



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

April 5, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment
DLCD File Number 005-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: April 20, 2007

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

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

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

Cc: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative
Sterling Anderson, Marion County

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FORM 2

DEPT OF

DLCD NOTICE OF ADOPTION

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

APR 02 2007

(See second page for submittal requirements)

LAND CONSERVATION
AND DEVELOPMENT

DEPT OF

APR 02 2007

Jurisdiction: MARION COUTNY

Local File No. ZC/CP06-4:

(If no number, use none)

Date of Adoption: 3/22/07
(Must be filled in)

Date Mailed: 03/29/07
(Date mailed or sent to DLCD)

LAND CONSERVATION
AND DEVELOPMENT

Date the Notice of Proposed Amendment was mailed to DLCD: 5/4/06

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

(Please Specify Type of Action)

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

Change zone from RS (Single Family Residential) to CC (Community Commercial) and the comprehensive plan designation from Rural Residential to Commercial

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

N/A

Plan Map Changed from: Rural Residential to: Commercial

Zone Map Changed from: Single Family Residential to: Community Commercial

Location: 6862 and 6892 Portland Road NE Acres Involved: 15,000 square feet

Specify Density: Previous: New:

Applicable Statewide Planning Goals:

Was an Exception Adopted? Yes: No:

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

Zoning Code applies? Yes No

DLCD File No.: 005-06 (15270)

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

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

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

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

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

Local Contact: STERLING ANDERSON Area Code + Phone Number: 503-588-5038

Address: PO Box 14500 City: Salem

Zip Code+4: 97308 Email Address:

ADOPTION SUBMITTAL REQUIREMENTS

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

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

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

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

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the)	Case No. ZC/CP 06-4
)	
Application of)	Clerk's File No. 5163
)	
RAUL ADALBERTO RAMIREZ MORA AND)	ZONE CHANGE/COMPREHENSIVE
ARGELIA GINEZ MORALES)	PLAN AMENDMENT

ORDINANCE NO. 1246

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Raul Adalberto Ramirez Mora and Argelia Ginez Morales to change the zone from RS (Single Family Residential) to CC (Community Commercial) and the comprehensive plan designation from Rural Residential to Commercial on two parcels containing a total of 15,000 square feet at 6862 and 6892 Portland Road NE, Salem. (T6S; R2W; Section 30BD; tax lot 4100 and 4200).

SECTION II. Procedural History

The Marion County Hearings Officer held a public hearing on this application on this application on June 28, 2006. Mailed notice was provided to all property owners within 500 feet of the subject property at least 10 days before the hearing, and required notice was provided to the Department of Land Conservation and Development. On November 8, 2006, the Hearings Officer issued a report recommending that the Board deny the requested changes. The Board duly held a public hearing on the subject application on December 20, 2006. The Board took official notice was taken of the Planning Division file and the Hearings Officer's recommendation and has reviewed all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts the Findings of Facts and Additional Findings of Fact and Conclusions of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein. The Board also adopts a limited use overlay for the subject property to address concerns raised by the Hearings Officer in her recommendation in Exhibit B, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan Amendment from Rural Residential to Commercial is hereby **GRANTED**. The zone change from RS (Single Family Residential) to CC-LU (Community Commercial, Limited Use Overlay) zone is hereby **GRANTED** subject to the conditions identified in Exhibit B.

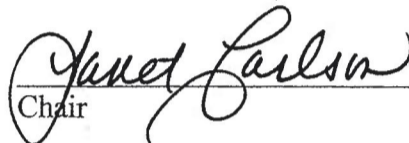
The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to Marion County Rural Zoning Ordinance Section 110.660 to reflect the new zoning.

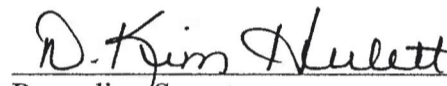
SECTION V. Effective Date

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

SIGNED and FINALIZED this 22nd day of March, 20 at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording/Secretary

JUDICIAL NOTICE

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

Exhibit A

The board, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Residential in the MCCP and zoned RS. The property is in the Labish Village Rural Community.
2. The subject 15,000 square foot property is in two tax lots that are south of Dover Avenue and east of Pacific Highway 99E (Portland Road). Property to the north and east is zoned RS and contains a commercial sandblasting operation. Property further to the north and east contain single-family dwellings. Property to the west is zoned EFU (Exclusive Farm Use) and is being farmed. Property to the south is zoned CC (Community Commercial) and contains an automobile repair and sales operation.
3. The subject property's northern tax lot contains a commercial structure. The southern tax lot contains a residence.
4. Applicants ask to change the comprehensive plan designation from Residential to Commercial and to change the zone from RS to CC.
5. The Marion County Planning Division requested comments on the application from various governmental agencies.

Marion County Fire District 1 provided a list of district standards.

The Oregon Department of Transportation (ODOT) commented that state highway access will be considered only if no other alternative to a city or county street exists, that applicants must apply for or show proof of an ODOT access permit, and that applicant may be required to construct frontage and/or access improvements.

The Marion County Department of Public Works Engineering and Permits Section commented:

Approval of the proposal would change the zone from Single Family Residential to Community Commercial on the 15,000sf subject property. According to the applicant, no new development is currently proposed on the site. However, the proposed zone change would facilitate future development, which would be likely to result in increased traffic and impacts on County Roads and State Highways in the area. The Public Works Department has the following comments, requirements, and recommendations for the proposed partition:

1. Portland Road in this vicinity is under the jurisdiction of the Oregon Department of Transportation (ODOT). The applicant shall meet ODOT's requirements for permits, access, Right-of-Way, and frontage improvements. The ODOT representative for this location is Gerry Juster, (503) 986-2732. It will be the applicant's responsibility to supply proof that this condition has been met.
2. Pursuant to Chapter 143 of the Rural Zoning Ordinance of Marion County, Oregon, the applicant is required to dedicate sufficient right-of-way on the plat to provide the public dedicated right-of-way half-width of thirty feet along Dover Avenue. This is the standard right-of-way half-width for a Local Street. However, it appears that no additional width is required. Any dedications would be to the public, not Marion County.
3. While no development is currently proposed for the site, the proposed comprehensive plan amendment and zone change would allow some types of development on this site that would generate an amount of traffic that would impact the transportation system in the area. If development occurs on this site, in order to protect the public safety and welfare, the applicant would be required to prepare a Transportation Impact Analysis (TIA) in accordance with the requirements of Marion County Public Works. Mitigation measures identified as necessary by the County upon evaluation of this TIA would need to be constructed as part of this development in order to protect the public safety and welfare. The Public Works Department may waive this TIA requirement if it finds that the proposed development would not generate enough traffic to impact the transportation system.
4. Dover Avenue along the frontage of the subject property is an unimproved turnpike section that does not meet current standards. If this Zone Change is approved and development occurs on this site, the developer shall improve Dover Avenue to appropriate standards as directed by the Public Works Department. This would include such elements as: wider pavement, defined driveways, curbs, drainage work, landscaping, and sidewalk. If future development significantly intensifies the use, it is possible that further road improvements may be necessary.
5. In accordance with Marion County Driveway Ordinance #651, driveway permits will be required for any new access, change in existing access to the public right-of-way, or access for any new development. If this Zone Change is approved, the applicant will be required to obtain a Driveway Permit and make improvements as necessary to establish safe and compliant access.

6. If future development occurs, the developer should anticipate requirements for road improvements, including contributions to off-site improvements that would be used by traffic to and from the proposed development.
7. Site grading shall not impact surrounding properties in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. If development occurs, the developer should anticipate storm drainage requirements, including detention, and will be required to verify that adequate provisions will be made for drainage of the subject property.
8. The subject property is within the unincorporated area of Marion County. Systems Development Charges will be assessed upon any development on the subject property at the time of application for building permits.
9. Any utility work in the public right-of-way will require a utility permit from Public Works and/or ODOT.

The City of Salem Department of Public Works commented:

The public sewer system serving the Labish Village is under the jurisdiction of the City of Salem. No increase demand on the sewer system shall be allowed. If the residence is to be removed sewer disconnect is required for the City of Salem or construction of a new sewer line. The concern for the City of Salem is that any future development based on the new zoning will not increase the demand on the city's sewer system.

The Oregon Department of Land Conservation and Development (DLCD) commented:

Findings for this application will need to address OAR 660-022-0030(6), (7) and (8) from the unincorporated communities rule. The cited rule sections address provisions to ensure that the proposal will not adversely affect agricultural or forestry uses (OAR 660-022-0030(6)), consistency of transportation facilities with identified functions (OAR 660-022-0030(7)), and public health hazards and environmental impacts to ensure they do not violate state/federal water quality standards, and to ensure the carrying capacity of the soil, existing water supply, and sewer services are not exceeded by the proposal (OAR 660-022-0030(8)).

All other contacted agencies contacted either did not respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.

COMPREHENSIVE PLAN AMENDMENT/GOAL EXCEPTIONS

2. All comprehensive plan amendments and goal exceptions are subject to review by DLCD. DLCD was notified as required by state law and made the comments noted above.
3. The subject property is in the Labish Village exception area. The exception was taken in 1980 for 40 acres in 172 parcels, with 141 of those parcels occupied at the time (141 may be a typographical error and 171 may have been intended because the narrative statement says all but one parcel is occupied). The authorized plan designations were Rural Residential and Commercial. The authorized zoning was RS, CR (Commercial Retail) and CG (Commercial General). The exception area findings and conclusions state that the area is a subdivision of 5,000 square foot lots with all but one occupied by dwellings.
4. Nonresource designation and zoning outside UGBs requires an exception to statewide resource planning goals. Statewide Planning Goal 2 governs goal exceptions. Goal 2 is implemented through OAR 660-004. In *Doty v. Coos County*, 42 Or. LUBA 103 (2002), LUBA stated, "as we concluded in *Friends of Yamhill County* [41 Or LUBA 247, 254 (2002)], a change in the uses allowed on land that is already subject to an irrevocably committed or physically developed exception does not require a new exception to Goal 3 . . . [W]hile the county does not have to take a new exception to Goal 3, the county must apply OAR 660-004-0018." No new goal 3 exception is required to redesignate or rezone the subject property, as long as OAR 660-004-00018(2)(a) or (b) is satisfied. Additionally, DLCD states that OAR 660-022-0030(6), (7) and (8) must be addressed.

OAR 660-004-0018

5. OAR 660-004-0018 states:
 - (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types

of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

- (2) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
 - (a) Which are the same as the existing land uses on the exception site; or
 - (b) Which meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.
- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for reasons except as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

6. The subject property is .034 acre, and contains a home and commercial building in a physically developed exception area. Applicants ask to allow commercial rather than residential plan designations and zoning on the parcels. The original land use exception allowed both designations and zoning in the exception area. The proposal will not authorize uses, density, and public facilities and services different than the existing land uses in the Labish Village exception area. OAR 660-004-0018(2)(a) is met. No evaluation of OAR 660-004-0018(2)(b) is required.

OAR 660-022-0030

7. DLCD stated that the county must address OAR 660-022-0030(6), (7) and (8) for the subject application. Under OAR 660-022-0030(6), county plans and land use regulations shall ensure that new or expanded uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses.

Property to the north, south and east are all within the Labish Village exception area and none are devoted to agricultural uses. Property to the west, across Highway 99E, is zoned EFU and is in farm use. The 80' Highway 99E right-of-way effectively cuts off activities on the subject property from farm uses. Additionally, the Labish Village properties along the Highway 99E frontage are already developed with commercial and residential uses. The proposed switch from residential to commercial use will have no greater impact on farm uses than current uses. OAR 660-022-0030(6) is satisfied.

8. Under OAR 660-022-0030(7), county plans and land use regulations shall allow only those uses which are consistent with the identified function, capacity and level of service of transportation facilities serving the community, pursuant to OAR 660-012-0060(1)(a) through (c).

Goal 12 is examined below and is met. OAR 660-022-0030(7) is satisfied.

9. Under OAR 660-022-0030(8), zoning applied to lands within unincorporated communities shall ensure that the cumulative development:
 - (A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and
 - (B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.

Labish Village is unique because the City of Salem extended sewage service to the Village in the 1970s due to failing septic systems causing serious health problems in the area. The City of Salem commented adamantly that commercial designation of the subject property should cause no additional load on the city's sewer system. This application must be conditioned to meet City of Salem requirements to ensure no additional health hazards will occur and that the land, water and sewer capacities will not be exceeded. If sewer use is limited, then water and soil use will be limited as well. Applicants do not object to a condition limiting sewer usage but the difficulty here is crafting an appropriate condition that will ensure there will be no increase in sewage use at the site. The applicants, through their attorney, submitted additional information concerning a limited use overlay for the subject property. Based on the information in the record, and the additional evidence submitted at the board hearing, the board finds OAR 660-022-0030(8) is satisfied.

STATEWIDE PLANNING GOALS

10. Relief from one goal does not excuse compliance with other Statewide Planning Goals, and, comprehensive plan amendments must be consistent with Statewide Planning Goals.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The notice and hearings process before the hearings officer and governing body provides an opportunity for citizen involvement.

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific.

Applicants propose a site-specific comprehensive plan amendment. Marion County notified Marion County Fire District 1, School District 24-J, ODOT, DLCD, the Pudding River Watershed Council and various Marion County departments of the proposed comprehensive plan amendment. Notified agencies comments were considered and would be accommodated to the extent possible with placement of an appropriate condition limiting sewer usage on the subject property.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

The subject site is currently under an exception from the requirements of goal 3.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest species as the leading use on forest land consistent with sound management of soil, air, water, fish and wildlife resources and to provide for recreational opportunities and agriculture.

The subject site is not in a forest zone and has no known forestland capability. Goal 4 is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To conserve open space and protect natural and scenic resources.

No goal 5 resources are identified on or near the subject site. Goal 5 is not applicable.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

Sewage disposal is the main issue under this goal. With placement of an appropriate condition limiting sewer usage on the subject property this goal could be met.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect life and property from natural disasters and hazards.

The subject site is not in an identified floodplain or geologic slide hazard area. Goal 7 is not applicable.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No goal 8 resources are identified on or near the subject site, and are not implicated by this application. Goal 8 is not applicable.

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

This goal addresses commercial and industrial development, primarily in urban areas. Under OAR 660-009-0010(1), OAR Chapter 660, Division 9 applies only to comprehensive plans for areas within urban growth boundaries. Additional planning for commercial development outside urban growth boundaries is not required or restricted by this rule. Portions of the subject property have been in commercial use, and the site will contribute to the area economy. Goal 9 is satisfied.

Goal 10: Housing. To provide for the housing needs of citizens of this state.

OAR 660-08 defines standards for compliance with Goal 10. OAR 660-08 deals with the provision of adequate numbers of needed housing units, and the efficient use of buildable land within urban growth

boundaries. Though one housing unit might be displaced by this comprehensive plan amendment, the loss is *de minimis* and the subject site is not within a UGB. Goal 10 does not apply.

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Access to Highway 99E is controlled by ODOT. Proof of ODOT permitting will be required as a condition of approval if access is taken via Highway 99E. If access is taken via the county road, Dover Avenue, the Marion County Department of Public Works has requested and applicant does not oppose conditions of approval relating to roadway improvements. Additionally, as noted above, Labish Village is on the City of Salem sewer system and Salem wants to ensure there is no increase in septic use due to the redesignation of the site. The board finds that applying a limited use overlay to the subject property will ensure compliance with Goal 11. Goal 11 is satisfied.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans and land use regulations that significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

Under OAR 660-012-0060(2), a plan or land use regulation amendment significantly affects a transportation facility if it:

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

The subject application does not seek, and is not likely to result in, change in the functional classification of any road, change the standards implementing the functional classification system, or

reduce performance levels of the roadway facilities. ODOT is responsible for Highway 99E. Requiring applicants to provide proof of conformance with ODOT requirements prior to development of the property to ensure Highway 99E is not negatively affected can be made a condition of approval. Additionally, Marion County Department of Public Works has requested roadway improvements to ensure adequate access to the site should access be via Dover Avenue. With appropriate conditions, goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

Sewer capacity limitations will restrict the type and intensity of uses allowed on the subject property, in turn limiting energy consumption. Goal 13 is satisfied.

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use.

The CC zone has been acknowledged as compliant with goal 14. Uses of the property will be even more limited because of sewer use restrictions. Goal 14 is satisfied.

Goals 15, Willamette River Greenway, 16, Estuarine Resources, 17, Coastal Shorelands, 18, Beaches and Dunes, and 19, Ocean Resources, are not applicable because the subject site is not within the Willamette River Greenway, or near any ocean or coastal related resources.

11. The subject proposal, with the conditions noted above, is consistent with statewide planning goals.

MCCP

12. Under the MCCP, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by the zone change procedure established in the MCZO. A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one ownership of two tax lots and is being processed with a zone change application as a quasi-judicial plan amendment.

13. Comprehensive plan amendments must be consistent with applicable MCCP goals and policies.

General rural development policy 2 - "Strip-type" commercial or residential development along roads in rural areas should be discouraged.

Commercial zoning is present on the adjacent parcel to the south and on several parcels more northerly of the subject property. The increase in commercial roadway frontage will be minimal and is contained by the boundaries of Labish Village. Commercial frontage development is unlikely to expand beyond Labish Village and this property is well within the confines of the Labish Village exception area. This application will not significantly alter the pattern of development in this area. This policy is satisfied.

General rural development policy 3 - Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

The subject property is in an exception area that was set aside for rural residential and commercial uses. The adjacent parcel is zoned CC as are several parcels northerly of the subject property. The CC zone has been acknowledged as compliant with statewide planning goals so the uses have been deemed appropriate and compatible. Sewer issues on the site will effectively limit the type of uses allowed or even feasible on the property. The subject property is well insulated from farm uses. Additionally, a declaratory statement acknowledging and accepting farm practices may be required as a condition of approval. The board finds that with applying a limited use overlay to the zone change, this policy is satisfied.

Rural development policy 1 - Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated rural communities or rural service centers.

The subject property is in a rural community. This policy is satisfied.

Rural service policy 1 - The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

Applicants will be required to meet any ODOT, DPW and Building Inspection requirements. The board finds that with applying a limited use overlay to the zone change, this policy is satisfied.

Rural service policy 2 - It is the intent of Marion County to maintain the rural character of areas outside of urban growth boundaries by allowing those uses that do not increase the potential for urban services.

As discussed above, the site already receives sewer services from the City of Salem and the City of Salem will not allow additional sewer load for the subject property. The board finds that with applying a limited use overlay to the zone change, this policy is satisfied.

Rural service policy 3 - Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

As discussed above, the site's sewer limitations, with accompanying conditions, will not encourage inappropriate development. The board finds that with applying a limited use overlay to the zone change, this policy is satisfied.

14. With the conditions of approval noted above, comprehensive plan amendment approval would be recommended.

ZONE CHANGE

15. According to MCZO 123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:
 - (a) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
 - (b) The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
 - (c) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
 - (d) The other lands in the County already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
 - (e) If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely

affect allowed uses on adjacent properties zoned for less intensive uses.

16. This application includes a comprehensive plan amendment request that would amend the comprehensive plan designation from Rural Residential to Commercial. If the comprehensive plan amendment were approved, the proposed CC zone would be consistent with the commercial plan designation. As noted in the comprehensive plan amendment analysis above, applicable MCCP policies is satisfied with conditions requiring roadway improvements and the limiting use overlay. MCZO 123.060(a) is satisfied.
17. Commercial use has been made of at least one of the parcels over the last twenty years or so. Commercial zoning directly abuts the property to the south and also exists more northerly of the parcel. Farm use across Highway 99E will not be disturbed by commercial use of the property to any greater extent than already exists in the area. The property's sewer limitations and an LU overlay or other limiting condition will keep commercial uses to a reasonable size and a reasonable intensity. The proposed zone change is appropriate considering the surrounding land uses and the density and pattern of development in the area. MCZO 123.060(b) is satisfied.
18. Facilities, services and transportation networks were discussed above and an appropriate level of services can be provided. ODOT or Marion County DPW permits, fire department sign off, and limits on sewer usage can be required as conditions of approval to help ensure that adequate public facilities, services, and transportation networks are in place or will be provided concurrently with redevelopment of the property. The board finds that with applying a limited use overlay to the zone change, MCZO 123.060(c) can be satisfied.
19. The subject site is already committed to nonfarm use, and has been at least partially in commercial use before. Availability of other lands for development is not a factor in this case as it is in an existing exception area. MCZO 123.060(d) is satisfied.
20. The CC zone is the only appropriate commercial zone for this rural community site. Commercial use is already made of the property to the east for a sandblasting operation even though that property is not commercially designated. The property directly south is already in commercial designation and use. Highway 99E is a major transportation facility, and already impacts uses along the highway to some extent. The highway provides at least an 80' right-of-way buffer for the EFU zoned land across the highway. A declaratory statement acknowledging and accepting farm practices can also be signed and entered into the chain of title of the subject property to help ensure compatibility with farm use. The new zone will not allow uses that would significantly adversely affect allowed uses

on adjacent properties zoned for less intensive uses. MCZO 123.060(e) is satisfied.

21. With the conditions of approval noted above, zone change approval would be recommended.

LIMITED USE OVERLAY ZONE

22. According to MCZO 176.010, the purpose of the LU overlay zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses that may be permitted if certain criteria are met. However, on a particular property, certain uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the LU overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone.

The LU overlay zone may also be applied to comply with use limitations for a goal exception required by OAR 660-004. It is the intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.

Under MCZO 176.030, the LU overlay zone is applied at the time the underlying zone is being changed. It is not necessary to mention in the hearing notice of a rezoning application that the overlay zone may be applied. The ordinance adopting the overlay zone shall include findings showing that: 1) no zone has a list of permitted and conditional uses where all uses would be appropriate; 2) the proposed zone is the best suited to accommodate the desired uses; 3) it is necessary to limit the permitted or conditional uses in the proposed zone; and 4) the maximum number of acceptable uses in the zone have been retained as permitted or conditional uses. The ordinance adopting the overlay zone shall by section reference, or by name, identify those permitted uses in the zone that become conditional uses and those permitted or conditional uses that are deleted from the underlying zone. A use description may be segmented to delete or require a conditional use for any aspect of a use that may not be compatible.

23. The CC zone allows several intensive uses that could affect the sewer system capacity. Uses of the site must be limited in some way to ensure sewer usage is not increased. The board adopts the

limited use overlay described in Exhibit B, pursuant to MCZO
176.030, for the reasons described above in the findings.

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP 06-4/Ramirez:

CONDITIONS OF APPROVAL:

Pursuant to the Marion County Rural Zoning Ordinance Chapter 123.070, the following conditions apply to the CC-LU (Community Commercial, Limited Use) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The CC-LU zoning significantly intensified the use of the land.

1. Limited Use Overlay Zone

- a. Pursuant to Marion County Rural Zoning Ordinance Section 176.030, no zone included a list of permitted and conditional uses where all uses would be appropriate. The proposed CC zone is the best suited to accommodate the desired uses, however it is necessary to limit the permitted or conditional uses in CC zone. The maximum number of acceptable uses in the zone have been retained as permitted or conditional uses.
- b. A Limited Use Overlay zone is applied to the CC zoning. The uses permitted outright in the overlay zone are:
 - i. The following uses are permitted in an existing building or a new or expanded building up to 4,000 square feet subject to Section 143.060(D):
 - (A) Office for professional services;
 - (B) Used merchandise store (SIC 5932);
 - (C) Hardware store (SIC 5251);
 - (D) Candy, nut, and confectionary store (SIC 5441);
 - (E) Gift and souvenir shop (SIC 5947);
 - (F) Retail art dealer;
 - (G) Household appliance store (SIC 5722);
 - (H) Radio, television, and consumer electronics store (SIC 5731);
 - (I) Sporting goods store (SIC 5941);
 - (J) Book store (SIC 5942);
 - (K) Photographic studio (SIC 7221);
 - (L) Shoe repair shop (SIC 7251);
 - (M) Repair services, including electrical; watch, clock and jewelry; reupholstery and furniture (SIC 76);
 - (N) Watch, clock and jewelry repair (SIC 763);
 - (O) Video Tape Rental (SIC 7841);
 - (P) Gunsmith;
 - (Q) Agricultural equipment repair;
 - (R) Agricultural services (SIC 07);
 - (S) Caretaker's dwelling;
 - (T) Uses legally established and existing on July 19, 2000. Such uses are permitted pursuant to this section only on the lot(s) or parcel(s) where they existed on July 19, 2000;

- (U) Wireless communication facilities attached, subject to Section 125.110.
- ii. The following uses are conditional uses in an existing building or a new or expanded building up to 4,000 square feet subject to Section 143.060(D):
- (A) Nursery, lawn, and garden supply store (SIC 5261);
 - (B) Meat and fish markets (SIC 5421);
 - (C) Fruit and vegetable market (SIC 5431);
 - (D) Retail bakery (SIC 5461);
 - (E) Florist (SIC 5992);
 - (F) Special trade contractors (SIC 17);
 - (G) Grocery store, limited to a maximum of 4,000 square feet of floor space in a rural community (SIC 5411 and 5499);
 - (H) Fire station;
 - (I) Public and private utility facilities and buildings including cooperatives necessary for public service;
 - (J) Home occupations, subject to section 120.075;
 - (K) Retail and service uses not listed in section 143.020 and not exceeding 4,000 square feet of floor space (SIC 50 through 89 except 70 and 88);
 - (L) Wireless communication facilities subject to section 120.080.
- iii. All other uses are deleted for the purposes of the Limited Use Overlay Zone.
2. State highway access shall be considered only if no other alternative to a county road exists. The applicant shall meet ODOT's requirements for permits, access, Right-of-Way, and frontage improvements. The ODOT representative for this location is Gerry Juster, (503) 986-2732. It will be the applicant's responsibility to supply proof that this condition has been met.
 3. Prior to issuance of any building permits, the applicant shall be required to prepare a Transportation Impact Analysis (TIA) in accordance with the requirements of Marion County Public Works. Mitigation measures identified as necessary by the County upon evaluation of this TIA would need to be constructed as part of this development in order to protect the public safety and welfare. The Public Works Department may waive this TIA requirement if it finds that the proposed development would not generate enough traffic to impact the transportation system.
 4. Prior to issuance of any building permits, the applicants shall improve Dover Avenue to appropriate standards as directed by the Public Works Department. This would include such elements as: wider pavement, defined driveways, curbs, drainage work, landscaping, and sidewalk. If future development significantly intensifies the use, it is possible that further road improvements may be necessary.
 5. In accordance with Marion County Driveway Ordinance #651, driveway permits will be required for any new access, change in existing access to the public right-of-way, or access for any new development. If this Zone Change is approved, the applicant will be required to obtain a Driveway Permit and make improvements as necessary to establish safe and compliant access.
 6. If future development occurs, the developer should anticipate requirements for road

improvements, including contributions to off-site improvements that would be used by traffic to and from the proposed development.

7. Site grading shall not impact surrounding properties in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. If development occurs, the developer should anticipate storm drainage requirements, including detention, and will be required to verify that adequate provisions will be made for drainage of the subject property.
 8. The subject property is within the unincorporated area of Marion County. Systems Development Charges will be assessed upon any development on the subject property at the time of application for building permits.
 9. Any utility work in the public right-of-way will require a utility permit from Public Works and/or ODOT.
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EXHIBIT C

The following describes property is rezoned from RS (Single Family Residential) to CC-LU (Community Commercial, Limited Use Overlay).

