



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



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

Date: 02/11/2015
Jurisdiction: City of Dallas
Local file no.: TSPA 14-01
DLCD file no.: 002-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 01/23/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 51 days prior to the first evidentiary hearing.

Appeal Procedures

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

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

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

DLCD Contact

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



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

FOR DLCD USE
File No.: 002-14 {22477}
Received: 1/23/2015

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

Jurisdiction: City of Dallas

Local file no.: **TSPA14-01**

Date of adoption: 1/22/15 Date sent: 1/23/2015

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

- Yes: Date (use the date of last revision if a revised Form 1 was submitted): 9/22/14
- No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No
If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Jason Locke, Community Development/Operations Director

Phone: 5038313565 E-mail: jason.locke@dallasor.gov

Street address: 187 SE Court St City: Dallas Zip: 97338-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

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

Amended TSP to remove a Roadway section, and remove from project list

For a change to a comprehensive plan map:

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

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

Location of affected property (T, R, Sec., TL and address): .

- The subject property is entirely within an urban growth boundary
- The subject property is partially within an urban growth boundary

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

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

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

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

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

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

For a change to a zoning map:

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

Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:

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

Overlay zone designation: . Acres added: . Acres removed:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts:

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

NOTICE OF ADOPTED CHANGE – SUBMITTAL INSTRUCTIONS

1. A Notice of Adopted Change must be received by DLCD no later than 20 days after the ordinance(s) implementing the change has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) as provided in [ORS 197.615](#) and [OAR 660-018-0040](#).

2. A Notice of Adopted Change must be submitted by a local government (city, county, or metropolitan service district). DLCD will not accept a Notice of Adopted Change submitted by an individual or private firm or organization.

3. **Hard-copy submittal:** When submitting a Notice of Adopted Change on paper, via the US Postal Service or hand-delivery, print a completed copy of this Form 2 on light green paper if available. Submit **one copy** of the proposed change, including this form and other required materials to:

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

This form is available here:

<http://www.oregon.gov/LCD/forms.shtml>

4. **Electronic submittals** of up to 20MB may be sent via e-mail. Address e-mails to plan.amendments@state.or.us with the subject line “Notice of Adopted Amendment.”

Submittals may also be uploaded to DLCD’s FTP site at http://www.oregon.gov/LCD/Pages/papa_submittal.aspx.

E-mails with attachments that exceed 20MB will not be received, and therefore FTP must be used for these electronic submittals. **The FTP site must be used for all .zip files** regardless of size. The maximum file size for uploading via FTP is 150MB.

Include this Form 2 as the first pages of a combined file or as a separate file.

5. **File format:** When submitting a Notice of Adopted Change via e-mail or FTP, or on a digital disc, attach all materials in one of the following formats: Adobe .pdf (preferred); Microsoft Office (for example, Word .doc or docx or Excel .xls or xlsx); or ESRI .mxd, .gdb, or .mpk. For other file formats, please contact the plan amendment specialist at 503-934-0017 or plan.amendments@state.or.us.

6. **Content:** An administrative rule lists required content of a submittal of an adopted change ([OAR 660-018-0040\(3\)](#)). By completing this form and including the materials listed in the checklist below, the notice will include the required contents.

Where the amendments or new land use regulations, including supplementary materials, exceed 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

7. Remember to notify persons who participated in the local proceedings and requested notice of the final decision. ([ORS 197.615](#))

If you have any questions or would like assistance, please contact your DLCD regional representative or the DLCD Salem office at 503-934-0017 or e-mail plan.amendments@state.or.us.

Notice checklist. Include all that apply:

- Completed Form 2
- A copy of the final decision (including the signed ordinance(s)). This must include city *and* county decisions for UGB and urban reserve adoptions
- The findings and the text of the change to the comprehensive plan or land use regulation
- If a comprehensive plan map or zoning map is created or altered by the proposed change:
 - A map showing the area changed and applicable designations, and
 - Electronic files containing geospatial data showing the area changed, as specified in [OAR 660-018-0040\(5\)](#), if applicable
- Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

ORDINANCE NO. 1773

An Ordinance adopting amendments to the Dallas Transportation System Plan

WHEREAS, the City has adopted a Transportation System Plan that provides for the future transportation needs of the citizens of Dallas; and

WHEREAS, the City has determined that it is appropriate and in the best interest of the public to amend the adopted Transportation System Plan by deleting the Extended Fern Avenue east to Kings Valley Highway project from the Plan; and

WHEREAS, after due notice, on November 12, 2014, the Dallas Planning Commission held a public hearing on the proposed Transportation System Plan amendments and at the conclusion thereof recommended approval to the City Council; and

WHEREAS, after due notice, on December 1, 2014, the City Council held a public hearing on the proposed amendments to the Transportation System Plan, and at the conclusion thereof found that that the proposed amendment was appropriate and in the best interest of the public and was Transportation System Plan met the requirements of State Law, the Dallas Development Code and was in compliance with the Comprehensive Plan;

NOW, THEREFORE,

THE CITY OF DALLAS DOES ORDAIN AS FOLLOWS:

Section 1. That the Dallas Transportation System Plan be, and it hereby is, amended by the amendments thereto set forth in Exhibit A attached hereto and by this reference incorporated herein.

Section 2. The Findings and Conclusions set forth in the staff report on this matter, submitted into the record herein on December 1, 2014, a copy of which is attached hereto as Exhibit B and by this reference incorporated herein, are hereby adopted and approved as the Findings and Conclusions in support of the adoption of the amendments enacted by Section 1 of this ordinance.

Read for the first time: January 5, 2015
Read for the second time: January 20, 2015
Passed by the City Council: January 20, 2015

Approved by the Mayor: January 20, 2015




BRIAN W. DALTON, MAYOR

ATTEST:



RON FOGGIN,
CITY MANAGER

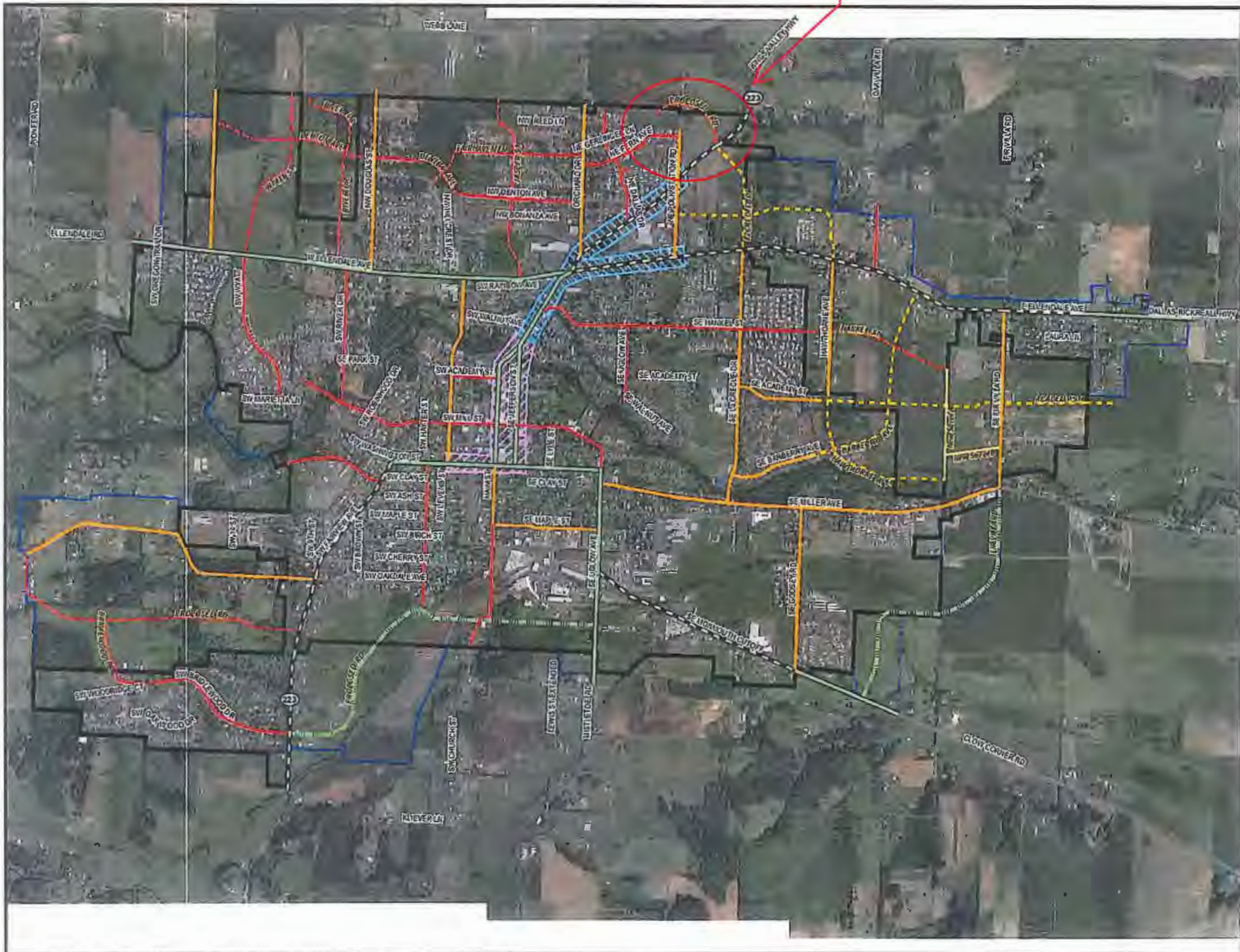
APPROVED AS TO FORM;



LANE P. SHETTERLY,
CITY ATTORNEY

EXHIBIT A

Enlarged Area



Dallas TSP

Figure 7-1
Proposed Roadway
Classification

Dallas, OR

Legend

Existing Streets

- Major Arterial
- Minor Arterial
- Major Collector
- Minor Collector

Future Streets

- Undefined
- Minor Arterial
- Major Collector
- Minor Collector

- Recommended Urban Business Area (UBA)
- Special Transportation Area (STA)
- City Limits
- Urban Growth Boundary (UGB)
- UGB Expansions

1 inch equals 1,754 feet





Dallas TSP

Figure 7-1
Proposed Roadway
Classification

Dallas, OR

Legend

Existing Streets

- ▬ Major Arterial
- ▬ Minor Arterial
- ▬ Major Collector
- ▬ Minor Collector

Future Streets

- ▬ Minor Arterial
- ▬ Major Collector
- ▬ Minor Collector

Special Transportation Area (STA)

Recommended Urban Business Area (UBA)

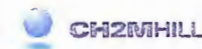
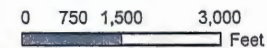
City Limits

Urban Growth Boundary (UGB)

UGB Expansions



1 inch equals 1,750 feet



New Streets

The new streets and streets extensions listed in Table 7-3 are planned over the next 20 years:

TABLE 7-3
Recommended New Street and Street Extension Projects

Street Segment	Priority
Extend Hawthorne Avenue south to Barberry Avenue	High
Extend Hankel Street east to Fir Villa Road	High
Extend Academy Street east to city limits	High
Extend Barberry Avenue east to Fir Villa Road	High
Extend LaCreole Drive north to Kings Valley Highway	High
Extend Wyatt Street north to city limits	High
Extend River Drive south across Rickreall Creek, connecting to Mill street	Medium
Extend Hawthorne Avenue north to connect with new east-west circulation road	High
Build new east-west circulation road connecting Polk Station Road and Hawthorne Avenue	Medium
Extend Jasper Street north to city limits	DONE
Extend River Drive north to city limits	High
Extend Webb Lane to Kings Valley Highway	Low
Extend Fir Villa Road south to Monmouth Cut-Off	Medium
Create east-west connector road from James Howe Road to Denton Avenue and Fairhaven Lane	High
New connector west from Fairview Avenue to serve southwest quadrant city	Low
Extend Wyatt Street north from city limits to Webb Lane	Low
Extend Jasper Street north from city limits to Webb Lane	Low
Add new connector from Fairview Avenue east to provide access to Mill to/from the south	Low
Add new connector from behind Weyerhaeuser Mill east to Uglow Avenue	Low
Extend Fern Avenue east to Kings Valley Highway	Low

Access Management

Managing access to the Dallas Rickreall and Kings Valley Highways in the study area will be important to preserve the capacity and enhance the safety of the roadway network. Access management minimizes the number of potential conflict points on the highway, where traffic flow may be disrupted by entering and exiting traffic.

Section 6 outlined strategies for consolidating and managing access along the state facilities located within the City. From a policy perspective, the City and ODOT will apply appropriate conditions for each land use action that is located within the vicinity of a state

Ashland, Medford, Wilsonville, and Philomath. Some jurisdictions add the fee onto existing utility bills to minimize additional administrative costs.

Although much of the revenue from Street Utility Fees is expected to go to maintenance of the roadway network, some could go to capital improvement projects. Furthermore, the institution of this fee could make available some of the street fund revenue that currently goes towards maintenance.

Table 8-7 lists a number of projects that could be funded through LIDs, General Obligation Bonds, or Street Utility Fees.

TABLE 8-7
Improvements with Recommended Funding through LIDs, Bonds, or Street Utility Fees

Category	Project Title	Estimated Capital Cost	Owning Jurisdiction	Potential LID
Next Ten Years				
R	Change stop control to a four-way stop at Miller Avenue and Fir Villa Road	\$1,000	City	Y
10-15 Years				
B/P/R	Extend Fir Villa Road south to Monmouth Cut-Off	\$3,030,000	City	Y
B/P/R	Extend River Drive south across Rickreall Creek, connecting to Mill street	\$1,080,000	City	N
B/P/R	Extend Fern Avenue east to Kings Valley Highway	\$410,000	City	N
15-20 Years				
B/P/R	Add new connector from Fairview Avenue east to provide access to Mill to/from the south	\$1,850,000	City	Y
B/P/R	Add new connector from behind Weyerhaeuser Mill east to Uglow Avenue	\$2,480,000	City	Y
Total		\$8,851,000		

Several of the projects listed above would benefit the industrial businesses located around Monmouth Cut-Off Road in the south end of the City. The City will analyze the possibility of forming a LID with these property owners to construct improvements that would provide great benefit to truck mobility and safety.

Urban Renewal Districts

Urban Renewal Districts are formed in selected areas of the City, where property owners are assessed Tax Increment Financing (TIF), dependent on property values, over a period of time. TIF revenues are used to finance revitalization improvements (not limited to transportation) within the district.

The City of Dallas has formed an Urban Renewal District for the downtown area, bordered on the north by Hankel, on the south by Clay, on the east by Jefferson (including taxlots on the east side of Jefferson) and on the west by Church (including tax lots on the west side of

EXHIBIT B

CITY OF DALLAS
City Council

APPLICATION COMPLETE:
N/A

STAFF REPORT
Date: November 24,
2014

FILE NO.	TSPA14-01
HEARING DATE	December 1, 2014 7:00 P.M. CITY HALL 187 SE COURT STREET DALLAS, OREGON 97338
APPLICANT	City of Dallas
OWNER	N/A
REQUEST	Amend the Transportation System Plan, Figure 7-1 and Table 8-7.
LOCATION	Between Polk Station Road, Kings Valley Highway, and the Dallas City Limits/UGB
RECOMMENDATION	Recommend approval

BACKGROUND INFORMATION:

When the Transportation System Plan (TSP) was adopted in 2008, there were a number of future transportation projects (roads, trails, pedestrian facilities, public transportation, etc) included to address capacity and connectivity. The proposed amendment removes a road section that was meant to connect Kings Valley Highway north to land outside the City Limits and UGB. This alignment presents a couple of significant issues, including connecting to a state highway and building streets for urban uses outside the Urban Growth Boundary. The proposed Amendment would amend Figure 7-1 and Table 8-7. The Planning Commission held a public hearing on this matter on November 12, 2014, received no public testimony, and is recommending approval.

DISCUSSION:

After reviewing the proposed project, which would have been required to be built as part of the continuation of the Polk Station PUD, staff has determined that this street section is not a viable project.

- 1) It would require an additional access onto Kings Valley Highway, which would require ODOT review and access permits. Given the distance from the existing Polk Station Road access, securing permits would be problematic.
- 2) The construction of a street outside the UGB, even for a short distance and for dubious benefit, would require a significant process with Polk County, including exceptions to Goal 4.
- 3) The existing Polk Station Road provides adequate access for existing and future development in the area.

RECOMMENDATION:

Direct staff to prepare an Ordinance for the amendments contained in TSPA14-01.

**RECORDING COVER SHEET
OTHER THAN FOR LIENS OR
CONVEYANCES, PER ORS 205.234**

*THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON
PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING.
ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE
TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.*

BENTON COUNTY, OREGON **2015-527088**
MI-MISCR
Cnt=1 Stn=47 COUNTER2 **01/21/2015 10:45:51 AM**
This is a no fee document **NO FEE**



I, James V. Morales, County Clerk for Benton
County, Oregon, certify that the instrument
identified herein was recorded in the Clerk
records.

James V. Morales - County Clerk



AFTER RECORDING RETURN TO
Linsey Godwin
Benton County Community Development

**Ordinance No. 2015-0265 In the Matter of Amending the Benton County
Comprehensive Plan Map and Zoning Map**

2. **DIRECT PARTY**, *name(s) of the person(s) described in ORS 205.125(1)(b) or
GRANTOR, as described in ORS 205.160.*

Benton County

3. **INDIRECT PARTY**, *name(s) of the person(s) described in ORS 205.125(1)(a) or
GRANTEE, as described in ORS 205.160.*

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

In the Matter of Amending the Benton County Comprehensive Plan Map and Zoning Map.)))	ORDINANCE No. 2015-0265
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WHEREAS, the applicant, Nathan Warren, submitted an application for a Comprehensive Plan Map Amendment, Zoning Map Amendment, and Goal Exception on October 7, 2014, for a 2.78-acre portion of parcel identified as Township 11 South, Range 6 West, Section 30, Tax Lot 1200; and

WHEREAS, the requested action would change the property’s designation on the Benton County Comprehensive Plan Map from Agriculture to Agricultural Industrial, and would change the property’s designation on the Benton County Zoning Map from Exclusive Farm Use to Agricultural Industrial with a Use Overlay zone; and

WHEREAS, the requested action would cause an exception to Statewide Planning Goal 3 to be adopted into the Benton County Comprehensive Plan; and

WHEREAS, the Benton County Planning Commission held a duly advertised public hearing on December 16, 2014, and voted to recommend that the Board of Commissioners approve the Zoning Map Amendment, Comprehensive Plan Map Amendment and Goal Exception; and

WHEREAS, the Benton County Board of Commissioners held a duly advertised public hearing on January 6, 2015, to consider the request; and

WHEREAS, the Board of County Commissioners finds that the proposed Map Amendments comply with the criteria of Benton County Code 53.505 through 53.525 and Oregon Administrative Rules 660-004-0018, 660-004-0028 and 660-012-0060, and are consistent with the applicable policies and procedures of the Comprehensive Plan; and

WHEREAS, the Benton County Board of Commissioners has considered the staff report, the application materials, the testimony of witnesses, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the application for a Comprehensive Plan Map and Zoning Map Amendment and Goal Exception, and conducted the First Reading of the proposed Ordinance on January 6, 2015; and

WHEREAS, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on 1/20/15.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

PART I: Short Title. Amendments to the Zoning Map and Comprehensive Plan Map.

PART II: Authority. The Board of County Commissioners of Benton County has authority to amend the Zoning Map and Comprehensive Plan Map pursuant to ORS Chapter 215 and the Benton County Charter.

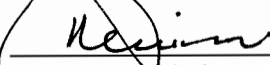
- PART III.** The Zone Change Application No. LU-14-077 is hereby approved, based on the Findings and Conclusions contained in the attached "Exhibit 4" and hereby adopted and incorporated herein.
- PART IV.** Benton County Comprehensive Plan Map is hereby amended to identify the property described on the attached "Exhibit 1" as Industrial. This property is also shown on the map in "Exhibit 2".
- PART V.** Benton County Zoning Map is hereby amended to identify the property described on the attached "Exhibit 1" as Agricultural Industrial with a Use Overlay. This property is also shown on the map in "Exhibit 2".
- PART VI.** A Use Overlay shall be applied to the subject property, with the following effect:
- Permitted Uses. All uses listed in BCC 76.105 shall be allowed except new farm vehicle and attachment sales.
- Conditional Uses. All uses listed in BCC 76.205 shall be allowed as conditional uses.
- Siting Standards. Structure size shall be limited to a structure or structures totaling no more than 15,000 square feet in floor area.
- The text of Chapter 76 (Agricultural Industrial Zone) of the Benton County Development Code shall be modified to reflect the Use Overlay adopted for the subject property. The modifications are shown in "Exhibit 3".
- PART VII.** The Benton County Comprehensive Plan Goal Exception section is hereby amended to include the Goal Exception Findings in "Exhibit 4."
- PART VIII.** The effective date for these amendments to the Benton County Comprehensive Plan Map and Zoning Map will be:

First Reading: January 6, 2015

Second Reading: January 20, 2015

Effective Date: February 19, 2015

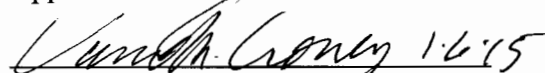
BENTON COUNTY BOARD OF COMMISSIONERS


 Jay Dixon, Chair


 Annabelle Jaramillo, Commissioner


 Anne Schuster, Commissioner

Approved as to Form:


 Vance M. Croney, County Counsel

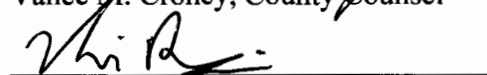

 Recording Secretary

Exhibit 1

Legal Description of Zone Change Area Warren Zone Change; File No. LU-14-077

The following described real property in the County of Benton and State of Oregon:

Beginning at a point in the center of the Mary's River from which a 5/8 inch rod bears South 38°02'44" West 58.14 feet, more or less, said 5/8 inch rod being located North 88°32'27" West 891.57 feet from the Southeast corner of Section 30, Township 11 South, Range West of the Willamette Meridian, Benton County, Oregon; thence upstream along the center of the Mary's River the following courses: North 44°15'00" West 30.61 feet, North 29°05'00" West 255.00 feet, North 32°38'00" West 280.00 feet, and North 51°00'00" West 175.00 feet to a point from which an iron rod bears South 0°37'56" West 51.84 feet, more or less; thence leaving said center of Mary's River South 0°37'56" West 51.84 feet, more or less, to a 5/8 inch iron rod; thence continuing South 0°37'56" West 363.00 feet to a 5/8 inch iron rod on the Northerly right of way line of the Southern Pacific Railroad; thence along said Northerly right of way line the following courses: South 45°47'00" East 378.15 feet and along a 924.93 foot radius curve to the left 75.68 feet (the long chord of which bears South 48°07'38" East 75.66 feet) to a point; thence North 38°02'44" East 118.40 feet to a 5/8 inch iron rod; thence continuing North 38°02'44" East 58.14 feet, more or less, to the point of beginning.

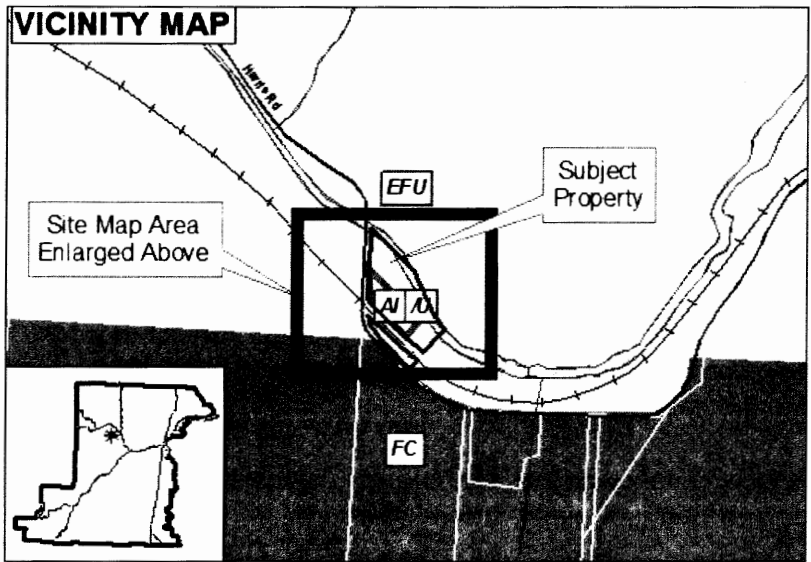
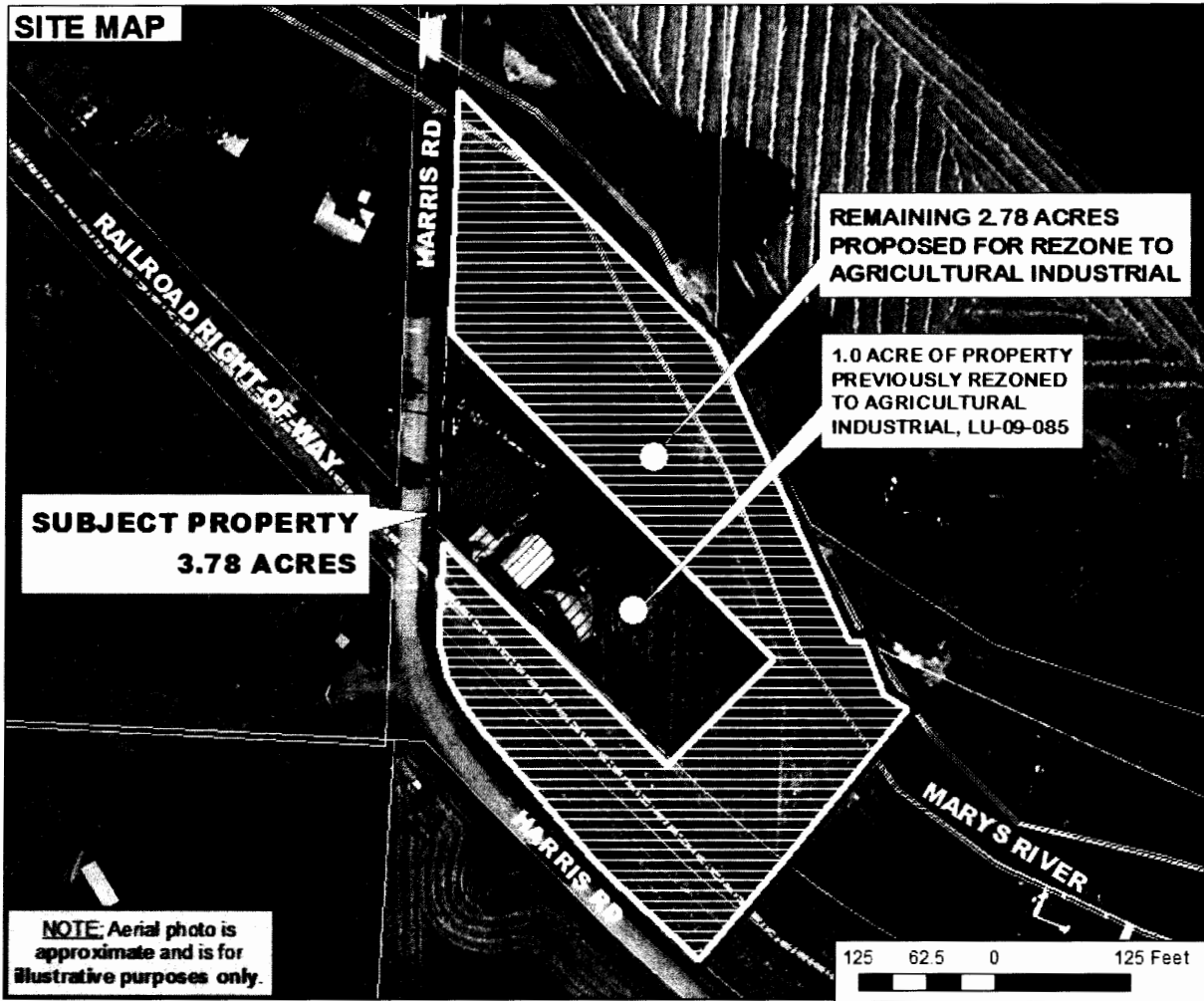
ALSO, beginning at a point on the Southerly right of way line of the Southern Pacific Railroad, said point being on the extension of the East line of the above described property and South 38°02'44" West 60.02 feet from the Southeast corner of the above-described property, and also being located South 83°17'23" West 1,008.14 feet from the Southeast corner of Section 30, Township 11 South, Range 6 West of the Willamette Meridian, Benton County, Oregon; thence South 38°02'44" West 45.65 feet to a 5/8 inch iron rod; thence along a 1,080.00 foot radius curve to the right 140.12 feet (the long chord of which bears North 48°11'24" West 140.02 feet) to a 5/8 inch iron rod; thence North 44°28'23" West 139.31 feet to a 5/8 inch iron rod; thence along a 215.00 foot radius curve to the right 136.27 feet (the long chord of which bears North 26°18'56" West 134.00 feet) to a 5/8 inch iron rod on the aforementioned Southerly right of way line of the Southern Pacific Railroad; thence along said Southerly right of way line the following courses: South 45°47'00" East 318.56 feet and along a 984.93 foot radius curve to the left 82.14 feet (the long chord of which bears South 48°10'21" East 82.12 feet) to the point of beginning.

EXCEPTING THEREFROM, beginning at a 5/8 inch iron rod at the intersection of the Northerly right of way line of the Southern Pacific Railroad, and the easterly right of way line of County Road No. 16520 (Harris Road), also being the southwest corner of the most northerly tract as described in the first paragraph of warranty deed no. 2003-338860; thence along said County Road right of way line, North 00°37'56" East 168.02 feet; thence leaving said right of way line South 45°47'00" East 415.83 feet, thence South 44°13'00" West 121.70 feet to said northerly right of way line of the Southern Pacific Railroad; thence along said right of way line North 45°47'00" West 300.00 feet to the point of beginning.

The above area contains 2.78 acres of land, more or less. The courses depicted in the previous legal descriptions have been based upon Benton County Survey No. 9771.

Exhibit 2

Map of Zone Change Area
Warren Zone Change; File No. LU-14-077



FILE NUMBER
LU-14-077

APPLICATION TYPE
**Zone Change:
Exclusive Farm Use
to Agricultural Industrial**

APPLICANT
Nathan Warren



Exhibit 3

**Development Code Text Amendment to Implement Use Overlay
Warren Zone Change; File No. LU-14-077**

[Deleted Text is ~~Struck Through~~; New Text is Underlined.]

Chapter 76

Agricultural Industrial (AI)

76.005 Purpose. The Agricultural Industrial Zone shall provide areas where rural industry directly related to the area's agricultural and forestry resources can occur within Benton County. [Ord 26, Ord 90-0069, Ord 90-0077]

76.010 Application. The Agriculture Industrial Zone is applied to areas forestry and agricultural related industrial uses compatible with agriculture uses. Application of the Agricultural Industrial Zone to land designated for resource use by the County Comprehensive Plan shall require a Comprehensive Plan Amendment and an exception to applicable Statewide Planning Goals. [Ord 26, Ord 90-0069, Ord 90-0077]

76.015 Transitional Areas - Philomath. Certain areas near the Philomath Urban Growth Boundary are zoned Agricultural Industrial/Transitional (AI/T) as shown on the Official Zoning Map, indicating that these areas may be added to the Philomath Urban Growth Boundary in the future. [Ord 26, Ord 90-0069]

76.020 Use Overlay Zone. A Use Overlay Zone designation (/U) is applied to areas that have special restrictions on permitted and conditional uses. Uses on these properties have been restricted to comply with the requirements for Exceptions to Statewide Planning Goals (OAR 660-004-0018) or other specified rules and statutes. Permitted and conditional uses within a Use Overlay Zone are listed in the ordinance(s) listed below, and supersede those listed in this Chapter. All other provisions of this Chapter are applicable. Use Overlay designations have been applied to the following areas:

- (a) Harris Road Agricultural Industrial Site – Ordinance ~~2010-0235~~ 2015-0265.

... * * *

Exhibit 4

Findings of Fact and Conclusions of Law **Warren Zone Change; File No. LU-14-77**

A. GENERAL FINDINGS

The applicant proposes to change the zone of the remaining 2.78 acres of a 3.78-acre split-zone property, from Exclusive Farm Use (EFU) to Agricultural Industrial (AI). The applicant's stated plan is to operate a winery with an on-site dwelling.

The subject property lies between the Marys River, Harris Road, and Union Pacific railway right-of-way.

Northeast of the property, across the river, is land zoned EFU, used for agriculture and a residence. To the northwest, across Harris Road, is a 2.63-acre parcel zoned EFU, the location of the historic Charles King House, an 1880 residence that has been recognized by placement on the Benton County Register of Historic Places and the National Register of Historic Places. Spanning the Marys River on Harris Road is the Harris Covered Bridge, also listed on the local and national registers. Southeast of the subject property is a 4.47-acre parcel with a residence, and to the south are farm and forest uses under Forest Conservation zoning.

Soils on the subject property are mapped as Conser Silty Clay Loam (Cs, Map Unit Symbol 52), a Class IIIw-1 soil with a moderate to high shrink-swell capacity and low permeability. According to the 2005 Soil Survey of Benton County Area, Oregon, these soils are poorly drained silt loams and silt clays that formed in alluvium and floodplains, suitable for a wide range of shallow-rooted crops when well drained. Conser IIIw soils are considered farmlands of statewide importance and are high-value soils.

Applicant's Proposal

The applicant proposes to change the zoning of 2.78 acres of his 3.78-acre parcel from Exclusive Farm Use (EFU) to Agricultural Industrial (AI). This property was purchased by the applicant, Nathan Warren, in 1999. It is the site of a vineyard and wine-making operation, Harris Bridge Winery, established by the applicant and his wife, Amanda Sever. One acre of this parcel has already been changed from EFU to AI pursuant to the approval of File Number LU-09-085. This one-acre rezoned area includes a parking area, a driveway, a shed and a 3,000-square-foot two-story structure (plus a basement) for wine-making and storage constructed in 2002. The applicant uses this structure as a winery¹, which is an outright permitted use in the AI zone.² The remaining 2.78 acres of the property is in use as a vineyard or is undeveloped due to the site constraints described in the previous section. If the rezone is approved, the entire 3.78-acre parcel will be within the AI zone.

Business operations at Harris Bridge Winery consist of the growing and harvesting of grapes; transport of the grapes to commercial freezers off-site where the sugars and other dissolved solids are pressed out of the grapes leaving the frozen water behind; transport of the resulting highly concentrated juice back to the site; then fermentation, filtering, aging, bottling and labeling on-site. Many of these processes are time-sensitive and must be monitored on a day-to-day basis. The product, a dessert wine, is stored on-site and distributed from this location. Wines are also sold at the on-site tasting room, open weekends May through November. Additionally,

¹ Defined as "a structure where grapes or other produce may be processed and converted to wine, bottled, blended, stored and sold...a tasting room where incidental wine related paraphernalia may be sold."

² BCC 76.105(3).

the vines on the property are at-risk without on-site monitoring. According to the applicant, *“Frost protection is a task that cannot be managed from offsite without prohibitively expensive mechanization, leaving the entire year’s crop at risk. There are also other time and resource critical farming practices that cannot be addressed from offsite, such as bird, deer, pest, and mildew detection and protection.”* The applicant has stated that, in order to effectively manage his vineyard and business, he and his family would like to reside on-site.

In the AI zone a dwelling **“required for the employer or employee for management or safeguarding of the industrial use”** is an outright permitted use. However, due to the small size of the portion of the property zoned AI, the existing structures and the costs associated with converting a portion of the two-story structure into a dwelling, the applicant has deemed it unfeasible to build a home in the AI zoned portion of his property. The EFU zoned portion of his property is unlikely to qualify for a farm dwelling due to its small size and also unlikely to qualify for a non-farm dwelling due to its current use as a vineyard. As a result, the applicant sees no alternative, but to apply for a rezone of the remaining 2.78 acres of the property from EFU to AI.

In addition, the applicant proposes a limited use overlay for his potential AI property, which would apply to the entire 3.78 acres and would replace the existing Use Overlay on the 1 acre currently zoned AI. The limitations of the Use Overlay, modified from the applicant’s original proposal, would be as follows:

- Prohibit farm vehicle and attachment sales, and
- Limit overall floor area of a structure or structures to no more than 15,000 square feet.

B. GOAL EXCEPTION FINDINGS

To change the zoning from Exclusive Farm Use to Agricultural Industrial requires an exception to Goal 3 be taken pursuant to Oregon Administrative Rules (OAR) Chapter 660, Division 4. OAR 660-004-0000(2) states that “an exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals.... The documentation for an exception must be set forth in a local government’s comprehensive plan.” Thus, if the exception is approved, the Board of Commissioners (Board) action will amend the Comprehensive Plan to include the Goal Exception Findings.

Oregon land use law allows three types of goal exceptions: developed, committed, and “reasons”, and the applicant has proposed that the subject property qualifies for a Goal 3 exception under the “physically developed” and “committed” criteria.

<p style="text-align: center;">Part 1: OAR 660-004-0025 Exception Requirements for Land Physically Developed to Other Uses</p>
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(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and

keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

The applicant states *“The land in question has been used for industrial purposes in support of agriculture since the late 1800s. Approximately 50% of the land in question was previously owned by the Union Pacific Railroad company. This portion was deeded by the Harris family, a founding family in Harris valley, to the railroad company in 1884. After this transfer of land took place, the railroad built a side-track on the land. The side-track was established to support a lumber mill (shown above) that existed on the land in the early 1900s. The other 50% of the land in question was previously owned by the Harris family. On this section of land was the Harris lumber mill, Elam (town name) one room schoolhouse, a Chinese Laundry shop and multiple small residences situated along the river. There is no record of this land ever being used for farming prior to the Applicants’ purchase in 1999. The combination of the lumber mill and the railroad side-track permanently impacted the farming potential of this land.*

“In the mid-1940s the mill was shut down and eventually the side-track was removed. However, much of the rock that once supported the side-track and the access road to the mill was left behind. This rock was spread out across the property covering more of the railroad land.”

The aerial photograph (left) was taken on July 10, 1955 by the United States Geographical Survey (USGS). The photo shows that the mill and side track had already been removed, but that some unpaved roads still existed on the subject property (outlined in red). The Union Pacific railroad track (yellow dashed line) remains on the property today and is in use. The railroad track and its 60-foot right-of-way (ROW) effectively separates approximately 0.4-acre of land south of the ROW from the northern portion of the subject property. The subject property is also separated from other adjacent properties to the south and west by Harris Road and to the north by Marys River. The property directly adjacent to the subject property on the east is in residential use and is also separated from adjacent properties by Harris Road and Marys River.

Findings: The Board of Commissioners concurs with the applicant in noting the historic uses of this property. Additionally, the Union Pacific Railroad track and ROW cuts through the property and effectively separates approximately 11% (approximately 0.4-acre) of the property south of the Railroad ROW from the rest of the property. One acre of the subject property has been rezoned to AI and is already physically developed with structures and a driveway. Of the remaining 2.37 acres in the EFU zone on the subject property only 1.25 acres can be farmed, because of the Marys River, a dirt access road and steep topography along the river bank.

In addition, it could be argued that, because the available portion of the re-zone site was physically developed by a use allowed under Goal 3 (vineyards), the property cannot then be said to be physically developed such that it is no longer available for uses allowed under Goal 3.

Analysis and Conclusion, Part 1 (Land Physically Developed to Other Uses): While it is impossible to determine the extent of contamination and depth of gravel on this site from the information available, it is reasonable to assume that, as a past location of sawmill and railroad track this area has been rendered less suitable for farming activities. Present-day observation and historic records investigation supports the applicant’s claim that past industrial uses have negatively impacted this 2.78-acre portion of his property.

However, the Board concludes that no-longer-existent physical development does not prevent the land from being put to uses allowed by Goal 3; in fact, such a use (vineyards) has been established at the site. Therefore, the physically developed exception is not warranted. **This criterion is not met.**

Part 2: OAR 660-004-0028
Exception Requirements for Land Irrevocably Committed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable....

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

- (a) The characteristics of the exception area;**
- (b) The characteristics of the adjacent lands;**
- (c) The relationship between the exception area and the lands adjacent to it; and**
- (d) The other relevant factors set forth in OAR 660-040-0028(6) (below)**

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource-protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible". For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

(a) Farm use as defined in ORS 215.203; [Note: The referenced OAR, edited for applicability, reads: "...the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops ... "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. ... "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. ..."]

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area. [emphasis added]

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

(b) Existing public facilities and services (water and sewer lines, etc.);

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-040-0025; and

(g) Other relevant factors.

Findings: To summarize, the administrative rule stipulates that a goal exception is justified if the characteristics of the exception area and adjacent lands, the relationship between the

exception area and adjacent lands, and other relevant factors render farm or forest uses impracticable. (Note: A winery supported by a vineyard smaller than 15 acres is not defined as a “farm use” by Benton County Code or Oregon Statute. The applicant’s vineyard is 1.25 acres in size.)

The Oregon Court of Appeals has further clarified that “the fundamental test for an irrevocable commitment exception...requires surrounding areas and their relationship to the exception area to be the basis for determining whether the exception is allowable. (*DLCD v. Curry County*, 151 Or.App. 7, 947 P.2d 1123) “...[T]o give exclusive or ‘preponderant’ weight to the characteristics of the exception area alone...would be contrary to [that fundamental test].” In other words, the focal point of the justification must be that the relationship between the subject property and adjacent lands somehow commits the resource land to non-resource use.

Existing Adjacent Uses.

The subject property is surrounded by a mix of residential and agricultural uses. The adjacent properties directly west and east of the subject property are exclusively in residential use. The property to the north contains a dwelling on a large acreage farm. The adjacent properties to the south of the subject property are a mix of large acreage farm and forest properties with one small residential property.

Existing Public Facilities and Services.

The subject property contains a septic system and a well. The subject property has frontage along Harris Road, a resource collector, maintained by Benton County. No other public services are connected to the subject property.

Parcel Size and Ownership Patterns.

The subject property has frontage on Harris Road as do four other small separately-owned properties ranging from 2.63 acres to 4.47 acres. Each of these four adjacent properties contains a dwelling and are used primarily for residential use. One of the properties contains a dwelling built in the late 1800s, which was placed on the National Register of Historic Places in 1990 as the Charles King House³. Starker Forests Inc. owns the FC zoned properties and the EFU zoned property south and southwest (respectively) of the subject property with a combined total of approximately 700 acres. These 700 acres are primarily in forest use with some agricultural use. The EFU properties north of the subject property consist of three parcels owned by Wayne Harris. One dwelling established in 1951 is located on the middle of these parcels. Combined, these three parcel contain approximately 120 acres, the majority of which are in farm use.

Neighborhood and Regional Characteristics.

This neighborhood was once within the settlement of Harris, which enjoyed its boom years from 1917 – 1929, and featured three sawmills, a school, dance hall, general store, and post office, clustered near the intersection of road, railroad, and river.⁴ The region contains a mixture of mostly agricultural and forestry uses with some residential uses. Residences are typically clustered along Harris Road and the intersection between Harris Road, Highway 20 and Territorial Highway approximately 1.5 miles east of the subject property.

Natural or Man-Made Features Separating the Exception Area from Adjacent Resource Land.

³ #90000833, <http://www.nationalregisterofhistoricplaces.com/or/benton/state.html>, viewed 11/24/2014.

⁴ Nellie Stark, et al., *Memories of Wren, Oregon*, (Philomath: Wren Historical Society, 1998), 149-159.

The subject property is separated from resource land south of the subject property by both Harris Road and the Union Pacific Railroad track and its associated 60-foot ROW. The subject property is separated from resource land to the north of the subject property by Marys River. Resource land to the east and west of the subject property and north of the railroad is currently exclusively in residential use. According to the applicant, *“The farm use on the land to the north is primarily cattle grazing and hay production. The property is physically separated from neighboring land to the west by Harris Road. There currently is no farm use on the neighboring land to the west. The property is physically separated from neighboring land to the south by Harris Road. The farm use on land to the south is primarily forest conservation with a portion of land dedicated to cattle grazing and hay production. The property is physically separated from the neighboring land to the east by an access road. Currently, there is no farm use on the neighboring property to the east.”*

Physical Development.

No structures exist on the portion of the subject property proposed for rezone. The railroad runs directly through the southern portion of the subject property and separates approximately 0.4-acre of land from the rest of the property. Approximately 1.25 acres of the subject property is cultivated as a vineyard. The applicant states *“Approximately 50% of the land in question was previously owned by the Union Pacific Railroad company. This portion was deeded by the Harris family, a founding family in Harris valley, to the railroad company in 1884. After this transfer of land took place, the railroad built a side-track on the land. The side-track was established to support a lumber mill that existed on the land in the early 1900s. The other 50% of the land in question was previously owned by the Harris family. On this section of land was the Harris lumber mill, the Elam (town name) one room schoolhouse, a Chinese Laundry shop and multiple small residences situated along the river...In the mid-1940s the mill was shut down and eventually the side-track was removed.”* The application and narrative attached to this Staff Report in Attachment B contain additional detailed and extensive information provided by the applicant.

OAR 660-040-0028(6)(c) states that “small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.” As described above, the subject property is in the middle of a group of small, separately-owned parcels clustered along Harris Road. Each of these small parcels contains a dwelling and are exclusively in residential use. Based on the applicant’s narrative, the 2011 Benton County GIS Aerial Photograph and staff’s site visit on November 25, 2014, the Board finds that no portion of the property has direct access to any land currently in resource use. The subject property is physically separated from all adjacent properties currently in resource use by long established barriers: the railroad, Harris Road and Marys River. It is highly unlikely that these physical barriers will be removed in the future.

The applicant states that “impracticability” is a situation where *“site limitations diminish the ability to carry out standard farming practices to the extent that there is no reasonable return on the investment.”* The applicant finds that the subject property is too small to be a viable farm unit without the industrial processing of their grapes into wine. Proceeds from the sale of wine cannot be used to justify a farm dwelling and there is no known farm commodity produced from 2.78 acres that would provide the necessary income to meet the standards for a farm dwelling. The applicant further states that “in order to exclusive farm the property in question, you would first need to remove the existing infrastructure including more than 15,000 cubic feet of gravel, a functioning septic system, and the foundation for an old timber mill.” The site has only ever been farmed to provide grapes for a winery and never as part of any of the adjacent resource uses

because it is too costly to clear and prepare, too small, irregular in shape, and physically separated from other resource uses.

In the EFU zone a winery is not considered a “farm use,” because it uses an industrial process to create wine. The applicant states that no farm use existed on the subject property prior to 1999, when he purchased the property. Upon purchase, the applicant established approximately 2.5 acres of wine-grapes (equal parts Pinot Noir and Pinot Gris) on the property for the purpose of producing “*ice wine style dessert wines, vermouth, aperitifs, and brandy.*” These grapes were never sold as a farm crop and have only been processed into wine. As a result, the Board finds that the subject property has never been solely in farm use as defined by ORS 215.203, but only farm use as part of a larger, integrated processing and sales operation.

No adjacent properties are currently in vineyard production. While it would not be impossible to farm the subject property in conjunction with the adjacent existing cattle, timber or hay operations to the south and north, there is no economic incentive for adjacent property owners to lease a small, access-restricted site with an unknown success rate for the support of cattle, timber or hay production.

Analysis and Conclusion, Part 2 (Land Irrevocably Committed to Other Uses): To recapitulate, the County must find that farm use and forestry activities are rendered impracticable, due to the character of surrounding lands and their relationship to the subject property (primary factor), and due to conditions of the subject property and other relevant factors (secondary factors). A use is “impracticable” when it cannot be carried out or put into practice.⁵ However, as OAR 660-004-0028(3) states, “*It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible".*” There is a fine line between impracticable and impossible. As shown by the decision criteria above, the key to this distinction is in the relationship between the subject property and surrounding properties.

The distinguishing features of this site are its intrinsic limitations for farm use and its isolation from other farmable lands. The property is small, irregularly configured, and degraded (from a farming perspective) by past land uses. There is no evidence of forestry operations occurring on the subject property for at least the past 100 years, except for a lumber mill, which is not an allowed use in the EFU zone. Any attempt to farm or initiate forestry operations on this land in conjunction with nearby resource land would be extremely difficult due to the intervening road, railroad, river, houses and property ownership. In sum, the relationship of the subject property to surrounding lands is one of isolation and is not complementarity. The only viable type of use for this property that is apparent to the Board is for a small-scale, intensive, vertically integrated enterprise such as the applicant proposes – to use the small acreage on-site to produce a raw material and then use industrial or semi-industrial means to process, distribute and retail the product. The Board concludes that such use is not viable under Goal 3 or Goal 4 and therefore, this property is irrevocably committed to uses not allowed by Goal 3 or 4. **This criterion is met.**

Conclusion, Part 2 (Goal Exception Criteria): The Board concludes that a goal exception has been justified – the site is developed and committed to uses other than agriculture.

⁵ According to Webster’s II New Riverside University Dictionary: “*Impracticable* applies to that which is not capable of being carried out or put into practice. *Impractical* refers to that which is not sensible or prudent. A plan may be *impractical* because it involves undue cost or effort and yet it may not be *impracticable*.” From this understanding, agricultural activities aimed at obtaining gross receipts may be practicable in many instances where it might not be practical to undertake farming with the intent of making a living at it or obtaining a net profit.

C. FINDINGS FOR PLANNING AND ZONING FOR EXCEPTION AREAS

(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. *[emphasis added]*

(2) For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size...

Findings: The application proposes "physically developed" and "irrevocably committed" exceptions. The proposed zoning is Agricultural Industrial, which has a minimum parcel size of one (1) acre.

...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

Findings: Uses will not be limited to the existing land uses, but may include a dwelling; therefore, (b) below must be met.

(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

Findings: Because the zone change would allow changes from the existing use on the subject property, through the potential addition of a dwelling, the provisions of this section apply. Agricultural Industrial is the zone proposed for the subject property. In the AI zone, BCC Chapter 76, the following uses are permitted outright:

- 1) Agriculture related warehousing, packing, processing, or cold storage.
- 2) Sales, Service, and storage of agriculture related vehicles and accessories and products required for farm use.
- 3) Winery. *(Note: Winery, as defined in BCC 51.020(77) reads: "a structure where grapes or other produce may be processed and converted to wine, bottled, blended, stored and sold. "Winery" includes a tasting room open to the public where wine may be sampled and purchased and where incidental wine related paraphernalia may be sold.")*
- 4) One dwelling required for the employer or employee for management or safeguarding of the industrial use.
- 5) Farm use.
- 6) Forest use.

7) Accessory use or structure.

To limit the impact of the proposed zone change on surrounding property owners the following Use Overlay is proposed for the entire subject property:

- Prohibit farm vehicle and attachment sales, and
- Limit structure size to a structure or structures totaling no more than 15,000 square feet in floor area.

This proposed Use Overlay will apply to the entire subject property (all 3.78 acres) and supersede the Use Overlay previously approved on the one acre rezoned portion of the subject property by LU-09-085.

Although no floor-area square-footage limitations exist for facilities in the AI zone, the applicant's proposed floor area square footage limitation of 15,000 square feet is within the size limitation of the 35,000 square feet found in the Rural Industrial (RI) zone. The RI zone, which in 2007 was modified to be consistent with the concept of "Rural Land," contains the same provision for "*One dwelling required for the employer or employee for management or safeguarding of the industrial use*" as is contained in the AI zone.

Analysis and Conclusion: The uses allowed through this zone change may be limited if a Use Overlay is simultaneously adopted. This has been done in four previous zone changes, including the zone change, LU-09-085, approved on the subject property. The Use Overlay is applied to, and is specific to, the subject property. The overlay specifies which uses can occur in that particular instance of the AI zone, and includes any other limitations (such as size of structures) that apply.

Considering the relatively small size of the area proposed for re-zone, and the comparison to square footage allowed in the RI zone, the proposed zone change accompanied by a Use Overlay imposing the limitations noted above would maintain the property as "Rural Land". **Through adoption of a Use Overlay, this criterion is met.**

(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

Findings: The intent of the applicant to construct a dwelling within the proposed rezoned area will be similar to and compatible with the nearest uses, which are residences on small-acreage resource land and farm and forest production. The subject property is separated from adjacent resource uses by natural and man-made barriers and already contains a winery (an existing self-contained agricultural industrial use) such that it is unlikely that it will commit adjacent uses to non-resource use. Furthermore, the Use Overlay will limit the total size of structures and ensure that other uses allowed at the site are either uses already allowed in the EFU zone or, in the case of warehousing/processing/etc., are related to agriculture.

The applicant notes that "*Public services provided to this area include law enforcement, fire suppression, and road maintenance. It is anticipated that the onsite caretaker allowed by the zone may actually serve to limit the needs of law enforcement....The Philomath Rural Fire Protection District provides fire protection. Without an onsite caretaker there is a greater risk that a fire could go unnoticed.*" These services are currently provided to this site. The Board

concurs with the applicant that the presence of an on-site manager could potentially reduce the need for law enforcement and fire suppression on this property.

Conclusion, Part 3, (Planning and Zoning for Exception Areas): The proposed zone and potential addition of a dwelling will not commit nearby resource land to nonresource use, and is compatible with adjacent resource uses, with the addition of a Use Overlay as proposed. **This criterion is met.**

D. FINDINGS APPLYING THE TRANSPORTATION PLANNING RULE

(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which 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. This shall be accomplished by either:

- (a) Limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility;**
- (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;**
- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or**
- (d) Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.**

(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.**

Findings: The subject property takes direct access to Harris Road, a resource collector in the Benton County road system. The proposed zone change and Comprehensive Plan map amendment could potentially result in one new residence accessing that road. It is not anticipated that this would result in a level of travel or access inconsistent with the functional classification of any county road, nor would such use reduce the performance standards of any facility below the minimum level identified in the County's transportation plan.

The applicant states *“Currently, the caretakers for Harris Bridge drive approximately 7,000 miles per year commuting to and from the farm from their residence in Corvallis. This generates approximately 500 trips (to and from), or 250 occurrences of travel to the farm down Harris Road related to the need to work the farm on which they do not live. Through approval of this application, which would ultimately result in the caretakers living at the farm, many of the trips generated by commuting to the farm would be eliminated.*

“The applicants are not proposing any changes to the commercial activity currently taking place on the farm as a part of this rezone application. The changes being proposed relate only to the industrial uses of the land and the opportunity for an overseer residence on the property. Therefore, it is expected that approval of this application would have no impact on the travel down Harris Road related to commercial activity.”

Benton County Public Works Engineer Associate Andrew Monaco has commented that in the event this re-zone is approved, the applicant will likely be required to improve a proportionate share of Harris Road as a condition of approval of a dwelling.

Conclusion (Transportation Planning Rule): The proposed plan amendment would not significantly affect a transportation facility, and the requirements of subsection (1) do not apply. Any road improvements necessary to mitigate increase in traffic will be conditions of development plan approval. **The Board of Commissioners finds this criterion is met.**

D. FINDINGS APPLYING DEVELOPMENT CODE CRITERIA and COMPREHENSIVE PLAN POLICIES

53.505 Zone Change Criteria. The Official Zoning Map may be amended if:

(1) The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied;

Findings: The applicant states “ *The Union Pacific Railroad owned the site when it was first zoned EFU. There is no documentation that research was done at the time this rezone took place to prove the farming potential of this parcel of land or align the zone with the historical uses of the land. Due to historical uses, including a railroad sidetrack and a sawmill, this land is irrevocably committed to non-farm uses. This land has not been farmed since it was deeded to the railroad in 1884 to be used for industrial purposes.* ”

It is correct that the property was in industrial use for many years, either associated with the railroad or sawmill. There is no evidence or history of the land having been put to farm or forest use prior to 1999. The property is boxed in on all sides by the existence of Marys River and the development of Harris Road, the Railroad ROW, and a dwelling on adjacent property as described in Section V, Part 2 above. The trifecta of road, rail and water made the site ideal for a sawmill and the transportation of goods and commerce. The small size of the property, existing adjacent residential uses and historic landmarks, and physical barriers to adjacent resource properties, in addition to modifications to the property during its industrial use, namely the addition of crushed rock, make industrial uses in conjunction with farm use more appropriate for the subject property.

Analysis and Conclusion: The subject property is not well-suited to agricultural uses of crop production. The types of uses most likely to work at this site (indeed, the uses that have occurred here in the past) are industrial in nature. The existing vineyard on the property is only viable economically, because it is vertically integrated with the winery located on the AI zoned portion of the subject property. The wine-grapes must be put through an industrial process in order to become the value-added commodity of wine and provide the property owner with the ability to turn a profit. Under farm zoning, the focus is on agricultural use; industrial use can occur *if* it is tied to agriculture. Under AI zoning, agriculture-related industrial use is the purpose of the zone. The proposed AI zone would allow a dwelling related to the industrial use, which appears to be appropriate for the ongoing operations of the vineyard/winery. For these reasons, the Board

concludes that the Agricultural Industrial zone is more appropriate for the subject property than is the current EFU zone. **This criterion is met.**

(2) The impact on adjacent properties will be minimal;

Findings: In his narrative, the applicant addresses impacts upon adjacent properties, and explains why they will be minimal: Harris Bridge Vineyard has existed to date with no negative impacts; the separation of the property from neighbors by roads, river, and railroad; the orientation of the building in which wine-making activities occur at the rear of the building and in the basement. No letters from adjacent property owners have been received.

The subject property is located adjacent to two structures significant in Benton County history: the Harris Covered Bridge, and Charles King House. Both structures are listed in the Benton County and National Registers of Historic Places, and represent the last remnants of the original settlement of Harris. The addition of built elements to the applicant's property has the potential to create negative visual impacts to the existing cluster of historic structures. Because the role of the Benton County Historic Resources Commission (HRC) on the applicant's property is limited to advisory guidance only, the Board recommends that the applicant inform the HRC of proposed new structures as well as additions and alterations to structures on-site, and the HRC will recommend measures to mitigate potential negative visual impacts to the existing historic structures. These advisories will be in the form of suggestions and recommendations only, and will carry no legal requirement for compliance.

Analysis and Conclusion: The applicant's proposed re-zoning is unlikely to have substantial impacts to neighboring properties. A Use Overlay that limits this instance of the AI zone would remove the potential for an incompatible use being established. The Board concludes that impacts will be minimal. **This criterion is met.**

(3) Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area; and

Findings: Public services provided include law enforcement, fire suppression and roads. Any increases in law enforcement and fire suppression resulting from development enabled by the zone change are anticipated to be offset by a reduction in need for such services resulting from having a residence on-site. Road impacts were discussed under Section 4 of this report. Any necessary improvements to roads occasioned by the addition of a dwelling or increase in building footprints will be determined at the time of the site development plan review.

Currently the property is served by on-site sewage disposal and water, the sewage consisting of a holding tank, allowed in commercial applications only. If a dwelling is authorized, the applicant will need to prove adequate water supplies and an on-site septic drainfield.

Conclusion: Public service increases are not significant and can be made available to the area. **This criterion is met.**

(4) The proposed zone change is consistent with the policies of the Comprehensive Plan.

Findings: The applicant has addressed several Comprehensive Plan policies in his narrative, found in Attachment B. These policies include support of local agriculture, encouragement of home based business, facilitation of sustainable economic development, and promotion of tourism. The Board concurs with the applicant's findings regarding the cited Comprehensive Plan policies.

In addition, the Wren Community Plan, adopted by reference to the Comprehensive Plan, establishes goals and policies developed in partnership with the community of Wren. The community of Wren consists of exception lands located along Highway 20, in addition to the larger community of Wren, as described in the Plan. Harris Bridge Winery lies in the larger community of Wren, and is therefore subject to Policy 8: **“Benton County shall recognize the efforts of the community to support forestry, farming and home based businesses as the primary industries of the Wren community.”** A farm-based business, providing a value-added product, with a vertically integrated production system would be in compliance with this policy. No comments were received from the Wren Citizens Advisory Committee.

Analysis and Conclusion (Consistency with Benton County Code and Comprehensive Plan Policies): The proposed re-zone is consistent with Development Code requirements and Comprehensive Plan policies. **The Board of Commissioners concludes that these criteria are met.**

E. FINDINGS FOR AMENDING THE COMPREHENSIVE PLAN MAP

Chapter V of the Benton County Comprehensive Plan contains the procedures and criteria for amending the Comprehensive Plan Map:

Map amendments may be considered when compliance with all elements of the Comprehensive Plan and with statewide land use planning goals can be shown and a public need exists for the proposed amendment.

Map amendments requiring goal exceptions shall comply with procedure and standards of OAR 660 Division 4 and State goals.

Findings: Compliance with the elements of the Comprehensive Plan is addressed in Section D(4), above; compliance with the statewide goals is addressed in Sections B, C, and D, above.

Conclusion: The proposed Comprehensive Plan Map amendment from Agriculture to Industrial is consistent with the Comprehensive Plan and statewide goals. **This criterion has been met.**

F. SUMMARY AND CONCLUSION

The Board of Commissioners’ findings and conclusions are:

Goal Exception Criteria: The inability to put the subject property to farm use by itself, and the lack of adjacent complementary use combine to make farm use impracticable. Forest use is impracticable due to the small size, and proximity of other uses.

⇒ The Board of Commissioners concludes that an “irrevocably committed” goal exception has been justified.

Planning and Zoning for Exception Areas (OAR 660-004-0018): The proposed rezoning will be consistent with the rural status of the area (if a Use Overlay is included), will not commit additional resource land to nonresource use, and will be compatible with nearby resource uses.

⇒ The Board of Commissioners concludes that the proposed zone would be appropriate for the rural area.

Compliance with Transportation Planning Rule: The applicant has stated that a dwelling for on-site management of the existing business is desired, and has proposed capping overall square footage at 15,000 square feet by applying a Use Overlay.

⇒ Based on the information submitted at this time, the Board of Commissioners concludes the proposed zone change complies with the provisions of the Transportation Planning Rule (OAR 660-012-0060).

Development Code Zone Change Criteria: The proposed zoning is more appropriate than the current zoning, and impact on adjacent properties will be minimal.

⇒ The Board of Commissioners concludes that the proposal meets the Development Code criteria for zone change.

Criteria for Amending the Comprehensive Plan Map: Consistency with Comprehensive Plan policies and statewide goals has been demonstrated.

⇒ The Board of Commissioners that these criteria have been met.

Overall Conclusion: A goal exception has been justified, and the criteria for zone change and Comprehensive Plan Map amendment have been met. Therefore, the Board of Commissioners approves the request.