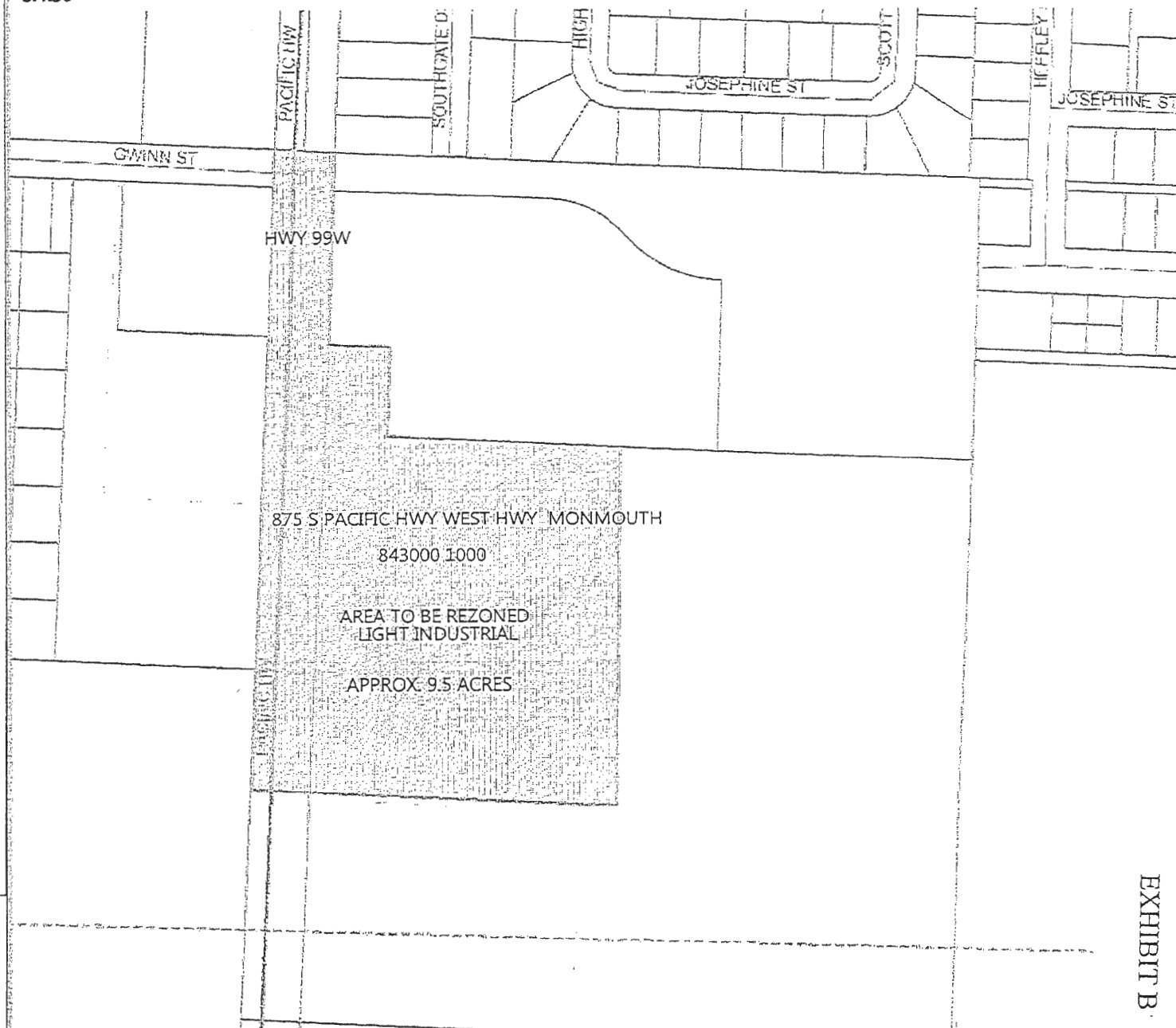
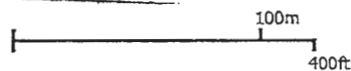


EXHIBIT B



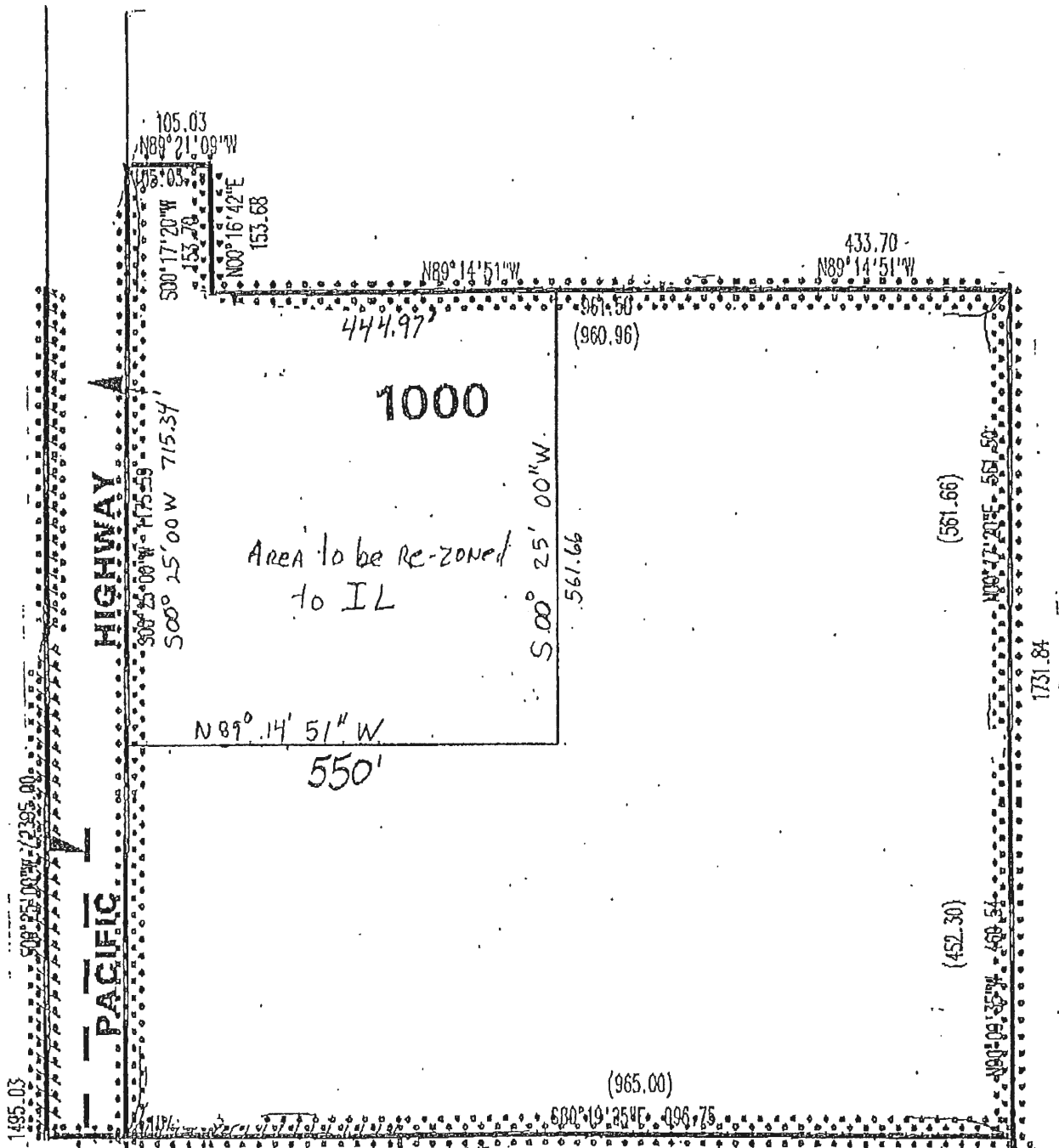
8-13-2014



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MARR
2C 14-01

EXHIBIT C



ADDRESS SERVICE
REQUESTED



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Polk County Community Development

Polk County Courthouse
850 Main Street
Dallas, Oregon 97338



TO:

Plan Amendment Specialist
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

DEPT OF
AUG 21 2014
LAND CONSERVATION
AND DEVELOPMENT