



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

11/26/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Monmouth Plan Amendment
DLCD File Number 002-13

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: Wednesday, December 11, 2013

This amendment was submitted to DLCD for review prior to adoption 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: Mark Fancey, City of Monmouth
Gordon Howard, DLCD Urban Planning Specialist
Angela Lazarean, DLCD Regional Representative
Thomas Hogue, DLCD Economic Development Policy Analyst

<paa> YA



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

FOR DLCD USE

File No.:

Received:

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 Monmouth

Local file no.: CPMA 12-01

NOV 21 2013

Date of adoption: 11/05/13 Date sent: 11/19/2013

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): May 1, 2013
- 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): Mark Fancey, Community Development Director

Phone: (503) 751-0147 E-mail: mfancey@ci.monmouth.or.us

Street address: 151 Main Street W. City: Monmouth Zip: 97361-

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:

For a change to a comprehensive plan map:

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

Change from Low Density Residential to Industrial. 7.46 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): T8W,R4W,S30 Tax Lot 1000 - 875 S. Pacific Highway -

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

[17687]
002-13 (19824)

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: Polk County, ODOT

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.

City of Monmouth

Public Works

- City UGB
- Monmouth UGB
 - Independence UGB
 - Monmouth
 - Independence
- Taxlot12
- Taxlot Arrows12
 - Taxlot Boundary12
 - taxlot12



This map was produced using the Polk County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

1 in. = 1000 ft.



 11/19/2013

CITY OF MONMOUTH, COUNTY OF POLK

STATE OF OREGON

An Ordinance Amending the)
Comprehensive Plan Map Designation and)
Property Owned by Jim and Penny Marr -)
Comprehensive Plan Map Amendment 12-01)

ORDINANCE NO 1331

WHEREAS, Jim and Penny Marr are owners (hereinafter "Owners") of the real property located at 875 Pacific Highway S. and identified as Assessor Map 8430, Tax Lot 1000, a 26.29-acre property; and

WHEREAS, the Owners submitted a Comprehensive Plan Map Amendment application for the northwestern 7.46 acres of Assessor Map 8430, Tax Lot 1000 as depicted on Exhibit A hereto (hereinafter the "Property"); and

WHEREAS, the Property is located outside the Monmouth city limits, but within the Urban Growth Boundary (UGB); and

WHEREAS, the Property is designated as Low Density Residential on the Comprehensive Plan Map and is zoned Suburban Residential (SR) by Polk County; and

WHEREAS, the Comprehensive Plan Map Amendment/Zone Change request would change the Comprehensive Plan Map designation to Industrial for the Property, and

WHEREAS, after due notice the Planning Commission conducted a public hearing on June 19, 2013; and

WHEREAS, after due notice, the City Council conducted a public hearing on August 6, 2013; and

WHEREAS, the City Council approved the application on September 3, 2013, based upon the Findings and Conclusions in the staff report dated July 30, 2013 and the Additional Findings and Conclusions found in Exhibit B.

CONCLUSIONS

1. Conditions in the neighborhood surrounding the land for which the Plan amendment is initiated have changed to such a degree that the Comprehensive Plan designation is no longer appropriate, and the Plan amendment would conform to the new conditions in the neighborhood;
2. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.

3. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area.

4. The proposed change is consistent with applicable goals and policies of the Comprehensive Plan.

5. The City of Monmouth acknowledges that it does not need to annex the Property to the City at this time, however, the City desires to ensure that prior to new development on the property requiring issuance of a building permit, the Owners shall annex the entirety of Assessor Map 8430, Tax Lot 1000.

NOW, THEREFORE,

THE CITY OF MONMOUTH DOES ORDAIN AS FOLLOWS:

Section 1. The Comprehensive Plan Map designation for Property described on Exhibit A hereto is hereby changed from Low Density Residential to Industrial.

Section 2. The Additional Findings and Conclusions described in Exhibit B are hereby adopted.

Section 3. Prior to any new development on the property requiring issuance of a building permit, the Owners shall annex the entirety of Assessor Map 8430, Tax Lot 1000 to the City of Monmouth.

Read for the first time: October 15, 2013
Read for the second time: November 5, 2013
Adopted by the City Council: November 5, 2013
Approved by the Mayor: November 5, 2013

ATTEST:



Phyllis L Bolman, City Recorder



John E.D. Oberst, Mayor

EXHIBIT A

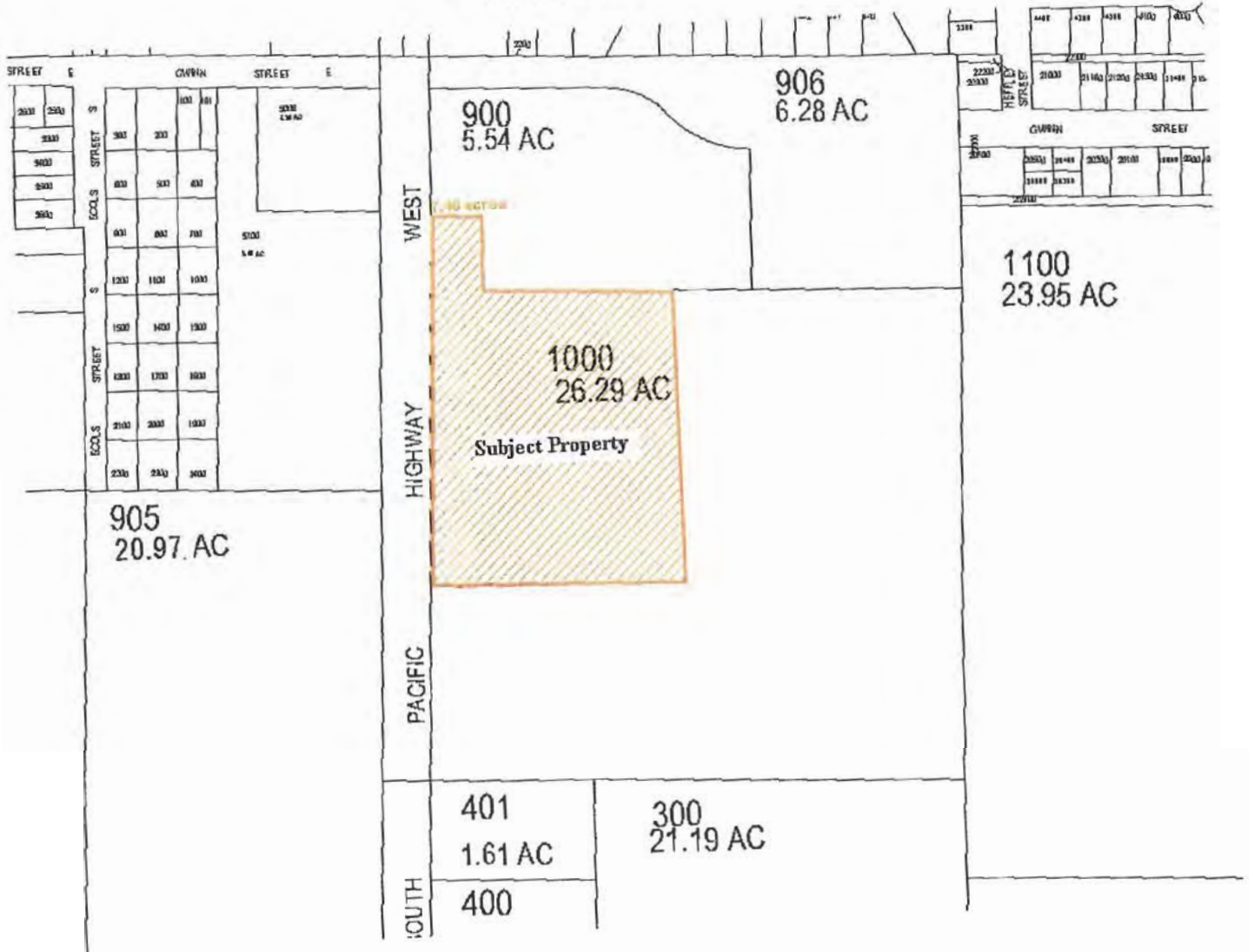


EXHIBIT B
(Additional Findings and Conclusions – CPMA 12-01)

The following are additional findings and conclusions made to support and justify the City's decision to approve the application herein (Comprehensive Plan Map Amendment 12-01) and the change in designation of the subject property from Low Density Residential to Industrial. This Exhibit is in addition to findings and conclusions made in the staff report in the record, dated July 30, 2013, which is adopted by reference to support the decision. In any case where these additional findings and conclusions are contradictory or inconsistent with the adopted reports, these additional findings and conclusions shall control and take precedence over any other report.

I. Process

1. A public hearing was duly scheduled, noticed and conducted by the Planning Commission on June 19, 2013. A previously scheduled and noticed Planning Commission meeting set for May 1, 2013 was re-scheduled in order to provide adequate and timely notice to DLCD of the pendency of this application. Such notice was given in a timely fashion, and no response from DLCD was provided to the City. An open record period was provided by the Planning Commission, and on July 18, 2013, the Planning Commission voted 3-3 on the approval of the application. Such a deadlock is considered by the City to be a "no recommendation" on the application, and the application was forwarded to the City Council with no recommendation from the Planning Commission.
2. The subject application was timely filed. Monmouth Zoning and Development Ordinance (MZDO) Section 90.235 provides that any request for a land use action that has been denied may not be resubmitted for a period of one year following the mailing of the Notice of Decision. The applicant had filed a prior application (Case No. CPMA 11-2) similar to the subject application that is presently before the City, however that application was withdrawn before a Notice of Decision was entered. MZDO 90.235 by its express terms does not prohibit the applicant from submitting the current application. In the case of the prior application, there was no adoption of findings, no conclusions or any written decision, let alone the issuance and mailing of the Notice of Decision that triggers the one year prohibition on resubmission.
3. The approval criteria for this application are found in MZDO 90.330 which are the standards for plan map amendments. Although this application was filed on November 16, 2012, a new version of MZDO 90.330 became effective on December 5, 2012 by Ordinance No. 1305. The version of MZDO 90.330 that was adopted in Ordinance No. 1305 is applicable to this application. The provisions of ORS 227.178(3) do not apply to this application because this application is for a comprehensive plan amendment, and it does not fit within the industrial land sites exception.
4. The City Council duly conducted a public hearing on this application on August 6, 2013, after proper notice was given. At that hearing declarations were made as to ex-parte contact, and no objections to those declarations were made. No objections to the notice or jurisdiction of the City to consider this matter were made. At the close of the public

hearing, an open record period was established, keeping the record open for any new evidence through August 13, 2013 and for rebuttal argument by the applicant through August 20, 2013. No objections were raised as to this schedule and information was received during the open record period.

5. The City Council convened on September 3, 2013 for the purpose of consideration of the application. During the course of deliberation, Councilor Shafer stated that he had visited the applicant's current business operation, situated adjacent to the property that is the subject of this application, for the purpose of purchasing bark dust for his home landscaping. He did note that the safety precautions identified during the hearing were in place. He stated that this visit did not change his mind about the application. At this point in the meeting, the deliberations were suspended and the public hearing was reopened for the purpose of allowing anyone to address the comments made by Councilor Shafer. One member of the public (Mr. Dominick Rose) came forward, but did not offer relevant inquiry and was ruled out of order. Mr. Alan Sorem, legal counsel for one of the opponents to the application came forward and examined Councilor Shafer with regard to his visit and purchase of bark dust. After his examination, Mr. Sorem made no objections to the reopening of the public hearing, or the continued participation of Councilor Shafer in this proceeding. No other objections were made by anyone else regarding this process or the continued participation of Councilor Shafer. Following the City Council's meeting on September 3, 2013, Mr. Sorem submitted to the City Council on September 17, 2013, a Motion for Conditions of Approval, by which he sought to have the Council consider and impose additional conditions of approval on its decision in this matter. On advice of the City Attorney that such communication directly to Council members after the close of the record, but before a final decision had been made, would constitute an ex parte contact, the Council members did not read Mr. Sorem's motion. Rather, his motion was treated as a request to reopen the record for the purpose of considering additional conditions of approval, and that request was heard by the City Council on October 1, 2013, at which meeting Mr. Sorem and Wally Lien, the applicants' attorney, were heard. No objections were made to the process by which the Motion for Conditions of Approval was heard. After deliberation on the request, the City Council denied the request and the record was not reopened. The Motion for Conditions of Approval is not a part of the record of this proceeding.
6. The Record of this proceeding includes all the material submitted to the Planning Commission and City Council related to the subject application, except the Motion for Conditions of Approval, as noted in Finding 5, above. No other material that was submitted for consideration was rejected. In addition, all of the Record materials from Case No. CPMA 11-2 (the prior withdrawn application) and the City's Transportation System Plan were accepted and incorporated into the official Record of this case.
7. Agency Comments include the following:
 - 7.1. Polk County commented that a zone change from SR would be required to implement the Industrial plan designation, and that zone change would be handled by the county.

- 7.2. The Department of Land Conservation and Development (DLCD) provided no comment or objection to the application.
- 7.3. The Oregon Department of Transportation (ODOT) expressed “no objection” to an amendment to the Comprehensive Plan from Low Density Residential to Industrial for the subject property.
8. According to the Intergovernmental Agreement (IGA) between the City and Polk County, when a comprehensive plan map amendment is sought for lands like the subject property that are inside the Urban Growth Boundary (UGB), but outside the city limits, the request shall be processed by the City. Section 7 of the IGA provides that the Monmouth comprehensive plan is the “controlling document in guiding development within the UGB,” and that “Polk County shall appropriately zone any affected properties.” Section 10 of the IGA provides for a cooperative process for review and action on development proposals, public improvement projects and implementing regulations and programs that pertain to the UGB. As such, upon approval of this application it will be incumbent on the applicant to apply to Polk County for a zone change for the subject property, for an appropriate zone, and to obtain the county’s approval of such zone change before making any commercial use of the subject property; and such use shall be subject to the terms of this approval and any terms, conditions and limitations imposed by Polk County.
9. The City’s approval includes a condition that requires TL1000 to annex to the City of Monmouth prior to obtaining any building permit for the subject property. This condition is substantially similar to an Annexation Agreement which the staff and applicant had tentatively agreed was acceptable, however the agreement would have allowed development to occur on TL1000 in the event annexation failed, so long as the applicant had made a good faith effort during the annexation process. The current condition requires the annexation to be completed before issuance of any building permit to assure the City of future control of development on the property. There is an annexation process in place in the City, and it is feasible for annexation to occur. Applicants have consented to the imposition of this condition.

II. Approval Criteria

10. MZDO 90.330, as applicable to this application, requires substantial evidence and findings and conclusions that all four elements of the section are complied with. MZDO 90.330(A) requires that the proposed Comprehensive Plan Map amendment meets at least one of three identified situations. Where an applicant satisfies one of the three circumstances, then MZDO 90.330(A) is complied with. The three alternative circumstances are:
 - 10.1. The Comprehensive Plan designation for the land for which the Plan amendment is initiated is erroneous and the Plan amendment would correct the error; or

- 10.2 Conditions in the neighborhood surrounding the land for which the Plan amendment is initiated have changed to such a degree that the Comprehensive Plan designation is no longer appropriate, and the Plan amendment would conform to the new conditions in the neighborhood; or
- 10.3 There is a public need for land use of the kind for which the Plan amendment is initiated and that public need can best be met by the Plan amendment.
11. MZDO 90.330(B) must be complied with. This criterion requires the proposed change be consistent with applicable goals and policies of the Comprehensive Plan.
12. MZDO 90.330(C) must also be complied with. This criterion requires the proposed change show that adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property. A Traffic Impact Analysis, pursuant to Section 96.415, may be required by the Public Works Director to determine the adequacy of existing or planned transportation facilities and demonstrate compliance with Oregon Administrative Rules (OAR) 660-012-0060.
13. MZDO 90.330(D) must be complied with. This criterion requires the proposed change be appropriate considering the surrounding land uses and the density and pattern of development in the area.
14. There are no other provisions of the City's Code that apply to this application.

III. Background Information on Application

15. This application involves only the northwesterly-most 7.46 acres of Tax Lot 1000, Map 8.4.30. The subject property is currently designated Low Density Residential (LDR) in the Comprehensive Plan, and is zoned Suburban Residential (SR) in the Polk County Zone Ordinance (PCZO). This application seeks to amend the Comprehensive Plan for the 7.46 acres to Industrial.
16. Tax Lot 1000 was originally split-zoned and designated in 1986, with the southern 10 acres being designated Industrial in the Monmouth Comprehensive Plan, and zoned for Light Industrial (IL) use by Polk County. This southern 10 acres of Tax Lot 1000 is the location of the applicants' wood products processing and recycling business. The remaining 16.29 acres of Tax Lot 1000 are vacant. Over the last 25 years, applicants' business has grown and is currently in need of expansion onto a portion of the remainder of their property. The expansion is to provide an area for public sales that will involve the movement of product bins from the adjacent business site. The purpose of this move is to segregate the public traffic from the internal and business traffic. By moving the public sales to the expansion area, public sales will be self-contained and out of the internal circulation pattern of the business, making it safer for all parties. The sales area will have some pavement under the bins to protect the product, and a gravel circular drive. The sales area will use the same driveway access onto Highway 99W that currently serves the property and business activities. Little new business is expected to

be generated by the move of the public sales area to the expansion area. The small area vacated on the adjacent property from the move of the public sales will allow for uniform parking of the commercial vehicles and equipment, where those are currently just left in the work area where ever they stopped working. In addition, the vacated area will provide sufficient room for employee parking.

17. The applicants' prior proposal to change the designation of the subject property involved a change in the land use designation for the entire remaining 16.29 acres of Tax Lot 1000. In order to mitigate impacts to the surrounding areas, and to move the proposed use farther away from the residential areas to the north and east, this proposal has reduced the size of the area to be re-designated to 7.46 acres. The subject property is to be 550 feet wide, and 561.66 feet long with the addition of a small square tract located at the northwest corner of Tax Lot 1000.
18. In addition, this proposal moves the expansion area west, concentrating the business activities along the existing Highway 99W commercial/industrial corridor. The location of this expansion area moves the change in use over 550 feet to the west, leaving a buffer of 8.8 acres of LDR zoned and designated land between the expansion area and the residential areas to the east and north. Based on the proposed location of the expansion area, the nearest residence will be approximately 700 feet away from the new project area.
19. The applicant has installed berms along the eastern property line, together with a fence, trees and vegetation to provide a buffer for the surrounding properties.
20. The expansion area is bordered to north by the city limits and a church which is zoned Low Density Residential (LDR). To the east the expansion area is bordered by applicants' own 8.8 acres of vacant Suburban Residential (SR) county land, that being the portion of Tax Lot 1000 that will remain designated SR, and beyond that, vacant land that is zoned Mixed Density Residential (MDR). To the south are rural lands, as the southern boundary of TL1000 is also the southern boundary of the UGB. To the west is Highway 99W, and across the highway are industrial uses zoned for Industrial Park and Light Industrial uses.

IV. Compliance with Approval Criteria

21. There are three alternative ways to satisfy MZDO 90.330(A). An applicant is only required to satisfy one of the three alternatives. Where one alternative is satisfied, MZDO 90.330(A) is satisfied. In this application, the applicant has satisfied MZDO 90.330(A)(2). Conditions in the neighborhood surrounding the land for which the Plan amendment is initiated have changed to such a degree that the Low Density Residential (LDR) Comprehensive Plan designation is no longer appropriate, and the Plan amendment to Industrial would conform to the new conditions in the neighborhood.

21.1. MZDO 90.330(A)(2) can be broken down into its individual components. First is

the consideration of what the “neighborhood surrounding” the area that is proposed for change is identified as. Second, the conditions in that identified neighborhood need to be analyzed to determine how the neighborhood has changed since the adoption of the modern zoning code in 1984. Third, that change is then assessed against the LDR designation to determine if that designation is no longer appropriate for the subject property. Finally, if the LDR is found to be no longer appropriate, then a determination is made whether the proposed Industrial designation is appropriate, given the identified changes. In the analysis of this criterion it is important to note that the subject property is a 7.46 acre portion of TL1000, and not the entirety of TL1000. In addition, when identifying a surrounding area, the notice area identified in the MDZO is generally considered to be the surrounding neighborhood and all the area that the City needs to notify local residents. In this case that notice area is 250' from the outside boundaries of the subject property. See MZDO 90.225(A). With these basic interpretations of MZDO 90.300(A)(2), the following findings address each element.

- 21.2. While the surrounding neighborhood is generally considered to be the Highway 99W corridor, for this application, the neighborhood identified here is greatly expanded beyond that which is commonly considered to be the surrounding neighborhood, and goes significantly beyond the 250' notice area provided for in the MDZO, and much farther than the 700' current separation of uses that exists in this area. The expanded “surrounding neighborhood” being considered here is bounded by Madrona Street, which is approximately 1,580 feet north of the subject property; the UGB boundary approximately 600 feet south of the subject property; Broad Street S. approximately 680 feet west of the subject property across Highway 99W, and a line extending from its terminus south to the UGB; and Edwards Road S. approximately 2,160 feet east of the subject property, and a line extending from its terminus south to the UGB. This defined area is approximately 3,300 feet in the east/west direction, and 2,700 feet in the north/south direction and encompasses over 200 acres of land. This identified neighborhood surrounding the subject property is also typical of the changing land use patterns in the entire City. The front door of the property faces essentially west toward Highway 99W. The access to the property is solely from the highway. The back door of the property faces out onto vacant open fields, with residential uses in the distance. To the south is the industrial use of the parent business. Across the highway to the west is an industrial park and area that is mostly vacant. To the north is a church and beyond that some additional residential uses.
- 21.3. The defined area includes a representative mixture of uses and zones. Along the Highway 99W corridor is a large Commercial Retail (CR) area on the west side of the highway and Medium Density Residential on the east side of the highway that is buffered from the highway by a mature line of trees. To the west of the CR area is land that is zoned for Commercial Office (CO) uses. At the corner of Gwinn and Highway 99W on the west side is a newer assisted living facility that

is zoned High Density Residential. South of Gwinn Street, but still on the western side of the highway, is a large area zoned for Industrial Park and Light Industrial uses. Further west of the industrial area are lands zoned for High Density Residential, Mixed Density Residential and Low Density Residential uses. To the east of Highway 99W, from Madrona south, is a strip of Medium Density Residential zoning, and to the east of that is a portion of Edwards Addition which is zoned for Low Density Residential uses. South from this area is the established church (which is allowed in the LDR zone as a conditional use, and commits a large part of that tract to church related uses that are non-residential in nature). To the east of the church is an area zoned for Mixed Density Residential uses. South of the church is the subject property which is currently zoned SR (the county's transition zone) but designated LDR in the comprehensive plan, and the southern portion of this tract is zoned IL and designated Industrial in the plan.

- 21.4. Uses within the defined area follow the zoning pattern. In the area west of Highway 99W and north of Gwinn Street there is the aforementioned assisted living facility. North of that facility are large retail stores and drive-through restaurants all oriented towards Highway 99W. South of the assisted living facility is a mini-storage facility, some industrial buildings and vacant land, designated for industrial use. There is a duplex subdivision approved, but it is only sparsely developed at this time. The remainder of the land in the southwest quadrant of the defined area is basically vacant. In the area east of Highway 99W, the northerly residential areas are fully developed, and the southerly area is only developed with the church and the applicants' wood processing business.
- 21.5. The reason for this pattern of growth is the need for industry and commerce to have clear and easy access to the Highway to get supplies to the business and to get products out to the larger markets to the north, south and east. Customers travel on the Highway, so visibility for a business to attract those customers is critical. Ease of access for customers to business improves success. Highway 99W provides that. This function of the Highway is so important that Highway 99W has been designated in the Oregon Highway Plan as a Freight Route, and recognized as such in the Monmouth Transportation System Plan. As the City grows, so go the changes in development patterns. As Highway 99W takes on more and more traffic from the region, the positive effects of an industry or business being located on the Highway becomes greater and more intensified.
- 21.6. Conversely, those same circumstances prompt residential developers to want to move away from the Highway. Residential areas are averse to high traffic and the noise generated from a busy highway and nearby business operations. Residential developers have planned and developed their subdivisions a considerable distance away from the Highway, despite land that is properly zoned and planned for residential use being located along the Highway frontage. This process of selective development led to subdivision construction over 1,000 feet to the east of the highway. This is the pattern of growth over the last 30 years. No new subdivisions have been oriented toward the Highway during the last 30 years, and

one subdivision that did border the Highway oriented itself in the opposite direction and made the highway frontage the back yards, and then buffered those with vegetation.

- 21.7. From the time the original comprehensive plan was adopted in the early 1980s, the defined area, and in fact all of the City, has changed in significant ways. The trend is for the Highway 99W corridor to become the north/south commercial and industrial trade route for the entire area, with the corresponding effect that this corridor has changed from predominantly residential (with regard to local traffic) before the comprehensive plan was adopted to today where businesses line the highway corridor and all new subdivisions have been located or facing away from the highway on interior streets. All of the businesses in the area have taken over residential lands along the highway since 1986, in much the same way that the applicants' own plan and zone change from LDR and SR to I and IL took place on the southerly 10 acres of TL1000 in 1986. The assisted living facility, the mini-storage units, the new duplex subdivision and the parts of Edwards Addition included in the defined neighborhood, all were re-zoned, and or constructed since the comprehensive plan was adopted in the early 1980s.
- 21.8. In addition, the commercial corridor that is Highway 99W has developed with many new businesses since 1986, also changing the character of the area. The evolution of the City is that residential subdivisions have been established on interior streets and away from (or oriented away from) the commercial areas. Since 1986, two subdivisions have been developed in the vicinity of the subject property, Edwards Addition, located approximately 1,000 feet east of Highway 99W and Gwinn Street Village, located approximately 650 feet west of Highway 99W. The Highway 99W corridor that had many residential dwellings in 1986, now in 2013 has very few; most having either been demolished to make way for commercial buildings, or converted to commercial buildings themselves. During this relevant period the following commercial/industrial operations have been changed to allow construction on the west side of Highway 99W including: Kentucky Fried Chicken; Bi-Mart; OSU Federal Credit Union; a drive up coffee stand; an assisted-living facility, and a 5-acre mini storage operation.
- 21.9. At present, the new pattern of land use development in this neighborhood is for commercial and industrial lands and uses to be located adjacent to Highway 99W, and residential uses to be located away from (or oriented away from) the commercial corridor that is Highway 99W. Amidst this current predominant land use pattern, the applicants' property still has LDR lands adjacent to the highway; across from and adjacent to industrial lands and directly on the commercial highway corridor. This is in conflict with the emerging land use patterns in this neighborhood over the last 30 years. The fact that the applicants' LDR-designated land has itself not converted to residential use in nearly 30 years, despite its residential zone and plan designation, indicates that land once thought to be residential is no longer appropriate for that use.

- 21.10. Based on all these facts and considerations the neighborhood surrounding the subject property (as defined here) has changed, thereby satisfying the first aspect of this criterion. Allowing the conversion of LDR land to the Industrial plan designation follows this pattern of development in the City generally, and in the defined area specifically, and therefore satisfies the second aspect of this criterion.
22. MZDO 90.330(B) requires the proposed change in plan designation to be consistent with applicable goals and policies of the Comprehensive Plan. This application is in fact consistent with the applicable goals and policies of the Comprehensive Plan, and therefore this criterion is satisfied.
- 22.1. For goals and policies to be relevant to this quasi-judicial land use decision, each must be “applicable” to the application. In addition, goals and policies, to play a role as decision criteria in a quasi-judicial land use decision, must be stated in such a way as to be a mandatory obligation with respect to the specific application. Not every plan goal or policy constitutes an approval criterion for a site specific land use application. Goals and policies that are directives to the City to take action do not constitute approval criteria for a quasi-judicial land use application. In some instances, goals and policies may not be approval criteria, but may express a policy preference to be considered during deliberations on the application. As to each of the goals and policies raised by parties and participants in this proceeding, a finding and conclusion is made that the language is 1) an approval criterion; or 2) not an approval criterion; or 3) a policy preference will be made here.
- 22.2. Urbanization - The Goal and Policies stated for urbanization are either not approval criteria for this application or are satisfied. Except as noted below, the language of these Goals and Policies constitute general planning directives for the City to use in guiding long term planning and in establishment of the UGB and cooperative administration of urbanizable lands with the county. This Goal and its accompanying Policies are designed to provide for an orderly and efficient transition from rural to urban land. This application does not involve any change in the UGB; there is no need to extend city services; and no annexation is proposed at this time. Therefore, all policies related to those issues are not applicable here. To the extent that Policy 3 expresses a policy relevant to this application, it is noted that the conditions for annexation of the subject property must be met, and the property must be annexed, before any building permit will be approved for the subject property, so those conditions are protected. Policy 4, relating to coordination between Polk County and the City, is fully complied with in this application. No industrial use on the subject property will be allowed until the County has changed the zoning designation as provided in the IGA between the City and County.
- 22.3. Land Use - The Goal and Policies stated for the Land Use element are either not approval criteria for this application or are met, as discussed below. This Goal is

designed to encourage the efficient use of land appropriate to the character of the City, and to provide for the future needs of the City for growth through 2020.

22.3.1. Policy 1 requires the City to revise land use designations to accommodate changing circumstances. This Policy is implemented by MZDO 90.330 (A) and subsection (2) thereof as determined in detail above that this approval does accommodate changing circumstances.

22.3.2. Policies 2, 3 and 4 are directives to the City requiring the establishment of certain land use designations, and are not applicable here.

22.3.3. Policy 5, as with Policy 1, is carried out in the planning process by the MZDO approval criteria. That this proposal is compatible is determined above. The primary issue for compatibility in this application is the separation of the applicants' property in such a manner as to propose changing the designations only on the 7.46 acres that is oriented toward Highway 99W, leaving easterly 8.8 acres that is closest to the neighboring subdivisions in its existing residential designation. When viewing the 7.46 acre area proposed here, it would be bounded to the north by TL900, a 5.54-acre property within the city limits, which is partially developed with a church and parking area ; to the east would be the retained 8.8 acres of vacant LDR/SR, outside the city limits and owned and controlled by the applicants; to the south is the 10 acre business operation of the applicants, which is zoned and designated for industrial use; and to the east is Highway 99W, and across Highway 99W is a mix of commercial and industrial uses. This area provides a significant buffer for the low impact industrial use the subject property will be put to. To the extent Policy 5 addresses compatibility it is considered to be a policy preference, which policy is carried out in MZDO 90.330(A)(2) and 90.330(D) and is addressed here under that language. To the extent an independent finding and conclusion is necessary under Policy 5, it is hereby declared that this proposed change is compatible with surrounding lands. Policy 6 relates to downtown and is not applicable here. Policy 7 relates to building construction. Because no buildings are proposed in this application this Policy is also not applicable. MZDO

22.3.4. The subject property is the northwestern-most portion of Tax Lot 1000, which is 7.46 acres in size. The land immediately to the east is therefore owned by the applicants, for a distance of over 561 feet. Staff has determined that the nearest house is over 700 feet from the new proposed boundary line. The property immediately to the south is also owned by the Applicants, for a distance of over 400 feet to the UGB boundary. Also, using the definition of the "neighborhood" used herein, this proposal is compatible with the uses taking place in that "neighborhood."

22.4. Housing - This Goal and these Policies are either not applicable approval criteria

for this application or are met, as discussed below. Essentially, these directives instruct the City how to ensure there is sufficient inventory of housing types available for future growth.

22.4.1. Because this application is intended to remove 7.46 acres of LDR/SR zoning from the City's housing inventory, this Goal must be viewed in light of what impact the lesser inventory has on the ability of the City to provide housing through the 2020 planning period. None of the policies related to the Housing Goal are applicable here, because housing is not being proposed.

22.4.2. The inventory balance, that is the amount of low-density residential land remaining after removal of this 7.46 acres is not adversely impacted by this application. The Land Use Element of the Comprehensive Plan, adopted in 2001, shows approximately 295 acres of buildable residential land designated as LDR within the Monmouth urban area. This includes approximately 40 buildable acres within the city limits and an additional 255 buildable acres between the city limits and UGB. The housing needs analysis from the Comprehensive Plan shows that approximately 189 acres of LDR land will be needed to meet the projected 2020 population. The removal of 7.46 acres of LDR land, outside the city limits, will not affect the City's ability to fulfill its Goal to provide housing through the 2020 planning period.

22.5. Transportation - This Goal and these Policies either are not applicable approval criteria for this application or are satisfied, as discussed below. Specific elements related to transportation issues are addressed in MZDO 90.330(C) and will be addressed in more detail below under that topic.

22.5.1. It has been argued that this proposal does not satisfy the City's Transportation Systems Plan (TSP), which is the guide for which transportation planning requirement flow. However, it is hereby concluded that this application is consistent with and satisfies the requirements of the TSP.

22.5.2. This proposal will generate little if any new traffic. There is no expansion of activities proposed, only the moving of one part of the business and allowing for improved safety and more coordinated parking in the vacated area. ODOT, which is the controlling jurisdiction over the Highway 99W access point to the property, has indicated that no new or modified access permitting is required, and that it has no objection to the proposal. No new access points onto any public street are being proposed. No functional classification of any public street is being changed. With the condition of approval in place to require annexation prior to issuance of any building permit, the City is assured that no structures will be constructed in locations on the property that conflict with roads that are

proposed for the subject property in the TSP. Annexation, building permits, and other land use development permits will allow the City to control the growth on the subject property in such a way as to implement each and every plan, goal and policy of the TSP.

22.5.3. The TSP shows future plans for an extension of Ash Creek Drive from Independence westerly across Highway 99W and connecting to Highway 51 on the western edge of the City. This planned extension is south of the subject property, and is generally planned along the southern most border of Tax Lot 1000 in a location that would not be impacted by this change. Next, the TSP shows the extension of Gwinn Street to be the major east/west collector to serve the Edwards Addition and lands in that area. The generalized planned location of this extension is well to the north of the subject property, as it will connect with Gwinn Street as it exists on the west side of Highway 99W to make a residential intersection. This extension is not located on the subject property, therefore nothing that goes on with this application will have any impact on that proposed street improvement. Finally, the TSP shows a southerly extension of Southgate Drive to a proposed intersection with the proposed Ash Creek Drive extension referenced above. This extension is proposed to be a frontage road to reduce local traffic on Highway 99W and to channel traffic entering Highway 99W to a new major intersection of Highway 99W and Ash Creek Drive. This extension is generally planned to be approximately 150 feet to the east of Highway 99W. The projected cost of this extension alone is \$1,100,000, with no funding identified and no projected timeline for construction. Of course this extension will not even be considered until and unless the Ash Creek Drive extension is developed, and that similarly is neither funded nor is there any timeline for this new street system. Since there is no development planned in the way of the street extension, and since no development can be placed on the subject property without annexation and, therefore, City control, this planned street extension is protected. There is nothing about this Plan Amendment that would adversely impact the future systems plan as stated in the TSP. The current proposal calls for no development on the subject property. No future development can occur without first annexing the property to the City. Nothing in this application commits the land to any use that would make it impossible for the City to acquire the right-of-way for Southgate Drive, and the Ash Creek Drive and Gwinn Street extensions are not located on the subject property, and therefore are not impacted at all.

22.5.4. The opponents refer to a number of internal subdivision streets and assert that they are based on the TSP and must be used now to deny this application. The TSP does not include any internal streets, and all planned public streets that are included in the TSP are addressed above.

22.6. Public Facilities - The goals and policies in this element of the Comprehensive

Plan are not approval criteria for this application. Where public facilities rise to a higher level of inquiry is in MZDO 90.330(C), and discussion of compliance with that section, which is an approval criterion, follows below. The subject property is served city water by virtue of a 1-inch service line installed years ago. Sewer and storm drainage are available and could serve the subject property upon the Applicants extending the lines to the subject property. Although city services are available to serve the subject property, they are not needed by the current proposal. The only activity to take place on the subject property will be public sales of various wood products from storage bins. A gravel looped driveway for the public to access from the existing entrance drive will be developed with one piece of equipment used to fill the bins, and to load out public vehicles with sold product. The proposal does not include any buildings or permanent construction. Fire protection is available from Polk County Fire District No. 1, and there is an available fire hydrant on the adjacent property. There are no residents on and no development planned for the subject property so there is no impact on or requirement for water service, sewer connection, storm water drainage (the vast majority of the site will remain in its natural state), schools, libraries, or police, fire or ambulance services. From a solid waste standpoint, collection is taken care of as part of the existing business operation, and no additional solid waste is generated by this expansion. In addition, whenever any development occurs, before any building permit can be issued, the subject property would be required to complete annexation to the City. As such, construction of any structure would require the applicants' extension of all city utilities to the site.

- 22.7. Economic Development - None of the goals or policies in this element of the plan are applicable approval criteria. This language amounts to directives to the City and do not involve application to a site specific land use proposal. While none of the goals and policies are approval criteria, there was much discussion specifically regarding Economic Policy 9. Economic Policy 9 is a directive from the City to the City to be sure to keep a sufficient inventory of industrial lands to meet the need for the planning horizon. There is no element that is applicable to this application. This language does not preclude the City from changing lands from one designation to industrial on a case by case basis as the situation arises quasi-judicially. Missing from the language of Policy 9 is the word "only," which would limit the City to adding industrial lands "only" when the inventory goes out of balance. Without limiting words, such as "only" or some other similar language, Policy 9 has to be given its plain meaning given the text and context of the provision.
23. MZDO 90.330(C) requires that the proposed change show that adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property. A Traffic Impact Analysis, pursuant to Section 96.415, may be required by the Public Works Director to determine the adequacy of existing or planned transportation facilities and demonstrate compliance with OAR 660-012-0060. This application demonstrates that adequate public facilities, services and transportation networks are adequate to serve the proposed use. This

criterion is satisfied.

- 23.1. The proposed use for the subject property does not require urban services. Adequate water service is already provided to the site, and fire protection is adequate. Given the condition of approval requiring annexation prior to the issuance of any building permit, the City is certain that when sewer and water and other city services are needed to serve any buildings, the property will be inside the city limits. All city services are available and adequate to serve the property once annexation occurs. It is especially important to note that this is a Comprehensive Plan Amendment, and not a development application. By changing the Comprehensive Plan, no new or different uses are allowed to take place on the subject property. Before any change in use may occur the county must agree to change the zone from SR to IL. It is only once the plan designation and the zone are matched (I and IL) that any change in the physical use of the property may occur. Given the condition of approval, only those uses that do not require any buildings would be allowed even then.
- 23.2. Other city services such as storm drainage, police, schools, and other similar services are all available and can adequately meet any demands that may occur from the subject property. Again, this change in the comprehensive plan map does not allow any change in use on the property that would require such services. The proposed public sales area will have only a small impervious surface, otherwise the area will be in its natural state except for a circle gravel drive. Drainage will continue as it does now by percolating into the ground or running off to the drainage ditch that traverses the middle of the property. This is a limited decision that requires further decisions in order to allow any new development. At such time as a new use is proposed that involves the construction of buildings, annexation will have occurred and the City's development code will control that development.
- 23.3. As currently proposed, there is little if any traffic increase involved. There is no new driveway access or street creation proposed or needed. ODOT has reviewed the access point and does not require any new permit or modification of the existing driveway access permit for the proposed use. The proposed use will generate significantly less traffic than what would be allowed if the site was developed for single family houses under the current zoning and Plan designation. The City concurs with ODOT that this application does not trigger any access review. Given that the only access point is on to Highway 99W, the City finds that this transportation network is in place and adequate for this proposed use. ODOT has primary jurisdiction over Highway 99W, and has expressed no objection to approval of this application.
- 23.4. MZDO 96.415 establishes the standards for when an application must be reviewed for potential traffic impacts and when a Traffic Impact Analysis (TIA) must be submitted. The need for a TIA is discretionary with the City, and is implemented by the Public Works Director. In this application, given the lack of

objections from ODOT; the fact that there will be little or no increase in traffic from this expansion; no new access points proposed; no new heavy truck traffic involved; and a positive change in the internal circulation pattern on TL1000 to improve safety all lead to the conclusion that no TIA is required for this application.

- 23.5. Compliance with the TPR is required, and is found to be fully complied with. A full discussion of compliance with the TPR is found in other sections of these findings.
24. MZDO 90.330(D) requires the proposed change be appropriate considering the surrounding land uses and the density and pattern of development in the area. The proposed change to Industrial is appropriate considering the surrounding land uses and the density and pattern of development in the area. This criterion is satisfied.
 - 24.1. This criterion is substantially similar to the second part of that found in MZDO 90.330(A)(2), and the compliance discussion above on that criterion applies equally to the compliance of this criterion. In situations where MZDO 90.330(A)(1) or (A)(3) are utilized for compliance this criteria allows the City to make findings and conclusions on the topics raised here, as they are not substantially similar.
 - 24.2. This criterion focuses on the appropriateness of the change. “Appropriate” is generally considered to mean “suitable” or “fitting” or “proper under the circumstances.”
 - 24.3. For purposes of this criteria, the “surrounding land uses” and the “area” to be considered as to the density and pattern of development are the same as that established for MZDO 90.330(A)(2). That is the specific area bounded by Bentley Street E. to the north; the UGB boundary to the south; Broad Street S. and a line extending from its terminus to the UGB to the west; and Martin Way S. and a line extending from its terminus to the UGB to the east.
 - 24.4. As noted in the findings and conclusions for compliance with MZDO 90.330(A), the defined area is a mixture of land uses centered along the Highway 99W corridor. Businesses predominate along the highway, with residential uses tending to be located or oriented away from the highway. The northerly portion of the area is almost entirely developed, with large commercial uses to the west and single family residential to the east. The southerly portion of the area is less developed, with few uses established to the west or the east. The orientation of this property toward Highway 99W, and the need for that access for industrial purposes fits the area, as there is sufficient buffering to the north where the church is located; to the east by the 8.8 acres owned by the applicant that will remain vacant and the open field to the east of the applicants’ property; to the west by industrial zoning and uses; and to the south by the applicants’ own business operation and the UGB beyond that.

- 24.5. The change in use from residential to industrial is appropriate (i.e., suitable, fitting and proper under these circumstances) for this portion of TL 1000, as it allows a local business to expand and become a safer operation. It is appropriate as it provides the best utilization of ground that has significant frontage along Highway 99W. The lesser traffic generation from this use compared to what would be generated by the present zoning prevents traffic congestion and therefore is best for this area, making it appropriate as well.

V. Statewide Goals and Guidelines

25. The City of Monmouth Comprehensive Plan is acknowledged. Notice of this application was duly and timely given to DLCD in April 2013, which is in charge of review and comment on changes to local comprehensive plans. In this case, DLCD provided no comment, and did not indicate to the City that this application was in conflict with any the Statewide Goals and Guidelines. Nevertheless, since compliance with the Statewide Goals and Guidelines was raised as an issue by opponents to this application, the City has reviewed the Statewide Goals and Guidelines, and has found that, to the extent they are applicable, they are complied with in this application.
26. Specific Goal compliance, with regard to issues raised during this proceeding are addressed as follows:
 - 26.1. Goal 5 - Requires local government to inventory, evaluate and classify natural resources. This is a comprehensive planning process and is not approval criterion for a map amendment to the comprehensive plan. A drainage area, which is a ditched tributary of the South Fork of Ash Creek, is identified in the application and comprises a small portion of the expansion area. The plan for the expansion is to provide for an undisturbed 25 foot wide buffer on both sides of the ditch, which would provide sufficient protection for the ditch. The ditch is not a fish-bearing stream and is consequently not a significant riparian corridor as defined by OAR Chapter 660, Division 23. The City's Goal 5 inventory states that wetlands exist along the North, Middle, and South Forks of Ash Creek. These areas do not include the subject property. The property does contain some hydric soils and further development may be subject to requirements administered by the Oregon Department of State Lands (DSL) The only impervious surface currently planned will be that small area where the products will be stored for sale to the public. That area does not include any hydric soils. To the extent that Goal 5 applies to this application, it complies with Goal 5.
 - 26.2. Goal 9 - Is another inventory mandate from the Land Conservation and Development Commission to the City. This goal calls for diversification and improvement of the local economy, and asks the City to inventory commercial and industrial land to project future needs for such lands. This Goal does not establish an applicable approval criterion for this application. The Goal 9 Administrative Rule, OAR Chapter 660, Division 9, provides that the Goal 9 rule

applies at the time of periodic review, OAR 660-009-0010(2) and whenever a jurisdiction undergoes a plan amendment to change the plan designation of more than two acres of land from an industrial to a non-industrial use or employment to non-employment use. OAR 660-009-0010(4). Neither of these circumstances is present in this application. This application meets this Goal in any event, as it aims to facilitate growth of a local company, which will make the City's economy just a little bit better.

- 26.3. Goal 10 - This is the statewide housing goal, which also requires inventorying and planning for future needs and prohibits discrimination. Again, this Goal contains no applicable approval criterion. The Goal is satisfied in any event, as the City's inventory shows a surplus of housing lands, to the extent that the conversion of 7.46 acres to industrial use will not create a shortfall. See the above discussion on buildable residential land. To the extent this Goal applies to this application, it is complied with.
 - 26.4. Goal 12 - This is the Transportation Goal that seeks to provide a safe, convenient and economic transportation system. This Goal does not contain any applicable approval criteria. The Goal is implemented by the Transportation Planning Rule (TPR). A more detailed discussion of the TPR follows below. In summary, the TPR does not come into play when the proposed change does not significantly affect a transportation facility. ODOT has no objection to this application, and no permit modification is required for this expansion. Under the limited circumstances in this case where there is no increase in traffic or other changes that affect a transportation facility, this Goal (to the extent it is applicable) and the TPR are complied with.
 - 26.5. Goal 14 - This is the Urbanization Goal, which is used to establish Urban Growth Boundaries (UGB) and give direction to local governments for dealing with urbanization of lands between the city limits and the UGB. No language in this Goal or its Guidelines can be construed to be applicable approval criteria for any quasi-judicial land use application. To the extent that Goal 14 provides for the establishment of a cooperative process between cities and counties for the management of urban growth boundaries, the Urban Growth Boundary IGA between the City and Polk County, pursuant to which this application has been filed and will be dealt with by the County, meets this requirement.
27. No other Statewide Land Use Goals were brought into consideration by any party to this proceeding, therefore no other goals will be specifically addressed.

VI. Specific Issues Raised by Opponents

28. Transportation Planning Rule - Opponents cite the Transportation Planning Rule (Goal 12 and its implementing OARs, commonly referred to as the TPR) and argue first it is applicable here, and second that it is not complied with. Neither argument is accepted. The applicants have an already approved access permit to Highway 99W issued by

ODOT. This application will not generate appreciable (let alone “significant”) new traffic to the site. No new access point is proposed. ODOT was notified of this application and submitted written comments that no new access permit or amendment thereof would be required, and that ODOT had no objection to the proposed plan change. Highway 99W is a state highway, under ODOT’s jurisdiction.

28.1. The TPR does not apply in this case. In order to apply, a proposal has to “significantly affect an existing transportation facility.” OAR 660-012-060(1). To “significantly affect” a transportation facility, a land use application has to change the functional classification of the facility; change the implementing standards of the classification; add types or levels of traffic that are inconsistent with the classification; or degrade the performance of the facility. This application contains none of the impacts that would trigger the TPR. Since there is no significant impact to an existing transportation facility, no mitigation or other action is required and the TPR is complied with. ODOT is the road authority for Highway 99W. The city accepts ODOT’s position that it does not object to this change as evidence that it will not significantly affect Highway 99W.

29. Noise, Dust and Odor - Each of these issues has been raised by opponents to this application. The City finds and concludes that there is no substantial evidence to support the allegations of adverse impacts from the proposed expansion as to noise, dust or odor. To the extent there is any such evidence in the record, the City has weighed such evidence against conflicting evidence against adverse impacts, and finds the evidence against adverse impacts to be more persuasive. The applicants have engaged professionals in each field to evaluate this proposal. Each report is in the record and has not been refuted, nor have other experts come forward with contrary information or opinions. Under these circumstances, the City finds and concludes the information submitted by the applicants’ experts that there is not now and will not be in the future any material adverse impacts on the surrounding neighborhood from noise, dust or odor.

29.1. Citizen complaints about noise, dust and odor were not substantiated by the Oregon Department of Environmental Quality (DEQ), despite site inspections made in response to opponent complaints. The DEQ report of its investigation into the opponents’ complaints found that no dust or odor could be noted; that the existing Marr facility is above average in the quality of its management of dust and odor; and that the source of complained of odors has not been definitely determined. The DEQ investigator indicated that he did not believe an air contaminant discharge permit was applicable, and that he would not expect a high amount of particulates to travel to the residence location from the bark piles.

29.2. There is a large farming operation on lands adjacent to the Edwards Addition development. Evidence showed a farm tractor operating immediately adjacent to the Edwards Addition demonstrating how close farm dust and odors are to the subdivision.

- 29.3. Edwards Addition, from which most complaints came during this hearing process, includes more than 100 homes, and of those only a handful of those residents have weighed in against this project. It should also be noted that several Edwards Addition residents submitted letters supporting this application.
- 29.4. The nearest residence to the boundary of the expansion area is approximately 700 feet, which is nearly the same distance as to the existing equipment operation, so that no new operations will be closer to the nearest residence with the approval of this application. There will be no increase in noise caused by this application, and the existing noise emanating from the business on the southern portion of TL 1000 complies with all noise standards. In addition, the applicants have followed all recommendations from their noise expert as to adding equipment to muffle and retard sound.
30. Mandatory Annexation for Development - Opponents argue that before any property may develop, or make any change to the comprehensive plan, that this property owner is obligated legally and morally to annex to the City. There is no legal requirement for the applicants to annex to the City in order to gain approval of this plan amendment. As to the moral obligation, such has not been defined by the opponents except to continue to assert that the applicants should annex. The 7.46 acres of land subject to this application will be used only for storing and selling wood products to the public. There will be no buildings or structures constructed, nor can any buildings be built unless the property is annexed to the City, which will bring any development under the City's control. There is no need for city water. There is no need for city sewer. There will be few impervious surfaces and on-site detention, so there is no need for city storm drainage. There are no dwellings on the property so there is no impact on schools. There will be little to no additional traffic generated by this expansion, as all that is happening is a reorganization of the operation to move the public sales from its existing location to the new expansion area. The act of annexation is a *quid pro quo* where the property owner gains an advantage or a needed service in exchange for annexation and payment of city taxes. In this case there is absolutely no city services needed for this operation, and no impact on the city. As such, while not acknowledging that "moral obligation" is an applicable land use criterion to begin with, there is no moral obligation to annex.
- 30.1. The argument regarding annexation has become essentially moot with the imposition of the condition of approval requiring annexation to be completed prior to the issuance of any building permit for the site. There is no need to annex now, as nothing happens on the ground to compel annexation, however at such time as development begins by the proposed construction of buildings, then annexation must first be completed. If annexation is not completed, no building permit can be issued.
- 30.2. There is nothing in the MZDO, the Comprehensive Plan, the City/County Intergovernmental Agreement or state law that requires annexation in a situation like this.

31. City Loss of Control to Polk County - Opponents contend that approval of this application, will mean the City loses control of land uses on the property. This is not a relevant argument as it does not address the approval criteria, but is addressed briefly because it was raised during the hearing process. The City and County have an Intergovernmental Agreement that controls that land area between the city limits and the urban growth boundary. The City controls land uses inside its city limits. Polk County controls land uses outside the UGB. In the urban area between the city limits and the UGB there is an agreed upon coordinating sharing of land use responsibilities. The City controls the comprehensive plan. The County controls zoning, but development is with notice and comment from the City. Section 9 of the Intergovernmental Agreement requires the County to cooperate and coordinate in the exchange of information and recommendations relating to lands in the urban area. Information on all land use actions that are under the County jurisdiction are to be forwarded to the City for review and comments and for the making of recommendations. These land use actions specifically include land divisions, variances, zone changes, conditional use permits and building permits. Where there is a disagreement raised by the City to the proposed County action, Section 10(e) requires the Council and Commissioners meet to work out a resolution of the disagreement. This Intergovernmental Agreement provides all the safeguards necessary to the City for the control of the future development of the subject property. As a further safeguard to the City for County actions in the urban area, Section 8 provides that when Polk County issues a building permit for an industrial facility in the urban area, a requirement of that building permit is that the property owners must sign an "Agreement to Annex" to the City. This last section is essentially moot in this instance with the annexation requirement imposed here as a condition of approval.
32. Planning Mistake/Reversionary Zoning - Opponents have alleged the Industrial plan designation on the southern portion of TL 1000 was a mistake, or in the alternative the allowance for industrial uses is temporary. These arguments apply only to property that is not under consideration in this application. It is only the 7.46 acre northwesterly portion of TL that is involved here. While this is a proposed expansion of the business taking place on the adjoining lands, the land use activities there are not determinative of this application. This application concerns land that is not now industrially zoned or planned, nor is there any reversion clause involved here.
 - 32.1. Polk County Ordinance 86-10, the 1986 county ordinance that zoned the southern portion of Tax Lot 1000, following the City's designation of the property as Industrial, provides that the IL zoning reverts back to the SR zoning only for the original 10 acres that was involved in that case, and then only if the "bark dust operations, be abandoned for a period of six months or longer." Because the applicants have been on the property in full operation continuously since 1986, and there is no evidence of their intention to abandon their business at this location, this reversion clause is moot. Further, the reversion clause is unenforceable, as the underlying comprehensive plan designation of the existing IL zoning is Industrial, and Industrial-designated land cannot be zoned SR. Neither state law nor the City code permit the re-designation or rezoning of property based on a 27-year old "reversionary" clause that would apply

automatically, without regard to current criteria or any public land use process.

- 32.2. The allegation made that the industrial zoning granted in 1986 was a mistake is not supported by any credible evidence in this Record. There was no mistake as to this zoning, as the 1986 decision was reduced to writing in Ordinance form, Ordinance 86-10. To the extent that MZDO 90.355 provides that, when a property is reclassified to a different designation the "Plan Map shall be revised accordingly" within 30 days after the effective date of the ordinance reclassifying the property, and to the extent the plan map was not revised within 30 days of the adoption of Ordinance 86-10, the City interprets MZDO 90.355 to mean that the revision of the plan map is a ministerial act to reflect a legislative action, and that the failure to make such a revision of the plan map does not affect the validity of the ordinance or the re-designation of the property accomplished by the ordinance.
- 32.3 As noted above, the asserted mistake as to the re-designation of the southern 10 acres of Tax Lot 1000 in 1986 involves property that is not the subject of this application, and the status of that property is not subject to collateral attack or review in this proceeding.
33. Property values - It is argued that this application should be denied as it will lower property values of lands in the surrounding neighborhood. There is no credible evidence that this proposal will lower property values, however in any event, the affect on property values from this application is not relevant as it does not appear as an element within any of the approval criteria.
34. Declaration - It is argued that the CC&R's from Edwards Addition apply to TL 1100 as well as a Master Plan. Whatever is meant by this, it does not affect this case because 1) it does not affect TL1000, a portion of which is involved in this application; and 2) private CC&R's are not enforceable by the City, nor are consideration of them relevant to the approval criteria involved in this case.
35. Conditions of Approval – It was proposed that approval of this application be made subject to conditions of approval limiting activities and operations on the subject property and TL 1000, including conditions relating to hours of operation (to limit noise), construction of public facilities, granting of right-of-way, and measures to limit dust and odor. To the extent that such conditions are proposed to be addressed to TL 1000, they are not germane to this application, as TL 1000 is not the property that is the subject of this application. In addition, even to the extent such conditions may be applicable to the subject property, such conditions are more appropriately addressed to Polk County in the context of a zone change application than they are in the context of this application to amend the comprehensive plan. Under the IGA between the City and Polk County, the County has the authority to zone the property, and that includes the authority to impose appropriate conditions of approval. The City defers to the County the imposition of such conditions of approval as may be appropriate in the context of any zone change application that the Applicants submit to the County after this approval, subject to the

City's right to comment, as provided in section 9 of the IGA, and the process for resolving any disagreement between the City and County under section 10.e. of the IGA.



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Attn: Plan Amendment Specialist
DLCD
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540