



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

5/17/2010

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

FROM: Plan Amendment Program Specialis

SUBJECT: Morrow County Plan Amendment
DLCD File Number 008-09

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, May 28, 2010

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 Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged

Cc: Carla McLane, Morrow County
Jon Jinings, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative

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FORM **2**

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

MAY 10 2010

LAND CONSERVATION
AND DEVELOPMENT
For Office Use Only

This Form 2 must be mailed to DLCD within 5-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: *Morrow County*

Local file number: *AC-019-10; AC(M)-020-10; AZ-021-10; AZ(M)-022-10*

Date of Adoption: *May 5, 2010*

Date Mailed: *May 7, 2010*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: *Applied Current Regulation to new land*

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

Amended the Comprehensive Plan; Amended the Comp Plan Map changing the designation from 'Industrial' to 'Commercial'; Applied the Tourist Commercial use zone; Amended the Zoning Map changing the designation from 'Space Age Industrial' to 'Tourist Commercial.'

Does the Adoption differ from proposal? Please select one

The original proposal included policy changes that were not adopted.

Plan Map Changed from: *Industrial* to: *Commercial*

Zone Map Changed from: *Space Age Industrial* to: *Tourist Commercial*

Location: *portion of tax lot 119 of Assessor's Map 4124* Acres Involved: *5.2±*

Specify Density: Previous: *N/A*

New: *N/A*

Applicable statewide planning goals:

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

Was an Exception Adopted? YES NO *Goals 3, 14*

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

~~Yes No~~

If no, did Emergency Circumstances require immediate adoption?

~~Yes No~~

DLCD file No. 008-09 (17989) [16124]

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

ODOT, DWRD, ODEQ, DLCD, Morrow County Planning & Public Works, City of Boardman, Boardman Rural Fire Protection District, Port of Morrow

Local Contact: *Carla McLane*

Phone: *541 922-4624* Extension: ~~4~~

Address: *PO Box 40*

Fax Number: *541-922-3472*

City: *Irrigon, OR*

Zip: *97844*

E-mail Address: *cmclane@co.morrow.or.us*

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.



PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844
(541) 922-4624 or (541) 676-9061 x 5503
FAX: (541) 922-3472

NOTICE OF DECISION

May 7, 2010

AC-019-10, AC(M) -020-10, AZ-021-10, and AZ(M)-022-10
Adoption Amending the Morrow County Comprehensive Plan, Comprehensive Plan and Zoning Maps, and Applying the Tourist Commercial Use Zone

This notice is to inform you that on May 5, 2010, the Morrow County Court adopted Ordinance Number MC-03-2010 amending the Morrow County Comprehensive Plan, Comprehensive Plan Map, Applying the Tourist Commercial Use Zone of the Morrow County Zoning Ordinance and Amending the Zoning Map to allow for the siting of a Love's Travel Stops & County Stores.

The requirements for filing an appeal of the decision to the Land Use Board of Appeals (LUBA) are set forth in ORS 197.830 to 197.845. State law and associated administrative rules promulgated by LUBA describe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after notice of the decision sought to be reviewed becomes final. Notice of this decision was mailed on May 7, 2010. The deadline to appeal is May 28, 2010.

Cordially,

A handwritten signature in black ink, appearing to read "Carla McLane".

Carla McLane
Planning Director

Encl: County Ordinance MC-03-2010

I certify that on May 7, 2010, I mailed a copy of this Notice of Decision by first class mail to all persons entitled to notice of this decision.

A handwritten signature in black ink, appearing to read "Mary P. Curry".

Mary Curry, Office Manager

5/7/10

Date

**BEFORE THE MORROW COUNTY COURT
OF MORROW COUNTY**

AN ORDINANCE AMENDING THE MORROW COUNTY COMPREHENSIVE PLAN, COMPREHENSIVE PLAN MAP, APPLYING THE TOURIST COMMERCIAL USE ZONE OF THE MORROW COUNTY ZONING ORDINANCE AND AMENDING THE ZONING MAP BY ADOPTING THE RECOMMENDATION OF THE COUNTY PLANNING COMMISSION ON AC-019-10, AC(M)-020-10, AZ-021-10 AND AZ (M)-022-10 REGARDING THE APPLICATION OF LOVE'S TRAVEL STOPS & COUNTRY STORES

**COUNTY
ORDINANCE
NUMBER:**

mc-03-2010

WHEREAS, ORS 203.035 authorizes Morrow County to exercise authority within the County over matters of County concern; and

WHEREAS, an application was filed by Love's Travel Stops & Country Stores for a Comprehensive Plan Map amendment from Industrial to Commercial, and Zoning Map amendment from Space Age Industrial "(SAI)" to Tourist Commercial ("TC") to facilitate the establishment of a travel center on a site east of Tower Road and south of Interstate-84; and

WHEREAS, the Morrow County Planning Commission held hearings and accepted testimony to review the requests on January 19, 2010 at the Port of Morrow Building, Boardman, Oregon and on February 23, 2010 at Heppner City Hall, Heppner, Oregon; and

WHEREAS, the Morrow County Planning Commission voted to recommend the applications to the County Court and adopted Final Findings of Fact signed by the Planning Commission Chair David Sykes on February 24, 2010; and

WHEREAS, the Morrow County Court did consider the testimony and evidence presented to them at public hearings held before the Court on March 24, 2010 and April 7, 2010 at the Port of Morrow Building in Boardman, Oregon; and

WHEREAS, the Morrow County Court did determine that the proposed Comprehensive Plan Map and Zoning Map amendments are in the best interests of Morrow County, affirmed the decision of the Planning Commission, and adopted the findings of the Planning Commission and Supplemental Findings as discussed below,

NOW THEREFORE THE COUNTY COURT OF MORROW COUNTY ORDAINS AS FOLLOWS:

Section 1 Title of Ordinance:

This Ordinance shall be known, and may be cited, as the “2010 Love’s Travel Center & Country Stores Comprehensive Plan and Zone Change Approval.”

Section 2. Decision:

The Morrow County Court adopts the recommendation of the Planning Commission and the Planning Commission’s findings are adopted as the findings of the Morrow County Court, as supplemented below. To the extent that there is a conflict between the Planning Commission’s decision and findings and these findings, these findings prevail.

Section 3. Supplemental Findings:

Devin raised a number of concerns with reports from experts regarding the Applicant’s proposal and Planning Commission’s recommendation relating to consistency with requirements of the Oregon Revised Statutes (“ORS”) and Oregon Administrative Rules (“OAR”), the Morrow County Comprehensive Plan and Zoning Ordinance, transportation, wastewater disposal, potable water, and stormwater. We consider these issues in the following supplemental findings.

1. The Comprehensive Plan amendment and Zone change do not improperly rely on the County’s approval of a partition.

The Court does not find any reason in Devin’s discussion of this issue to believe that development of 12 acres on a 50 acre parcel would be any different from the development of 12 acres on a 457 acre parcel. As the Applicant has noted, if the land had been acquired under a lease arrangement, the issues relating to the partition would simply disappear. The Planning Commission considered impacts of the proposal, as does the Court. The size of the site, so long as it is sufficient to accommodate the intended use, we find to be irrelevant to this consideration.

In any event, the Applicant submitted evidence that the State has agreed in principle to a process that will resolve this issue by conveying the property within the easement, but outside the right of way, to the County. The County will then retain enough property for the right of way and convey the remaining property to the adjacent property owners. Thus, it is feasible for the Applicant to resolve this issue and the Court will impose a condition of approval requiring resolution of the access issue prior to occupancy of the facility.

Devin also contends that the County lacks authority to designate zoning for a site prior to a land division to create that site. We find that so-called “split zoning” - where part of a property has one plan and zoning designation and the remainder of the property has a different designation - is not uncommon in Morrow County and that we have also approved a plan and zoning designation prior to submission of an application for a partition. Devin’s assertion that a land division must be complete prior to zoning a site is inconsistent with our practice and Devin has not identified any statute or County ordinance that prevents the County from split-zoning property. In fact, MCZO 2.040(C) explicitly anticipates that zone lines will split property. It requires that, when such a line is within 100 feet of a property line, the entire parcel will be considered to be in one zone. Because the split zoning here will exceed 100 feet, this provision will not apply, but it demonstrates that the County's ordinance anticipates split-zoned parcels.

2. The Applicant adequately addressed the Airport Approach (AA) zone, which is fully consistent with the Tourist Commercial (TC) zone and allows the proposed use.

The Court disagrees with Appellant's assertion that the proposed travel center is not allowed in the AA Zone and is a "fatal flaw" in the application for two reasons. First, the proposed use is not a "truck stop" as Appellant asserts, and second, even if it is a "truck stop," Appellant's interpretation of the code to discern a prohibition of truck stops in the AA zone is incorrect and inconsistent with the relationship of an overlay zone to a base zone.

First, in reviewing the County's code, we find that the proposed use does not meet the definition of a "truck stop" under its code and, instead, is more properly classified as an agglomeration of various retail uses. MCZO 1.030 defines "truck stop" as follows:

"Truck Stop.' Any building, premise or land in or on which the service of dispensing motor fuel or other petroleum products directly into trucks or motor vehicles is rendered. A truck stop may include the sale of accessories or equipment for trucks or similar motor vehicles and may also include the maintenance, servicing, storage, or repair of commercially licensed trucks or motor vehicles."

Appellant argues that, because the proposed use dispenses motor fuel or other petroleum products into trucks or motor vehicles, it fits the definition of a truck stop. However, that cannot be correct, because then every "automobile service station" would also qualify as a "truck stop":

"Automobile Service Station.' A building or portion thereof or land used for the retail sale of automobile fuel, oil and accessories, and service." MCZO 1.030

The two definitions overlap and, thus, it can not be that the simple act of dispensing fuel transforms any use into a truck stop. Instead, we interpret the definition of the term "truck stop" to center on the term truck – a truck stop must be a facility that is intended primarily to serve trucks. This allows it to be differentiated from an "automobile service station," which primarily serves automobiles. Obviously, some trucks will use the services of an automobile service station and some automobiles will use the services of a truck stop, but the question for the Court is how the Court will distinguish the terms and the key involves the primary customer of the facility.

Applying that interpretation to this application, it does not appear that the proposed facility fits into either definition and, instead, is designed to provide services to both automobiles and trucks. The Court notes that the fast food restaurants and convenience store primarily serves automobile uses and general travelers along the freeway, and that the facility would include fueling stations that are not accessible for large trucks. These factors support a conclusion that it is automobile oriented. At the same time, the facility has fueling and parking areas that are designed exclusively for large trucks (which can also be used by large recreational vehicles) and the facility includes a truck tire repair operation. These factors support a conclusion that the facility is truck oriented. Because the facility is designed to serve both trucks and automobiles, the Court concludes that the facility is neither a "truck stop" nor an "automobile service station." Because it is not a truck stop, we conclude that there is no prohibition on siting the facility in the AA zone because, as Appellant argues, it is not a listed use.

Accordingly, the Court interprets its code to authorize the proposed use in the AA zone as included within the general category of “retail and wholesale trade facilities” and can be allowed as a conditional use under MCZO 3.090(B)(13). The fact that retail and wholesale trade facilities may be allowed in other zones is immaterial to this determination. Appellant specifically argues that this interpretation would allow “any use with a retail component” in the AA zone. That is incorrect – retail uses are allowed in the AA zone, but only as a conditional use, which is exactly what is contemplated by the language in the AA zone allowing “retail and wholesale trade facilities.” The overlay zone allows such uses, provided it is authorized by the underlying zone, and the use must be reviewed under the CUP process to ensure their compatibility with the airport.

Moreover, the character of the AA zone as an overlay zone further supports such a conclusion. The purpose of the conditional use aspect of the overlay zone is to provide a review process for non-airport and non-agricultural uses proposing to locate within the airport approach zone to assure that such uses will not be detrimental to airport operations. Uses that may be considered through the CUP process include “retail and wholesale trade facility” (MCZO 3.090.B.13). The AA Zone provides for review of certain types of uses that would otherwise be permitted in a base zone, and to suggest that the reverse is true—i.e., that the AA Zone precludes from consideration certain uses—simply is incorrect. The Court interprets the broad language “retail and wholesale trade facilities” to not distinguish among those uses, but to broadly authorize such uses in the AA zone, provided they are otherwise authorized by the underlying zone.

We find that the analysis of the term “retail use” in our code provided by the Applicant’s planning consultant to be reasonable and reliable as an interpretation.¹ We reject the Appellant’s claims that retail uses cannot be allowed in the AA Zone and that by acknowledging that the AA Zone identifies broad categories of use types subject to review, we somehow open the floodgates to incompatible uses around airports.

Appellant argues that this interpretation would open the floodgates to a surge of commercial uses in a variety of County zones, including the GI, PI and RSC zones. Although the County might welcome such a surge, the Court finds it unlikely, because the underlying zoning also controls the types of uses that could be allowed. Retail uses would not be allowed in an EFU zone, for example. Here we interpret the phrase “retail and wholesale trade facility” as encompassing the types of uses that can be authorized in the TC zone, we do not change the relationship of a base zone and overlay zone.

As far as Appellant’s argument that this would then allow a whole slew of additional uses in other zones, the Court disagrees. First, MCZO 3.060(A)(7) allows “retail trade establishment” uses. There is nothing incongruent about allowing a variety of retail uses in the general commercial zone. As far as the other zones Appellant is concerned with, both the GI and PI zone allowed “retail, wholesale or service business establishments,” with certain exceptions and limitations. MCZO 3.070(A)(1) & 3.073(A)(17). Again, there is nothing anomalous about allowing retail uses in a zone that specifically allows “retail . . . business establishments.” Similarly, the rural service center zone also allows for a “retail store, office or service

¹ Letter dated April 7, 2010, from Leslie Ann Hauer AICP.

establishment.” MCZO 3.030(A)(3). In each of those zones, retail uses are allowed and Appellant gives no explanation of why the allowance of retail uses in those zones has some effect on how the Court interprets whether the proposed travel center is a retail trade facility, such that it is allowed in the AA zone.

Finally, the Court notes Appellant’s assertion that the “and” in the use description - “retail and wholesale trade facilities” - means that a use must include both a retail and a wholesale component. We do not agree with this imaginative interpretation of this provision. Specifically, the Court notes that “manufacturing and warehousing” is also listed without the implication that elements of both types of uses must be conducted jointly. Nor must a “private or public grounds and buildings for games” include both grounds and buildings, nor must it provide for all items listed in the definition of “games, sports, riding arenas and race tracks.” Instead, the Court interprets the code in a more natural fashion that the use of the conjunction “and” in this context allows both retail and wholesale trade facilities, but does not require both. In any event, the review process in the AA Zone is precisely the mechanism to assure that the area around an airport will be protected.

Devin also expresses its concerns over safety issues. The Court relies on the letter of Michael B. Key, Love’s Director of Environmental Services, which explains various safety measures that will be utilized in the construction of fuel storage facilities and in the operation of dispensing fuel. The Court believes that this letter provides sufficient basis to conclude that there is no safety problem inherent in the use. This is not to say that an accident could never happen, rather that we believe that all prudent measures will be taken to assure that the maximum level of safe operations will occur.

3. Did the Applicant adequately address transportation impacts?

The application included the Traffic Impact Report (“TIA”) prepared for the partition, which focused on the travel center use, and an additional report (“TIAR”) that considered the “worst case” as required by OAR 660-012-0060 (the Transportation Planning Rule—“TPR”). In response to the Planning Commission’s concerns about the potential for conflicts with harvest season traffic to and from the storage sheds on the west side of Tower Road, the Applicant provided an additional supplemental report to consider this issue.

The Court finds that the Applicant’s consultant USKH, Inc. provided credible information on the potential for impacts to the transportation system, even considering all of the concerns raised by Devin’s expert analysis, which identifies a number of issues that will each be addressed in turn.

First, in the Lancaster memorandum dated March 23, 2010, Lancaster raises concerns regarding the lack of certain calculations that it would like to see accompanying the traffic reports. In particular, Lancaster states that “in our experience preparing traffic reports . . . it is a routine requirement to include queuing calculations for the off ramps.” Similarly, in its April 6, 2010, memorandum, Lancaster again states that certain calculations were not available for review. However, Lancaster never identifies any legal requirement for those calculations to be included and the Court is aware of none. The Applicant submitted its analysis to both the County Public Works department and ODOT, both of which indicated that the analysis adequately addressed the areas affected. Accordingly, we find no error with not submitting the calculations, which Lancaster was free to do on its own.

Next, Lancaster identifies what it calls a “site area discrepancy.” However, the size of the area subject to this proposal is 49.1 acres and this Court so finds; to the extent any analysis is based on a 52 acre site, it would overstate the impacts of the traffic generation, so the Court does not find any error in the mis-stated size of the site area; if anything, it provides a greater comfort level with the analysis. Lancaster also discusses what it calls inconsistencies in the TIA regarding the size of the area available for development. USKH responded to this issue in its supplemental analysis dated March 31, 2010, and resolved that issue by re-evaluating the proposal under Lancaster’s site area of 34.4 acres and determining that the proposed development still complied with the TPR and all applicable criteria.

Next, Lancaster calls into question the use of a per acre trip rate. The Court notes that Lancaster does not call these assumptions wrong, but that, in Lancaster’s opinion, they are unreasonable. In this case, the Court is caught between two experts and the Court chooses to believe Applicant’s expert because they have done the actual analysis, instead of simply nit-picking. In addition, the Court notes that, in its April 6, 2010, memorandum, Lancaster specifically notes that USKH had revised its analysis and accurately assessed trip generation. Perhaps more importantly, the Court is persuaded by its members’ experiences with this portion of the County’s road system and the lack of any real concern about traffic in this relatively unused portion.

In any event, as noted in USKH’s March 31, 2010, analysis, the trip generation rates under the actual use proposed is less than the trip generation for the worst case scenario used for the evaluation and, accordingly, the per acre trip method is not important because this zone change is explicitly conditioned on limiting the uses on the site. In other words, the analysis in the TIA assumed a worst case scenario; however, the worst case scenario will not come to pass because this zone change is expressly conditioned on limiting the uses on the site and the trip generation for that use is less than the trip generation used in the worst case scenario. Lancaster also suggests that a different worst case scenario should have been used because of the AA zone; however, that criticism is based on the uses not being limited. Because the Court has chosen to limit the uses allowed by this zone change, this criticism is no longer valid.

Next, Lancaster asserted that two intersections are found to be failing in the long term TPR evaluation. In particular, Lancaster determined that the access road, Tower Road intersection would fail, as would the Tower Road, northbound I-84 intersection. However, as indicated in the March 31, 2010, supplemental memorandum from USKH, USKH concluded that the projects to remedy that situation are not needed on the day of opening and “if the site is not developed beyond the proposed Love’s, they will not be necessary.” In other words, the intersections fail only under a “worst case scenario.” Because this decision is explicitly conditioned on the development being limited to the uses proposed in this application, we conclude that the proposed development will not significantly affect any transportation facilities under the TPR.

In its April 6, 2010, memorandum, Lancaster suggests that there is no evidence that ODOT would support a re-configuration of the Tower Road at north I-84 on-ramp. However, at the April 7, 2010, hearing, staff introduced an e-mail from ODOT indicating they would support such a reconfiguration. Similarly, Lancaster argues that the Tower Road at the access road would fail. Lancaster’s analysis seems to ignore the finding in the March 31, 2010, USKH memorandum that “if the site is not developed beyond the proposed Love’s [the improvements]

will not be necessary.” Accordingly, the Court finds that no left turn lanes or traffic signals will be necessary at this location and that there is no violation of the TPR.

Lancaster also expresses concern in its April 6, 2010, memorandum regarding the freeway ramps analysis and that specific areas of deficiency need to be identified or the extent of improvements, but Lancaster does not explain its basis for why it needed to see this additional information. Both ODOT and the County Public Works department have reviewed the proposed improvements and signed off on the conditions placed on the proposal to remedy any deficiency; the Court is not aware of any legal obligation to satisfy Lancaster’s demand for additional information. The Applicant was required to show that there would be no significant impact to the road system and, if there is, to take steps in accordance with the TPR to remedy those impacts. It has done so through its analysis and the conditions of approval imposed by this decision. Lancaster does not explain where there is a violation of the TPR.

Lancaster also identifies its concerns regarding seasonal variations. Lancaster does not suggest that there is anything wrong with the seasonal variation sensitivity analysis prepared by USKH for the conditional use permit (CUP) application, but suggests that a similar sensitivity analysis should have been performed for this application as well. USKH indicated that in its professional opinion, the sensitivity analysis was not needed because of the conservative nature of the preparation of the re-zoning analysis. The Court concludes that there was no need to prepare the sensitivity analysis to comply with the TPR.

Lancaster also expresses concern regarding how traffic anticipated to be generated by the speedway was handled. As explained in the March 31, 2010, USKH memorandum, the speedway is conditioned to provide significant improvements to the area roadway system. Because the speedway will not put any additional traffic on the system without making the improvements identified in the speedway decisions, the system will be sufficient to handle that traffic. That capacity is more than sufficient to accommodate both the speedway traffic and the traffic generated by this proposal.

Ultimately, as discussed above, the traffic concerns come down to a battle of the experts. One expert has performed the necessary analysis, including reviewing a worst case scenario, providing a TIA, performing a sensitivity analysis, reviewing speedway documents and proposing mitigation. The other expert has not appeared to have done any of its own analysis or reviewed additional material that he believed should have been accounted for. The Court chooses to believe the expert who has done more work and whose recommendations comport with the Court’s understanding of the conditions of its road system. Ultimately, the only traffic issue raised by Devin involves the TPR. The Court concludes that the Applicant has adequately addressed the TPR and, by limiting the uses, to ensure that the uses allowed on the site are consistent with the function, capacity and performance standards of the area roadway system.

4. Has the Applicant adequately addressed stormwater and wastewater impacts?

MCZO 8.050(B) requires an applicant to demonstrate that “public services and facilities are sufficient to support a change in designation, including, but not limited to, streets and roads.” As this Court concluded in the partition decision, which was upheld at LUBA, that on site wastewater and stormwater are not “public facilities,” because they serve only one property. Therefore, stormwater and wastewater impacts are not issues under MCZO 8.050(B) and are not at issue in this application.

Devin also raises several issues under MCZO 8.050(C), which states “That the proposed amendment is consistent with unamended portions of the Comprehensive Plan and supports goals and policies of the Comprehensive Plan.” The Plan provision cited by Devin are not criteria and do not apply directly to this application. Even if the provisions did apply, the proposal is fully consistent with those policies. Natural Resources Policies, General Policy 1.L simply requires all discharges to meet state and federal environmental quality standards. Generally, the County does not enforce state and federal environmental quality standards, so the County is not the appropriate entity to judge whether the facility will do so; that will be determined when the Applicant applies for the appropriate permits from the bodies that enforce those standards, e.g., the septic facility will have to obtain the necessary permits from the Oregon Department of Environmental Quality, which will review the environmental standards at that time. What we can tell from the material submitted by the Applicant is that it is feasible to obtain such permits and, accordingly, there is no issue on consistency with this provision.

Devin also raises Natural Resource Policies, General Policy 1.M. That policy requires the County to establish a policy of analysis of requests for zone changes, use permits and the like to determine their affect on air, water, and land quality. The County has done just that in adopting its land use ordinance and, by going through that analysis, the Applicant is fully complying with this policy.

Even though these are not public facilities, nor are the Plan provisions cited by Devin applicable, the Court will address whether stormwater or wastewater will present any issues on the development of this facility.

Morrow County is a sparsely populated rural area, with very few public services and facilities, other than the road system, provided beyond the several urban growth boundaries of the cities in the county. The Court has considered the adequacy of the transportation system, as discussed above. Beyond roads, however, we find that no publicly provided services or utilities are contemplated or necessary for the site or proposed use.

The Applicant’s consulting engineer, USKH, Inc., has provided reports and testimony at our public hearings relating to the potential for disposal of stormwater, including the fact that the needed size of an infiltration area is approximately 3/4 acre. Given the developed area that is proposed—approximately 12 acres—and the site size—approximately 49.1 acres—the Court concludes that there will be no problem in accommodating stormwater and providing treatment according to standard and accepted practices. This part of our County has an average annual rainfall of 7 to 9 inches, and Devin’s consultant does not convince us that stormwater will be a significant concern given the site size.

The Applicant’s consulting engineer, USKH, Inc. has also provided reports and testimony at our public hearings relating to disposal of sewage on the site. The soil depth on the site ranges from very little to several feet, which precludes a standard septic system. However, the Applicant’s consulting engineer has testified that alternative methods of sewage disposal are typical and commonly accepted, as the conditions on the Applicant’s site are not unusual in Morrow County or the region. Devin’s consultant does not persuade us that a sewage disposal system must be designed and approved prior to zoning for the site. This is certainly not the typical design review process for land development in Morrow County, and not a pathway that

the Court considers necessary here given the expert testimony from USKH, Inc. and our experience with other developments in the area.

5. Has the Applicant adequately addressed the water source and supply?

MCZO 8.050(B) requires an applicant to demonstrate that “public services and facilities are sufficient to support a change in designation, including, but not limited to, streets and roads.” As this Court concluded in the partition decision, which was upheld at LUBA, that on site wells that supply only one property with water are not “public facilities,” because they serve only one property. Therefore, water supply is not an issue under MCZO 8.050(B) and is not at issue in this application.

In any event, the Applicant’s consulting engineer, USKH, Inc., reviewed available data including well logs from the area and discussed water issues with the regional Watermaster. Based on analysis of the data and these conversations, USKH, Inc. concluded, and the Court agrees, that it is reasonable to assume that an on-site well can be used to supply water for the proposed use. Devin’s consultant points out that there is no guarantee that drilling a well will find water and that a water right will be approved. While we agree with Devin’s consultant that there is no certainty, lack of certainty is not the same as the reasonable belief that water will be available and that a water right will be approved.

6. The Applicant has demonstrated that fire protection will be provided to the site.

Devin argues that there is no indication how fire protection services will be provided to the site. The record includes a letter from the Fire District indicating that the facility would be under the protection of the Fire District. Based on this letter, the County Court finds that fire protection can be provided to this site.

7. Alternative sites

OAR 660-004-0020(2)(b)(B) requires consideration of alternative locations that would not require a new exception and the potential for a site within an urban growth boundary or expansion of an urban growth boundary. The contours for the alternatives analysis are set out in OAR 660-004-0020(2)(b)(C):

“This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.”

First, the proposed zoning designation is Tourist Commercial, a type of zoning that Morrow County established in order to provide support for travelers and visitors and, in particular, the County anticipated that this designation would be established along I-84 and, potentially, along

the relatively few other major highways through the County. The City of Boardman proposed the text for the Tourist Commercial zone and asked that the northern portion of their 457 acre property be zoned TC. As discussed in a previous section, the Court adopted the zoning text to create the TC zone in 2006, but delayed designating any property until a specific application sought a re-zoning.

The Applicant complied with the general requirements of OAR 660-004-0020(2)(b)(C) by reviewing the alternative locations along I-84 for TC zoning in Morrow County and for a location of the use in Gilliam County, where I-84 intersects OR 74. There is no location in Morrow County or Gilliam County that would not require a new exception; there is no location in Morrow County that would not convert land presently in agricultural use except for the subject site.

The Applicant also considered potential sites within the City of Boardman, the only UGB along I-84 in Morrow County. These sites were excluded for reasons of size or accessibility. When Devin identified two sites that it believed could be used, the Applicant provided additional details to demonstrate that the sites were unsuitable. One site, 4N 25 9, tax lot 400 is located across the street from a school, between an office and a multi-family development—all types of uses that could be negatively affected by the noise and other impacts associated with large vehicles. The established uses around the site limit the potential for expanding the rights of way or reconfiguring the intersection of Boardman Avenue and Main Street to accommodate the turning movements for larger vehicles. The second alternative suggested, 4N 25 10, tax lot 3000 has a 30-foot wide flag lot access that takes a sharp turn west from Laurel Road, changing to a 50-foot wide access at a 90 degree angle corner. This situation alone precludes larger vehicles, many of which have a turning radius exceeding 40 feet. Furthermore, this site is in the shape of a long triangle with a narrow base, and while the total area is approximately 11 acres, most of the area is in the narrower part of the triangle and simply not usable.

The Applicant has identified its minimum needed site area as 12 acres, with additional area needed if sewer and water is not available. Devin questions this by showing that some of the Applicant's other locations have smaller sites. Most of the other sites with smaller footprints are located in areas that have public facilities available to serve the uses, thus eliminating one of the significant constraints that is present with this site. The Applicant also provided specific details about each of the sites that are not present in this case that prevent the utilization of a full site. If constraints similar to the other sites were present here, the Applicant may be able to provide a site that had limited operations or that was not adequate for traffic or other concerns. The Court is satisfied that the 12 acre minimum site requested by the applicant is necessary in order to provide a well functioning facility at this site. The Court does not question the Applicant's determination for business reasons that 12 acres is the optimum site size, notwithstanding that other properties it owns and operates are smaller.² In this regard, this Court has reviewed the proposed site layout included with the record in this application and concludes that the parking area and interior driveways are sized to provide an appropriate level of parking and make for efficient and safe site circulation considering the larger size vehicles (triple trailers and recreational vehicles) that will use this site.

² Reasons for various site sizes are explained in a letter from the Applicant's land use consultant dated April 7, 2010.

We find that the Applicant has adequately considered alternative sites and agree that the proposed Tower Road site is the best location for a TC designation and that a minimum of a 12 acre site is a necessary characteristic for this facility.

8. Did the Applicant demonstrate a public need?

We are required to consider whether there is a “demonstrated need” as required by OAR 660-04-0022(1)(a) and a “public need” as required by MCZO 8.050(C). The Court interprets the requirement for a “public need” under MCZO 8.050(C) to be the same as the requirement of OAR 660-004-0022(1)(a) and, thus, use the same analysis for both provisions below.

The analysis of need begins with OAR 660-004-0022(1)(a) and its requirement that there be a need “based on one or more of the requirements of Goals 3 to 19.” The County’s acknowledged Comprehensive Plan identifies the need for tourist commercial uses, such as the proposed travel center, in its Recreation Element. In the section entitled “needs and potentials,” the County specifically identifies that “tourist commercial activity is significant along I-84, particularly near Boardman.” This statement identifies a need under Goal 8 to serve that tourist commercial activity through services such as the one proposed. This is confirmed by the policies adopted to implement the Recreation element of the County’s Plan. Policy 7 specifically states that “Morrow County should seek to provide adequate tourist commercial land along freeways where it doesn’t conflict with agriculture requirements.” The proposed travel center fits squarely within the uses allowed by the Tourist Commercial zone and satisfies the need identified in the plan and is done in conformance with the policy adopted by the County.

The need for additional commercial land is further confirmed by the Goals and Policies contained in the Economic Element of the County’s Comprehensive Plan. The County specifically identified one of its Goals to “diversify local businesses, industries and commercial activities and to promote the economic growth and stability of the County.” Amending the Comprehensive Plan and changing the zoning on this property to allow the siting of the Love’s proposal will diversify the businesses in the County and will promote economic growth in the County. Love’s has indicated that it will make a significant investment in building the facility and in hiring a large number of employees. These actions will clearly support the Goal of the County’s Economic Element.

In addition, Policy 12 of the Economic Element is to “cluster commercial uses intended to meet the business needs of the County residents and highway travelers only in designated areas to prevent the undesirable effects of spot zoning.” Given this site’s proximity to the airport, speedway and Port of Morrow, it is hard to imagine a more effective clustering of uses than exists here. The location of the Love’s facility will only serve to enhance the accessibility and use of the Boardman Airport and will serve as a convenient adjunct to the Speedway when it is built. The proposed actions help the County to also implement the economic goals of the County.

Finally, it is worth noting that the County adopted the Tourist Commercial zoning only a few years ago. At the time the County was considering the zoning, the County had already identified this location as the appropriate site for Tourist Commercial zoning. The only reason that the Tourist Commercial zoning was not applied to this property at the time the zoning text was adopted was because of the concerns expressed by the Department of Land Conservation and Development (DLCD) requesting a transportation analysis. As the staff report states “attached to

this memorandum are two items: a vicinity map of the subject property that the use zone language will eventually be applied to and the Planning Commission Final Findings of Fact for this amended action.” Now that Love’s has prepared a traffic impact analysis that adequately assesses the traffic generation from the site, it is now time to fully implement the Tourist Commercial zone by designating this property for its use.

Accordingly, the Court concludes that there is both a “demonstrated need” under OAR 660-04-0022(1)(a) and a “public need” as required by MCZO 8.050(C).

9. Is the proposal consistent with Comprehensive Plan provisions?

This decision has already identified several Comprehensive Plan provisions that are applicable to this decision. Devin identifies a set of goals and policies that it believes do not support the proposal, so we consider each in turn.

General Land Use Element: “The County intends to concentrate all new urban development in the existing five incorporated cities.”

In the first instance, we note that this is not stated in mandatory terms and this Court concludes that this provision does not prevent the location of urban uses outside of the County's incorporated cities. In particular, to the extent the proposed development is an urban use, the nature of the zoning, which specifically allows for the siting of these types of uses outside of the County's urban areas, the County has already made the determination that these types of uses are appropriate outside of urban areas to accommodate tourist and other uses. The time to contest whether this type of use should be sited in unincorporated portions of the County was when the TC zone was adopted. At this point, the zone has been adopted and may be applied only outside existing urban areas. Because the provision is not a mandatory provision, the Court concludes that the proposed Plan amendment and zone change are consistent with this portion of the Plan.

In any event, the Court does not believe that the proposed travel center is an urban use, because it will provide services to travelers along a rural portion of I-84; it will cater to the needs of rural residents of Morrow County and employees of uses allowed in the EFU Zone, including a dairy, coal-fired electrical generating plant, and the airport; the types of large vehicles using such a facility generate noise and emissions that are unsuitable for an urban environment; and it is a type of use requiring a larger land area for parking and maneuvering of large vehicles that would make unnecessary and wasteful use of land within an UGB that is better suited for more intense residential, commercial and industrial uses.

We look to DLCD’s regulations and find no guidance to differentiate between an urban and rural use. The cases reviewed by LUBA and the Courts similarly offer little assistance on the issue. While it is relatively easy to determine that the nature of the Oregon International Speedway is an urban use due to its scale and intensity, the proposed travel center is less obvious due to its intended clientele and the smaller size. The presence of similar uses inside an UGB is also not dispositive, again depending on the intended service area.

Even if a travel center is determined to be an urban use, we have determined through policies in the Plan that the services provided to the traveling public are needed in the County as discussed above.

Devin also raises Economic Element, Economic Policy 12: County shall “cluster commercial uses intended to meet the business needs of the County residents and highway travelers only in designated areas to prevent the undesirable effects of spot zoning.”

The Tower Road area has already been identified as a location for a cluster of commercial uses with the existence of the airport and through the re-zoning of the area for the development of the Oregon International Speedway. The presence of the Boardman Airport already provides a focus for the area. The SAI zoning indicates also the County’s long-term view of the area as suitable for non-agricultural uses. Moreover, for the reasons identified above, that there are no other sites along I-84 at which to site such a use in the County, there are no concerns regarding the potential undesirable effects of spot zoning.

Transportation Element, Transportation Policy 27 requires the County to protect airports from “incompatible uses.” Initially, it is worth noting that Policy 27 specifically references the incompatible uses listed in the 1981 ODA Airport Compatibility Guide. Devin does not identify any incompatible use from that guide and, therefore, the Court finds that the use is consistent with this provision. In any event, the County has adopted the 2002 Airport Master Plan for the Boardman Airport, and has adopted the AA Zone to provide a review process to assure that uses will not be detrimental to the airport. The Court concludes that compliance with the provisions of the AA zone is sufficient to satisfy this policy and note that our decision on the CUP in the AA Zone has implemented these policies for the proposed travel center use.

Recreational Element, Recreational Policy 16 provides that “no public land should be sold, traded or otherwise disposed of without first having been reviewed for suitability for park and recreation use or open space.”

Devin points out that the site is owned by the City of Boardman, and therefore is “public land.” However, because the County can only implement this Plan policy with respect to property owned by the County, the Court interprets this provision as applying only to public property owned by the County. Even if the Court had to implement the Policy, the Court has considered this property for suitability for park and recreation use or open space. The County does not currently have funding for acquiring land for such uses. In any event, the Court has reviewed its Plan for the suitability of siting park or recreation use or open space and finds that this is not an appropriate location for such uses. Instead, by re-zoning this property for a TC use, the County can better implement the County's recreation policies as discussed above. Moreover, the presence of the speedway in the immediate vicinity will provide for ample opportunities for recreational activities.

10. Statewide Planning Goal Exception requirements

Devin asserts that the Applicant has failed to adequately address OAR 660-004-0020(2)(c) and similar requirements in OAR 660-014-0040(3)(b) which requires an evaluation of ESEE consequences of other areas that would require a Goal exception. However, we conclude that the long term ESEE consequences from allowing the use at this site would be significantly less adverse than the consequences from allowing the use at other sites that would also require an exception. Most importantly, most other sites in the County would displace agricultural uses, but the Tower Road site is already approved for an exception to allow Industrial uses and is not suited for agricultural use. Even though a new exception is required—from Agricultural, even though that has not been the designation for 30 years—the real change from Industrial to

Commercial has less impact for resource uses than any alternative location. Devin asserts that the siting of a large commercial use will have significant environmental impacts. The Court disagrees. First, it does not appear to us that a 12 acre travel center is a “large” commercial use. In any event, as discussed above, the development of this site will not impact groundwater resources because the Applicant will be required to mitigate its discharges to comply with all groundwater and environmental standards. The Applicant demonstrated that there is sufficient water available and that they will be able to discharge wastewater and stormwater without any adverse consequences.

OAR 660-004-0020(2)(d) and similar requirements in OAR 660-014-0040(3)(b) requires a demonstration of compatibility with adjacent uses. For this site, the adjacent uses are the agricultural storage sheds to the west, the Boardman Airport to the west, and vacant land to the east and south. The Planning Commission considered compatibility with the storage sheds with their concern about harvest time traffic and they determined that there was adequate road capacity based on a supplemental report submitted by the Applicant. The Planning Commission also reviewed and approved a CUP for the proposed use in the AA Zone, which this Court affirmed on appeal. Finally, we looked at adjacent property to the east and south and could find no compatibility issues with vacant land or with the freeway to the north. Although the speedway has been approved on land to the west, it is not yet developed and, in fact, may never be developed. Because the use is not in existence, the Applicant need not demonstrate how it will be compatible with that use. To the extent such a demonstration is required, the Court finds that a travel center is compatible with a speedway; the speedway will attract numerous users who will need the services provided by the travel center, including food, fuel and items available at the store. Compatibility is further demonstrated by the conceptual site plan, which showed these types of uses in the proposed conceptual plan for the speedway. This Court finds that the compatibility issues have been resolved or are non-issues.

Devin also argues that OAR 660-004-0022(1) requires the Applicant to demonstrate compliance with sub-a and either sub-b or sub-c:

(1) For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

First, we agree with the Applicant that the reason identified in this provision is only one of the potential reasons to justify a reasons exception. As LUBA has concluded, other reasons may also justify an exception. In this case, the reason justifying an exception is the same reason supporting the County's adoption of the Tourist Commercial zone, which was adopted to provide services to local residents and travelers along I-84. As discussed by the Applicant, the distances between services in this part of Oregon are long and having additional places to obtain the services offered by this use are important to the safety and convenience of the residents and visitors to the County. This reason is supported by the discussion of the need for this use in response to the identification of a public need. Although that need also supports a finding of a demonstrated need based on the other Goals, the need exists outside of the demonstrated need under the Goals and can be evaluated separately. The Court finds that this reason is separate and independent of the Goals and supports the finding that there is a reason why the applicable Goals should not apply.

Regardless of whether there is a need apart from the reason identified in OAR 660-004-0022(1), the Court finds that the reason is justified under that rule as well. The Court discussed the “demonstrated need” issue previously, noting the County’s adoption of the TC Zone and various policies in the County’s Comprehensive Plan regarding Goals 3 (maintaining resource land), Goal 8 Recreation (travelers’ services), Goal 9 Economy (supporting residents and employees; diversifying the County’s economy), and Goal 12 (providing services for local and long haul truckers as well as tourists and County residents) all show a demonstrated need based on the requirements of those Goals.

In addition, the Court concludes that OAR 660-004-0022(1)(b) is satisfied because I-84 is a resource in the County, very much like access to a river is the resource that provides a location for a port facility. This Court adopted the TC Zone with the expectation that areas zoned TC must be located along I-84 because that is where travelers are; it would hardly make sense, economically or otherwise, to locate a TC Zone on a rarely used back road. Devin alleges that the freeway is not a “resource” for purposes of this provision, however we find that the freeway is an important feature--geographically and economically, as well as a major transportation link--in our rural county. As discussed in the Applicant's alternatives analysis, there are no other locations along the freeway that would not require displacing agricultural use.

Alternatively, the Court concludes that OAR 660-004-0022(1)(c) is met because the proposed use has features or qualities that require it to be located on or near the exception site. The specific quality is the ability to serve the traveling public along I-84. There is no question that the intent of the Court in adopting the TC zone was to allow for services to be provided for travelers along I-84. Thus, the use must have access to I-84, otherwise, it cannot provide the services that justify its existence. The quality of providing services to the traveling public necessitates a location accessible to the traveling public. Given that one of its primary purposes is to serve travelers from outside the County, it must also be visible and accessible from the freeway, or it will also not serve its purpose. Once those qualities are identified, it is clear that the only potential locations will be adjacent to I-84 intersections and, as discussed at length above, this location is the only one that would not displace agricultural uses and, therefore, in order to best satisfy the conflicting dictates of the Goals, this location is the only one that satisfies all of the requirements for an exception.

OAR 660-014-0040(3)(a) requires an Applicant to demonstrate that proposed “urban development” cannot be “reasonably accommodated” within expansion of an urban growth boundary or in an existing rural community.

To the extent this provision is applicable, the first issue is the nature of the proposed travel center, whether it is an “urban use” for purposes of compliance with OAR 660-004 and 660-014. The Court concludes that the proposed travel center is not an urban use, because it will serve travelers on a rural section of I-84, it requires a land area that is incompatible with the more intense nature of urban uses, it has potential for creating noise and other impacts that are undesirable in an urban area, and it will save time and distance for employees of uses permitted in the EFU Zone. Even though the Court concludes that the proposed travel center is not an urban use, the Court will provide findings to demonstrate compliance with Goal 14 and the provisions of OAR 660-014.

Turning to the second issue, as discussed above, the proposal is intended to implement the TC zone and satisfy the Plan policies that supported the adoption of that zoning. There is no way to achieve those policies without locating the use along I-84 and, as previously discussed in the section addressing alternative sites, the City of Boardman is the only UGB along I-84 and there are no rural communities or rural service centers along I-84. As also discussed in that section, the City of Boardman does not have a suitable location for the proposed use within its UGB. Moreover, it could not justify an expansion of its UGB, even if an additional freeway interchange location was available. Unlike the County, which has a significant deficit of commercially zoned land, the City of Boardman has an oversupply of commercially zoned land and could not justify such an expansion. This conclusion is bolstered by the fact that it is the City of Boardman that owns this property and is selling it to the Applicant specifically to allow the Applicant to establish this use. If the location of a travel center on this site were incompatible with the interests of the City, it would be unlikely that the City would sell the land to allow the development of this use.

OAR 660-014-0040(3)(c)(A) requires the County to consider whether the site of the proposed use will detract from the ability of existing cities and service districts to provide services. The term “services” is not defined; from the context, including the fact that the rule specifically addresses “service districts,” the Court concludes that the provision means “public services” such as water and sewer. The City of Boardman is nearly five miles from the site; its ability to provide its citizens with public sewer, water and other services will not be diminished and in fact may be enhanced through the sale of its property. The Port of Morrow has a water system that serves its industrial area to the west of the site. There is no indication that the proposed on-site well will detract from the Port’s ability to maintain its water system.

Although the Court has concluded otherwise, the term “services” could also mean commercial services. Devin asserts that the convenience store and fast food service that will be part of the travel center may detract from similar businesses in Boardman. However, the existence of a competitor does not prevent individual businesses from locating in Boardman. The location of the travel center at this location will not prevent any other business from locating in the city. Again, as noted above, the seller of the property is the City of Boardman. The fact that the City is selling this property to facilitate this use bolsters our conclusion that the development of this site will not impact the City's ability to provide any types of services.

Finally, Devin asserts that the proposed travel center is an urban use that should be located in an urban area, citing the *Leathers v. Marion County*, 144 Or App 123 (1994), case. However, that case does not support the point Devin wishes to make. The Court wishes that the case had resolved the issue of whether a travel center was a rural or urban use, but it left the question open. Noting the lack of definition along with the history of this particular site and use, the Court of Appeals remanded the case so Marion County could consider whether a Goal 14 exception had been taken with one of the prior applications for the use or explain why an exception was not taken with the application under consideration.

The Application discusses the Goal 14 Rule at length (pages 22-25). Ambiguity in the rules, OAR 660-004-0022 and 660-014-0040, has led to spirited discussion as to the location of the “bright line” between urban and rural. Urban land and rural land are defined in the goals; rural uses are listed at length in OAR 660-0033; but “urban uses” remain elusively undefined and woefully dependent on context, the parameters for which remain somewhat vague. On the one hand, it is glaringly obvious that a speedway intended to accommodate motor sports events with over 100,000 persons or an amphitheater for 1,000 persons are “urban” in intensity of the use. It is not at all clear where the line should be drawn even though the choice of two possibilities lends the false impression that the choice is simple. “Urban use” remains undefined by the DLCDC, a source of dismay for practitioners and this County Court. The Appellant asserts that the proposed use is an urban use, however the situation is not at all clear.

This situation leaves an applicant and, as a result, this Court, little choice but to address both sides of the rule as this application has, by asserting that the proposed use is not “urban” so does not require a Goal 14 exception, however in the event that it is an “urban use”, the proposal also satisfies the requirements for a Goal 14 exception.

Here is the case for “on the one hand”: The proposed travel center is not an urban use.

1. An urban use may have concentrations of persons who generally reside and work in the area, and supporting public facilities and services (*Curry County*, p. 42)
2. Urban uses are of a kind and intensity characteristic of urban development in nearby cities. (*Curry County*, p. 44)
3. A rural use is appropriate for, but limited to, the needs and requirements of the rural area to be served and not likely to become a magnet that would attract people from outside the rural area (*Conarow v. Coos County* quoted in *Curry County*, p. 45)
4. Lack of the need for public services is an indication, but not conclusive.
5. Some uses are not inherently urban or rural, depending on the population to be served and presence of urban services, e.g. church. (*Cox v. Yamhill County*, LUBA No. 94-255).

The Comprehensive Plan and Zoning Map Amendment Application seeks approval of a travel center that would include fuel dispensing for automobiles and trucks, fast food restaurant service, a convenience store catering to the needs of travelers, and the base location for a mobile tire repair service. The CUP, which was consolidated for hearing before the Planning Commission, provided additional details on the nature of the use, along with a site plan. In summary:

1. The travel center is intended to serve travelers on I-84, a rural portion of the interstate highway, and is not expected or likely to generate new trips on I-84 or Tower Road, based on the applicant's experience at over 200 locations elsewhere in the United States.

2. The travel center includes a fast food-type restaurant and a convenience store that will offer food, snacks, and a variety of consumer goods of particular interest to travelers passing through the area, as well as sale of fuel suitable for passenger vehicles, recreational vehicles, and trucks.

3. The travel center is located conveniently to workers at the Boardman Coal Fire Power Plant to the south on Tower Road, which will also soon see construction of the Carty Generating Station, a gas-fired electricity generating plant. "Utility facilities" are allowed in an EFU Zone.

4. The travel center is conveniently located to provide services to farm workers at nearby Threemile Canyon Farm (Oregon's largest dairy, including approximately 66,000 acres) as well as other farm employees and farm truck drivers in need of fuel or other supplies. The travel center would save a round trip of approximately 10 miles and at least as important, no less than half an hour in travel time, as compared to a trip to the City of Boardman.

5. No public facilities are necessary for the travel center, which proposes an on-site well, on-site sewage disposal, and on-site storm water management.

6. Morrow County identified a need for "tourist commercial" uses, especially along the I-84 freeway, through the adoption of the Tourist Commercial Zone and policies in its Comprehensive Plan.

Commercial services such as sale of fuel for motor vehicles and restaurants are appropriately located within UGB's, however the Tourist Commercial Zone in general, and the proposed travel center in particular, are designed and intended to serve the needs of travelers. This is distinct from uses within a UGB, which are scaled and oriented to serve the needs of customers within a community and are typically not designed or oriented to a transient clientele.

This Court agrees with the Applicant that the proposed travel center is not an "urban" use based upon relevant case law and rule requirements, and that an exception from Goal 14 is not needed.

This Court concludes that the proposed travel center is not an urban use, but if it is determined otherwise, as discussed elsewhere in these findings, the Applicant has justified an exception to allow the use on rural land.

11. The County should have adopted Tourist Commercial policies.

The Court notes that this is an example of good intentions turned around, as the Applicant offered to suggest policies for Morrow County's consideration. The Planning Commission decided to delay action on a recommendation in order to further study the matter.

The Court believes that Tourist Commercial policies suggested by the Applicant would be helpful and looks forward to the Planning Commission's recommendation. However, the Court also believes that the policies already in the Comprehensive Plan, upon which we based the adoption of the Tourist Commercial Zone text, provide sufficient basis for guiding the location of an appropriate site for a TC designation. Devin did not explain why the existing policies, discussed above, do not provide sufficient guidance to the County in implementing the TC zone and designating this property for tourist commercial use.

12. The application should have included the Limited Use Overlay

At the April 7, 2010 public hearing, Devin's attorney asserted for the first time that the application should have included a request for rezoning to the Limited Use Overlay Zone ("LU"), as provided by Section 3.110 of the MCZO:

"The purpose of the Limited Use Overlay Zone is to limit the list of permitted uses and activities allowed in the zone to only those uses and activities which are justified in the comprehensive plan 'reasons' exception statement under ORS 197.732(1)(c). The Limited Use Overlay Zone is intended to carry out the administrative rule requirement for 'reasons' exceptions pursuant to OAR 660-14-018(3).

We note that the Applicant requested that the TC Zone be applied to the Tower Road site, not that uses be limited to "travel center" as described in the applications for Comprehensive Plan and Zoning Map amendment and CUP. The Court has determined that it will limit uses and the development of the site, primarily to comply with the TPR, through the use of conditional zoning. Devin argues that the Court must apply the limited use overlay zone and that the Court may not limit uses through conditional zoning. However, Devin points to nothing in our ordinances or state statutes that prohibit the use of conditional zoning and the Court notes that it is explicitly allowed.³

13. Conclusion

For all of the above reasons, the Court concludes that the Applicant has met its burden in showing that its application for a Comprehensive Plan Amendment and Zone Change complies or can be conditioned to comply with all applicable criteria and we approve the request, subject to the conditions of approval as part of this decision.

Section 4 Conditions of Approval:

1. Construct improvements to meet ODOT standards for truck movements on freeway ramps.
2. Construct frontage improvements on Tower Road for the frontage of the proposed facility.

³ We are not unfamiliar with the application of our Limited Use Overlay Zone and have used it twice, both times at the request of the applicant. One example is the "Speedway Limited Use Overlay Zone", west of Tower Road, requested in the application for the speedway use and not the result of consideration of the application as is the case here.

3. Dedicate land for and construct a new public street on the south property line as established by the partition.
4. Construct a point of access for in and out movements no closer than 1320 feet from the interchange; a right-out only access may be located closer to the interchange a distance no closer than 990 feet.
5. Access to the facility shall be fully resolved prior to occupancy of the facility
6. This zone change is conditioned to allow only the construction of a travel center or other use of similar density, configuration and type.

Section 5 Affected Documents:

1. The decision shall be incorporated into the Morrow County Comprehensive Plan by reference.
2. The Comprehensive Plan Map shall be changed from "Industrial" to "Commercial" based on this decision with the acreage to be determined by the final decision of the pending land partition.
3. The Zoning Map shall be changed from "Space Age Industrial" to "Tourist Commercial" based on this decision with the acreage to be determined by the final decision of the pending land partition.

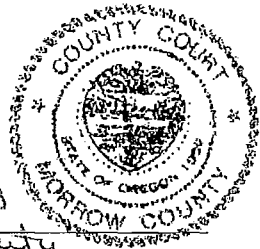
Section 6 Effective Date

The Morrow County Court recognizes that this action is part of a larger permitting and development process and recognizes that time is of the essence. Therefore this Ordinance shall be effective on June 1, 2010.

Date of First Reading April 28, 2010
 Date of Second Reading May 5, 2010

DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 5TH DAY OF MAY, 2010.

ATTEST:



MORROW COUNTY COURT:

Bobbi Childers
 by *Cheresa Crawford*
 Bobbi Childers Deputy
 County Clerk

Terry K. Tallman
 Terry K. Tallman, Judge

ABSENT
 Ken Grieb, Commissioner

APPROVED AS TO FORM:

Ryan Swinburnson
 Ryan Swinburnson
 County Counsel

Leann Rea
 Leann Rea, Commissioner

MORROW COUNTY PLANNING DEPT.
P.O. BOX 40
IRRIGON, OR 97844



DLCD
Angela Hauck
635 Capitol St. NW Ste. 200
Salem OR 97301-2540