Oregon
John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development
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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: March 20, 2015

Jurisdiction: Clackamas County

Local file no.: Z0212-14-CP, Z0213-1

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 03/17/2015. 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 60 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

DLCD FORM 2

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

FOR DLCD USE	
File No.:	004-14 {22427}
Received:	3/17/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (*See* OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: Clackamas County

Local file no.: **Z0212-14-CP & Z0213-14-ZAP**

Date of adoption: 03/05/2015 Date sent: 3/17/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1was submitted): 08/18/2014

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Martha Fritzie, Senior Planner

Phone: (503) 742-4529 E-mail: mfritzie@clackamas.us

Street address: 150 Beavercreek Rd City: Oregon City Zip: 97045-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

Comprehensive Plan map amendment from Agriculture to Rural Industrial with a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI) for 8.77 acres of a 86.63-acre tract. The applicant took a "Reasons" exception to Goal 3, under ORS 197.732 & OAR 660-004-0018 through 0022.

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from Agriculture to Rural Industrial 8.77 acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Change from to acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): 23E27C 01400 & 01500/ 23E28 00304 & 00306;

20949 S Harris Rd., Oregon City, 97045

The subject property is entirely within an urban growth boundary NO

The subject property is partially within an urban growth boundary NO

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from EFU	to RI	Acres: 8.77
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: Acres added: Acres removed:

Location of affected property (T, R, Sec., TL and address): 23E27C 01400 & 01500/ 23E28 00304 & 00306; 20949 S Harris Rd., Oregon City, OR 97045

List affected state or federal agencies, local governments and special districts: Redland-Viola-Fishers Mill CPO, Clackamas County Fire District #1

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

The following documents are attached: Board Order 2015-17; Findings of Fact and Conclusions of Law; maps of the affected area; list of approved uses.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of a Comprehensive Plan Amendment and Zone Map Amendment from James R. Dierking/ Oregon Lavender Farm & Liberty Natural, Inc., on property described as T2S R3E Section 27C, Tax Lots 1400 & 1500 and T2S R3E Section 28, Tax Lots 304 & 306	ORDER NO. 2015 - 17

File Nos.: Z0212-14-CP & Z0213-14-ZAP

Whereas, This matter coming regularly before the Board of County Commissioners, and it appearing that James R. Dierking/ Oregon Lavender Farm & Liberty Natural, Inc., made an application for a Comprehensive Plan Amendment from Agriculture to Rural Industrial and a corresponding zoning map amendment from EFU (Exclusive Farm Use) to RI (Rural Industrial) on property described as T2S R3E Section 28, Tax Lots 304 and 306 and portions of property described T2S R3E Section 27C, Tax Lots 1400 and 1500, located off S. Springwater Road, approximately three miles northeast of Redland and more commonly referred to as 20948 S. Harris Road, Oregon City, Oregon 97045.

Whereas, it further appearing that in order to change the Comprehensive Plan Map designation to any plan designation other than Agriculture, it is necessary to take an exception to Statewide Planning Goal 3 (Agriculture), under the procedure described in the Oregon Administrative Rules (OAR) 660, Division 4, and the applicant has proposed to do so under the "reasons" exception criteria.

Whereas, it further appearing that after appropriate notice a public hearing was held before the Planning Commission on November 10, 2014, at which testimony and evidence was presented, and that, at this hearing, the Commission, by the vote of 7-0, recommended approval of this request, subject to the resolution of an identified traffic issue; and

Whereas, it further appearing that after the November 10, 2014 Planning Commission hearing, the applicant, his traffic engineer and staff from the County's Engineering Division resolved the identified traffic issue to all the parties' satisfaction; and

Whereas, it further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on December 3, 2014 at which testimony and evidence were presented, and that, at that hearing, a decision was made by the Board, by the vote of 5-0 to approve the application, with the Comprehensive Plan Amendment and Zone Map Amendment limited to that area identified in Order Exhibit B and limited to the uses identified in Order Exhibit C, which are attached to this order and incorporated herein by reference.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of a Comprehensive Plan Amendment and Zone Map Amendment from James R. Dierking/ Oregon Lavender Farm & Liberty Natural, Inc., on property described as T2S R3E Section 27C, Tax Lots 1400 & 1500 and T2S R3E Section 28, Tax Lots 304 & 306

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Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. The applicant requests approval of a "reasons" exception to Statewide Planning Goal 3 (Agriculture), to allow for the uses identified in Order Exhibit C.

2. The applicant requests approval of a Comprehensive Plan Amendment from Agriculture to Rural Industrial and a corresponding zoning map amendment from EFU (Exclusive Farm Use) to RI (Rural Industrial) limited to that area identified in Order Exhibit B.

3. This Board adopts as its findings and conclusions the *Findings of Fact and Conclusions of Law* document attached hereto and incorporated herein as Order Exhibit A, which finds the application to be in compliance with the applicable criteria.

NOW THEREFORE, IT IS HEREBY ORDERED that the requested "reasons" exception to Statewide Planning Goal 3 and the requested Comprehensive Plan Amendment and Zone Map Amendment are hereby APPROVED, limited to that area identified in Order Exhibit B, and limited to the uses identified in Order Exhibit C, which are attached to this order and incorporated herein by reference.

DATED this 5th day of March, 2015

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

John Ludlow

Chair

Mary Raethke

Recording Secretary

ORDER EXHIBIT A:
FINDINGS OF FACT AND CONCLUSIONS OF LAW

FILE NOS. Z0212-CP & Z0213-14-ZAP

I. BACKGROUND.

A. GENERAL INFORMATION.

APPLICANT:	James R. Dierking Oregon Lavender Farm & Liberty Natural, Inc. 20949 S. Harris Road, Oregon City, Oregon 97045
APPLICANT'S REPRESENTATIVE:	Andrew H. Stamp, Esq. Andrew H. Stamp, P.C. Kruse-Mercantile Professional Offices, Suite 16 4248 Galewood Street Lake Oswego, OR 97035 Tel: 503.675.4318 Fax: 503.675.4319 Email: andrewstamp@comcast.net
TAX LOT NUMBERS:	T2S R3E Sec. 27C, Tax Lots 1400, 1500. T2S R3E Sec. 28, Tax Lots 304, 306 Note: The following Tax Lots are part of the same tract but are not subject to this application: T2S R3E Sec. 27C, Tax Lots 1000, 1200, 1300, 1301, 1600, 1700 & 1701 T2S R3E Sec. 27B, Tax Lot 700
SITE ADDRESS:	20949 S. Harris Road, Oregon City, Oregon 97045
SITE AREA:	8.77 acres
TOTAL AREA IN TRACT:	Approximately 90 acres
COUNTY COMPREHENSIVE PLAN:	AGRICULTURE
CURRENT COUNTY ZONING:	EFU
REQUESTED PLAN DESIGNATION:	RURAL INDUSTRIAL
REQUESTED ZONING DESIGNATION:	RURAL INDUSTRIAL

B. REQUEST.

The applicant requests approval of a Post-Acknowledgment Comprehensive Plan Amendment ("PAPA") and Zoning Map Amendment for two (2) parcels of land totaling approximately 8.77acres, more or less. The property is located 20949 S. Harris Road, Oregon City, Oregon 97045 and currently has a Clackamas County zoning designation of "EFU" Approval of a reasons exception for a PAPA and zone change to "Rural Industrial" will allow the present OLF operations to continue. The Board's approval of this application provides a solution to the land use compliance issues otherwise facing the applicant, and results in zoning that is appropriate for the uses proposed on the subject property.

C. REASONS FOR THE PAPA AND ZONE CHANGE.

Since 1999, Liberty Natural Products has utilized the 90-acre Oregon Lavender Farm, which has over 150,000 square feet of rural industrial building space, as both a lavender farm and a distribution center for over 1000 different farm crops, herbs, botanicals and extracts sourced and distributed in Oregon, the United States and throughout the world. Before the establishment of the Oregon Lavender Farm, various rural industrial operations existed on the property. These structures predated the 1973 enactment of Senate Bill 100. Liberty's operation at the Oregon Lavender Farm is the only sustainable business that has ever operated at the property over a long time period. Past operations failed to be economically or environmentally sustainable. Liberty Natural's and OLF's investment in property improvements exceeds $2,000,000 over the past 14 years. Liberty has funded the cleanup and improvement of one of the largest nuisance properties in Clackamas County, and established a showcase 25-acre lavender farm benefiting the local agricultural community.

The uses at issue in this application are related to the quantity of distributed agricultural goods, primarily essential oil crops produced at other farms, the processing of agricultural goods, primarily herbs, grown at other farms into herbal extracts and the distribution of related goods that originate from outside of the region.

D. HISTORICAL USES ON THE PROPERTY.

The subject property was initially developed in the early 1960s by the Carnation Company as a large factory egg production and distribution facility named the Logan Farms with approximately 150,000 square feet of building space. From 1980 to 1990 the property housed several commercial rabbit farms. From 1990 to 1999 the property was used for several businesses, including a tannery, auto parts sales, commercial storage of food and agricultural products, an exotic pets and reptiles operation, unlawful firearms dealing, unpermitted dwellings, at least one methamphetamine lab, a stolen automobile "chop shop," and a cockfighting gambling ring. Some of these activities were illegal nuisances that degraded the quality of life for the neighbors. These uses came to an end after Mr. Dierking purchased the property in 1999.

E. EXISTING AND PLANNED USES OF THE PROPERTY.

Liberty Natural Products Inc., an Oregon C corporation, now operates an herb farming operation at the OLF, which grows and distills 25 acres of lavender and other specialty herb crops, as well as the development of a complex integrated permaculture, which includes the production of worms, compost tea, mulch, compost, mushrooms and an aquaculture steelhead farming practice powered by appropriate technology solar and water resources.

Liberty also processes and distributes a broad variety of agricultural crops produced by other farms and distributes related goods and packaging, sourced substantially from other states and countries around the world. The distributed goods include approximately 500 different essential oils derived from herb crops, several hundred different bulk herbs and herbal extracts made from herbs grown on the farm and also substantially from herbs grown on other farms Liberty has been in the agricultural product distribution business since 1982 and currently has 35 employees. Annual sales for fiscal year 13-14 are estimated at approximately $7,000,000.00

1. The agricultural processing at the OLF includes:

   (1) steam distillation of lavender grown on the farm;
   (2) repackaging of bulk botanical farm products acquired from Oregon and around the world;
   (3) extraction and processing of herbal extracts and the manufacture of value added products, such as lavender soaps and lotions, from botanicals grown at the farm and acquired from other farms from around the world.
   (4) distillation and processing of botanicals from the local area and from around the world.

   All of these activities utilize the same farm infrastructure, which includes facilities, equipment, and staff for cultivation, processing, shipping and receiving, sales and administration. The OLF operations process, package and distribute agricultural crops that are estimated to represent more than one million acres of crops worldwide.

   The Oregonian newspaper published several articles in September 2013, including one on the front page, which addressed the OLF land use dilemma and a follow up editorial in support of the OLF operations and resolution of the land use problem. In over seven years of complete operation at the OLF, no complaints or negative impacts from the OLF operations have been raised in any way by any neighbor or party (other than the out-of-state complainants). Adjoining neighbors have expressed their appreciation for the OLF having removed nuisance and illegal uses, which impacted their businesses and livability of their property

Currently, the OLF property and facilities are being used for the following uses:

1. Crop Production. Currently, OLF actively manages approximately 25 acres of land for farm crops. Of this total, the applicant manages 15 acres of lavender and 10 acres of lavandin. In addition, the property is used to grow Oregon Tilth Organic Certified Herb Crops include Burdock, Coltsfoot, Cut flowers, dandelion, Boneset, Calendula, Catnip, Chamomile, Citronella, Dill, Echinacea, Elecampane, Fennel, Fenugreek, Feverfew, Ginkgo, Heal All, Horehound, Lavender, Lavandin, Lemon Balm, Marshmallow, Melissa Officianalis, Motherwort, Nettle, Pleurisy, Rosemary, Sage, Tea, Thistle, Valerian, and Yarrow. Other herbs currently in production include Monarda (Bee Balm), Rose Hips and Hops. The company also maintains a community vegetable garden for the benefit of the company's employees and their families.

2. Processing. The applicant engages in a number of processing / manufacturing operations. Primary among these processes is the steam distillation of essential oil crops, such as lavender, rosemary, clary sage, Douglas fir, and Noble fir. The applicant is also involved in the production of tinctures, which are herb extracts obtained by using alcohol to extract their constituents. The applicant produces over 180 different tinctures from herbs, over 30 of which are grown at the OLF. The process of extracting constituents from botanicals is an accepted farming practice. ORS 215.203(2)(a) defines the term "farm use" as including the preparation, storage and disposal my marketing or otherwise of the product or products of or by-products raised on such land for human or animal use. Such extracts are identified by US government agencies as farm crops or produce. *See* Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621) and amended under section 10010 of the Agricultural Act of 2014, Public Law 113-79 (the Farm Bill). 2002, Market Opportunities and Strategic Directions for Specialty Herbs and Essential Oil Crops in Montana. (Applicants, Exhibit 76).

3. Storage. One of the most space-intensive aspects of the operations is the storage of oils for sale, dried herbs, containers and similar materials, as wells as the storage of shipping and packaging materials.

4. Drying, Milling. The facilities are used to dry various herbs for future sale. OLF recently acquired a dryer for the hops it is also growing at the farm.

5. Other Farm and Value Added Products. OLF produces Culinary Lavender, Lavender Honey, Lavender Soap, and Lavender Lotion.

6. Herbal Extracts – Tincture production. The OLF lab facility engages in the production of herbal oils and tinctures.

7. A complex permaculture practice is under development that utilizes distillation by-products and water resources at the OLF to sustainably produce worms, compost/compost tea, mulch, mushrooms and steelhead.

8. Liberty Natural Products Inc -.Distribution Operations. The current operations are heavily dependent on the importation, repackaging and distribution of oils and herbal extracts produced outside of Clackamas County. The long term goal for this facility is to transition to the processing, packaging and distribution of locally grown herbal products. At present, products from OLF farm operations account for 2-3% of sales, and bring in $150,000 to $200,000 per year in revenue. This figure includes revenue made from the sale of herb crops grown on the farm (includes lavender buds, bunches), lavender oil, and waters obtained from distillation of lavender grown on the farm, herbal extracts produced from herb crops grown on the farm, and other value-added products made from crops grown at the farm, such as lavender soap and lotion. Liberty is now negotiating contracts with Oregon growers for specialty herb crops, such as Melissa/Lemon Balm for its high value essential oil. Liberty is reaching out to Clackamas County growers to establish new specialty crop acreage. (Applicants, Exhibit 77). The prospects for the establishment of high value specialty herb crop cultivation in Oregon in the coming decades are good. Crop distribution, such as possessed by Liberty, is a key component to the developing new specialty crop acreage in Oregon.

9. Distribution of crops. Distribution of products produced by other farms brought in revenue of $6.5 - $7 million for fiscal year 2013. This includes the distribution of over 1,200 different farm products from Oregon, the US and around the world. Of this total, an estimated 20 to 30% are grown in the United States, including 3-4%, which are from Oregon farms. These farm products include the following:

   - ❖ Dried herbs – thirty of which are grown at the farm.
   - ❖ Essential oils – only (5) of which are produced from crops grown or produced at the farm.
   - ❖ Herbal extracts – thirty of which are produced from herbs grown at the farm.
   - ❖ In addition, the distribution operations includes container packaging, supplies and incidental goods., as well as the distribution of manufactured personal care products, such as TIB® Breath Freshener, made with Oregon & Washington Mint Oils.

10. Shipping. Once ordered, products are packaged and shipped via UPS and other carriers. Typically, there will be one UPS pick-up per day.

11. Administration. The facilities are also used for a variety of business-related activities, including book-keeping, purchasing, marketing, sales, personnel management, computer systems – IT, facilities management, inventory & quality control, laboratories, and packaging and shipping.

OLF and Liberty Naturals support Oregon agriculture in the following ways:

a) Purchase and distribution of Oregon agricultural crops for three decades, *e.g.* mint, blue green algae, other essential oil crops, meadowfoam oil, herbs etc. (Liberty has historical company sales exceeding $70,000,000.00, it is estimated that it has grown, purchased and distributed in excess of $1,500,000.00 of Oregon and southern Washingon agricultural crops;

b) Examples of growers-producers: Funke, Kropf, Rose City, RCB, Plant Technologies, Klamath Valley Botanicals, Mountain Rose Herbs, beekeepers for wax and honey;
c) Distribution of packaging and container supplies to beekeepers;
d) Distribution of essential oils for use in agriculture as sustainable natural source herbicides and pesticides, *e.g.* Advanced Marketing of Wilsonville: $53,000.00 in three years;
e) Distribution of essential oils and other farm sourced ingredients to small Oregon farms for value added manufacturing;
f) Development and operation of the Oregon Lavender Farm.

OLF and Liberty Naturals supports interstate commerce in the following ways:

a) Production of herbal extracts used in bovine veterinary practice;
b) Distribution of botanical extracts used in university and private research
c) Supply of farm produced ingredients for small farm value added product manufacture;
d) Agricultural use of botanical extracts as herbicides and pesticides.

The future plans for this facility include:

1. Construction of a “mother distillery” to support the following operations: (a) distillation of 200 to 500 acres of local lavender cultivation, (b) distillation of Christmas tree culls from neighboring growers, and (c) R&D of other potential extractions: raspberry seed extraction, cucumber waters.

2. Provision of support services to commercial lavender growers in the area, including: (a) propagation of lavender plugs, (b) lavender practice consultation: planting, irrigation, cultivation, (c) provide services: harvest, distillation, quality control and analysis, and (d) contract – purchase lavender essential oil from local producers as a part of the distillation services.

3. Lease or purchase of adjoining properties to increase lavender cultivation. Properties which would be ideal for this purpose include the MS Growers property (20 acres) and Moriarity property (100 acres).

4. Contract with local farmers to grow herb crops to be used for making herbal extracts and bulk herb sales.

5. Acquire additional herb drying and processing equipment.

6. Development of compost by-products from distillation spent charge.

II. LEGAL ANALYSIS: REASONS SUPPORTING THE COMPREHENSIVE PLAN AMENDMENT & ZONE CHANGE TO RURAL INDUSTRIAL.

An exception is authorized only when "compelling reasons and facts" support the conclusion that it is not possible to apply the appropriate goal …" This conclusion must be accompanied by a statement addressing four points: (1) need, (2) alternatives, (3) consequences, and (4) compatibility. ORS 197.732(2)(c); *see also* Goal 2, Part II. These four standards are known as the "need" standard, the "alternatives," standard, the "consequences" standard, and the "compatibility' standard. An administrative rule, OAR 660-004-0020(2)(a)–(d), fleshes out the four standards described in Goal 2, Part II, and ORS 197.732(2)(c). *See generally Still v. Board of Commissioners, Marion County*, 42 Or App 115, 122 600 P2d 433 (1979).

1. <u>The Need Standard: "Reasons Justify Why the State Policy Embodied in the Applicable Goals Should Not Apply."</u>

The first of the four standards for a "reasons" exception requires the applicant to prove that a need for the use exists, and that the use must be undertaken on the particular resource land at issue. ORS 197.732(2)(c)(A) and OAR 660-004-0020(2) provide as follows:

> ***(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:***
>
> *****.
>
> ***(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;***

The specific state policies embedded in Goal 3 that should not apply to the subject property are as follows:

- ❖ "Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space * * *."
- ❖ "Counties may authorize farm uses and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices."

OAR 660-004-0022(3)(c) is an administrative rule which implements ORS 197.732(2)(c)(A) and OAR 660-004-0020(2). In fact, OAR 660-004-0022(3)(c) is the heart of the "needs" component of a reasons exception for a rural industrial use. It provides standards for determining whether there exists a need to site a rural industrial facility at a particular location zoned for resource use, as follows:

> ***(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:***
>
> ***(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;***
>
> ***(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or***
>
> ***(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.***

In this case, the applicant seeks an exception to 8.77 acres of property that is currently zoned EFU. The applicant seeks to rely on the third of the three listed reasons set forth above: i.e. that "the use would have a significant comparative advantage due to its location * * * which would benefit the county economy and cause only minimal loss of productive resource lands."

b. <u>The Proposed Industrial Use Would Have "a Significant Comparative Advantage" Due to its Current Location, both on Account of the Existing Facilities and its Close Proximity to Clackamas Area Farms, as Opposed to if the Same Business Were Sited in an Area Otherwise zoned for Industrial Uses.</u>

The Board finds that the proposed use presents a very unique business model, and the business enterprise is only viable if a required degree of efficiency is maintained; that requires the farming operations to be co-located with the laboratory, distillation facility and distribution facility.

The applicant provided substantial evidence to show that its present use is a complex mixture of interrelated agriculturally-related and farm uses, some which are permitted outright, allowed through a conditional use process (CACFU), and others not allowed without a RI rezone because of the origin of the agricultural crops. As discussed in the application*,* there is a blind spot in the structure of the current state land use legal framework that does not allow a commercial activity in conjunction with farm use ("CACFU") to be authorized unless and until it meets a certain threshold of interaction with local agricultural activities, even though that use might otherwise support public policy goals. In this case, it may take years before the applicant can establish a large enough network of local farmers to fulfill the need for farms products processed on the site. Clackamas County has identified the importance of increasing processing facilities for local farmers. In the 2012 "Clackamas County Agriculture and Foodshed Strategic Plan," the County emphasized this need to "[f]ocus especially on processing for small farmers and incubating new value-added products." (Applicant's, Exhibit 90). Indeed, the applicant's lavender operation is mentioned by name on page 24 as an example of a "value added plus" Clackamas County product. *Id.*

The Board finds it is imperative that the proposed wholesale agricultural distribution of Liberty Products Inc. use be allowed to continue at the proposed location. As an initial matter, the Board agrees that the proposed distribution facility use only achieves the necessary efficiencies if it is co-located with the primary farm facility, distillery, and laboratories, which are all "Farm Uses," allowed by right. In order to be competitive in a global market, the Board finds OLF must have similar efficiencies that mirror production and processing methods worldwide.

OLF has testified that it cannot compete with producers in the developing world on cost alone, however. "Production costs in the U.S. are higher than in developing countries because of higher land values, wage rates, and regulations, which govern environmental and labor standards." Market Opportunities and Strategic Directions for Specialty Herbs and Essential Oil Crops in Montana, Dr. Gary Brester, Kole Swanser, and Tim Watts, U.S. Department of Agriculture Federal-State Marketing Improvement Program, February 27, 2002, section IV.B.1, page 45 (hereinafter "Brester study"). (Applicant's, Exhibit 76). Thus it is very unlikely American producers "will be able to compete with foreign providers of specialty herbs and essential oils on a cost basis." There is no evidence to the contrary.

The applicant would have to build, operate, and maintain a second distillery at the second location if operations were split. Such a distillery would cost between $250,000 and $500,000. This would be cost-prohibitive and would create additional inefficiencies that, when combined with the other impediments mandated by two locations, would make the enterprise unprofitable. The inefficiencies are not exclusive to infrastructure, but include duplication of management and supervisory personnel as required by federal and state laws and good management practices.

Thus, the Board finds a break-up of the current integrated Oregon Lavender Farm and the Liberty Naturals Products operations and a move of the LNP distribution operations to another industrial facility would render both operations unprofitable and economically unsustainable. Capital improvement costs, down payment and monthly debt service/lease payments arising from the acquisition or lease of a replacement facility, are not within Liberty's financial capacity.

Accountant Edward Kalberg, C.P.A., analyzed the financial implications of splitting the Oregon Lavender Farm and Liberty Natural Products into two separately-sited enterprises, and determined this would prove economically disastrous for both operations. Mr. Kalberg found:

- "Given the current NNN/lease rates or the debt service of an acquisition, the expenditures for a new facility estimated at $35,000.00 to $50,000.00 per month would render Liberty Natural Products Inc. unprofitable and would push it in the direction of insolvency over a period of a few years. Liberty presently expends $165,000.00 per year for its facility. An additional facility would add expenditures likely exceeding $500,000.00 per year, more than triple the current expenditures.

- The costs of a move not only impair Liberty's cash flow for its distribution operation, but impacts the agricultural operation in two regards: 1) would remove the monetary and operational efficiencies of shared resources cross-utilized and co-located with the distribution operation, e.g. employees, equipment, management, data processing and thereby increase costs; 2) impair if not altogether remove Liberty's ability to continue to capitalize the agricultural operations to accomplish its business plan to further grow and develop the scope of the agricultural operations."

The Board finds that Mr. Kalberg's testimony constitutes substantial evidence, and there was no evidence presented to the contrary.

The Board also finds that transportation costs incurred traveling between the two facilities would also increase dramatically, particularly if efforts were made to share equipment and personnel between the two facilities. Indeed, with fuel prices indexing upwards over the long term, the economic and sustainability downside to split operations will only increase over time.

The Board also notes that there are key efficiencies related to labor that can only occur if the entire operation is co-located on the same site. Oregon's growing season is limited to one summer season with up to two flushes (harvests) of lavender, which translates into peaks and valleys with regard to work cycles. This leads to a problem whereby it is not possible to keep all of the full-time employees occupied with productive work unless the off-peak times are supplemented with other types of production / activities. While this is certainly true of most farming operations, many farms are able to solve this problem by tapping into a large supply of unskilled migrant workers, an overwhelming percentage of which are undocumented. On the other hand, OLF / Liberty Natural Products largely employs workers that have received extensive training, and, as a result, are quite skilled with regard to the production methods employed at this facility. In order to keep these employees working at full-time capacity year round, Liberty Natural engages in "off-season" production activities such as (1) repackaging of bulk botanical farm products acquired from Oregon and around the world, and (2) distillation and processing of herbal extracts from botanicals acquired from Oregon and around the world. The Board finds it is essential that Liberty Naturals be allowed to continue to offer this year-round employment in order to maintain and retain a trained professional full-time work force.

Clackamas County has a strong agricultural tradition. Clackamas County consistently ranks between second and fourth annually in agriculture sales "at the farm gate" in Oregon. The county is "an agricultural powerhouse that has the capability of growing a variety of agricultural products." Stewart, et al, *Agritourism Master Plan for Clackamas County*, 2012 (bold emphasis supplied). According to one recent report:

> "Clackamas County has a long history of successful agricultural production. The agricultural sector of the county's economy is an important foundation for the region and contributes significantly to the health and well-being of its citizens. With a growing interest in sustainable and locally-produced farm products, Clackamas County's agricultural economy and lifestyle are expected to become more important in the years ahead."

(Rural Lifestyles 2009, R. Oberg, M. Stewart, p. 8). Nonetheless, even though Clackamas County is a strong agricultural producer, many family farms in the County are struggling. One of the reasons for this is the concentration on traditional lower-value crops like grass seed, alfalfa, clover, fescue seed, and hay. Fortunately, the long term prospects for a greater development of high-value specialty herb crop practices in Clackamas County are favorable. The historical producers of these high-demand agricultural goods are developing countries like India, China and Egypt who have traditionally exported these crops to developed countries such as the United States for use in consumer personal care products, cosmetics and food. With the emergence of middle classes in these countries, an increasing portion of these foreign crops are being retained for domestic consumption, reducing the quantity of goods available to consumer countries such as the United States. Concurrently, worldwide consumer demand continues to grow for organic and natural products and the raw material high-value specialty herb crops from which they are created. These two supply and demand factors have resulted in the continuous price increase of specialty herb crops in the past decade and are projected to continue to increase over the long term. The development of high tech, low energy consumption cultivation, harvesting and processing equipment and technologies is an important factor in the ability of US/Clackamas County farmers to compete in the international specialty herb marketplace. As developing countries reach parity in land and labor costs, and prices continue to rise, the economics of specialty herb crop production will emerge as one of the most environmentally sustainable and profitable crop options for Clackamas County farmers.

It is precisely this identified need that the applicant addresses. Clackamas County is indeed an "agricultural powerhouse," but county agriculture needs to diversify into higher value crops in order to prosper. Here is one clear and illustrative example. Oregon has a high value crop, peppermint, that is a fine example of what the applicant wishes to build on, and expand. Peppermint was once an ignored and unimportant plant, considered a weed with odorous leaves. Since that time, peppermint became highly valued in tea, ice cream, confectionery, chewing gum, toothpaste, shampoos, breath freshener, soaps and skin care products. In 2007, Italian medical researchers reported a major breakthrough in treating debilitating Irritable Bowel Syndrome using peppermint oil. Oregon has now become a major peppermint producer, based on all of these discovered uses (including medicinal properties) of peppermint oil. Peppermint must be grown fresh, regularly tested *in situ* for purity, pH, and potency, and then quickly plucked and processed on site to retain its soothing and healing properties. That cannot be done if the farm growing the peppermint and the laboratory testing and processing the peppermint into oil are many miles apart. According to Dr. Roberts:

> "Typically, freshly harvested essential oil crops are distilled as soon as possible because of a loss of the volatile oils at the harvested crop dries. Transportation of the crop to another location, much less a long distance, may result in a loss of oil yield due to drying and adds the time and expense of shipping, which undermines the overall profitability and sustainability of the enterprise."

For these reasons, the Board finds that allowing the co-location of the allowed uses (farm, distillery, labs, etc.) with the distribution operations is critical to the viability of the applicant's business, and creates a significant comparative advantage due to its location * * * which would benefit the county economy. The Board emphasizes that this fact situation is very unique that is not typical for most business enterprises.

1. <u>Product Differentiation Based On Pristine, Natural Wholesome Rural Production Site.</u>

The Board further finds that the current location of the business is critical to its success. Both the Oregon Lavender Farm and Liberty Natural Products have sought to emphasize certain intangible qualities, reflected in their names, such as authenticity, place, naturalness, freedom, and purity. These desirable "value-added" qualities are inextricably intertwined with the current rural production site, and critical to the business' appeal to many customers. The 2012 "Clackamas County Agriculture and Foodshed Strategic Plan" cites the applicant's lavender operation as an example of a "value added plus" county product (Table 4, page 27 of the report). In large part, OLF / Liberty Natural achieves this product differentiation via the *terroir* of the land. The second strategy identified in the Brester study for the success of an American specialty crops and essential oils producer is product differentiation. "A differentiation (also called benefit strategy) strategy is one in which a producer incorporates features into goods or services which cause buyers to prefer that firm's product/service over those of others." Brester study, p. 44. "Differentiation strategies are often attained by generating product attributes which are valued by purchasers for tangible or intangible reasons." In this case, the Board finds that the applicant uses the lavender farm and view of Mt Hood as a mechanism to differentiate its product in the marketplace.

2. <u>*Terroir* and the Relationship of the Natural Environment to Product Marketing.</u>

As the applicant explained in its application narrative, the French term *"terroir"* can be translated as "a sense of the land" and denotes the set of special characteristics that the geography, geology and climate of a certain place, interacting with plant genetics, express in agricultural products such as wine, coffee, flowers, chocolate, herbs, hops, tomatoes, heritage wheat, medicinal plants, and tea. Perspectives on terroir tend to range from it being an all-encompassing concept (a holistic combination of nature and nurture), to nature in isolation (fixed and largely immutable by human efforts).

People enjoy and value a connection to the soil and the land that nourishes and sustains them. This is one of the primary reasons that “agritourism” is a growing industry, especially in Clackamas County. “Agritourism is defined as an enterprise at a working farm or woodland, ranch or agricultural plant conducted for the enjoyment and benefit of visitors that generates supplemental income for the owner. It combines the best of what we produce locally in Clackamas County and our local sustainable vision with the public’s desire for local products and experiences resulting in increased local revenue and in keeping family farms viable.” Mary D. Stewart, *et al,* Clackamas County Tourism Development Council, *Agritourism Master Plan for Clackamas County*, 2012.

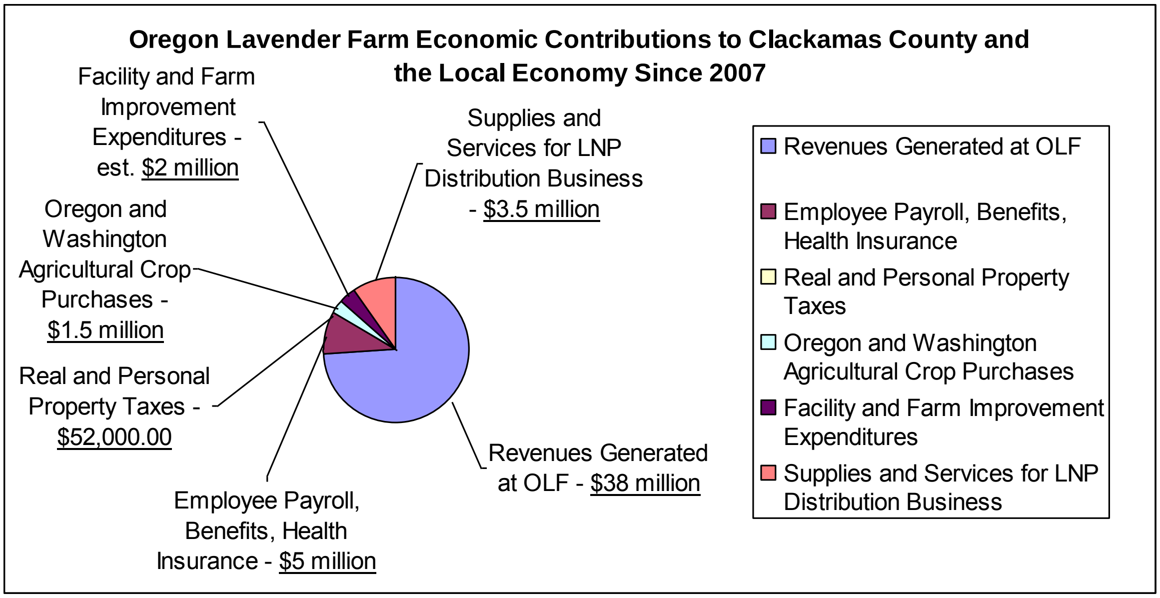
The Board finds the applicant’s successful annual Lavender Festival is a shining example of the sort of agritourism Clackamas County seeks to promote, attracting five thousand visitors annually to a two-day harvest celebration promoting local products, food, music, and showcasing agriculture as an appealing and viable way of life. This festival has been a yearly event since 2007, entertaining families and educating young people about farm life and natural resources in ways they could never learn from books, television, or the internet. The Lavender Festival has become a tradition for many Oregon families, a wholesome and enjoyable way to spend time together in a beautiful countryside setting while children learn valuable lessons that could influence their future lives and careers.

c. <u>Locating the Proposed Use at the Proposed Site Will “Benefit the County Economy</u>.”

In this particular unique circumstance, the Board finds an exception to Goal 3 will provide greater support of agriculture. This business is not portable; and the Board finds it would not be financially feasible to move portions of the business that are not allowed under Goal 3 and ORS 215.283(1) & (2) offsite to a location not needing an exception. This is due to the fact that the relocation costs would be far in excess of what the company could hope to recoup over any reasonable planning horizon. Therefore, as a practical matter, a denial of this exception request would effectively end the integrated business venture.

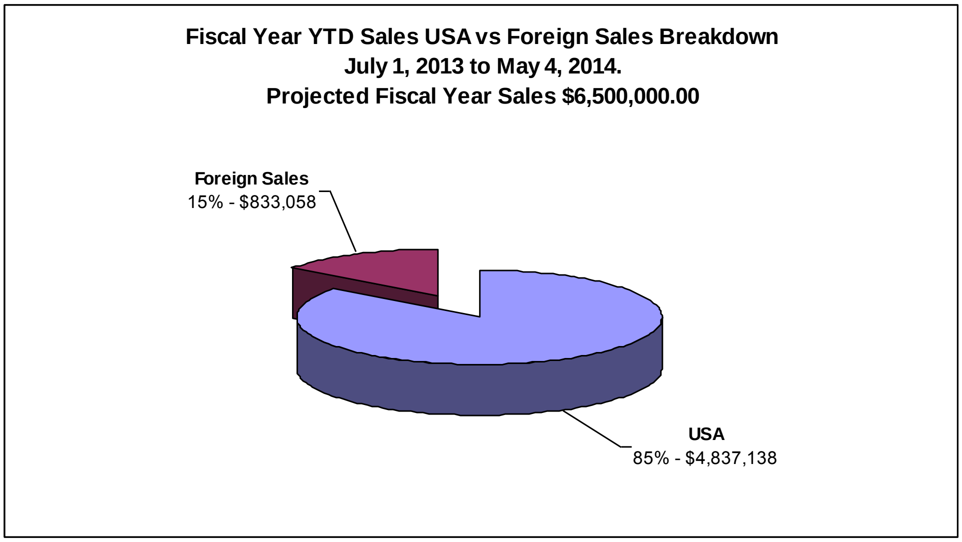
Apart from the farm, and the fact that the business employees 35 persons, the OLF / Liberty Natural operations contribute to the County economy in many other regards.

Liberty Natural’s distribution facility is needed to support Clackamas County agriculture. The County’s agricultural businesses are changing and evolving to meet new market demand. In this regard, Liberty Natural Products, Inc. is one of the new faces of Oregon’s agricultural economy. Liberty’s distribution and the picturesque OLF support Clackamas County’s marketing image as a both an agricultural producer and tourist destination. The 2012 “Clackamas County Agriculture and Foodshed Strategic Plan” cites the applicant’s lavender operation as an example of a "value added plus" county product that encourages tourism. (Table 4, page 27 of the report.). The following charts illustrate some of the benefits to the local economy.

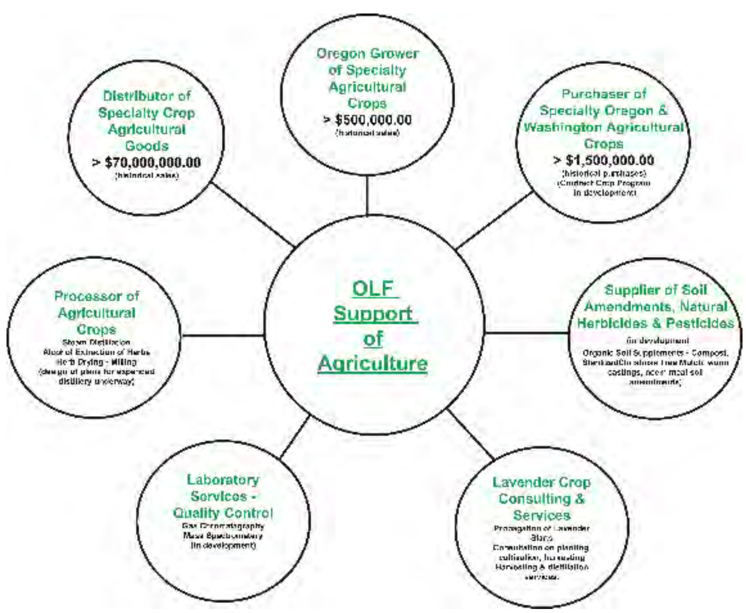


Just to examine one measure, payroll and benefits expenditure, the Oregon Lavender Farm/Liberty Natural Products business has 25 full time employees, and 10 part-time employees. Assuming this works out to 30 jobs FTE (full time equivalent), we can use Professor Wayne P. Miller's income multiplier of 1.5 for skilled agricultural jobs to arrive at a figure of 45 jobs.[1] That means the economic value of 45 full-time skilled jobs with benefits are added to the local economy. In other words, in addition to the applicants' employees, an equivalent of 15 new full-time benefitted local jobs result from the goods and services those employees need to consume including groceries, housing, health care, fuel, utilities, vehicle payments and maintenance, clothing, child care, education, recreation, and all of the other expenses of modern life.

[1] "Economic Multipliers: How Communities Can Use Them for Planning," Professor Wayne P. Miller, University of Arkansas Division of Agriculture, 2010.



To consider the money that the Oregon Lavender Farm/Liberty Natural Products business brings into the local economy, we will rely on the sales figures for the fiscal year 2013-2014. This year the applicant's business generated sales revenues of roughly $6.5 million, with 15% of that total coming from foreign sales. Assuming that no more than 7% of the applicant's total sales of $6.5 million came from Oregon buyers, that is over $6 million coming into the local economy from out-of-state and overseas purchasers. Using Professor Miller's methodology and an output multiplier of 1.7, that amounts to over 10 million dollars' worth of value being created for the local economy.



The applicant's Oregon Lavender Farm/Liberty Natural Products business also supports local agriculture. In addition to the factors shown in this diagram, the Board finds the Oregon

Lavender Farm/Liberty Natural Products operation supports the local area's agriculture in the following ways:

- provide services and support for the planting of new lavender acreage, including propagation of new plants, harvesting, distillation and distribution;
- sustainable processing of Christmas tree culls for essential oil, reduced air quality problems resulting from traditional burning practice problems as identified by the ODA;
- the OLF agricultural facility is a stabilizing presence in the EFU zone, which is subject to incremental erosion caused by continued rural residential development pressures, such as Measure 49.
- The applicant has purchased and distributed over $1,000,000 of Oregon agricultural goods, including mint, blue green algae, other essential oil crops, meadowfoam oil, herbs, *etc,* from growers including Funke, Kropf, Rose City, RCB, Plant Technologies, Klamath Valley Botanicals, Mountain Rose Herbs, and several beekeepers for beeswax and honey. (Applicants, Exhibits 65, 92, 97, 98, 99, 100, 101).

d. <u>Locating the Proposed Use at the Proposed Site Will "Cause Only Minimal Loss of Productive Resource Lands" Because the Site is Already Partially Paved and the Buildings Are Already Constructed.</u>

The subject site is extensively developed with industrial buildings that were established prior to any zoning. At various times in the past, these buildings were used for industrial-scale farm uses, including the raising of poultry for egg production, and the raising of rabbits for meat and fur production. Continued use of these building for agricultural uses is doubtful for three reasons. As an initial matter, the subject site was offered for sale for almost a decade (1991 to 1999). There was no interest or attempts to purchase the property for agricultural uses allowed by the code. Secondly, the amount of actual tillable farm land located on the site is low compared to the overall acreage, due to the size of the improvements. Third, there are very few other farm uses that need this much unlit interior space, especially given the long, narrow configuration of the buildings. Nurseries and greenhouses, for example, make up 60% of agricultural sales in Clackamas County. However, nurseries and greenhouses need buildings with translucent roofs, which allow in plenty of natural light to bathe the plants grown therein. The buildings on the present property were not built with the intent that they be used for storing plants. Rather, the buildings were built for the purpose of housing chickens on an industrial scale, using methods that are largely considered obsolete in the egg-production industry.

In Clackamas County, there is only one large scale egg production facility, Willamette Egg Farm, LLC, and there does not seem to be much opportunity for other egg producers to break into this market over the short-term planning horizon. Farms engaging in egg production are moving away from the traditional cage system. A "cage-free" campaign, led by the nation's largest animal welfare group, the Humane Society, have had success in changing policies in this area. Political opposition to factory farmed egg production is growing.

On the other hand, the property is ideally suited to distill Christmas tree by-products into essential oils, a use already being done by Liberty Naturals at the subject property. Currently there is no other location in Clackamas County providing this value-added process.

Similarly, these buildings are, for the most part, not suitable for raising horses. Buildings used to house equines typically do not have concrete floors because that is not comfortable for the horses. Equine stables also require good natural lighting, which these buildings lack, to make it easy to work in, pleasant for the horses, and to detract flies. Finally, modern equine facilities are very image conscious, and the architecture of the barns on the subject property is not consistent with current trends in that business. As a result, these buildings are not very attractive for those purposes.

Clackamas County does have a fairly high number of small berry and fruit operations. However, while berries and small fruits make up a large portion of the percentage of sales in Clackamas County, these operations are almost always small and dispersed. For this reason, there is no current need in the County for a large (150,000 square foot) facility for processing fruits and berries. As with egg and pig operations, the existing facilities would not substantially meet the improvement requirements of a fruit and berry operation. The same is true of vegetable producers. Moreover, the subject property does not have sufficient water rights to serve as a processing facility for fruits or vegetables.

For these reasons, the Board finds that this situation is factually unique, and it is unlikely County approval of this Goal 3 exception will deny an opportunity for some other farm use to take over and use the subject buildings. Again, the evidence indicates that the buildings sat either vacant or underutilized for many years in the 1990s, a time when the economy was robust. The Board views this fact as evidence that the building are not in high demand for agricultural users.

There is some potential that the buildings could be used by other Commercial Activities in Conjunction with Farm Uses. For example, it is possible that agricultural suppliers of farm equipment, such as machinery, greenhouses, buildings and chemicals could use the buildings. Clackamas County has 103 agricultural suppliers that provide 916 jobs and approximately $37 million in annual payroll. However, the site is very unique and is not an attractive location for a supplier because it is off the main road and has poor street visibility. Potential suppliers want to be located on key traffic corridors that offer high accounts of pass-by traffic. Furthermore, using these buildings as an agricultural supply operation would result in underutilization of the surrounding acreage of agricultural land, which would have no connection to the primary CACFU use.

e. <u>Discussion of the "Lost Resource Productivity and Values" in Relation to the County's Gain from the Proposed Rural Industrial Use.</u>

As discussed elsewhere, the site is already fully developed and, as a result, the granting of a Goal 3 exception does not entail any loss in resource productivity. Given that this criterion starts from a premise not applicable in this case (*i.e.* an undeveloped property), it is not applicable here.

f. Discussion of the Specific Transportation and Resource advantages that Support the Decision.

The facility takes advantage of existing Gerber Road infrastructure that may or may not be present at competing locations.

The last fifty years have seen gasoline and diesel fuel prices increase from $0.30 per gallon to more than $4.00 per gallon. Any decision which would effectively require the applicant to split apart its operations into two facilities (one urban and one rural) would introduce considerable transportation inefficiencies. For this reason, the Board finds that leaving the distribution facilities co-located with the permitted farming operations and distilling operations creates a significant transportation advantage.

2. The "Alternatives" Standard: Areas Which Do Not Require a New Exception Cannot Reasonably Accommodate the Use.

As discussed above, the second of the four state-mandated standards for justifying a "reasons" exception requires the applicant to undertake an alternative-site analysis to satisfy ORS 197.732(2)(c)(B) and OAR 660-004-0020(2)(A). Areas that do not "require a new exception" includes lands located outside of an urban growth boundary zoned for rural industrial uses, as well as sites within an urban growth boundary zoned for industrial uses.

a. Criteria Used to Identify Suitable Alternative Sites.

In this case, the minimum criteria for a suitable alternative site are broken down into mandatory requirements and desirable attributes. The mandatory requirements represent quantifiable thresholds which are absolutely essential to achieve the economy of scale needed for the successful operation of the business. These three identified thresholds are as follows:

Mandatory Requirements for a Suitable Site

- Minimum of five (5) acres for industrial uses.
- Minimum of 150,000 s.f. of existing building space.
- Minimum of twenty (20) acres of on-site agricultural land (Class 1 & 2 soils) & gardens.

The desirable attributes are not in-and-of-themselves absolute bottom-line thresholds, but rather represent features that, when viewed together, are important to the overall feasibility and economic viability of the operation. A suitable site would have all of the following four attributes in varying quantities:

- Proximity to other agricultural land which can potentially be used for herb or other specialty high-value crop production.
- Sufficient space and buffer land for an on-site composting facility and distillery.

- Presence of natural scenic beauty (view of Mount Hood, etc.).
- Close proximity to Portland airport (PDX), Port of Portland, UPS / Fed Ex / Common Carriers to gain favorable shipping rates.

The Board finds that any potential site that does not meet any of the first three threshold criteria must be rejected as not providing a feasible alternative. Sites that do not have some or all of the remaining four characteristics are disfavored.

b. <u>Reasons for Rejecting All Sites Within An Urban Growth Boundary As Viable Alternatives</u>.

Before considering any specific alternative sites, the applicant addressed why, in general, *any* site inside the Urban Growth Boundary is not a reasonable alternative in this case. First, the current site contains significant improvements, such as paving and large buildings, which results in the land thereunder being physically committed since 1962. To recreate these improvements on vacant land located inside an Urban Growth Boundary would be cost prohibitive. The applicant has spent over two million dollars improving this site.

Second, the applicant noted, and the Board finds, that sites that do not have on-site agricultural land cannot be operated as an "integrated whole," which is critical to the success of this combined business. In general, the complex integrated enterprise proposed in this application cannot be reasonably located on other sites located within an urban growth boundary due to the following reasons:

- Distillation and extraction operations must be located in close proximity to both the farming operations and the laboratory. The distillate outputs must be constantly checked and adjusted using both laboratory and human testing. The process can be considered analogous to an expert chef constantly observing and tasting a delicate sauce and adjusting the temperature, adding ingredients, stirring or whisking, checking again, and then repeating the process until the sauce has reached perfection. Such a process cannot be performed remotely, or by a computer, or by unskilled workers, or via a Skype internet connection. The distiller must be present and must have the freshest ingredients and laboratory testing equipment available immediately, or the end product will suffer. "Typically, freshly harvested essential oil crops are distilled as soon as possible because of a loss of the volatile oils at the harvested crop dries. Transportation of the crop to another location, much less a long distance, may result in a loss of oil yield due to drying and adds the time and expense of shipping, which undermines the overall profitability and sustainability of the enterprise." Dr. Roberts letter, (Applicants, Exhibit 92), Bontoux letter, (Applicants, Exhibit 91). Many consumers will be satisfied with automated mass-produced food that was never touched by a human hand, but there is also a market segment of those people who value highly (and will pay accordingly for) top-notch gourmet fare personally crafted by experts from the freshest, highest quality ingredients.

- Manufacturing and distribution uses support the sustainability of the permitted farming operation through co-location and cross-utilization of common resources, the benefits of which cannot be obtained if the operation were broken up into separate locations. For example, OLF / Liberty Natural Products largely employs workers that have received extensive training, and, as a result, are quite skilled with regard to the production methods employed at this facility. In order to keep these employees working at full-time capacity year round, Liberty Natural engages in production activities such as repackaging of bulk botanical farm products, and distillation and processing of herbal extracts from botanicals acquired from Oregon and around the world. This combined operation also takes advantage of the cost savings and synergy of maintaining one (rather than two) business departments, including book-keeping, telephone system, purchasing, marketing, sales, personnel management, computer systems, facilities management, inventory & quality control, laboratories, and packaging and shipping.

- Organic composting of distillation and herbal extract by-products is best done on-site, at an EFU zoned property. The applicant, working with the assistance of the Clackamas County Business and Economic Development Department, has been unable to locate a single non-EFU-zoned site in Clackamas County that would allow the compost operations. Even assuming such a site existed, completing composting operations at a non-EFU site would require transport and increase operational costs and likely give rise to odor conflicts with neighboring uses.

- Maintaining an integrated operation would require acquiring industrial zoned land that has either contiguous adjoining EFU land or has the same quantity of industrial zoned acres. There are no properties in the current land inventory, with or without facilities, which have contiguous zoned EFU land. There are alternative property sites with sufficient acreage zoned industrial. However, industrially zoned landed is valued substantially higher than EFU farmland. The cost of the land for alternative sites is cost prohibitive. The high cost of available alternative improvements also poses a significant economic obstacle to re-location.

Third, the Board finds the applicant's Liberty Natural Products business cannot realistically be located inside an urban growth boundary due to impacts potentially incompatible with densely populated areas. Included in these impacts are the following:

1) Odors. The distillation of lavender, peppermint, and other herbs oils creates odors that would create conflicts with other surrounding industrial uses inside an urban growth boundary. The nature of this business requires that there be considerable distance separating the distillery aspect of the use from adjacent properties. Otherwise, the proposed use is vulnerable to being deemed a private nuisance. Furthermore, it is necessary to have the distillery co-located with a laboratory so that samples may be tested for potency and purity. Dr. Roberts letter, (Applicant's Exhibit 92), and Funke Essential Oils letter, (Applicant's Exhibit 99).

The aromas created by Liberty Natural are not hazardous, of course, but under current social norms, it is incompatible with commercial operations and residential activities being in densely populated places. The growing and processing of aromatic plants is, by definition, odorous (that is the "aroma" part of "aromatic"). Lavender, peppermint, rosemary, cilantrocorriander, and the like are not offensive to most people most of the time, but that can change if people nearby must smell these odors all the time, and at close proximity. “The substantial aromas generated and discharged by the steam distillation process makes it problematic to locate such operations in urban locations because of likely conflicts with neighboring uses.” Dr. Roberts letter, Applicant’s Exhibit 92. Funke Essential Oils letter, Applicant’s Exhibit 99.

The applicant cited numerous examples of cases where businesses have been adversely affected due to complaints from neighbors related to odors. As Liberty Natural Products primarily processes herbs and aromatic plants, the Board finds it must realistically be sited a considerable distance away from any working or residential area containing people who might complain and/or take legal action about the smells (however faint, and however pleasant) the operation might generate. This precludes the operation from being sited in an industrial or commercially zoned area, because those areas are densely populated (the population might be a workforce rather than a residential population, but workers are still a population). Thus the applicant’s business fits the criteria of a “use [that] cannot be located inside an urban growth boundary due to impacts that incompatible in densely populated areas,’ as stated in OAR 660-004-0022(3)(b).

2. Cost. Given the high cost of urban land, locating a comparable facility with sufficient land for the farm practices would be economically prohibitive. The applicant estimated that a comparable facility located inside an urban growth boundary would cost more than $10,000,000. Any such industrial site would likely lack the aesthetic and natural resources of the subject site.

3. Inconsistent Zoning. Utilization of industrially zoned land for agricultural purposes is inconsistent with the highest and best use and underlying goals for urban or rural industrial zoned land.

C. Alternative Sites Analysis For Other Sites Not Requiring an Exception (*i.e.* sites already zoned Industrial)

Working with Jamie Johnk and Cindy Hagen of the Clackamas County Business and Economic Development Department, the applicant located available alternative Clackamas County industrially-zoned sites. No site met all (or even most) of the necessary criteria, such as proximity to arable land, so the criteria were narrowed to only two: (a) minimum of 150,000 square feet of existing building space; and (b) close proximity to United Parcel Service / Federal Express / common carrier routes to gain favorable shipping rates. Applying these reduced criteria resulted in locating seven sites, with the following addresses:

- 11241 SE Hwy 212, Clackamas
- 12601 SE Hwy 212, Clackamas
- 10755 SE Jennifer St., Clackamas
- 11210 SE Jennifer St., Clackamas
- 13009 SE Jennifer St., Clackamas
- 12472 SE Capps Rd., Clackamas
- 12480 SE Capps Rd., Clackamas

An examination and analysis of these seven sites revealed that none of the sites are *remotely* suitable for the applicant's operation. Aside from the most obvious reason – all of the sites are in paved-over, industrial areas nowhere near arable land suitable for growing crops and composting – the sites had the following additional deficiencies:

11241 SE Hwy 212, Clackamas. This is a single story light manufacturing facility of 164,000 square feet. It is in close proximity to numerous small businesses, including Oregon Bookkeeping Services, Righteous Clothing Agency, Priority One Property Management, Clackamas Blueprint and Copy, North America Mattress Corp., Les Schwab Tire Center, Sounds in Music, Big Rock Sports, and others. Though zoned commercial, this area is located in close proximity to retail and service companies open to the public. This proximity to small businesses disqualifies this site due the possibility of odor objections or other conflicts with nearby uses and their customers.

12601 SE Hwy 212, Clackamas – this site is directly south of a higher-end residential development of single-family homes along Southeast Bluff Drive, separated only by a visual buffering green space a little over 300 feet wide. On the other three sides it is surrounded by small businesses within yards, including Precision Elite Gymnastics, Portland Party Works, Dean's Homestyle Café, American Wood Dryers, Inc., Fastenal, and Knez Building Materials and Insulation, Clackamas. This proximity to many residences and small businesses disqualifies this site due the possibility of odor objections or other conflicts with nearby uses. In addition, this site is incorrectly configured as a large, hollow warehouse, designed for high capacity truck operation, such as a distribution center. Loading docks and massive metal doors run the length of the building and it has docking spaces for twenty or more semi-trailer trucks. Leasing such a large, transportation-intensive facility would force the applicant to pay a premium for trucking facilities and fixtures he does not want, could not use, and cannot afford. Lastly, due to the massive open-warehouse design, this building would be cost prohibitive to heat and cool as needed to preserve the Liberty Naturals products.

10755 SE Jennifer St., Clackamas. This a large open warehouse distribution-type building intended for major railroad and truck freight operations. It sits due south of a rail line with a dedicated railroad siding running right into the north side of the building. The entire south side is a loading platform with numerous truck loading stations. Again, this site is a large, hollow warehouse, designed for high capacity truck and rail operations, such as a distribution center. Loading docks and massive metal doors run the length of the building and it has docking spaces for twenty or more semi-trailer trucks. Leasing such a large, transportation-intensive facility would force the applicant to pay a premium for trucking and rail facilities and fixtures he does not want, could not use, and cannot afford. It sits directly across the street from a large gravel pit operated by the Portland Road & Driveway Company. As a warehouse, this building has the same impossibility and prohibitive costs for necessary climate control for the storage and processing of botanicals and organic goods.

11210 SE Jennifer St., Clackamas. This site is just down the block from the previous site, cater-corner to the Portland Road & Driveway gravel pit. It is next door to several small businesses, including Gary's Mustangs, CalPortland, and Precision Truss and Lumber. This proximity to small businesses disqualifies this site due the possibility of odor objections or other conflicts with nearby uses and their customers. The building is a large warehouse with fifteen truck loading stations, and leasing this site would force the applicant to pay a premium for trucking facilities and fixtures he does not want, could not use, and cannot afford. This site has the same disqualifying cost-prohibitive climate control problem due to its open-space design with numerous poorly-insulated metal trucking doors.

13009 SE Jennifer St., Clackamas. Again, this is a large open warehouse space, making climate control cost prohibitive. It is mere yards away from the Clackamas Fire Department Station 08 to the west, as well as multiple small businesses including Bunzl Papercraft, P&A Metal Fabrication, Fuji Produce, Grabber Northwest, Trillium US Inc., K&D Services of Oregon, and Extreme Shears. A large residential manufactured home and RV park, Clackamas River Village, is to the east of the warehouse site. This proximity to small businesses and residences disqualifies this site due the likelihood of odor objections or other conflicts with nearby uses and residents.

12472 SE Capps Rd. Clackamas. Again, this is a large open warehouse space, making climate control cost prohibitive. It is another distribution-type warehouse with a dozen truck docking spaces, thus leasing this site would force the applicant to pay a premium for trucking facilities and fixtures he does not want, could not use, and cannot afford. It is mere yards away from multiple small businesses including Rescue Rooter, Jack Howk Plumbing, Forged Iron Supply, Warn Industries, LaSalle Bristol, Health Wright Products and Leverage 5 Productions. The site abuts the Sah-Hah-Lee Golf Course, to the east. Golfers are famously sensitive to distracting noises, smells, or other impediments to focused concentration. This proximity to small businesses and the private golf course disqualifies this site due the possibility of odor objections or other conflicts with nearby uses and their customers.

12480 SE Capps Rd. Clackamas. This is simply the other end of the previous warehouse site, 12472 SE Capps Road, and has all the same problems: a large open-plan distribution-type warehouse that would be cost-prohibitive to heat and cool, expensive unnecessary trucking facilities the applicant cannot use, and close proximity to small businesses and a private golf course that would likely give rise to odor complaints or other conflicts with neighbors.

These seven sites had additional deficiencies, as well. As an initial matter, none are for sale, but rather are offered for lease only. This is cost-prohibitive, and effectively limits the amount of modification allowed by a leasehold tenant (the installation of distillery equipment, for example). None of these sites permit composting, requiring numerous expensive truck trips to a commercial compost site or a landfill accepting bio-waste – and no landfill in the tri-county area will accept bio-waste. In addition, moving the Liberty Naturals Products operation to one of these sites would denigrate the quality of life for employees: moving their workplace from a beautiful farm to grim, dreary industrial buildings in an industrial zone would lead to an erosion of morale and increased turnover.

Co-location of the integrated uses at one site allows for cross-utilization of resources that lowers energy costs and transportation needs. Multiple locations would greatly increase the amount of back & forth travel of employees and attendant consumption of expensive fuel. Location in an urban or rural industrial site would likely require greater travel by employees. This combined operation also takes advantage of the cost savings and synergy of maintaining one (rather than two) business departments, including book-keeping, telephone system, purchasing, marketing, sales, personnel management, computer systems, facilities management, inventory & quality control, laboratories, and packaging and shipping. Kalberg letter, (Applicants, Exhibit 93).

D. <u>The Board Finds Rural Residential Lands located in Clackamas County Do Not Provide Feasible Alternatives.</u>

The vast majority of Clackamas County rural residential lands were initially zoned on the basis of lot size. Clusters of lots that were 5 acres or smaller were typically zoned RRFF5. Areas where the existing development pattern was 1 or 2 acres were typically zoned RA-1 or RA-2, or similar. Similarly, 5 -10 acre parcels were typically zoned FF-10, etc. Rural Area, Rural Residential, or small Farm Forest lands are most commonly seen on the edge of the urban growth boundary, or at the border of a rural center. Clackamas County maps reveal an abundance of Rural Residential areas on the interface to EFU land. Although these land parcels have the potential to be of meaningful agricultural or forest use, with thoughtful landowner planning and application of resources, they are by their very nature too small to be used as a processing and distribution facility.

Consistent with OAR 660-004-0020(3), it is fair to generalize that rural residential areas typically are too heavily parcelized to provide the applicant with the amount of high-quality farm land that it needs for its lavender production. The distillation operations would invariably create conflicts with neighboring rural residential uses. In contrast, the preferred site has few neighbors, features adequate farm land, and the potential to expand its agricultural operations onto neighboring properties over time.

Rural Residential lands would not satisfy the Clackamas County Rural Industrial Lands Policy 3. For these reasons, the Board rejects any rural residential site as a potential alternative.

E. The Board Finds Unincorporated Communities or Rural (Population) Centers Located in Clackamas County Do Not Provide Feasible Alternatives.

Unincorporated Communities or Rural (Population) Centers are settlements located outside urban growth boundaries in which concentrated residential development is combined with limited commercial, industrial or public uses. Unincorporated communities in Clackamas County include Beavercreek, Redland, Mulino, Colton, Marquam, Boring, Wildwood, Welches, Zig Zag and Rhododendron. The Board finds that none of the areas meet the needs posed by the applicant's business.

First, the Board finds that none of these communities possesses an available site with the required eight built and paved acres with 150,000 square feet of existing industrial space coupled with twenty or more acres of suitable agricultural land for growing specialty herb crops (*i.e.* class 1 and class 2 soils). That alone disqualifies any of these communities from consideration.

Second, the Board finds that many of these locations are too far away from the Portland International Airport and the Port of Portland. The US Customs and Border Protection Service, enforcing federal import and export regulations on organic products, often requires Liberty Natural Products personnel to travel to the Portland Airport field office to personally deal with Customs questions, forms and complete package pickup and delivery. These longer distances may increase the common carrier rates from United Parcel Service, Federal Express, and transportation costs as well.

Third, the Board finds that many of these locations are too far away from the residences of the current specialized Liberty Natural Products 35-person workforce, making employee commuting more expensive, difficult, and demoralizing.

Fourth, some of these communities (*e.g.* Zig Zag, Rhododendron) are at higher elevations, which are much less desirable for growing lavender and herbs, as compared to the applicant's current integrated agricultural operation. These locations receive heavy winter snowfall, making employees' commutes difficult or impossible and thus effectively shutting down the commercial operation for several weeks every year. This very costly annual productivity hiatus could, in and of itself, make the applicant's business untenable in the competitive market.

A site-by-site examination of all Clackamas County rural commercial lands reveals the following sites that must be evaluated under this criterion:

First, there is a cluster of parcels located in the Eagle Creek area zoned for Rural Industrial uses. This site is located on the east side of Highway 224, at 23123 Eagle Creek Road. The larger parcel, tax lot 2403, is already occupied by a long-established business, the Eagle Foundry Company. This company is an iron and steel castings manufacturer, and has been in continual industrial use since the late 1950s and under the current ownership since 1974. The parcel is 38 acres but it has inadequate building space, only 68,000 sq. feet. It would likely not be permitted today, as the area has become more residential and there is a residential RV park right across Eagle Creek Road. The building space on the vacant site is eight (8) acres, which would be sufficient if it were surrounded by available farm land that can be used to grow lavender and other botanical herbs. However, the lack of available farm land for sale on adjacent or nearby properties is a definite problem. Moreover, the Eagle Creek industrial site is also not ideal because it offers no view of Mt Hood.

Second, there exists a small parcel of rural industrial land north east of Mulino, at 13626 S Freeman Rd, Mulino, OR 97042. The property is occupied by Sunstone Circuits, a well-established firm that specializes in manufacturing and marketing printed circuit boards. This property is not available and is too small in any event.

Third, there is an isolated patch of Rural Industrial land located in Liberal, Oregon, north of Molalla, which is the site of the RSG Forest Products Mill. This mill has been in continuous operation for decades, and is not available for redevelopment. The site is located on Highway 213, which is a highly congested road. Businesses in this area do not get favorable rates from UPS, Fed Ex and other common carriers, making this a highly unsuitable location for Liberty Products.

A fourth rural industrial site is located directly south of Canby. This site is fully developed with existing uses. According to the applicant, "a dashboard survey of this location reveals no available land for purchase." There is no evidence to the contrary in the record, and the Board finds that it is substantial evidence to support the conclusion that this site is not a feasible alternative.

A. <u>OAR 660-004-0020(2)(b)(B)(ii): The Proposed Use Cannot Reasonably Be Accommodated on Resource Land that is Already Irrevocably Committed to Non-resource Uses Not Allowed by the Applicable Goal, Including Resource Land in Existing Unincorporated Communities.</u>

1. <u>The Board Finds Unincorporated Communities or Rural (Population) Centers Located in Clackamas County Do Not Provide Feasible Alternatives.</u>

Unincorporated Communities or Rural (Population) Centers are settlements located outside urban growth boundaries in which concentrated residential development is combined with limited commercial, industrial or public uses. Unincorporated communities in Clackamas County include Beavercreek, Boring, Redland, Mulino, Colton, Marquam, Boring, Wildwood, Welches, Zig Zag and Rhododendron. With the exception of Boring, none of these areas have any parcels zoned for Rural Industrial. The Board finds that none of these areas, including Boring, meet the needs posed by the applicant's business, because none of the sites have 25 acres of tillable farmland that can be used to grow lavender and other herb crops.

The unincorporated area of Boring has two Rural Industrial zones, as highlighted on this county zoning map (left) and shown in the accompanying aerial photo:

This aerial photograph shows that these two Rural Industrial areas are fully built out with existing uses. One of the larger collections of buildings is the location of Plymart, Inc. (27600 SE Hwy 212, Boring, OR 97009). Plymart Inc. provides panel and lumber products for use in construction, industry, and furniture manufacturing sectors, and has been at this location since 1977. The only other collection of larger buildings is located at 12401 SE 282nd Ave Boring, OR 97009, and is the current location of CCR Inc. Collision Repair. A dashboard survey of the remainder of Boring industrial area revealed that there were no available buildings in the two RI zones. Furthermore, there is no suitable tillable farm land nearby that is available to be used in conjunction with the industrial use. Furthermore, the area is close to residential dwellings that would undoubtedly not appreciate the odors originating from the distillation facility.

The unincorporated Redland and Beavercreek areas contain no land zoned for industrial purposes. Both of these hamlets have a small area zoned for rural commercial uses, but in both cases those lands are fully utilized by existing uses. Also, in both cases, the areas zoned for rural commercial are surrounded by urban and rural density residential uses. Since the applicant needs at least 25 acres of attached farm land to grow herbs, the Board finds that these sites are not viable alternatives. The unincorporated Mulino area also suffers from similar flaws which make it an unsuitable alternative as well:

In this case, the Board finds that the applicant's preferred site is already developed, and the rural industrial operation for which the exception is sought is already up and running as a practical matter. Thus, this fact situation creates the need for a much different analytical process for comparing reasonable alternatives, as compared to the more common scenario where the comparison is between competing vacant parcels.

In this case, the Board finds that comparing the preferred property (already developed exactly as needed to allow Applicant's use to prosper) to a vacant parcel of land results in a situation where the vacant parcel loses out in virtually every case. This is due to the fact that the capital costs associated with building the 150,000 s.f. of needed infrastructure is simply cost prohibitive under any reasonable scenario. The rule allows the county to consider "[e]conomic factors * * * along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas." The "along with other relevant factors" language means that increased cost by itself cannot generally be a sole determinative justification. *Oregon Department of Land Conservation and Development v. Douglas County,* 38 Or LUBA 542, 554–555 (2000). Nonetheless, it can be a crucial factor. In this case the Board finds that under the unique circumstances presented by this case, the sheer enormity of the cost differential, combined with the fact that (1) the preferred site is very close to town as compared to the majority of rural Clackamas County, (2) is in an area of relatively low residential density and far from potential conflicts, and (3) contains excellent views of Mt Hood all combine to disqualify virtually all vacant rural sites as reasonable alternatives.

3. <u>The "Consequences" Standard: EESE Analysis for Alternative Sites That Also Require An Exception (*i.e.* other sites zoned EFU).</u>

The third standard requires the applicant to evaluate the long-term environmental, economic, social and energy consequences of selecting the requested site over other similar sites that would also require an exception. The rule requires the Board to set forth "facts used to determine which resource land is least productive or lands that would not be significantly more adverse." In addition, the Board considered:

- the ability to sustain resource uses near the proposed use, and
- the long-term economic impact on the general area caused by irreversible removal of the land from the resource base.

Here, the Board finds there are two facts that, when viewed together, are dispositive on the issue of agricultural productivity. First, the preferred site is *already developed* with structures that prohibit the use of that land for farm uses. For this reason, there is no long-term economic impact on the general area by the "irreversible removal of the land from the resource base." Second, the applicants have identified *no other site* in the County with similar improvements. For this reason, the land under the buildings on the proffered site is, by its very nature, the least productive farm land.

Furthermore, allowing the facility to remain in operation at the preferred location will provide neighboring farms with one more potential list of crops that can be sold for processing into essential oils and other related products.

a. <u>Environmental Consequences of Choosing The Proposed Site Over Competing EFU Zoned Sites.</u>

Here, the Applicant's proposed site is already developed with all the infrastructure needed to carry out the business LNP operations. After conducting an extensive search, with assistance from the Clackamas County Business and Economic Development Department, the applicant could locate no other site containing a concentration of existing and available industrial buildings located on "lands that require an exception" (*i.e.* EFU zoned lands) in Clackamas County. As such, evaluating the environmental consequences of remaining on the current site versus building a new facility on other vacant EFU land is simple. The Board finds constructing a similar facility on other EFU land would be much more environmentally detrimental, as it would require paving over five or more acres of farmland, and constructing very large buildings. All other things being equal, it is better for the environment if productive farmland is left alone, and already-built facilities are put to their most productive use.

Given this unique factual situation, the evaluation of environmental consequences becomes quite simple in this case. As an initial matter, to build a similar facility on any other EFU-zoned site would require the construction of 150,000 square feet of industrial space, which would take at least 5 acres of agricultural land out of farm production. In contrast, allowing the existing operations to remain at the current site takes no – zero - additional land out of agricultural production.

Furthermore, moving to another EFU-zoned site would leave the current property idle. In the past, the property sat vacant for a long time due to a lack of demand for such facilities. As a result, the property attracted a high degree of nuisance and illegal activity, including such activities such as cock-fighting, meth production, illegal arms dealing and similar criminal activity. (Applicants, Exhibit 20). The Board finds there is a high potential for the abandoned property to once again revert to being a hotbed of undesirable, dangerous, and illegal activity.

Finally, the Board finds there are no negative environmental consequences of continuing to use the subject property for the proposed rural industrial use. Specifically, the Board finds:

1. Soils: The soils at the current site are ideal for pesticide-free organic growing of specialty crops like lavender and herbs. Many alternative crops would likely require pesticides and herbicides.

2. Composting: The use of the current site allows the applicant to compost biological plant by product, reducing vehicle trips to a landfill. It is very unlikely that other sites located in closer proximity to conflicting neighbors' uses would permit efficient composting. Agricultural by-product composting may give rise to neighbor complaints about odors (plant aromas and decomposition smells) and unsightliness. As Liberty expands its operations into other types of drying and processing, processing dusts could also contribute to nuisance in an urban environment.

3. Water: The previous permitted and allowed uses required substantial amounts of water for operations and waste processing. The subject use requires minimal water and has irrigation water rights in the final stage of beneficial use confirmation for the farm practices. Water used for distillation is uncontaminated (as one would expect, as it is pure distilled water produced by evaporation) and can be sustainably be re-used for irrigation purposes.

4. Waste: Previous animal husbandry operations generated substantial amounts of animal feces and other noxious waste. The present use generates no noxious waste whatsoever, only moderate amounts of plants and organic compost used onsite as soil amendments to sustain the long-term health of the soil.

5. Noise: the previous uses generated significant noise, as one would expect from an egg farm housing thousands of disgruntled chickens. The applicant's current (and future proposed) uses create no significant noise; indeed, the loudest sound heard all day is the arrival of the daily UPS truck delivery. The applicant anticipates distilling unused Christmas trees to obtain essential oil extracts, but grinding these surplus Christmas trees will be substantially performed offsite where the trees were grown, in the local Clackamas County agricultural community.

6. Sustainability: Co-location of the integrated uses at one site allows for cross-utilization of resources that lowers energy costs and transportation needs. Multiple locations would increase the amount of travel of employees (both commuting, and work-based trips) with attendant increased consumption of fuel without any corresponding gain in productivity. Location in an urban or rural industrial site would likely require greater travel by employees.

7. Herbicides and Pesticides: Organic herb crop practices supported by the subject uses, in contrast to other common Clackamas County agricultural activity such as Christmas tree

growing, do not utilize herbicides and pesticides. These substances, while necessary, can contribute to water quality problems and soil degradation. The applicant takes a holistic and organic approach to farming, and prides himself on being one of the few Clackamas County farm operations that is Oregon Tilth Certified Organic.

In sum, the Board finds the current business operation has fewer adverse environmental impacts than any previous agricultural use at this site, currently operates in a sustainable, efficient, and environmentally responsible manner with no greater impact than allowed EFU uses. The Board finds it is extremely unlikely the applicant's current business operation could be conducted at some hypothetical alternative EFU-zoned site (assuming such a suitable site existed) with the same fastidious degree of environmental sensitivity and ecologically beneficial practices, such as composting and pesticide-free, certified-organic farming.

b. <u>Economic Consequences of Choosing the Proposed Site Over Competing EFU-Zoned Sites.</u>

The 150,000+ square foot facilities of the Oregon Lavender Farm are likely much too large to be fully utilized or economically supported by any known agricultural practice from crops grown only on the property. For this reason alone, the long-term economic consequences of not allowing the existing business enterprise to remain at the present location but instead requiring it to move to another location zoned EFU are highly negative. – a successful, multimillion-dollar business would be forced to shutter its doors and lay off thirty-five hardworking Oregonians. Specifically, the Board finds:

First, moving to another EFU-zoned site would likely leave the current property idle, wasting the economic value of the already-built facilities. It is highly unlikely that there is another farming use that could efficiently utilize these large facilities, as evidenced by the fact that the property sat idle and neglected for many years, before being purchased by the applicant's Liberal Natural Products, Inc. fifteen years ago.

Second, the Liberty Natural Products facility is currently located close to the key Clackamas County residential and commercial centers of Oregon City, Damascus, and the Highway 224 corridor. Many of the operations employees reside in nearby Estacada and benefit from a short drive to work. After conducting an extensive search, with assistance from the Clackamas County Business and Economic Development Department, the applicant has found that no suitable EFU-zoned site exists in Clackamas County, let alone one so close to employees' homes. A short commute to a pleasant, scenic workplace adds to employee job satisfaction, helps morale, and lowers the turnover of the specially-skilled and dedicated workers upon whom the applicant depends to run his business. The current site is also close to the Clackamas County small businesses, vendors, suppliers and contractors the applicant regularly patronizes to run and maintain his operation and facilities. The applicant has spent over two million dollars making improvements to the site, and the lion's share of those millions went to local businesses. Travel-time factors into any contractor's calculations when formulating a bid, and the applicant currently enjoys a comparative advantage to other potential EFU-zoned sites due to his proximity to major Clackamas County commercial areas.

In a similar vein, the Board finds moving to another EFU-zoned site (if one existed) would be wildly economically wasteful, as millions would have to be spent to recreate the facilities that the applicant already possesses and occupies, while abandoning the current successful site to fall into disrepair, dilapidation and decrepitude.

c. <u>Social Consequences of Choosing the Proposed Site Over Competing EFU-Zoned Sites.</u>

The Oregon Lavender Farm/Liberty Natural Products business has become a strong and respected pillar of the local social community over the last fifteen years. The vast majority of the people employed at the subject site are residents of the local area. The ability of employees to work and live in the same area supports a strong community identity and furthers vital community interests, such as stable families buying homes and investing their time and devotion to strengthening local schools, churches, and social organizations such as 4-H, Future Farmers of America, the Boy Scouts and Girl Scouts, Kiwanis, Rotary, Lions Club, and similar groups. A local employer, close to home and deeply involved in the community, creates a stable, reliable, quality work environment for employees, enabling them plan for their families and futures. To put it simply, the applicant has invested heavily (in time, in money, in years of loving devotion) to this property and his business, and that cannot be blithely transferred to some other site. In furtherance of this goal, the applicant supports a Clackamas Community College scholarship for agriculture students and participated in the Clackamas County Green Ribbon Committee, among other community activities.

If the applicant was to shutter his Oregon City site and move his business to some other EFU-zoned site, the Board finds all of that carefully accumulated social capital and goodwill would be lost. The applicant would be forced to start all over, and some employees would likely decline to make the move.

The applicant has been very successful in promoting both his business and Clackamas County agriculture as an appealing, viable way of life through his annual Lavender Festival. This two-day event, featuring local foods, music, and agricultural products, has become a family tradition for many local residents, attracting 5,000 people each year. It is very doubtful that the Lavender Festival would have enjoyed this success at the some other EFU-zoned site lacking the stunning Mount Hood view and short drive-time that make the festival so appealing to so many local residents at the Oregon City site. The 2012 "Clackamas County Agriculture and Foodshed Strategic Plan" cites the applicant's lavender festival as an example of a "value added plus" county product that benefits the County and promotes agritourism (Applicant's, Exhibit 90, p27).

The Board finds that the OLF / Liberty Natural facility has proven itself to be a good neighbor, and does not have negative social consequences on the community. A corridor of RRFF-5 rural residential zoned properties to the east and south of the property are insulated by roughly a quarter of a mile of farmland from the distribution and warehousing activities located to the west of the subject property.

Lastly, at the current Oregon City site, the applicant and his 35 employees have excellent and harmonious social relations with all of their neighbors. There is no guarantee the new neighbors at some other EFU-zoned site would be anywhere near as understanding and sympathetic, and that could lead to conflicts. Dr. Roberts letter, (Applicant's, Exhibit 92). Neighbor conflicts are very common in EFU zones, and it is to the applicant's credit that he has worked hard to resolve any that arose in the past and now enjoys harmonious relations with his neighbors. Moving to some other EFU-zoned site would require the applicant to build those same relationships of trust and mutual reliance all over again, with a new cast of characters. Some of those characters might see the world very differently, and it only takes one irascible neighbor to ruin the quality of life for everyone.

d. Energy Consequences of Choosing The Proposed Site Over Competing EFU Zoned Sites.

The Board finds relocating the existing business to a new EFU-zoned location would have enormous negative energy implications, far greater energy-related expenses than could be recouped over a twenty-year planning horizon. In fact, the construction of new replacement facilities would be an endeavor requiring the consumption of *far* more energy resources.

The biggest day-to-day energy-related operational expense for the facility is electricity. After considerable expenditure and upgrading, the current site is quite efficient with regard to electrical usage. The cost related to electrical usage would be roughly the same regardless of where the facility is located, *assuming* – and this is a huge and unlikely assumption – that the new EFU-zoned site would already be upgraded to the same energy-efficient technologies the applicant has invested in. (The extensive 3 phase electrical infrastructure alone is worth several hundred thousand dollars)

The second largest energy-related cost to operate the facility is fuel. The existing site maximizes efficiency of fuel and resources, because employees, suppliers, contractors, and common carriers have only one close-in Oregon City site to drive to and from. If the operations were to be split into multiple locations, or moved to any other location that is further away from the current centralized Oregon City location, then the overall fuel costs for the applicant's operation would undoubtedly increase, perhaps greatly.

The farm is not located in an extended area surcharge location. Other EFU alternative sites may be in an extended area which would increase transportation charges. Liberty's presence and substantial daily shipments provide stability for UPS/FedX services in the local area. Liberty's presence and substantial daily shipments support UPS/FedX services for the benefit of package service in the local area. If Liberty were to relocate to into a delivery area surcharge zip code, it would result in additional charges for both inbound and outbound shipments making it less competitive in the marketplace. In addition, the current operations utilize composting of biological plant waste, reducing truck trips to a regional landfill.

In sum, the Board finds moving to a new facility would consume a huge amount of energy (human, gasoline, diesel, electricity, productive capacity, and wasted moving and packing resources (*e.g*. crates, boxes, pallets, bubble wrap, visqueen, padding materials, tape, fasteners, straps). Paving five or more acres of farmland consumes a vast amount of energy (*e.g.* human, gasoline, diesel, electricity, productive capacity, and all the energy required to make the aggregate, asphalt, and concrete). Constructing 150,000 square feet of commercial building space and/or modifying existing structures consumes a huge amount of energy (*e.g*. human, gasoline, diesel, electricity, productive capacity, steel, fiberglass, wallboard, sheetrock, sawn and treated lumber, electrical wiring, carpeting, insulation, fireproofing, Tyvek sheeting, glass, putty, fasteners, steel cable, flooring, roofing, drains and gutters). Lastly, requiring 35 employees to commute to another (likely more distant) location would require more consumption energy in the form of gasoline and diesel fuel, contribute to the degradation of road and intersections, and increase the consumption of vehicular components like tires, brake pads, and motor oil. All of these energy consequences add up, and add up quickly. Allowing the applicant to continue his operations at the current site will be far, *far* more efficient (from an energy consumption standpoint) than any other alternative.

e. The Effects of the Proposal on the Water Table.

Oregon Lavender Farm has a total of four wells on its contiguous property. Two were pre-existing and two were installed by Liberty. Liberty filed an application for water rights (G-16444) to be able to irrigate 52.9 acres of its lavender and other specialty herb crops in May of 2005, and thereafter obtained Permit No.164555 in May of 2006. A new 8" casing 115 gallon per minute irrigation well, identified as No.3 (Clack 62440), was drilled in May of 2006, in order to meet the State of Oregon Water Rights Division well construction specifications necessary to obtain water rights approval. Additionally, 3,200 lineal feet of buried three to four inch PVC irrigation mainline was installed to distribute irrigation water to crops. In September of 2013, Liberty submitted a CWRE Claim of Beneficial Use. Well No. 3 has been in operation since May of 2007. There has been no unrecovered drawdown of the water table. In March 2014, the Water Rights Division accepted the pump test results for Well No. 3. It is anticipated a water rights certificate will be issued in the next 12-18 months. (Applicants, Exhibit 105).

Well No. 1 is a 50 gpm fully functioning well, designated for emergency use. Well No.2 is an 80 gpm well that serves the potable water requirements of the facility. It is subject to quarterly water testing and water quality reporting. Well No. 4 is a 6" casing domestic well for the existing 7 acre homesite that has been drilled but not improved.
A ¾ acre rainwater pond is being developed from an old drainage pond. This pond will be used for both as an irrigation reservoir and for fire protection. Thus the Board finds that the water supply at the current site is adequate and does not harm the neighbors' ability to use their properties as they wish.

f. Cost to Special Service Districts.

The Board finds allowing the Oregon Lavender Farm and Liberty Natural Products to continue current operations and expand into the new operations proposed herein will not have any impacts on Special Service Districts. There are no Special Service Districts that provide service to the subject property, except for fire protection with Clackamas County Fire District 1. The farm and business operation will continue to meet fire, life, health and safety requirements. Special service districts supported by the current business, from the Assessor's tax statement:

Education Districts:
COM COLL CLACK
ESD CLACKAMAS
SCH OREGON CITY

General Government:
COUNTY CLACKAMAS
COUNTY EXTENSION & 4-H
COUNTY LIBRARY
COUNTY PUBLIC SFTY LOC OPT
COUNTY SOILS CONS
FD 1 CLACK CO
PORT OF PTLD
URBAN RENEWAL COUNTY
VECTOR CONTROL
VECTOR CONTROL LOC OP

g. Cost of Improving Roads.

According to County staff and, the Board concurs that there are not improvements that are required to offsite roadways or intersections in order to support the proposed use. In summary on the issue of comparative impact analysis: the Board finds the subject site is the most optimal site for the subject uses – in large part because it is already built to support such uses.

4. The "Compatibility" Standard: The Board Finds the Proposed Uses are Compatible with Other Adjacent Uses (or Will be so Rendered Through Measures Designed to Reduce Adverse Impacts).

a. Site Description.

The subject property is located on nearly 90 acres of farmland in an established rural area. The site features rustic-looking newer buildings housing the administrative and business offices along with multiple old simple agricultural warehouse storage buildings. The land in the territory to be rezoned exhibits relatively flat topography with a gentle downward slope to the east exhibiting, twenty-five acres of lavender fields and a stunning view of Mount Hood. There are no special or noteworthy topographic features or hills.

North of Harris Road there are eight large rectangular building once built for housing chickens in the old commercial egg farm. South of Harris Road are the four new structures housing the administrative and business offices, laboratory, inventory, distillery, shipping and receiving department, and staff lunchroom. There is a small gazebo and patio tables for guests overlooking the lavender fields.

b. Description of Neighboring Uses.

The following tables identify land uses, utilities, and the area surrounding the subject property.

Direction	Comp Plan	Zoning	Use
North	Farm Use	EFU	Rural residential, not planted, woods to the NE
East	Farm Use	EFU	Rural residence, screened by thick woods, no crops
South	Farm Use	EFU	Beyond the lavender crops is a thick tree stand, then acres of Christmas trees
West	Farm Use	EFU	M.S. Growers nursery: azaleas, rhododendron, japonica, Christmas trees

c. Demonstration of Compatibility between the Proposed Use and Adjacent Neighbor's Uses.

The law requires the applicant's proposed use to be compatible with the adjacent neighbor's uses. The Board so finds. This is quite easy to demonstrate, because the applicant's proposed use (*i.e.* the Oregon Lavender Farm, the Liberty Natural Products business, and the annual Lavender Festival) has been taking place uninterrupted for years, with no problems whatsoever for the neighbors. In fact, the applicant's neighbors are in support this application and there have been no objections. (*See* Applicant's Exhibits 61, 62, 63, 64, 66, 68, 73, 74, 107, letters in support of the application signed by LB Day, Dennis Moriarity, Moriarity Christmas Trees, Rita Snyder, MS Growers, John Anderson, McKenzie Farms and Steve and Bobbe Fendall, Lila Elliot and other Logan area neighbors).

Possible sources of conflict with the neighbors' uses could include water disputes, traffic problems, noises, pesticide spraying, odors, degradation of the visual environment, or other interference with the neighbors' quiet enjoyment of their property. As previously discussed, the production of plant aromas (and possibly allergens) has become a major problem today for many businesses, as aggrieved neighbors initiate government enforcement action and file private nuisance lawsuits to curb activities their nostrils allegedly find objectionable. Not a hint of any of those issues exist here. In fact, it is quite the opposite. The applicant's current use has *ended* previous incompatible (and even noxious and criminal) uses on this site. Before the applicant acquired this site in 1999, it was a long-time nuisance property with multiple unlawful uses, solid waste violations, and even dangerous criminal activity. (*See* Applicant's, Exhibit 20, (*The Oregonian article from 2000*). The applicant cleaned up the property (literally and figuratively) and has become a true asset to his neighborhood and community over the past fifteen years.

The language of OAR 660-004-0020(2)(d) repeats the words "proposed" use because it contemplates a use proposed but not yet put into place and practice. In this case, the applicant's proposed use is exactly the use he has been practicing for many years, and so there is no need to speculate about whether his "proposed" use will be compatible with his neighbors' uses. We *know* it is compatible, because it long has been. The best proof of *future* compatibility is *past* compatibility, and the applicant's use has long since been proven to be compatible with his neighbors. The Board finds this standard has been met.

III. CLACKAMAS COUNTY ZONE CHANGE APPROVAL STANDARDS

Clackamas County has adopted the following standards applicable to a zone change:

1202.01 APPROVAL CRITERIA
The Hearings Officer may approve a zone change, pursuant to Section 1300, if the applicant provides evidence substantiating the following:

A. Approval of the zone change is consistent with the Comprehensive Plan;

Both the applicant and staff identified a number of plan policies as being relevant to this zone change application. The first of these relates to the policies to be applied when considering a property for a "Rural Industrial" zoning classification. The applicable section of the Comprehensive Plan states as follows:

POLICIES

1.0 The Rural Industrial plan designation may be applied in non-urban areas to provide for industrial uses that are not labor-intensive and are consistent with rural character, rural development, and rural facilities and services.

2.0 The Rural Industrial (RI) zoning district implements the Rural Industrial plan designation.

3.0 Areas may be designated Rural Industrial when the first, the second, or both of the other criteria are met:

a. Areas shall have an historical commitment to industrial uses; or

b. The site shall be an abandoned or diminished mill site, as defined in the Zoning and Development Ordinance, provided that only the portion of the site that was improved for the processing or manufacturing of wood products may be designated Rural Industrial; or

c. Areas shall be located within an Unincorporated Community; and

d. The site shall have direct access to a road of at least an arterial classification.

In this unique case, the Board finds the application can be approved under Policy 3.0(a), because the site has a historical commitment to industrial uses. The Comprehensive Plan does not define what is meant by an "industrial use" in this specific context. LUBA has stated that uses can be categories in different ways for different purposes. *Swenson v. DEQ*, 9 Or LUBA 10 (1983) The Board is not aware of a prohibition in the goals that a use must be either exclusively a farm use or an industrial use in making a determination whether or not a commitment to historical industrial use has existed.

The Board interprets Plan Policy 3.0(a) to further the goal of preserving farm land for resource uses by limiting rural industrial uses to those areas of the county that have been previously been "committed" to activities which are industrial in nature. The goal the policy seeks to further is to prevent the existing limited supply of useable and unspoiled agricultural land from being converted to rural industrial use. Conversely, the policy seeks to steer the zoning and development of new rural industrial lands towards those properties that have previously been used for that purpose. In other words, only areas that are already developed or "committed" to rural industrial uses as a result of past practices may be made available for continued rural industrial use.

As discussed in more detail below, the subject property has over 150,000 square feet of "industrial" buildings on the property. The Board finds these building are not well-suited for modern agriculture, for reasons previously discussed in these Findings. The ZDO defines the term "industrial uses" in the zoning sense, as "[t]he use of land and/or structures for manufacturing and processing of primary secondary, or recycled materials into a product; warehousing and associated trucking operations, wholesale trade; and related development." The Board finds the subject property contains buildings that have been used in the past for uses that are industrial in nature, and the infrastructure is more similar to industrial uses than agricultural uses.

The subject property was constructed and used primarily as an egg production and distribution facility and rabbit processing facility and rendering plant. When one thinks about the practical nature and impacts of an egg production facility, it becomes quite clear that these operations are factories, not farms. Take, as an example, Willamette Egg Farms, LLC. With over 200 employees, Willamette Egg Farms operates one of the largest facilities in rural Clackamas County. Willamette Egg Farms does not rely on farm land to produce its eggs. In fact, the chickens raised at Willamette Egg Farm never go outside and never touch the ground. There is no relationship to the land other than a place to place the buildings and sewage system needed for the plant's waste. A detailed examination of the historical uses on this property reveals there was never a "typical" farm operation growing crops. Instead, there were a series of uses that more closely resemble industrial and commercial uses in terms of scale and impacts:

- Carnation poultry-egg operation (1963-1978):

  - Onsite raising of chickens for eggs
  - Processing and wholesale distribution of eggs raised onsite and secondary processing to make packaged egg products.
  - Processing and wholesale distribution of eggs obtained offsite and secondary processing to make packaged egg products.
  - Placement of waste (chicken manure & egg shells) from operations on agricultural ground:
    a. a) portion derived from onsite poultry-egg operation (a "farm use")
    b. b) portion derived from eggs obtained from offsite (an industrial use).

- Rabbit breeding, slaughter, meat processing – tannery, fur operation:

  - Onsite breeding and raising of rabbits (a "farm use").
  - Processing, distribution and marketing of rabbits raised onsite – farm use.
  - Processing, distribution and marketing of rabbits obtained from off-site – 1983 GAD CACFU conditional use permit for remodel and use of building as a rabbit meat processing plant – industrial use.
  - Tanning of rabbit hides and other commercial livestock pelts, produced onsite and offsite. 1988 GAD CACFU conditional use permit - industrial use.
  - Processing and onsite disposal of slaughter gray water waste disposal of rabbits raised onsite – farm use.
  - Processing and onsite disposal of slaughter gray water waste disposal of rabbits raised offsite – industrial use.

- Liberty Natural Products use: area used for warehousing, processing and distribution of agricultural goods from other farms between 1999 to the present, which has been identified by the County in the report as a nonfarm use in land use pre-application conferences beginning in 2004.

Thus, substantial evidence shows that a mix of farm and associated and non-associated industrial uses have existed historically at the OLF property from 1963 to the present. Both the egg and rabbit operations included substantial industrial processing of eggs and rabbits obtained from non-local offsite producers and as such were nonfarm industrial uses.

For these reasons, the Board finds that there is a history of extensive rural industrial use of the property. The Board finds the requirement of Rural Industrial Plan Policy 3.0 has been met.

B. If development under the new zoning district designation has a need for public sanitary sewer, surface water management, and/or water service, it can be accommodated with the implementation of service providers' existing capital improvement plans. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

The proposed use does not have a need for public sanitary sewer, surface water management, and/or water service. For this reason, the Board finds this standard does not apply.

C. The transportation system is adequate, as defined in Subsection 1007.09(D), and will remain adequate with approval of the zone change.

The subject land use application proposes a PAPA and zone change to convert land planned and zoned for agriculture to Rural Industrial designations. The 8.77-acre portion of the subject property at issue contains 150,000 square foot of existing pre-development building improvements. The site has been occupied by Liberty Natural Products Inc. an integrated agricultural operation engaged in the cultivation and processing of specialty herb crops, such as lavender, and the distribution of wholesale agricultural goods since 1999.

The traffic impact study establishes that the transportation system is safe and adequate to serve the proposed use. County staff and this Board concur.

The Board finds this PAPA and zone change will limit the rural industrial use to 8.77 acres of the 90 acres property, and would not allow any significant changes that would result in substantial increases in current and historical transportation volumes for operations that have been conducted at the facility. The Board finds this standard has been satisfied in the record by the Lancaster Engineering traffic studies and the findings of the Clackamas County Department of Transportation.

<u>Description of Area Roadways Serving The Site:</u>

The local area is primarily zoned EFU with some RRFF-5 and is sparsely populated. S. Harris Road – is a paved 6/10 of a mile long local County road that runs from Gerber Road on the west to the subject property on the east. In addition to the subject farm site, there are only three single-family residences that have their primary access on .6 mile long Harris Road. The west end of Harris Road at its intersection with S. Gerber Road is .5 mile north of S. Springwater Road south and 1.1 mile south of S. Bakers Ferry Road.

S. Gerber Road – is a paved 1.6 mile long local County road that runs between S. Springwater Road on the south to S. Bakers Ferry Road on the north. There are only 23 residences on Gerber a local road with low traffic volume.

S. Springwater Road – is a paved 15.2 mile long major arterial County road that connects Hwy 224 to Hwy 211.

S. Bakers Ferry Road – is a paved 4 mile long minor arterial County road that connects S Springwater Road to Hwy 224 at Barton.

The roadways serving the site have interconnection with a variety of minor and major arterials providing alternate routes in various directions.

Current Transportation Volumes:

Liberty Natural / Oregon Lavender Farm's regular days of operation are Monday through Friday. The operation is closed on weekends. The hours of operation vary according to the seasonal daylight time, but are generally between 7:30am and 6:30pm. In the past three years, Liberty Natural / Oregon Lavender Farm has employed an average of 32 regular employees at the site.

According to the applicant, in the past three years, Liberty Natural/Oregon Lavender Farm has employed an average of 32 regular employees at the site. Of those employees, 10 are associated with the agricultural operation unaffected by the approval of the land use application, and 24 are associated with the distribution operation subject to the application. Adjustments have not been mode for: 1) agricultural employee trips; 2) vehicular trip reduction of employees who, from time to time, alternatively rideshare, bike or walk, are not deducted from the trip volume breakdown; 3) regular employees who do not work full time; 4) vehicular trips of short term temporary seasonal agricultural workers.

Breakdown of total actual site trips:

Employee arrival	= 32
Employee departure	= 32
Employee lunch trips	= 4
Employee pickup and delivery	= 2
UPS pickup and delivery	= 4
Other small parcel/common carrier	= 6
Wholesale will call customers	= 6
Vendor and other misc visits	= 4
Total	= 88

Employees have regular daily work schedules but are allowed a degree of flexibility in their arrival and departure times. Typically, most employees take lunch on site. The employees who go out for lunch will join with other employees and take one vehicle.

Speed Study & Sight Distance Analysis

S. Gerber Road has a statutory 55-mph speed limit. The applicant collected speed data at the intersection of S Gerber Road at S Harris road for a 24-hour period from 12:00 AM to 11:59PM on Tuesday, November 18, 2014. For the purposes of this PAPA and zone change, data from the southbound direction (which was found to have limited intersection site distance ("ISD") will be analyzed.

For vehicles traveling southbound, the 85th percentile speed was measured to be 49 mph. The complete set of data from the study is provided in an attachment to the memo provided by the applicant's transportation engineering firm. Based on both AASHTO standards and the Clackamas County Roadway Standards, the required ISD is 554 feet and the required SSD is 412 feet for the 85th percentile speed of 49 mph.

Based upon field measurements, the available sight distance to the north for vehicles departing Harris Road is 530 feet. This distance very nearly meets the ISD standard of 554 ft, but easily satisfies the SSD requirement of 412 feet.

At 530 feet, the existing sight distances is 14 feet less than the 544 feet specified by Clackamas County as the necessary intersection sight distance (ISD) for this intersection at an 85th percentile speed of 49 mph. However, the applicant has requested, and staff has agreed to, a design modification as allowed in Section 170.1 of the Clackamas County Roadway Standards to use stopping sight distance (SSD) in lieu of ISD as the applicable design standard. Based upon this standard, the sight distance available to the north to vehicles turning left (southbound) onto S Harris Road is sufficient to accommodate safe operation of the intersection from this direction. The existing sight distance exceeds the minimum necessary ISD for an 85th percentile speed of 49 mph by 118 feet.

Mitigation measures:

The current low-level usage of the roadways serving the subject site and the land use planning goals for the area to remain in the EFU zone well beyond 2030, if not indefinitely, do not provide basis to conclude that there will be any significant increase in the amount of business or residential traffic. Should future traffic impacts occur in the area, the applicant has indicated a willingness to employ the following mitigation efforts:

- Freight consolidation -common carriers and parcel shippers can be utilized to maximize cargo loads and reduce vehicular trips.
- Employee rideshare/shuttle - the company can coordinate and encourage employees to share rides and/or provide shuttles from central locations.
- Employee work at home – while not feasible for the majority of the employees, customer service, administrative and some other employees could utilize the remote computer access to work at home as a part of their work schedule.
- Four-day work week – vehicular trips could be reduced 10-15% per week. It is anticipated production and shipping would functions would need to be maintained, but that customer service functions could be done from home in order to maintain just in time shipment of goods Monday through Friday.

There is no immediate demand for these measures, however, and the Board does not impose any conditions of approval related to these types of mitigation measures at this time.

D. The proposal, as it relates to transportation facilities under the jurisdiction of the State of Oregon, complies with the Oregon Highway Plan.

This application does not impact any transportation facilities under the jurisdiction of the State of Oregon.

IV. TRANSPORTATION PLANNING RULE

As discussed in the applicant's Transportation Analysis Letter ("TAL"), the applicant asserts that the current trip generation, measured at the site, is 88 total weekday trips. Under a worst-case scenario of development, with the OLF doubling the size of its distillery operations, a total of 188 weekday trips are projected given the existing traffic behavior at the site. Trip calculations using the ITE Trip Generation Manual (9^{th} edition) indicate lower weekday trip generation of 88 weekday trips under current conditions and 132 weekday trips under the worst-case development scenario.

In order to consider an appropriate trip cap for the site, Lancaster Engineering revisited the capacity analysis conducted in the TAL for the nearby intersection of S Gerber at S Springwater Road. That analysis was done for projected 2034 traffic volumes with the addition of additional trips from the site as discussed above.

The analysis was updated to determine how many trips could be generated by the site and still allow the intersection to meet the applicable Clackamas County performance standards, where the acceptable level of service (LOS) on the critical approach is LOS D. Based on this analysis a total of 682 new trips could be generated during the evening peak hour, with 341 entering and 341 exiting, and still maintain acceptable operation.

The traffic counts on S Gerber Road contained in the original TAL show that there are approximately 30 evening peak hour trips along the roadway presently. The analysis shows that the site could generate over 20 times the volume of trips that are already on S Gerber Road and still meet applicable performance standards.

V. COMPLIANCE WITH STATEWIDE PLANNING GOALS.

A Post Acknowledgement Plan Amendment (PAPA) is a planning responsibility under ORS 197.175(1) and is subject to compliance with the statewide planning goals. Thus, to the extent they are applicable, the Board finds the applicant demonstrated compliance with the Statewide Planning Goals as follows:

Goal 1 – Citizen Involvement. Citizen involvement is always applicable to quasi-judicial applications such as this. Statewide Planning Goal 1 is met via the implementation of the provisions in the acknowledged Clackamas County Zoning & Development Ordinance (ZDO) that relate to citizen participation. This application was reviewed by staff, the Clackamas County Planning Commission, and the Board of County Commissioners. Public hearings were conducted with notice and opportunity to be heard presented, as required by the ZDO. The property was posted with notice as well as mailed notice to surrounding property owners and affected governmental agencies. At the public hearings anyone wishing to present relevant testimony or documentary evidence was allowed to do so. The Board finds adequate citizen involvement occurred in this case.

Goal 2 – Land Use Planning. The Clackamas County Comprehensive Plan (CCCP) and ZDO are acknowledged to be in compliance with statewide planning goals and guidelines. Goal 2's coordination obligation will be met because the applicant and County shall seek public comment from any affected unit of government, including and any special district whose boundaries overlap with the site. The application does trigger the Goal 2 exception standards, and those standards are addressed herein. The Board finds this statewide planning goal was met.

Goal 3 – Farm. The applicant's proposed use does not comply with Goal 3 and therefore, an exception was granted.

Goal 4 - Forest. The subject property does not contain forest land. Therefore, Goal 4 does not apply to this land.

Goal 5 – Open Spaces, Scenic and Historic areas, and Natural Resources - The subject property is not designated as an open space, scenic, or historic area and has no natural resources to protect. There are no natural resources located on the portion of the subject property at issue. The There are no landslide hazard areas. There are no historic resources or cultural areas located or identified on the site. There are no identified mineral or aggregate resources on the site. The site is not located downtown or in a neighborhood conservation district. Therefore the Board finds this goal does not apply.

Goal 6 – Air, Water and Land Resources Quality - The proposed use of this property will be for rural industrial use. The distribution operations do not generate any substantive wastes or emissions, other than odors. Liberty Naturals and OLF are dedicated to being a sustainable enterprise. Metal and plastic containers are collected and recycled. By-products of distillation/processing, spills and expired goods are composted and returned to the soil as inputs. Storm water will be detained on-site and through the existing storm drainage system and future on-site drainage. There are no significant water demands, and no potential for pollution. This application will not affect in any way the air, water or land resources. Therefore, this goal is met.

Goal 7 – Areas Subject to Natural Disasters and Hazards - There are no identified landslide areas on the subject property. There are no identified wetlands or floodplains on the portion of the subject property subject to this application. The portion of the subject property subject to this application is basically flat and devoid of natural hazards. The Board finds Goal 7 does not apply.

Goal 8 – Recreational Needs - The subject property is proposed primarily for rural industrial uses and a rural residence. This goal is not applicable.

Goal 9 - Economic Development. Goal 9 does not apply to this application, as Goal 9 only applies to areas within an urban growth boundary. OAR 660-09-0010(1). *Port of St. Helens v. Land Conservation & Development Committee*, 164 Or App 487, 495, 996 P 2d 1014 (2000). Nevertheless, the Board finds this land use approval furthers the aims of Goal 9 "[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens." As discussed in these Findings, the applicant's Oregon Lavender Farm/Liberty Natural Products combined operation is a going business concern with thirty-five employees, over $6.5 million in gross annual sales, and demonstrated success in its field. Approving this application will allow this business operation to continue, and hopefully prosper, benefiting its employees, the local economy, and the development of high-value specialty crops among local farmers to supply the applicant's growing business.

Goal 10 – Housing. The subject property is proposed primarily for rural industrial uses and a rural residence. This goal is not applicable.

Goal 11 – Public Facilities and Services. Goal 11 concerns the provision of public health, safety, and welfare facilities such as water, sewer, and transportation. OAR 660-011-0005(5). As such, Goal 11 does not apply to this application, a privately-owned business operation.

Goal 12 – Transportation. The transportation impacts of the proposal are discussed *supra.* The Board finds this land use decision does not have a significant impact on a transportation facility.

Goal 13 – Energy. This application presented a positive alternative from an energy consumption and efficiency standpoint, when compared to any decision which would result in current operations being split into urban and rural components. The Board finds this goal was satisfied by substantial evidence in the record as a whole.

Goal 14 – Urbanization. The land is considered "rural" because it is located outside of a UGB. Goal 14 is violated if the applicant proposes an urban use on rural land without taking an exception to Goal 14. LUBA has stated that the determination of whether a proposed land use is rural or urban will in most cases require a case-by-case analysis. *Hammack & Assoc. v. Washington County*, 16 Or LUBA 75, 80 (1987), *aff'd Hammack v. Washington County*, 89 Or App 40, 747 P2d 373 (1987); *1000 Friends of Oregon v. LCDC (Curry Co.),* 301 Or 447, 724 P2d 268 (1986). In *Curry County*, the Oregon Supreme Court identified a number of relevant factors which must be considered when determining whether a use is "urban or "rural." When combined with other case law from LUBA and the courts, the list of relevant factors can be summarized as follows:

- The size and extent of commercial and industrial uses;

- Propensity to attract consumers from urban areas. *City of Sandy v. Clackamas County*, 3 LCDC 139 (1979); *Conaway v. Coos County,* 2 Or LUBA 190 (1980). *Shaffer v. Jackson County*, 17 Or LUBA 922 938 (1990) (LUBA stated in dicta that a determination that commercial uses are limited to serving the needs and requirements of the rural area, "that factor might be significant, or even determinative, in deciding whether [that] commercial use is rural or urban.); *City of Ashland v. Jackson County*, 2 Or LUBA 378 (1980).
- Proximity to UGB. *Cox v. Yamhill County*, 29 Or LUBA 263 (1995) (A church that does not require urban services and serves "primarily a rural population" is not a rural use despite being located only 1000 feet outside a UGB); *City of Sandy v. Clackamas County*, 3 LCDC 139 (1979) (90,000 square foot shopping center located 4 miles from the nearest UGB is an urban use of land); *Geaney v. Coos County*, 34 Or LUBA 189, 200 (1998) (PAPA from rural residential to commercial triggers the need for an exception to Goal 14, when the decision would allow any number of commercial uses of any size as a permitted use.
- Types and levels of facilities and services, esp. water & sewer. *Doob v. Josephine County*, 32 Or LUBA 364, 373 (1996); *DLCD v. Douglas County*, 17 Or LUBA 466, 473 (1987).
- Dependence on a site-specific resource. In *Shaffer v. Jackson County*, 17 Or LUBA 922 938 (1990), LUBA held that whether an industrial use is dependent on a site specific resource is relevant in determining whether the industrial use is rural in nature.

> Note: Density, parcel size and ownership patterns are not particularly relevant when determining whether a commercial or industrial use is "urban" or "rural" in nature. *Hammack v. Washington County*, 89 Or App 40, 747 P2d 373 (1987).

In this case, the applicant is not proposing an "urban use of rural land." Each of the factors identified above are addressed in turn:

<u>The size and extent of commercial and industrial uses;</u>

The integrated specialty crop production and distribution operations at the OLF are not found in urban locations, as the agricultural nature of the operation requires acreage for cultivation and composting and a low density setting to avoid processing operation conflicts with surrounding uses. While there are examples of integrated specialty crop operations worldwide, the OLF operation is the only one of its kind in Clackamas County. An integrated specialty crop operation like the OLF is not contemplated in any urban land use descriptions in the ZDO or statue statute. Farm owners expand their operations both vertically and horizontally in order to achieve economy of scale and sustained profitability. The OLF operation includes a variety of integrated uses that are both agricultural and directly related to agriculture. Farm based distribution of agricultural goods, such as the specialty crops and related goods distributed at the OLF, is an historical and customary practice worldwide.

The record in this application has established that the operations of the Oregon Lavender Farm are not labor intensive, consistent with the rural character of the local area and Clackamas County rural development policies for facilities and services, and are rural industrial in character.

Propensity to attract consumers from urban areas.

The wholesale distribution operations are not directed at consumers and have not attracted consumers from the Portland Metro areas in the seven years they have been conducted at the OLF. With the exception of the two-day lavender festival once per year, even wholesale sales are not procured onsite. 100% of distributed goods sales are obtained by internet, phone and fax.

Proximity to UGB.

The OLF is approx. 2 ½ to 3 miles from the present UGB. The Metro UGB mapping tool shows that the 1.52 acre westerly portion of the proposed 8.77 acre rural industrial area of existing facilities and the northerly 40 acres, to remain zoned as EFU land, are within the County's rural reserves.

Types and levels of facilities and services, esp. water & sewer.

OLF does not rely on any urban services or facilities. OLF utilizes on-site subsurface septic systems for treatment of sanitary wastes. Existing subsurface systems conform to state standards, are fully functioning and have greater capacity than required. OLF composts all processing and distillation by- products. Water is obtained from a well.

Dependence on a site-specific resource.

Considered as integrated whole, the OLF operation is dependent on the size of the existing farm improvements and the availability of cultivable ground onsite and in the local area.

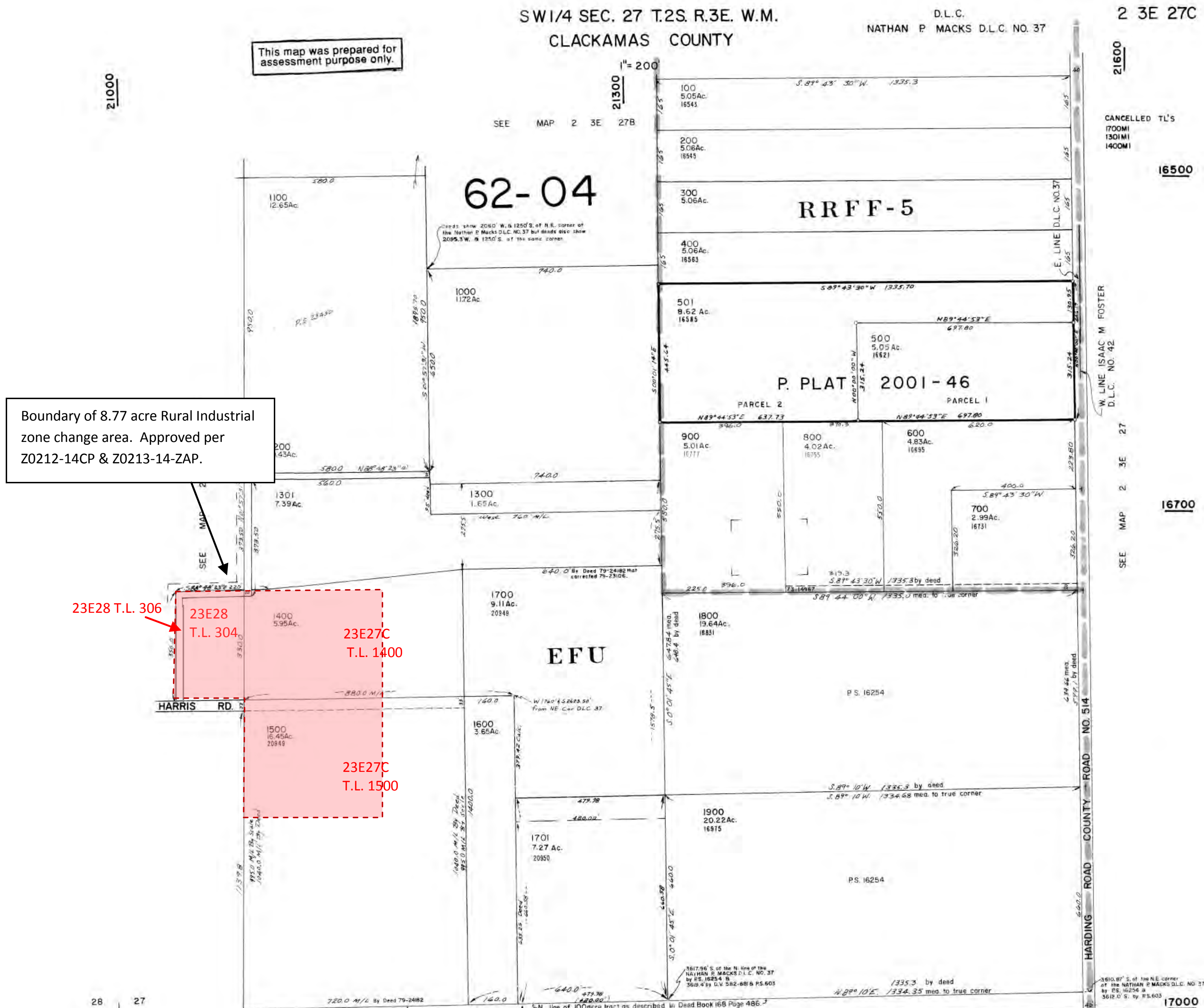
For all of the reasons stated above, the Board finds that the proposed PAPA and zone change does not propose an "urban" use of land. The Board finds that Goal 14 does not therefore apply to this case.

The Board finds that the applicable Statewide Planning Goals have all been met.

VI. CONCLUSION.

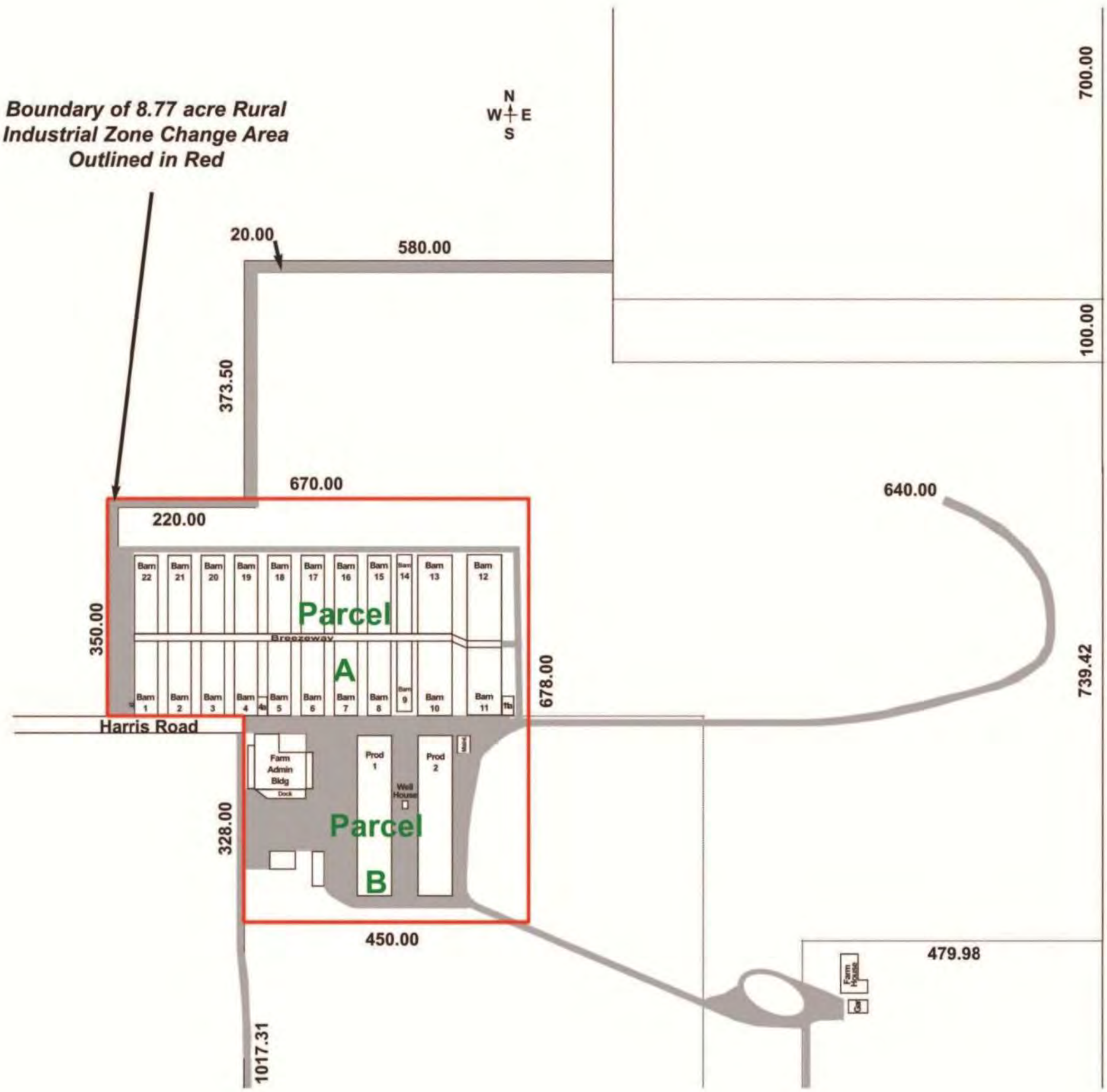
For all the reasons given above, the Board finds this land use application complies with all relevant state and Clackamas County statutes, rules, ordinances, and policies by substantial evidence in the whole record. The entire application and all its exhibits are incorporated into these Findings by this reference. This land use application is approved by county ordinance.

This Comprehensive Plan Amendment and Zone Change is limited in scope to the existing and future uses set forth in Section I(E) of these findings. These uses are considered uses allowed by right in this zone. Any other futures uses that are outside the scope of the uses contemplated in Section I(E) will require a new PAPA and Zone Change, in addition to any conditional use permits or other land use permits that might be required.



File Nos. Z0212-14-CP & Z0213-14-ZAP

ORDER EXHIBIT B – PAGE 1 OF 3 (3/5/2015)



File Nos. Z0212-14-CP & Z0213-14-ZAP
ORDER EXHIBIT B – PAGE 2 OF 3 (3/5/2015)

Legal Description of the Oregon Lavender Farm Area to be Designated Rural Industrial, Pursuant to the Approval of Z0212-14-CP, Z0213-14-ZAP and Order of the Board of the County Commissioners.

<u>Parcel A:</u>

Beginning at a point 2060 feet West and 1900 feet South of the Northeast corner of said Macks Donation Land Claim said point being the Southeast corner of that tract sold on Contract to Jerry C. Robinson, recorded June 11, 1979, as Recorder's Fee No. 79-24183, Clackamas County Records; thence West along the South line of said Jerry C. Robinson Tract 580 feet to a point; thence South parallel to the East line of that tract conveyed to Jack Barber by Deed recorded July 9, 1875, in Book "L", on Page 107, Clackamas County Deed Records, 373.50 feet to the North line of that tract sold on Contract to Constance A. Robinson, recorded July 11, 1979, as Recorder's Fee No. 79-24182, Clackamas County Records; thence West along said North line 220 feet, more or less, to the Northwest corner thereof, which is the true point of beginning of the herein described Parcel B; thence South along the West line thereof 350 feet to the South line thereof being on the North line of Harris Road (County Road No. 1659); thence East along the North line of said Harris Road 670 feet more or less to the Northeast corner of the above described Parcel A; thence North 350 feet to a point; thence West 670 feet more or less to the true point of beginning of Parcel B.

<u>Parcel B: The West 450 feet and North 328 feet of the parcel of land described as:</u>

Part of the Nathan P. Macks Donation Land Claim No. 37, in Section 27, Township 2 South, Range 3 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the point of intersection of the Northeast corner of Harris County Road No. 1659 and the West line of that tract sold on Contract to Constance A. Robinson by instrument recorded June 11, 1979, as Recorder's Fee No. 79-24182, Clackamas County Records; thence South along said West line 1040 feet, more or less, to the Southwest corner thereof; thence East along said South line and its Easterly extension to a point which is 160 feet East of the Southeast corner thereof; thence North parallel to the East line of said Robinson Tract 1040 feet, more or less, to a point which is 880 feet, more or less due East from the Northeast corner of aforesaid Harris County Road; thence West 880 feet, more or less, to the point of beginning.

MIKE MCCALLISTER
PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

EXHIBIT C:
Approved Uses for the Oregon Lavender Farm/Liberty Natural Products LLC "Reasons" exception and Comp Plan designation/zone change

File Nos. Z0212-14-CP & Z0213-14-ZAP

The following lists the **current uses** on the property that are subject to the Reasons exception:

- Processing operations, including
  - The steam distillation of essential oil crops, such as lavender, rosemary, clary sage, Douglas fir, and Noble fir;
  - The production of tinctures, which are herb extracts obtained by using alcohol to extract their constituents;
  - The production of other "farm and value-added" products such as culinary lavender and lavender honey, soaps, and lotions; and
  - The drying, milling of various herbs for future sale including hops it is also growing at the farm.
- Storage/warehousing of oils for sale, dried herbs, containers and similar materials, and shipping and packaging materials.
- Distribution operations, including the importation, repackaging and distribution of over 1,200 different farm products and oils and herbal extracts produced outside of Clackamas County.
- Administration offices, including book-keeping, purchasing, marketing, sales, personnel management, computer systems – IT, facilities management, inventory & quality control, laboratories, and packaging and shipping.

Future uses expected on the property subject to the Reasons exception are limited to the expansion of the existing processing and warehousing/distribution facilities to include the construction of a "mother distillery" to support the following operations: (a) distillation of 200 to 500 acres of local lavender cultivation, (b) distillation of Christmas tree culls from neighboring growers, and (c) research & development (R&D) of other potential extractions: raspberry seed extraction, cucumber waters; and the composting of byproducts on on-site processing (which may be subject to additional land use permitting).