



Oregon

Kate Brown, 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: February 19, 2016

Jurisdiction: Polk County

Local file no.: LA 15-02

DLCD file no.: 004-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 02/18/2016. 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 36 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.: 004-15 {24083}
Received: 2/18/2016

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: Polk County

Local file no.: **LA 15-02**

Date of adoption: 2/3/2016

Date sent: 2/18/2016

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): 10/13/2015

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:

Yes. The attached Ordinance No. 16-01 identifies appropriate Polk County zones for marijuana uses articulated in House Bill 3400.

Local contact (name and title): Mark Bernard

Phone: 503-623-9237

E-mail: bernard.mark@co.polk.or.us

Street address: 850 Main 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:

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:

Polk County Zoning Ordinance Chapters 110, 111, 116, 136, 138, 148, 155, 161 and 177.

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: Oregon Liquor Control Commission and Oregon Health Authority.

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.

Polk County passed Ordinance 16-01 regulating marijuana uses to be consistent with new legislation contained in House Bill 3400.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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

In the matter of Legislative)
Amendment LA 15-02 to amend the)
Polk County Zoning Ordinance in)
Order to implement new state law)
Contained in House Bill 3400)

ORDINANCE NO. 16-01

WHEREAS, on June 30, 2015 Oregon House Bill (HB) 3400, which permitted the regulation of marijuana uses, was enacted by the 2015 Oregon Legislature; and

WHEREAS, on August 26, 2015, the Board of Commissioners initiated Legislative Amendment 15-02 to update the Polk County Zoning Ordinance to implement HB 3400 by adopting local zoning regulations governing marijuana uses; and

WHEREAS, the Planning Commission conducted duly noticed public hearings on December 1, 2015 and December 15, 2015 to receive testimony and evidence. The Planning Commission deliberated at the December 15, 2015 meeting and recommended that the Board of Commissioners approve the proposed updates to Polk County Zoning Ordinance Chapters 110, 111, 116, 136, 138, 148, 155, 161 and 177 adopting local zoning regulations governing marijuana uses; and

WHEREAS, the Board of Commissioners conducted a duly noticed public hearing on January 13, 2016, and provided an opportunity for the submission of testimony and evidence. The Board of Commissioners deliberated at the January 13, 2016 meeting, and the quorum passed a motion by voting 2 – 1 to approve Legislative Amendment 15-02 as recommended by the Planning Commission and Planning staff; now therefore

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk County Zoning Ordinance shown on Exhibit A.

Sec. 2. That Polk County adopts the Polk County Zoning Ordinance amendments to the sections and subsections identified in Exhibit B.

Sec. 3. That Polk County determines that an emergency related to the economic welfare of the citizens of Polk County is declared and this ordinance is effective immediately upon passage.

1 Dated this 3rd day of February 2016, at Dallas, Oregon.

2

3

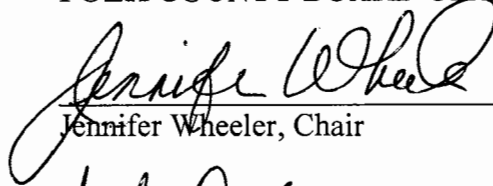
4

POLK COUNTY BOARD OF COMMISSIONERS

5

6

7



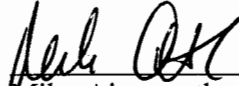
Jennifer Wheeler, Chair

8

9

10

11



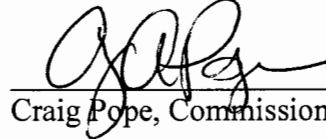
Mike Ainsworth, Commissioner

12

13

14

15



Craig Pope, Commissioner

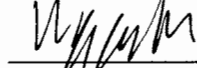
16

17

18 Approved as to Form

19

20



Morgan Smith

21

County Counsel

22

23 First Reading: February 3 2016

24

24 Second Reading: N/A

25

Recording Secretary: DChase

Findings in support of Legislative Amendment LA 15-02:

I. BACKGROUND

The Board of Commissioners considered Comprehensive Plan policies for each zone recommended by the Planning Commission for marijuana uses while evaluating the applicable review and decision criteria for this legislative amendment. Accordingly, findings of consistency with the Comprehensive Plan, the Statewide Planning Goals, Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) follow for each zone recommended by the Planning Commission.

Updates to the text of the PCZO include definitions of recreational and medical marijuana uses in Chapter 110, minor changes to Chapter 111 for continuity, changes in Chapter 116 to prohibit home occupations involving marijuana uses, amendments to Chapter 136, Exclusive Farm Use (EFU) Zoning District, Chapter 138, the Farm/Forest (FF) Zoning District and Chapter 177, the Timber Conservation (TC) Zoning District to permit marijuana production, new provisions governing recreational marijuana processing, wholesaling and testing laboratories in the Light Industrial (IL) and Rickreall Unincorporated Community Industrial (Rickreall UC-I) zones, and changes to Chapter 148, Northwest Polk Community Commercial (NPC-C) Zoning District, to provide for recreational marijuana retailing and medical marijuana dispensaries.

Oregon House Bill (HB) 3400, adopted on June 30, 2015, amended both the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act* (Ballot Measure 91, adopted by the voters in 2014) and the *Oregon Medical Marijuana Act* (codified as Oregon Revised Statutes 475.300 - 475.346). Section 33 of HB 3400 authorizes the County to impose reasonable regulations on licensed recreational marijuana businesses, and Section 89 of HB 3400 authorizes the County to impose reasonable regulations on medical marijuana uses. The Oregon Liquor Control Commission (OLCC) adopted temporary administrative rules on recreational marijuana on October 22, 2015. Local authority to regulate recreational marijuana uses is granted by the OLCC in OAR 845-025-1090, which requires a Land Use Compatibility Statement (LUC) from the city or county where such uses would be located. Similarly, Polk County's authority to regulate medical marijuana dispensaries is granted under ORS 475.314.

Rules promulgated by the OLCC in OAR 845-025-1000 through 8590 create four primary licenses for recreational marijuana production, processing, wholesaling and retail sales. Two other recreational marijuana licenses are available through the OLCC for laboratory testing and for research. Marijuana production, per OAR 845-025-1015(42), means the manufacture, planting, cultivation, growing, or harvesting of marijuana, not including drying harvested marijuana by a marijuana processor, or the propagation of immature plants or seeds. Section 34 of HB 3400 states that marijuana is a crop for the purposes of a "farm use" as defined in ORS 215.203, and implies that marijuana production is an allowed use in the Exclusive Farm Use (EFU) zone. Marijuana processing means the processing, compounding or conversion of marijuana into cannabinoid products, concentrates or extracts. Marijuana processing does not include packaging or labeling activities. Marijuana wholesaling means the purchasing of marijuana for resale to a person other than a consumer. The retail sale of marijuana means the sale of marijuana to a consumer.

Presently, the Polk County Zoning Ordinance neither references nor specifically regulates growing, processing, wholesale or retail recreational or medical marijuana uses, or medical marijuana dispensaries. However, marijuana-related land uses have impacts, and the County must proceed with appropriately siting recreational and medical marijuana uses, permitted and regulated by the State. Section 33 of HB 3400 authorizes the County to impose reasonable regulations on recreational marijuana uses and Section 89 of HB 3400 authorizes the County to impose reasonable regulations on medical marijuana uses. State agencies have the primary responsibility for regulating marijuana activities in Oregon through the licensing of medical marijuana growers, processors and

dispensaries by the Oregon Health Authority (OHA), and licensing of recreational marijuana producers, processors, wholesalers and retailers by the OLCC. While the State has the licensing authority over recreational and medical marijuana activities, Polk County has decided to regulate the time place and manner of marijuana uses by limiting them to certain zones and by imposing reasonable regulations on the nature of marijuana land uses. The OLCC would ensure that the issuance of recreational and medical marijuana licenses does not conflict with local zoning regulations by requesting a LUC from cities and counties. The proposed PCZO amendments are necessary to guide implementation of HB 3400 in a manner consistent with local policies and values. Through the adoption of this legislative amendment, the County identified the appropriate zones, developed ordinance language for marijuana uses to implement HB 3400 and placed reasonable conditions on those uses.

The County is responsible for regulating land uses, including those related to recreational and medical marijuana, by evaluating Comprehensive Plan policies and determining the appropriate implementing zones within the PCZO for different uses. Marijuana production, processing, wholesaling, retail sales and dispensing are no different than other land uses when it comes to administering the zoning ordinance. Determining the appropriate zoning district(s) to locate marijuana uses was based on the characteristics of each business (growing, processing, wholesaling, retailing, dispensing or a combination thereof).

In formulating an approach to regulating marijuana uses, staff initially identified definitions in PCZO Chapter 110 that could simply be referred to in each of the zoning chapters where a particular use is allowed. Those definitions changed when the OLCC released rules governing marijuana testing laboratories and marijuana research certificates. For marijuana production and processing uses, staff added language to each definition in proposed PCZO Section 110.371 to identify marijuana research uses. A new definition in PCZO Section 110.371 was created to capture marijuana testing laboratory uses.

The Planning Commission was interested in evaluating the potential to permit marijuana production in the primary agriculture and timber resource zones that permit farm use outright. Section 34 of HB 3400 states that marijuana is a crop for the purposes of a "farm use" as defined in ORS 215.203, and implies that marijuana production is an allowed use in the EFU zone. To reconcile inconsistencies between HB 3400 and permitted uses in the EFU zone, staff included provisions related to marijuana production directly in PCZO Chapter 136.

Farm use in the EFU, FF, FFO and TC zones includes the primary processing of farm products, which would include drying, curing and manicuring harvested marijuana flowers. Staff recommended further changes to PCZO Chapters 136, 138 and 177 in addition to the changes recommended by the Planning Commission. Specifically, staff recommended amending the farm use definition by adding a statement to each chapter that a "marijuana crop" is a "farm crop" for the purposes of those chapters. The additional language in PCZO 136.030(A), PCZO 138.040(A) would account for the processing of farm products consistent with ORS 215.213(1)(u) which is implemented by OAR 660-033-0130(28). Staff initially inserted language in PCZO 136.040(Q) and PCZO 138.050(A), amending the provisions for a "processing facility for farm crops" allowed under OAR 660-033-0130(28), in an attempt to distinguish between the processing of a farm crop as an allowed use in resource zones and a "commercial activity in conjunction with farm use" which is prohibited for marijuana crops by HB 3400. Although certain types of marijuana processing described in OAR 845-025-3210, such as edible and topical processors, could be considered a "commercial activity in conjunction with farm use" and prohibited, other processing uses, such as extracting cannabinoids from usable marijuana, could be allowed as a "processing facility for farm crops" (OAR 660-033-0130(28)) under HB 3400. After further consideration, staff concluded that by including the statement that a marijuana crop is a farm crop for the purpose of Chapters 136 and 138, the processing of marijuana farm crops consistent with OAR 660-033-0130(28) could be allowed as permitted under State law. Consequently, the recommended amendments to PCZO 136.040(Q) and PCZO 138.050(A) that differentiate between the types of processing uses described

in OAR 845-025-3210 proved unnecessary. The Board of Commissioners advanced the changes recommended by staff as part of their decision on this legislative amendment.

Provisions in PCZO Chapters 136 and 138 related to qualifying for a farm dwelling, farm stands and commercial uses in conjunction with a farm use were also amended to be consistent with HB 3400. Section 34 of HB 3400, prohibits the establishment of a dwelling, a farm stand or a commercial activity in conjunction with a farm use on tracts of farmland engaged in marijuana cultivation. Staff inserted specific language in PCZO 136.030(Q), permitted farm stands, PCZO 136.040, PCZO 138.050 and PCZO 138.080 administrative review for dwellings and farm stands, and PCZO 136.050 and PCZO 138.060, conditional use review for a commercial use in conjunction with a farm use, to account for the Section 34 prohibitions. Staff's approach in proposing specific amendments to PCZO Chapters 136 and 138 was designed to better integrate Section 34 of HB 3400 with statutes, rules and local ordinance provisions that regulate uses in the EFU zone.

While staff believes that State law permits marijuana production as a farm use in the EFU zone, it does not require counties to permit marijuana production in other resource zones. Nevertheless, like the EFU zone, the FF, FFO and TC zones are intended to permit an array of agricultural and timber uses and to restrict nonfarm and non-resource uses that are likely to conflict with resource production. The Planning Commission recommended including marijuana production in the FF and FFO zones following the December 15, 2015 public hearing understanding that the same restrictions on farm stands, dwellings and commercial activities in conjunction with farm use would need to be applied to those zones. The TC zone was also recommended by the Planning Commission for marijuana production, although restrictions in HB 3400 related to qualifying for dwellings based on an income standard, farm stands or commercial activities in conjunction with farm use would not apply to the TC zone since those uses are not permitted in the zone.

While locating marijuana uses in other zones in Polk County was considered by staff and discussed by the Planning Commission, those zones were not advanced because processing, wholesale, retail, laboratory and dispensary uses were not considered appropriate in isolated rural industrial and rural commercial zones. In the case of retail, staff was concerned that customers would be drawn into rural areas from urban areas for marijuana items that should be procured in cities. For marijuana processing, wholesaling and testing laboratory uses staff and the Planning Commission agreed that they would require close proximity to the urban markets they serve and appropriate infrastructure to serve them.

The Planning Commission evaluated zones identified by staff for marijuana uses at the December 15, 2015 public hearing after considering public testimony. The identified zones were evaluated based on the spatial location of zones throughout the county, the intensity of each marijuana use, marijuana business interdependencies, availability of services, proximity of urban markets and security of transport. The Board of Commissioners adopted the Planning Commission recommendation following the January 13, 2016 public hearing, and rendered a final local decision on this legislative amendment.

The Planning Commission recommended the IL zone for recreational marijuana processing and wholesaling, which is only applicable within Urban Growth Boundaries (UGB) of cities and is an intensive industrial zone where conflict with surrounding uses is less likely. In addition, the Heavy Industrial (IH) zone also permits IL uses. There is currently a supply of these zones within the UGBs of Dallas, Independence, Monmouth and Willamina. The Rickreall UC-I zone was also selected for marijuana processing, wholesale and marijuana testing laboratory uses. The Rickreall UC-I zone allows uses that are similar to processing, wholesaling and laboratory testing. Rickreall has safe access to Highway 22 by a grade separated interchange and direct access to Oregon Highway 99. The Rickreall UC-I zone was selected because its central location in the County facilitates easy access for marijuana producers and its close proximity to the largest cities in Polk County facilitates easy access to local recreational and medical marijuana markets for wholesalers, processors and testers.

Similarly, for marijuana retail and dispensary uses, the Planning Commission recommended the NPC-C zone which is a retail commercial zone that is applied within the unincorporated communities of Grand Ronde, Fort Hill and Valley Junction. These communities are located in a more remote area of the county along Oregon Highway 18 and are not easily served by the major population centers. Testimony received by the Planning Commission suggested there is demand for medical marijuana in Northwest Polk County and that there is interest in commercial development to serve the demand locally. Staff found it unlikely that urban consumers would leave urban markets specifically for retail and medical marijuana items in Northwest Polk County.

A temporary moratorium on medical marijuana dispensaries was passed by the Board of Commissioners on April 9, 2014 (Ordinance 14-03). On May 20, 2015, Polk County adopted Ordinance 15-01 imposing a temporary moratorium, in accordance with ORS 197.520, on the establishment of new and expansion of existing marijuana facilities in any area within the jurisdiction of Polk County. The purpose of the temporary moratorium was to delay development of County land use regulations for recreational and medical marijuana until the State regulations have been adopted. The moratorium allows the County to develop comprehensive zoning regulations that are consistent with State regulation for both recreational and medical marijuana. This moratorium was originally for 120 days, and expired on September 17, 2015. However, the moratorium was extended an additional six (6) months until March 17, 2016 to allow time for the OLCC to develop rules regulating recreational marijuana uses in HB 3400, and for Polk County to appropriately zone marijuana uses.

On August 26, 2015, the Board of Commissioners initiated the legislative amendment process to consider land use regulations for recreational marijuana production, processing, wholesaling, retail sales, and medical marijuana dispensaries. For the purpose of Ordinance No. 15-02, "marijuana uses" means indoor or outdoor growing, cultivating, dispensing, selling, processing, producing, or wholesaling marijuana whether for medical or recreational purposes. The Planning Commission recommended changes to the PCZO, including definitions for recreational and medical marijuana uses in Chapter 110, minor changes to Chapter 111 for continuity, amendments to Chapter 116, amendments to Chapter 136, Exclusive Farm Use (EFU) Zoning District, Chapter 138, Farm/Forest (FF) Zoning District and Chapter 177, Timber Conservation (TC) Zoning District to allow marijuana production as a permitted use, and changes to Chapters 148, 155 and 161 to include processing, wholesale, testing, retail and dispensary uses, and new provisions separating wholesale and retail marijuana uses from public parks and schools. The Oregon Legislature adopts new statutes and State agencies promulgate implementing rules that affect the permitted uses in Polk County's resource zones on a regular basis. When new land use regulations are adopted in State statute and administrative rule, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. The Board of Commissioners directed staff to develop regulations governing the time, place and manner of recreational and medical marijuana uses. The amendments adopted by the Board, set forth in Exhibit B, carry out this directive.

The Planning Commission conducted a work session on November 17, 2015 on the proposed amendments then continued the work session and held a public hearing on December 1, 2015. A second public hearing before the Planning Commission on the proposed amendments was held on December 15, 2015.

At the December 1, 2015 work session and public hearing, the Planning Commission considered material presented by staff, listened to public testimony and directed staff to come back on December 15, 2015 with a recommendation for specific zones to locate marijuana uses. Following a second public hearing on December 15, 2015, the Planning Commission recommended to the Board of Commissioners the zones referenced above. The Planning Commission recommendation represented a middling approach between lax and stringent regulations on marijuana uses.

As stated above, HB 3400 provides for local regulation of the time place and manner of marijuana uses. Reasonable local conditions placed on marijuana uses can be effected through specific language in each zone (see the recommended changes to Chapters 136 and 138 in Attachment A),

by development standards that can be applied through conditional use review in individual zones where marijuana uses may be allowed, or by citing references in the OARs that define various marijuana uses. Local standards for marijuana uses may include references to language in HB 3400 prohibiting marijuana retailers from locating within 1,000 feet of a school, an exclusive residential zone, or with a marijuana processor licensed to process marijuana extracts. Local implementation of HB 3400 was accomplished through regulating the types of marijuana businesses locally that would be licensed by the OLCC. The adopted regulations, found in Exhibit B, incorporate the Planning Commission recommendation at the December 15, 2015 public hearing, testimony at the Board of Commissioners January 13, 2016 public hearing on this matter, and deliberation by the Board at the January 13, 2016 hearing on the merits of the proposed amendments, leading to a decision to adopt the amendments to the PCZO recommended by the Planning Commission. At the January 13, 2016 public hearing, the Board of Commissioners considered written comments and heard testimony advocating for marijuana production uses in the Mineral Extraction (ME) zone. While the ME zone permits farm uses, its primary purpose is for the extraction of mineral and aggregate resources. Consequently, the ME zone was not recommended by the Planning Commission for recreational marijuana production. Additionally, the Board received testimony that there is a need to allow marijuana processing in farm zones. The Board was provided information regarding the distinction between the primary processing of farm products as a “farm use”, a processing facility for farm crops permitted pursuant to PCZO 136.040(Q) and 138.050(A) and a processing facility producing a value added product that would be considered a “commercial activity in conjunction with farm use” pursuant to PCZO 136.050(I). The Board heard that while a “commercial activity in conjunction with farm use” was expressly prohibited by HB 3400, land use activities involving primary processing of marijuana processing that results in value added products, like edible or topical products, could be located in the zones where Marijuana Processing, as defined in PCZO 110.371(B), is allowed.

PCZO 115.040 sets forth the procedures for a legislative amendment. Legislative amendments can only be initiated by the Board of Commissioners after findings are made that the proposed change is in the public interest and would be of general public benefit. After a legislative amendment has been initiated, the Planning Commission must hold a public hearing as prescribed in Chapter 111. After concluding this hearing, the Planning Commission then submits its recommendation to the Board of Commissioners. The Board of Commissioners must then hold a public hearing on the proposed Plan amendment as provided in Chapter 111. Filing of an appeal to the Land Use Board of Appeals (LUBA) would stay all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. Any plan amendment or reclassification of property must be by ordinance passed by the Board of Commissioners.

Including recreational and medical marijuana related uses in appropriate zoning districts has provided public certainty as to where and how these uses could be established. It also offers a way to mitigate potential conflicts between land uses by grouping marijuana related uses in zones that include other uses with similar externalities. In addition, reasonable standards have been adopted to further reduce the potential for conflict. For these reasons, staff concludes that the public interest and of general public benefit has been served through the adoption of this legislative amendment, which identifies appropriate zoning districts and reasonable standards for recreational marijuana production, processing, wholesaling, laboratory testing and retail sales, and medical marijuana dispensing.

II. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information that supports the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. The applicable review and decision criteria are listed in bold, followed by Staff’s analysis and findings.

- (A) **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary,**

Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]

- a. **ORS 197.612 Comprehensive plan or land use regulation changes to conform plan or regulations to new requirement in statute, goal or rule.**
 - (1) **Notwithstanding contrary provisions of state and local law, a local government that proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may take action to change the comprehensive plan or the land use regulation without holding a public hearing if:**
 - (a) **The local government gives notice to the Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615; and**
 - (b) **The department confirms in writing that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements. [ORS 197.612]**
- b. **A local government shall amend its acknowledged comprehensive plan, regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with:**
 - (1) **A new statutory requirement; or**
 - (2) **A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission. [ORS 197.646(1)]**
- c. **When a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan as required by subsection (1) of this section [ORS 197.646(1)], the new statutory, land use planning goal or rule requirements apply directly to the local government's land use decisions. The failure to adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(4)]**

Findings: The adopted amendments to PCZO Chapters 110, 111, 116, 136, 138, 148, 155, 161 and 177 (Exhibit B) implement House Bill 3400 (HB 3400), which legislated recreational marijuana uses and clarified laws related to medical marijuana processing activities and dispensaries. The Polk County Comprehensive Plan (PCCP) contains broad goals and policies that are intended to guide local development. The PCCP has been acknowledged by the Land Conservation and Development Commission (LCDC) as consistent with the statewide planning goals, and implements these broad goals and policies through various zones. The purpose and intent of the zones carry out the goals and policies of the PCCP. This legislative amendment responds to changes in State law, consistent with ORS 197.612. Proposed updates to the text of the PCZO include definitions for recreational and medical marijuana uses in Chapter 110, minor changes to Chapter 111 for continuity, amendments to Chapter 116 prohibiting home occupations for marijuana uses in residential zones, amendments to Chapter 136, Exclusive Farm Use (EFU) Zoning District, Chapter 138, the Farm/Forest (FF) Zoning District and Chapter 177, the Timber Conservation (TC) Zoning District to permit marijuana production, and provisions governing marijuana processing, wholesaling and testing laboratories in the Light Industrial (IL) and Rickreall Unincorporated Community Industrial (Rickreall UC-I) zones, and changes to Chapter 148, Northwest Polk Community Commercial

(NPC-C) Zoning District, to provide for recreational marijuana retailing and medical marijuana dispensaries. Notice of the proposed amendments to the PCZO was provided to the Department of Land Conservation and Development (DLCD) on October 13, 2015.

Prior to adoption of these legislative amendments, the Polk County Zoning Ordinance neither referenced nor specifically regulated growing, processing, wholesale, laboratory testing or retail recreational marijuana uses, or medical marijuana dispensaries. However, marijuana related land uses have impacts, and after careful consideration of the issues related to these uses the Board of Commissioners proceeded with siting of recreational marijuana uses and medical marijuana dispensaries, initiated and regulated by the State. Section 33 of HB 3400 authorizes the County to impose reasonable regulations on recreational marijuana uses and Section 89 of HB 3400 authorizes the County to impose reasonable regulations on medical marijuana uses. State agencies have the primary responsibility for regulating marijuana activities in Oregon through the licensing of medical marijuana growers, processors and dispensaries by the Oregon Health Authority (OHA), and licensing of recreational marijuana producers, processors, wholesalers, laboratory testing, researchers and retailers by the OLCC. While the State has the licensing authority over recreational and medical marijuana activities, Polk County can regulate the time place and manner of marijuana uses by limiting them to certain zones and by imposing reasonable regulations on marijuana land uses. The OLCC coordinates the issuance of recreational and medical marijuana licenses with local governments to ensure licenses do not conflict with local zoning regulations by requiring license applicants to submit a LUC completed by Polk County. The adopted PCZO amendments are necessary to guide implementation of HB 3400 in a manner consistent with local values.

The County is responsible for regulating land uses, including those related to recreational marijuana and medical marijuana dispensaries, by evaluating Comprehensive Plan policies and determining the appropriate implementing zones within the PCZO for different land uses. Marijuana production, processing, wholesaling, laboratory testing, research, retail sales and dispensing are no different than other land uses when it comes to administering the zoning ordinance. Determining the appropriate zoning district(s) to locate these businesses was based on the characteristics of the business (growing, processing, wholesaling, laboratory testing, retailing, dispensing or a combination thereof). Through a legislative amendment land use process, the appropriate zoning district(s) and reasonable conditions have been determined following public hearings before both the Polk County Planning Commission and the Board of Commissioners.

The adopted PCZO Chapter 110, 111, 116, 136, 138, 148, 155, 161 and 177 amendments incorporate language in OAR 845-025-1000 through 7060 and ORS 475.314 that facilitate integration of the new statutory marijuana use provisions into the PCZO. The proposed amendments clarify the time place and manner in which recreational and medical marijuana uses could be established in Polk County. The PCZO does not currently permit recreational or medical marijuana. The adopted amendments to the PCZO clarify zones in which recreational marijuana uses and medical marijuana dispensaries are allowed, characterize the types of recreational marijuana uses identified in HB 3400 and prohibit the recognition of income derived from recreational marijuana uses to qualify for a farm dwelling, marijuana uses as Chapter 116 home occupations, marijuana uses in conjunction with a farm stand and marijuana uses as a commercial activity in conjunction with a farm use.

Staff has not identified any other sections of ORS, OAR, or the Statewide Planning Goals that are directly applicable to approval of the PCZO updates. The proposed updates are permitted per Section 33(2) of HB 3400; consequently, the legislative amendment complies with this criterion.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

- a. To provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County. For the purposes of the Polk County Citizen Involvement Program, the term “citizen” shall mean**

property owners, land use applicants and the general public. [PCCP Section (2)(A), Goal 1]

Findings: The PCZO contains notice requirements for legislative amendments that involve text amendments to the zoning ordinance in Section 111.215. Polk County initiated this legislative amendment to implement HB 3400, a new State law regulating recreational and medical marijuana. Amendments to the text of the PCZO adopted by the Board of Commissioners include definitions for recreational and medical marijuana uses in Chapter 110, minor changes to Chapter 111 for continuity, amendments to Chapter 116, amendments to Chapter 136, Exclusive Farm Use (EFU) Zoning District, Chapter 138, the Farm/Forest (FF) Zoning District and Chapter 177, the Timber Conservation (TC) Zoning District to permit marijuana production, and provisions governing marijuana processing, wholesaling and testing laboratories in the Light Industrial (IL) and Rickreall Unincorporated Community Industrial (Rickreall UC-I) zones, and changes to Chapter 148, Northwest Polk Community Commercial (NPC-C) Zoning District, to provide for recreational marijuana retailing and medical marijuana dispensaries. These findings identify the review and decision criteria, text changes to the PCZO, and sets forth findings in support of the Board of Commissioners decision concerning this legislative amendment. The Citizen Involvement element of the Polk County Comprehensive Plan contains goals and policies that are intended to ensure opportunities for citizen participation in the land use planning process. Goal 1 of the Citizen Involvement element seeks “[t]o provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County.” The proposed changes to the PCZO provide ample opportunity for the citizenry to shape where, when and how recreational and medical marijuana uses are established in Polk County.

Notice of the proposed amendments to the PCZO was provided to the Department of Land Conservation and Development (DLCD) on October 13, 2015.

Notice of the November 17, 2015 Planning Commission work session was published in the Itemizer-Observer newspaper on November 11, 2015.

Notice of the December 1, 2015 Planning Commission work session and public hearing and the December 15, 2015 Planning Commission public hearing was published in the Itemizer-Observer newspaper on November 18, 2015. In addition, a notice announcing the proposed amendments to the PCZO and the December 1, 2015 public hearing was distributed to all Polk County property owners with their property tax statements on October 25, 2015. Numerous inquiries have been made to staff since then, and an interested parties list was compiled to keep folks involved in this legislative process. Notice of the December 1, 2015 Planning Commission work session and public hearing and the December 15, 2015 Planning Commission public hearing and requests for comment were sent to the incorporated cities in Polk County on November 23, 2015, and to a Citizen Group list maintained by the Polk County Planning Division on November 24, 2015.

Notice of the January 13, 2016 Board of Commissioners public hearing was published in the Itemizer-Observer newspaper on December 23, 2015. Notice of the January 13, 2016 public hearing and requests for comment were sent to the incorporated cities in Polk County, to an interested parties list specific to this matter, and to a Citizen Group list maintained by the Polk County Planning Division on December 23, 2015.

Notice of public hearings before the Planning Commission and Board of Commissioners was provided consistent with PCZO Section 111.370. Accordingly, the adopted changes comply with the goals and policies of the Citizen Involvement element of the PCCP, as the tax statement notice, notices provided consistent with PCZO Section 111.370, and an interested parties list provided ample opportunity for the citizens of Polk County to shape where, when and how recreational marijuana uses are conducted and medical marijuana dispensaries are operated.

The Board of Commissioners directed staff to amend the PCZO in order to implement a State mandate to regulate recreational marijuana uses and medical marijuana dispensaries locally. The Planning Commission held workshops on this legislative amendment on November 17, 2015 and December 1, 2015, and held public hearings on December 1, 2015 and December 15, 2015 during

which public testimony was taken. After listening to testimony from the public and discussions with staff, the Planning Commission directed staff to identify appropriate zones to locate marijuana uses for the December 15, 2015 public hearing. Staff analyzed zones where similar uses would be permitted outright. Since HB 3400 defines the production of marijuana as a “farm use” as that term is defined in ORS 215.203, farm and forest zones where farm uses are allowed were selected by staff for recommendation to the Planning Commission. Processing and wholesale marijuana uses would be most appropriate in Industrial zones, where similar intensive rural and urban uses already occur. Accordingly, staff identified the IL and Rickreall UC-I zones for recommendation to the Planning Commission. Staff identified the Rickreall UC-I zone for laboratory testing. Retail marijuana and medical marijuana dispensary uses would be most appropriate where such uses can’t be easily served by urban establishments. Based on testimony received at the December 1, 2015 public hearing staff identified the NPC-C zone for recreational marijuana retailing and medical marijuana dispensing. The Planning Commission considered the aforementioned zones at the December 15, 2015 public hearing after listening to public testimony and made a recommendation to the Board of Commissioners for adoption of amendments to the PCZO to allow recreational marijuana uses and medical marijuana dispensaries in the zones identified by staff. The Board of Commissioners adopted the Planning Commission recommendation following public testimony and deliberations at the January 13, 2016 public hearing on this matter.

- b. To diversify agriculture within Polk County.** [PCCP Section (2)(B), Goal 2]
- c. Polk County will permit those farm and nonfarm uses in agricultural areas authorized by Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section (2)(B), Policy 1.4]
- d. To conserve and protect, and encourage the management of forest lands for continued timber production, harvesting and related uses.** [PCCP Section (2)(C), Goal 1]

Findings: The PCCP contains broad goals and policies that are intended to promote agriculture in Polk County. Zoning provides an important tool in implementing the PCCP. Polk County initiated this legislative amendment to implement a new State law regulating recreational marijuana uses and medical marijuana dispensaries, HB 3400. The purpose statement of the EFU zone provides for the conservation of agricultural land. A way to conserve agricultural land is to advance its economic viability by promoting greater crop diversity. Implementation of HB 3400 could diversify agriculture in resource lands where farm uses are allowed by including marijuana as a potential crop. Marijuana production licenses issued by OLCC permit primary processing of usable marijuana, including drying curing and manicuring of marijuana flowers. Producing and the primary processing of marijuana flowers is labor intensive and, therefore, would be expected to create employment opportunities for Polk County residents. Increasing the supply of farm labor could enhance the overall diversity of local agriculture by providing growers more certainty that farm labor would be available to cultivate, harvest and prepare other high value added crops such as Filberts, blueberries, hops and wine grapes. Alleviating uncertainty about the availability of farm labor may drive investment in high value added crops, further diversifying the agricultural base of the county.

The State included marijuana production as a “farm use”, as that term is defined in ORS 215.203, and permitted it in the EFU zone. The Farm Forest Plan designation also implements the PCCP Agricultural Lands goals and policies. Accordingly, the Farm/Forest (FF) and Farm/Forest Overlay (FFO) zones, which implement the Farm Forest Plan designation, provide for a range of agricultural uses, including farm uses.

The Board of Commissioners’ decision includes marijuana production in resource zones that permit farm use outright (the EFU, FF, FFO and TC zones). Section 34 of HB 3400 states that marijuana is a crop for the purposes of a “farm use” as defined in ORS 215.203, and implies that marijuana production is an allowed use in the EFU zone. To reconcile inconsistencies between HB 3400 and

permitted uses in the EFU, FF, FFO and TC zones, the Board of Commissioners included provisions related to marijuana production directly in PCZO Chapters 136, 138 and 177.

Farm use in the EFU, FF, FFO and TC zones includes the primary processing of farm products, which would include drying, curing and manicuring harvested marijuana flowers. Staff recommended further changes to PCZO Chapters 136, 138 and 177 beyond those recommended by the Planning Commission. Specifically, staff recommended that the Board amend the farm use definition by adding a statement to each chapter that a “marijuana crop” is a “farm crop” for the purposes of those chapters. The additional language in PCZO 136.030(A), PCZO 138.040(A) accounts for the processing of farm products consistent with ORS 215.213(1)(u) which is implemented by OAR 660-033-0130(28). Staff initially inserted language in PCZO 136.040(Q) and PCZO 138.050(A), amending the provisions for a “processing facility for farm crops” allowed under OAR 660-033-0130(28), in an attempt to distinguish between the processing of a farm crop as an allowed use in resource zones and a “commercial activity in conjunction with farm use” which is prohibited for marijuana crops by HB 3400. Although certain types of marijuana processing described in OAR 845-025-3210, such as edible and topical processors, could be considered a “commercial activity in conjunction with farm use” and prohibited, other processing uses, such as extracting cannabinoids from usable marijuana, could be allowed as a “processing facility for farm crops” (OAR 660-033-0130(28)) under HB 3400. After further consideration, staff concluded that by including the statement that a marijuana crop is a farm crop for the purpose of Chapters 136 and 138, the processing of marijuana farm crops consistent with OAR 660-033-0130(28) could be allowed as permitted under State law. Consequently, the recommended amendments to PCZO 136.040(Q) and PCZO 138.050(A) that differentiate between the types of processing uses described in OAR 845-025-3210 proved unnecessary and staff recommended they not be adopted; the Board followed staff’s recommendation.

Provisions in PCZO Chapters 136 and 138 related to qualifying for a farm dwelling, farm stands and commercial uses in conjunction with a farm use were also amended to be consistent with HB 3400. Section 34 of HB 3400, prohibits the establishment of a dwelling, a farm stand or a commercial activity in conjunction with a farm use on tracts of farmland engaged in marijuana cultivation. With respect to Chapter 136, specific language was inserted in PCZO 136.030(Q), permitted farm stands, PCZO 136.040, administrative review for dwellings and farm stands, and PCZO 136.050, conditional use review for a commercial use in conjunction with a farm use, to account for the Section 34 prohibitions. The Board of Commissioners’ decision to make specific amendments to PCZO Chapters 136 and 138 better integrates Section 34 of HB 3400 with statutes, rules and local ordinance provisions that regulate uses in the EFU, FF and FFO zones.

While staff believes that State law permits marijuana production as a farm use in the EFU zone, it does not prohibit marijuana production in other resource zones or require counties to permit marijuana production in other resource zones. Nevertheless, like the EFU zone, the FF, FFO and TC zones are intended to permit an array of agricultural and timber uses and to restrict nonfarm and non-resource uses that are likely to conflict with resource production. The Board of Commissioners’ decision to include marijuana production in the FF and FFO zones means that the same prohibitions on farm stands, dwellings and commercial activities in conjunction with farm use affecting the EFU zone are being applied to those zones. The TC zone does not permit dwellings based on farm income, farm stands or commercial activities in conjunction with farm use. As a result, those restrictions in HB 3400 would not be applicable to the TC zone.

The Farm Forest Plan designation also implements the PCCP Agricultural Lands goals and policies in addition to the Forest Lands goals and policies. It is the intent of the Farm Forest Plan designation to provide an opportunity for the continuance of timber uses, and the creation of large and small scale commercial farm and forestry operations. Accordingly, the FF and FFO zones, which implement the Farm Forest Plan designation, provide for a range of agricultural uses, including farm uses. The purpose statement for the FF and FFO zones states that they are “designed to provide for the full range of agricultural and forest uses for such lands.” Recreational marijuana production in the FF and FFO zones, as implemented in PCZO Chapter 138, is consistent with the

above PCCP goal and the purpose and intent of the FF and FFO zones because it expands the broad range of agricultural uses already permitted in the underlying zones.

The Timber Conservation (TC) zone, which implements the PCCP Forest Lands Comprehensive Plan designation and Forest Land goals and policies, permits farm uses. The purpose statement of the TC zone echoes the above goal, which provides for uses related to timber production and harvesting, protects watersheds, soil fish and wildlife habitats, and provides for recreational uses that don't conflict with timber management. Farm use is permitted outright in the TC zone but commercial activities related to the farm use that are permitted in the EFU zone are not permitted in the TC zone. Permitting marijuana production in the TC zone diversifies agriculture in resource lands where farm uses are allowed by expanding the types of crops that can be produced on forest lands. Recreational marijuana production in the TC zone is consistent with the Comprehensive Plan goals for Forest Lands, and the purpose and intent of the zone.

- e. **To provide an atmosphere conducive to economic activity with an emphasis on private sector activity.** [PCCP Section (2)(H), Goal 2]
- f. **To avoid over-reliance on one industry.** [PCCP Section (2)(H), Goal 4]
- g. **Polk County will favor the development of economic activities which will provide jobs able to utilize the skills of the local labor force.** [PCCP Section (2)(H), Policy 1.1]

Findings: The PCCP contains broad goals and policies that are intended to promote economic development, including commercial agriculture, in Polk County. Zoning provides an important tool in implementing the PCCP. The purpose and intent statements for each zone in the PCZO align uses with appropriate zones, and carry out the goals and policies of the PCCP.

Polk County initiated this legislative amendment to implement a new state law regulating recreational marijuana uses and medical marijuana dispensaries, HB 3400. The implementation of HB 3400 would stimulate economic development in EFU, FF, FFO and TC lands as recreational marijuana production operations commence. Recreational marijuana production licenses issued by OLCC permit primary processing of usable marijuana, including drying curing and manicuring of marijuana flowers. The growing and primary processing of marijuana flowers is labor intensive and, therefore, would be expected to create employment opportunities for Polk County residents.

The OLCC has created two tiers of licenses for both indoor and outdoor marijuana producers that effectively limit the size of marijuana crops produced by a license holder.

Tier I licenses allow indoor production with a canopy size no greater than 5,000 square feet and outdoor production with a canopy size no greater than 20,000 square feet.

Tier II licenses allow indoor production with a canopy size between 5,001 square feet and 10,000 square feet, and outdoor production with a canopy size between 20,001 square feet and 40,000 square feet.

Although the outdoor production licenses allow a larger canopy size, indoor licenses are anticipated to be more popular because the cultivation environment can be controlled indoors, and as many as three (3) crops a year can be grown indoors verses one (1) crop per year outdoors. Consequently, anticipated development in EFU, FF, FFO and TC lands could include construction of accessory structures for indoor grow operations. Marijuana production could also stimulate local economic development as security companies, agriculture supply companies, grow light suppliers, information technology providers and freight carriers are contracted to serve marijuana producers. Marijuana uses, and the businesses that support them, are similar to agricultural cultivation, processing and marketing activities carried out in connection with crop production already occurring in Polk County. Marijuana uses would likely require many of the same agricultural job skills that are present in the Polk County work force.

Marijuana processing would also likely provide economic benefits. Processing of usable marijuana into concentrates, extracts, edibles, topical products and tinctures requires the use of specialized equipment and results in value added products. This conversion of usable marijuana may be simple, as in the case of marijuana tinctures, or involve expensive industrial equipment such as a carbon dioxide extractor. The more complicated methods of processing usable marijuana would require a significant investment in equipment and skilled labor to operate. If demand for local processed marijuana is high, equipment manufacturers could open local offices to market their products, local service representatives could be recruited, and marijuana processors could hire skilled labor to run the equipment. Simple processing of marijuana would require a semi-skilled workforce.

Marijuana wholesaling, retail and dispensing uses would also likely provide economic benefits. Retail sales of marijuana and medical marijuana dispensaries are anticipated to occur primarily inside city limits where the greatest supply and concentration of retail space exist as well as the largest markets for consumers. Residents in rural Polk County could travel relatively short distances to access marijuana items, negating the necessity for retail marijuana and medical marijuana dispensaries uses in nearby rural areas. Limiting consumer access to recreational and medical marijuana outside urban areas would reduce the chance that urban consumers would leave urban markets to purchase marijuana items. This would improve the efficiency and costs associated with retail marijuana supply chains. For marijuana retail and dispensary uses, the Planning Commission recommended the NPC-C zone, which is a retail commercial zone that is applied within the unincorporated communities of Grand Ronde, Fort Hill and Valley Junction. The Planning Commission considered proximity to urban retail centers when recommending the NPC-C zone. These communities are located in a more remote area of the county along Oregon Highway 18 and are not easily served by the major population centers. Testimony received by the Planning Commission suggested there is demand for medical marijuana in Northwest Polk County and that there is interest in commercial development to serve the demand locally. The Planning Commission and staff agreed that urban consumers would not likely leave urban markets specifically for retail and medical marijuana items in Northwest Polk County.

The introduction of marijuana uses in resource zones that permit farm uses, in the IL zone, the Rickreall UC-I zone and in the NPC-C zone, will diversify the economy of Polk County, and minimize reliance on any one industry for economic viability, consistent with the PCCP goals and policies above.

- h. Polk County will encourage the development of industrial land uses within urbanized areas or serviced industrial parks unless an industry specifically requires a rural site. [PCCP Section (2)(H), Policy 4.1]**
- i. Within urban growth boundaries, Polk County will support the location of industrial uses in accordance with adopted intergovernmental agreements pertaining to urban growth boundaries and urbanizable land. [PCCP Section (2)(H), Policy 4.2]**
- j. Polk will require industrial uses to locate so as to minimize adverse social, economic and environmental impacts. [PCCP Section (2)(H), Policy 4.5]**
- k. Polk County will encourage commercial uses to locate within existing municipalities, urban growth boundaries, unincorporated communities and existing rural commercial areas. [PCCP Section (2)(H), Policy 5.1]**

Findings: Based on direction from the Planning Commission, staff evaluated Polk County's commercial and industrial zones that outright permit uses similar to the various commercial and industrial marijuana uses identified in HB 3400. The Planning Commission recommended the following zones at the December 15, 2015 public hearing as potentially appropriate: Light Industrial (IL) and Rickreall Unincorporated Community Industrial (Rickreall UC-I) zones for marijuana processing and wholesale uses, the Rickreall UC-I zone for marijuana testing laboratories, and the

Northwest Polk Community Commercial (NPC-C) zone for retail recreational marijuana uses and medical marijuana dispensaries.

The Oregon planning program encourages locating commercial and industrial uses within established urban growth boundaries when not directly associated with a rural resource. While locating marijuana uses in other zones in Polk County were considered by the Planning Commission and the Board of Commissioners, they were not advanced because processing, wholesale, retail, laboratory testing and dispensary uses were not considered appropriate in isolated rural industrial and rural commercial zones. In the case of retail, the Planning Commission and staff expressed concern that urban customers could be drawn from their urban markets to areas outside urban growth boundaries for retail or dispensary marijuana items that could otherwise be procured in a city. The Board concurred with staff findings that processing, wholesaling and testing laboratory uses require close proximity to the urban markets they serve, and appropriate infrastructure to serve them.

For processing and wholesaling uses, the Planning Commission recommended, and the Board considered, the IL zone which is only applicable within Urban Growth Boundaries (UGB) of cities and is an intensive industrial zone where conflict with surrounding uses is less likely. These areas are also most likely to have access water, sewer treatment, transportation infrastructure and workforce. In addition, the Heavy Industrial (IH) zone also permits IL uses and is applied exclusively within UGBs. There is currently a supply of these zones within the UGBs of Dallas, Independence, Monmouth and Willamina. Agricultural processing and wholesaling activities may be associated with similar urban land uses that create value added products from agricultural crops and forest operations. These uses are similar in nature to marijuana processing and wholesaling uses described herein. Processing and wholesale marijuana uses are therefore appropriate within UGBs, when consistent with the provisions of Urban Growth Management Agreements (UGMA) between Polk County and affected cities. Polk County sent a special notice to the cities on November 23, 2015 to solicit comments regarding LA 15-02, and its consistency with UGMA provisions regarding urbanizable land. A notice of the January 13, 2016 public hearing before the Board of Commissioners was also sent to cities on December 23, 2015. To date, the City of Salem has responded with no specific comments and the City of Monmouth has requested further information regarding this legislative amendment.

The Rickreall UC-I zone was also considered by the Board for marijuana processing, wholesale and marijuana testing laboratory uses. The Rickreall UC-I zone allows uses that are similar to processing, wholesaling and testing. Rickreall has safe access to Oregon Highway 22 via a grade separated interchange and direct access to Oregon Highway 99. The Rickreall UC-I zone was identified because its central location in the County facilitates easy access for marijuana producers and its close proximity to the largest cities in Polk County accommodates access to local recreational and medical marijuana markets for wholesalers, processors and laboratory testers. Properties with Rickreall UC-I zoning designations are located on the western, eastern and southern margins of Rickreall, away from potential conflicting land uses. Rickreall's central location, proximity to marijuana production, retail and dispensary uses (the clients of marijuana processing and wholesale license holders), and the land use pattern in Rickreall that separates properties zoned Rickreall UC-I from potential conflicting uses in the community minimize adverse social, economic and environmental impacts arising from marijuana processing, wholesale and laboratory testing uses.

For recreational marijuana retail and medical marijuana dispensary uses, the Planning Commission recommended, and the Board considered, the NPC-C zone, which is a retail commercial zone that is applied within the unincorporated communities of Grand Ronde, Fort Hill and Valley Junction. These communities are roughly eight (8) miles from the nearest city, Willamina, and approximately 23 miles from Salem, the largest metropolitan area, are located in a more remote area of the county along Oregon Highway 18 and are not easily served by the major population centers of Salem, Independence, Monmouth and Dallas. Testimony received by the Planning Commission suggested there is demand for medical marijuana in Northwest Polk County and that there is interest in

commercial development to serve the demand locally. The Board of Commissioners and the Planning Commission concurred when concluding that urban consumers would not likely leave urban markets specifically for retail and medical marijuana items in Northwest Polk County.

For the reasons above, the Board finds that the identified zones for marijuana uses are consistent with these PCCP policies.

- l. To provide for and maintain a viable economy while preserving the present sense of community and environment. [PCCP Section (2)(I), Goal 5]**
- m. Polk County will only permit those uses in unincorporated communities for which it can be clearly demonstrated that such uses:**
 - a. Contribute to the well-being of the community;**
 - b. Do not seriously interfere with surrounding or adjacent activities;**
 - c. Are consistent with the identified function, capacity and level of service of facilities. [PCCP Section (2)(I), Policy 1.3]**

Findings: When evaluating appropriate zones for commercial and industrial marijuana uses, the impact on unincorporated communities both positive and negative were a concern. Based on direction from the Planning Commission, staff evaluated Polk County's commercial and industrial zones that outright permit uses similar to the various commercial and industrial marijuana uses identified in HB 3400. The Board of Commissioners decided the following zones are appropriate: Light Industrial (IL) and Rickreall Unincorporated Community Industrial (Rickreall UC-I) zones for marijuana processing and wholesale uses, the Rickreall UC-I zone for marijuana testing laboratories, and the Northwest Polk Community Commercial (NPC-C) zone for retail marijuana uses and medical marijuana dispensaries.

The purpose of the NPC-C Zoning District is to implement the Comprehensive Plan policies related to commercial development by providing for a range of service and product-oriented commercial activities. This zone is applied to commercial lands within the unincorporated communities of Grand Ronde, Valley Junction, and Fort Hill.

The intent of the NPC-C Zoning District is to provide for commercial development in the unincorporated communities of Grand Ronde, Valley Junction, and Fort Hill. Commercial activities in this zone generally consist of uses which complement agricultural and forest activities in the surrounding area, uses which serve the needs of the surrounding community or the needs of the traveling public, or other uses which are small-scale and low impact.

The NPC-C zone permits retail uses. It should be noted however, that the consumption of marijuana products is prohibited by State law at either a retail outlet or dispensary. In this context, the relevant question becomes whether permitting retail marijuana uses in the NPC-C zone complies with Comprehensive Plan policies taking into account the characteristics of the neighborhood. The practical impact of this change is that it allows a different kind of retail use in the NPC-C zone than currently exists. The fundamental difference is that marijuana retail uses are all cash businesses, which require greater security. The need for greater security must be balanced with the benefits retail marijuana uses could bring to the Grande Ronde, Fort Hill, and Valley Junction communities. Allowing retail marijuana uses and medical marijuana dispensing in these communities would provide employment opportunities to local residents. The Planning Commission heard testimony on December 1, 2015 from a resident of the area stating that the Fort Hill area has been adversely affected by recent improvements to the Salmon River Highway that have limited access to local businesses. According to the testimony, retail marijuana uses and medical dispensing could aid some of the properties with limited access by providing a retail outlet to meet local demand. By limiting retail marijuana uses to areas with fewer options for economic development, such as the Grand Ronde, Fort Hill and Valley Junction unincorporated communities, local economic viability and sense of community and environment could be enhanced.

Potential impacts on the community from allowing marijuana retail uses would not be substantially different from other retail uses currently allowed in the zone with the exception of a greater potential for crime. OAR 845-025 requires all licensed retail locations to be responsible for the security of marijuana and money on the licensed premise. The rules outline of number of safety requirements that all locations must use, such as the methods of locking the outside doors, storage of marijuana in safes while not in business, and the steps that must be taken for computer infrastructure security. All locations must have an alarm system that notifies the owner or security staff of a potential break in and all locations must have at least two panic buttons. The OLCC devotes five separate rules to the level of detail required for video security and surveillance. In short, the location must have all areas under constant video surveillance, and maintain the recordings for at least 30 days. All licensed locations will also have to be compliant with health and sanitation requirements and open to inspection to determine compliance. Marijuana dispensaries are not currently subject to these same security requirements. Dispensaries are only open to people with a medical marijuana card prescribed by an Oregon Licensed Physician and not the general public. Marijuana dispensary operators would likely impose similar security measures; however it is not required by the State as of the writing of this staff report. The Board of Commissioners decided to include recreational marijuana retail and medical marijuana dispensary uses as conditional uses in the NPC-C zone. Including these uses as conditional uses allows the public to participate in the siting process. It would also allow Polk County to evaluate specific proposals for harmony with the purpose and intent of the zone and to impose reasonable conditions deemed necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

The NPC-C zone permits a range of uses, including gas stations, auto repair facilities and heavy equipment service centers. Such uses in the zone are expected to generate more noise, odors and traffic than a retail or dispensary marijuana use, leading to greater conflicts with surrounding land uses. These uses could be located on underutilized properties in the NPC-C, creating potentially greater conflicts with surrounding or adjacent land uses than a marijuana retail or dispensary use.

Property used for commercial uses would be subject to the development standards in PCZO Chapter 112. These standards include requirements for building setbacks; landscaping; parking requirements; heat, glare, and light; noise; sewage disposal; and vibration. Those standards themselves are intended to minimize conflicts between neighboring properties. Staff did not identify any significant negative offsite impacts from retail and dispensary marijuana uses allowed in the NPC-C zone. The West Valley Fire District and the Polk County Sheriff's Office provide emergency services for Northwest Polk County. Retail and dispensary marijuana uses could obtain access to local roads or Highway 18, a principal arterial, as defined by the Polk County Transportation Systems Plan with the appropriate access permits from either Polk County Public Works or the Oregon Department of Transportation (ODOT). It does not appear that the adopted amendments will create substantially more traffic than other retail uses currently allowed in the NPC-C zone. Retail marijuana and medical dispensing uses use little water and generate little solid waste. Staff concludes, and the Board concurs, that there are adequate public facilities, services, and transportation networks available at this time in Grand Ronde, Fort Hill and Valley Junction to serve potential retail and dispensary marijuana uses.

The purpose of the Rickreall UC-I Zoning District is to implement the Comprehensive Plan policies related to industrial development by providing for industrial uses with limited off-site impacts such as noise, dust, or odor. This zone is applied to designated industrial lands within the unincorporated community of Rickreall.

Industrial activities in this zone generally consist of uses which complement agricultural and forest activities in the surrounding area, uses that require proximity to rural resources, or other uses which are small-scale and low impact.

The Rickreall UC-I zone was identified for marijuana processing, wholesale and marijuana testing laboratory uses. The Rickreall UC-I zone allows uses that are similar to processing, wholesaling and testing. Rickreall has safe access to Oregon Highway 22 via a grade separated interchange and

direct access to Oregon Highway 99. The Rickreall UC-I zone was identified because its central location in the county facilitates easy access for marijuana producers and its close proximity to the largest cities in Polk County facilitates easy access to local recreational and medical marijuana markets for wholesalers, processors and testers. Properties with Rickreall UC-I zoning designations are located on the western, eastern and southern margins of the Rickreall unincorporated community boundary, away from potential conflicting land uses. Rickreall's central location, proximity to marijuana production, retail and dispensary uses (the clients of marijuana processing and wholesale license holders), and the land use pattern in Rickreall that separates properties zoned Rickreall UC-I from potential conflicting uses in the community would minimize adverse social, economic and environmental impacts arising from marijuana processing, wholesale and laboratory testing uses.

The unincorporated community of Rickreall is served by the Rickreall Community Water Association, which could provide potable water to marijuana processing, wholesaling or testing laboratory uses on Rickreall UC-I zoned lands. However, they may not be issuing connections for commercial uses that use water in a production process. In addition, Rickreall is not served by a sanitary sewer system. Marijuana processing and testing facilities may need to obtain Water Pollution Control Facility (WPCF) permits from the Oregon Department of Environmental Quality (DEQ). As a result, it is not likely that larger scale or intensive marijuana processors would locate in Rickreall. These are the same limitations any agricultural processor would face within Rickreall. Marijuana processing includes a range of activities from processing marijuana into concentrates, extracts, topical products and tinctures to producing edible value added products. This conversion of usable marijuana may be simple, as in the case of marijuana tinctures, or involve intensive processing likely to require commercial water and sanitary sewer. As a result, it is not likely that larger scale or intensive marijuana processors would locate in Rickreall. It is more likely that they would locate within cities or UGBs where there are adequate sanitary sewer and water services. It is more likely that less intensive or very small scale marijuana processors would locate in Rickreall. Allowing marijuana processing in Rickreall would ensure that there are opportunities to meet potential demand from local agricultural producers for local small scale processors. The Board of Commissioners decided to include marijuana processing, wholesaling and laboratory testing uses as conditional uses in the Rickreall UC-I zone. Including these uses as conditional uses would allow the public to participate in the siting process. It would also allow Polk County to evaluate specific proposals for harmony with the purpose and intent of the zone and to impose reasonable conditions deemed necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

The Southwest Polk Rural Fire Protection District and the Polk County Sheriff's Office provide emergency services in Rickreall. Rickreall is located near a freeway interchange that serves the main north/south (Hwy 99) and east/west (Hwy 22) highway corridors in Polk County. Marijuana processing, wholesale and testing laboratory uses could obtain access to either Hwy 22 or Hwy 99, both principal arterials as defined by the Polk County Transportation Systems Plan (TSP), with the proper access permits from ODOT, or to Rickreall Road, a major collector as defined by the TSP, with an access permit from Polk County Public Works. There is no evidence to suggest that marijuana processing, wholesaling or laboratory testing would generate substantially more traffic than other uses currently allowed in the Rickreall UC-I zone.

Properties with Rickreall UC-I zoning designations are located on the western, eastern and southern margins of the unincorporated community, away from potential conflicting land uses. To obtain an OLCC license for recreational marijuana processing and wholesale uses, applicants must demonstrate that security measures are in place to discourage theft. Security mandated by OLCC licenses for recreational marijuana uses would minimize the potential for crime. These uses are not expected to involve large amounts of cash at the place of business like retail and dispensary uses.

Allowing marijuana processing, wholesaling and laboratory testing uses in the Rickreall UC-I zone could facilitate investment in local businesses. Facilitating investment in the unincorporated

community of Rickreall would increase employment opportunities and contribute to the well-being of the community. Based on staff findings, public testimony and the Planning Commission recommendation, the Board concludes that adequate public facilities, services, and transportation networks are available at this time in Rickreall to serve potential marijuana processing, wholesaling and laboratory testing uses.

For the reasons above, the Board finds that the identified zones for marijuana uses are consistent with these PCCP policies.

- n. **Polk County shall allow commercial and industrial uses within unincorporated communities in accordance with the provisions of Oregon Administrative Rule OAR 660, Division 22, the Unincorporated Communities Rule.** [PCCP Section (2)(I), Policy 1.10]

Findings: When evaluating appropriate zones for commercial and industrial marijuana uses, the impact on unincorporated communities both positive and negative were a concern. Based on direction from the Planning Commission, staff evaluated Polk County's commercial and industrial zones that outright permit uses similar to the various commercial and industrial marijuana uses identified in HB 3400. The Planning Commission recommended, and the Board of Commissioners considered, the following zones as appropriate: Light Industrial (IL) (exclusively applied within UGBs) and Rickreall Unincorporated Community Industrial (Rickreall UC-I) zones for marijuana processing and wholesale uses, the Rickreall UC-I zone for marijuana testing laboratories, and the Northwest Polk Community Commercial (NPC-C) zone for retail marijuana uses and medical marijuana dispensaries.

Polk County's NPC-C and Rickreall UC-I zones have been acknowledged by the Land Conservation and Development Commission (LCDC) and found to be compliant with Oregon Statewide Planning Goal 14 and OAR 660-022. The unincorporated communities of Grand Ronde, Fort Hill, Valley Junction and Rickreall are acknowledged as rural service centers consisting primarily of commercial or industrial uses providing goods and services to the surrounding rural area or to persons traveling through the area, but which also include some permanent residential dwellings.

OAR 660-022 encourages locating commercial and industrial uses within established UGBs when not directly associated with a rural resource. While locating marijuana uses in other zones in Polk County was considered by the Planning Commission in their deliberations, they were not advanced in their recommendation because processing, wholesale, retail, laboratory testing and dispensary uses were not considered appropriate in isolated rural industrial and rural commercial zones outside unincorporated communities that lack the infrastructure and workforce to serve them.

In the case of retail, the Board of Commissioners heard concerns that urban customers could be drawn from their urban markets to areas outside urban growth boundaries for retail or dispensary marijuana items that could otherwise be procured in a city. Testimony received by the Planning Commission suggested there is demand for medical marijuana in Northwest Polk County and that there is interest in commercial development to serve the demand locally. The Planning Commission concluded, and the Board of Commissioners agreed, that urban consumers would not likely leave urban markets specifically for retail and medical marijuana items in Northwest Polk County. Limiting marijuana retail sales and medical dispensing to only the NPC-C zone encourages commercial marijuana uses to locate in the markets they serve.

The Board of Commissioners heard that processing, wholesaling and testing laboratory uses directly serve marijuana agricultural producers and are essential to getting their crops to market. As a result, these uses require close proximity agricultural producers and to the urban markets they serve, and appropriate infrastructure to serve them. The Rickreall UC-I zone allows uses that are similar to processing, wholesaling and testing. Rickreall has safe access to Oregon Highway 22 via a grade separated interchange and direct access to Oregon Highway 99. The Rickreall UC-I zone was identified because its central location in the County facilitates easy access for marijuana producers

and its close proximity to the largest cities in Polk County facilitates easy access to local retail recreational marijuana markets for wholesalers, processors and laboratory testers. The unincorporated community of Rickreall is served by the Rickreall Community Water Association, which could provide potable water to marijuana processing, wholesaling or testing laboratory uses on Rickreall UC-I zoned lands. However, they may not be issuing connections for commercial uses that use water in a production process. In addition, Rickreall is not served by a sanitary sewer system. Marijuana processing and testing facilities may need to obtain Water Pollution Control Facility (WPCF) permits from the Oregon Department of Environmental Quality (DEQ). These are the same limitations any agricultural processor would face within Rickreall. Marijuana processing includes a range of activities from processing marijuana into concentrates, extracts, topical products and tinctures to producing edible value added products. This conversion of usable marijuana may be simple, as in the case of marijuana tinctures, or involve intensive processing likely to require commercial water and sanitary sewer. As a result, it is not likely that larger scale or intensive marijuana processors would locate in Rickreall. It is more likely that they would locate within cities or UGBs where there are adequate sanitary sewer and water services. It is more likely that less intensive or very small scale marijuana processors would locate in Rickreall. Allowing marijuana processing in Rickreall would ensure that there are opportunities to meet potential demand from local agricultural producers for local small scale processors.

These new marijuana uses have been evaluated and determined above in these findings to be substantially similar to and no more intensive than other commercial and industrial uses already allowed within these unincorporated communities. In addition, no new commercial or industrial lands are proposed. As a result, these new uses, like the existing allowed commercial and industrial uses, are necessary to provide employment that does not exceed the project work force within the community and the surrounding rural area.

If this legislative amendment is approved, recreational marijuana retail and medical marijuana dispensing would be included in the NPC-C zone as small scale low impact commercial uses as that term is defined in OAR 660-22-030(10) and as such would be limited to establishment in a building or buildings not exceeding 4,000 square feet of floor space. Establishment of a retail recreational marijuana use or medical marijuana dispensary use that exceeds the 4,000 square foot standard would require a Comprehensive Plan Amendment as specified in Chapter 115 of the Zoning Ordinance.

The marijuana processing, wholesaling and laboratory testing uses included in the Rickreall UC-I zone are uses that require proximity to rural resource, as defined in OAR 660-004-0022(3)(a), and are not subject to small scale low impact building size limitations.

Based on the above findings, the Board concluded that allowing marijuana retail and marijuana dispensary uses in the NPC-C zone, and marijuana processing, wholesale and laboratory testing uses in the Rickreall UC-I zone is consistent with the PCCP policy above.

(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

Findings: The proposed amendments to the PCZO are in the public interest and of general public benefit because it allows the County to identify appropriate zones and apply reasonable standards for recreational marijuana uses and medical marijuana dispensaries. Including recreational and medical marijuana uses in appropriate zoning districts provides the public certainty as to where and how these uses can be established. It also provides a way to mitigate potential conflicts between land uses by grouping these marijuana related uses in zones that include other uses with similar externalities. In addition, reasonable standards have been implemented to further reduce the potential for conflict.

The Board of Commissioners adopted amendments to PCZO Chapters 110, 111, 116, 136, 138, 148, 155, 161 and 177 to provide for marijuana uses following the January 13, 2016 public hearing, directing staff to come back with an Ordinance memorializing their decision. The Planning

Commission's recommendation on December 15, 2015 included changes to the FF and TC zones to incorporate marijuana production as a "farm use", recommended language in the EFU zone concerning prohibitions on marijuana uses in conjunction with a farm use, in farm stands and for the purposes of qualifying for a farm dwelling, a 1,000 foot buffer between retail marijuana uses and public parks and schools, and the prohibition of Chapter 116 home occupations for marijuana uses in residential zones. The Board of Commissioners considered public safety, urban service availability, transportation and structural setbacks during their deliberations. After thoughtful consideration, they elected to rely on provisions already contained in HB 3400 and OAR 845-025 governing security, separation of marijuana uses and transport.

The Planning Commission recommended, and the Board of Commissioners adopted, standards in the PCZO to separate, by a minimum of 1,000 feet, public parks and public or private elementary, secondary or career schools from medical marijuana dispensaries and retail recreational marijuana uses. These additional standards are intended to mitigate potential conflicts between uses that attract marijuana consumers and places frequented by youth. Although adopted PCZO provisions separating retail recreational marijuana and medical marijuana dispensaries from schools echo language found in HB 3400, the Board of Commissioners included them in the PCZO since Polk County Planning staff is more familiar with local school locations than OLCC staff.

The Board of Commissioners' decision regarding these legislative amendments provides for conditional use review of all marijuana uses except production uses. Conditional use review affords an opportunity to place reasonable conditions on marijuana uses on a case by case basis. This approach would provide the opportunity to place specific conditions on marijuana uses after evaluating site and area characteristics, and the potential for conflict with nearby land uses. The Planning Commission also recommended prohibiting marijuana uses as home occupations in residential zones. In Polk County, home occupations are sought for a variety of non-retail home businesses in residential zones. The most likely marijuana uses that could be characterized as home occupations would be for recreational and medical marijuana processing or wholesaling. The OLCC rules governing marijuana uses do not consider a primary residence a "licensed premises" as that term is defined in OAR 845-025-1015(37)(b). The OLCC has, in effect, deemed primary residences inappropriate for marijuana uses. The Planning Commission heard testimony from supporters of this legislative amendment on December 1, 2015 cautioning against permitting marijuana uses in residential areas because they could compromise the existing electrical utility infrastructure. State prohibitions against locating marijuana uses in primary residences, testimony from marijuana proponents warning of the unintended consequences of locating marijuana uses in residential areas and inherent conflicts between residential uses and marijuana processing and wholesaling uses all contributed to the Planning Commission recommendation, and the Board of Commissioners' decision, to prohibit home occupations for marijuana uses.

For these reasons, the Board finds that it has been in the public interest and of general public benefit to identify appropriate zoning districts and impose reasonable standards for recreational marijuana production, processing, wholesaling, laboratory testing and retail sales uses and medical marijuana dispensaries.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

Staff Findings: The new zoning text amendments apply to all lands in Polk County outside of a UGB, and some lands within UGBs and outside of city limits. Land within the UGBs are predominantly zoned Suburban Residential (SR), although some land is zoned EFU and FF and there are is also a limited supply of industrial and commercial zoned properties within UGBs.

Polk County has adopted Urban Growth Management Agreements (UGMA) with each of the cities that have UGBs that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. The Falls City UGB is

entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

While recreational marijuana uses and medical marijuana dispensaries are not appropriate in the SR zone, other lands in UGBs may still carry Polk County resource zoning designations where recreational marijuana uses could be allowed. In addition, the Board found the IL zone and indirectly the IH zone, appropriate for marijuana processing and wholesaling, which zones are applied exclusively within UGBs and can be found in Independence, Monmouth, Dallas and Willamina.

Staff's review of IGAs with the cities in Polk County did not uncover direct references to coordinating zoning ordinance amendments, although general references to the consistency of city and county land use regulations are included in the agreements. The text of the IGAs between Polk County and the incorporated cities in Polk County did not change as a result of this legislative amendment.

Polk County sent a special notice to the cities on November 23, 2015 to solicit comments regarding LA 15-02, and its consistency with UGMA provisions regarding urbanizable land. Additional notification of the Board of Commissioners hearing was provided to the cities on December 23, 2015. The City of Salem has responded with no specific comments and the City of Monmouth requested additional information regarding this legislative amendment, but provided no comments.

Staff evaluated Polk County's resource, commercial and industrial zones that outright permit uses similar to the various commercial and industrial marijuana uses identified in HB 3400. The new marijuana uses have been evaluated and determined above in this staff report to be substantially similar to and no more intensive than other agricultural, commercial and industrial uses already allowed within UGBs. In addition, no rezoning of land is proposed. Polk County is not proposing to permit marijuana retail sales or medical marijuana dispensing within a zone applied to a UGB. No evidence has been presented to suggest that this proposal is not consistent with an intergovernmental agreement. The Board of Commissioners' decision includes marijuana processing and wholesaling uses as conditional uses in the IL and IH zones. The IL and IH zones are applied within UGBs. Including these marijuana uses as conditional uses allows cities to participate in the siting process. It also allows Polk County to evaluate specific proposals for harmony with the purpose and intent of the zone and to impose reasonable conditions deemed necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

For these reasons, the Board finds that this proposal is consistent with the PCCP policy above.

IV. CONCLUSION

Based on the findings above, the Polk County Board of Commissioners conclude that the proposed amendments to the Polk County Zoning Ordinance comply with all of the applicable review and decision criteria for a legislative amendment.

Exhibit B to Ordinance No. 16-01

110.371 MARIJUANA USES. Recreational marijuana production, processing, laboratories, retailing and wholesaling as defined in OAR 845-025-1015; marijuana research described in OAR 845-025-5300; and, medical marijuana dispensaries registered under ORS 475.314. Marijuana uses shall only occur where specifically enumerated in a zone. Discrete marijuana uses are defined below:

- (A) *Marijuana Production.* The commercial manufacture, planting, cultivation, growing or harvesting of recreational marijuana for wholesale and retail trade consistent with OAR 845-025-1230, or marijuana research related to production, consistent with OAR 845-025-5300. A person designated to produce marijuana by a registry identification cardholder under ORS 475.304 who produces marijuana for a registry identification cardholder at an address other than the address where the registry identification cardholder resides, or at an address where more than 12 mature marijuana plants are produced pursuant to ORS 475.302(18).
- (B) *Marijuana Processing.* The processing, compounding, or conversion of recreational marijuana into a cannabinoid concentrate or extract per the requirements of OAR 845-025-3200 to 3290, and consistent with OAR 845-025-1230. The compounding or conversion of marijuana into medical cannabinoid products, concentrates or extracts pursuant to ORS 475.302(11). Also, marijuana research related to processing, consistent with OAR 845-025-5300.
- (C) *Marijuana Wholesaling.* The purchase of recreational marijuana items, as defined in OAR 845-025-1015(31), for resale per the requirements of OAR 845-025-3500, and consistent with OAR 845-025-1230.
- (D) *Marijuana Retailing.* The sale of recreational marijuana items, as defined in OAR 845-025-1015(26), to a consumer, consistent with OAR 845-025-2840.
- (E) *Marijuana Testing Laboratory.* A laboratory licensed for testing marijuana consistent with OAR 845-025-5030.
- (F) *Medical Marijuana Dispensary.* Dispensing of medical marijuana from a location registered pursuant to ORS 475.314. [Amended by Ordinance 16-01]

111.040. INTERPRETATION OF ORDINANCE.

- (A) When, in the administration of this ordinance, there is doubt regarding the intent of the ordinance, the Director shall request an interpretation of the provision by the Board of Commissioners, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of the ordinance shall be based on the following:
 - (1) The purpose and intent of the ordinance as applied to the particular section and question; and,
 - (2) The opinion of the County Counsel when requested by the Board of Commissioners.
- (B) The Board of Commissioners may decide that the interpretation of the question is not within their power without an ordinance amendment or that there is insufficient basis upon which to make an interpretation and may

request the Director to study the problem, and where necessary, propose an amendment to the ordinance. [Amended by Ordinance 88-21]

- (C) A use is not precluded from being established or authorized in a zone based solely on the fact that the use is more specifically identified in another zone, except for Marijuana Uses defined in PCZO 110.371. [Amended by Ordinances 14-04 and 16-01]

116.020. HOME OCCUPATION - SERVICES. Home occupations which provide various services are permitted in the SR and AR-5 zones provided:

- (A) The occupation is carried on solely by the resident of a dwelling house as a secondary use.
- (B) No assistants are employed.
- (C) No commodities are sold other than services.
- (D) No sounds produced by the occupation are heard beyond the premises.
- (E) No Marijuana Uses, as defined in PCZO 110.371, are proposed.
- (F) The business uses no display, advertisement, or sign board except such signs as permitted by this ordinance.
- (G) No structural alterations are made to accommodate such occupations and the residential character of the building remains unchanged, and not more than one-half of the floor area of one-story is devoted to such use. [Amended by Ordinance 16-01]

116.030. HOME OCCUPATION - CONDITIONAL. Home occupations in which commodities are produced are allowed as conditional uses in the SR and AR-5 zones provided:

- (A) The occupation or activity be carried on solely by the resident of a dwelling as a secondary use, in connection with which no assistants are employed.
- (B) No structural alterations are made to accommodate such occupations, the residential character of the buildings and property remains unchanged, and traffic attracted to the premises be kept at a minimum.
- (C) The business or activity shall be conducted wholly within the home or within a small (not greater than one-half the floor area of the house) accessory building, residential in appearance.
- (D) No noise, dust or any other offensive action or material be emitted from the premises.
- (E) No storage of materials, products, or supplies be conducted outside of the building.
- (F) No Marijuana Uses, as defined in PCZO 110.371, are proposed.
- (G) There be sufficient room to load and unload materials, supplies, and products on the premises. [Amended by Ordinance 16-01]

116.040. COTTAGE INDUSTRY - HOME OCCUPATION. Home occupations in which services are provided and/or commodities are produced in a building other than the main residential structure are allowed as conditional uses in the AR-5, CO, CR, and CG zones provided:

- (A) Any applicant for a cottage industry home occupation shall apply to the County Sanitarian for an authorization notice and shall comply with the requirements for septic and refuse disposal.
- (B) The operator of the cottage industry home occupation shall reside within the main residence on the subject property.
- (C) The only sign allowed shall be a two (2) square foot nameplate attached to the face (wall) of the building near the main entrance of the main building.
- (D) Parking shall be permitted at the rate of one space per employee in the specified area in accordance with the standards of Chapter 112 of the Polk County Zoning Ordinance.
- (E) All aspects of the cottage industry home occupation shall be conducted within a fully enclosed building consisting of the main structure or accessory structures meeting the Uniform Building Code.
- (F) No retail trade activity for goods shall be allowed, however, nothing prohibits the transport of products manufactured or services offered at the site.
- (G) No Marijuana Uses, as defined in PCZO 110.371, are proposed.
- (H) Notice requirements for the conditional use permits shall be to all properties within 750 feet of the exterior perimeters of the subject property where the cottage industry home occupation will be located.
- (I) Nothing contained in the County's action to approve the cottage industry home occupation shall be used as justification for a zone change.
- (J) No structures shall be authorized by the County which do not otherwise meet the conditions of the residential zone in which the cottage industry home occupation is located.
- (K) The proposed cottage industry home occupation shall not interfere with the existing uses in the notice area or with other uses permitted in the zone in which the property is located.
- (L) The cottage industry home occupation shall not employ more than a total of five (5) full or part-time persons. [Amended by Ordinance #308, dated May 16, 1984 and Ordinance 16-01]

136.030. USES PERMITTED BY RIGHT. The following uses are permitted, subject to applicable standards set forth in the Polk County Zoning Ordinance and as may otherwise be indicated by federal, state and local permits or regulations:

- (A) Farm use, as defined in ORS 215.203, including marijuana production as defined in PCZO 110.371(A). A marijuana crop is a "farm crop" for the purposes of Chapter 136. [Amended by Ordinance 16-01]
- (Q) Farm Stand [OAR 660-033-0130(23)], subject to the following requirements:
 - (1) The structures are temporary, do not require building permits under the Oregon Structural Specialty Code, and are used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon, including the sale of retail incidental items to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental

items do not make up more than 25 percent of the total annual sales of the farm stand; and

- (2) If retail incidental items are offered for sale, they shall be offered for sale at the same time and location as the farm crops and livestock sold by the farm stand.
- (3) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
- (4) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. Notwithstanding the foregoing, a farm stand used in conjunction with a marijuana crop is not permitted.
- (5) Farms stands that would include fee based activities to promote the sale of farm crops or livestock sold at the farm stand shall be reviewed under PCZO 136.040(P). [Amended by Ordinance 13-05 and 16-01]

136.040. USES SUBJECT TO ADMINISTRATIVE REVIEW. The following uses are permitted, subject to review and approval under the prescriptive standards specified herein and as may otherwise be indicated by federal, state and local regulations and permits:

SINGLE-FAMILY RESIDENCES

- (A) *Dwelling for the Farm Operator on High-Value Farmland [OAR 660-033-0135(4) and (9)]*. A Farm Dwelling may be authorized on a tract of land classified as high value, where the tract meets the following criteria:
 - (1) The subject tract is currently in farm use and has produced at least \$80,000 gross annual income from the sale of farm products, each of the last 2 years or 3 out of the past 5 years. Only gross income from land owned, not leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation as defined in OAR 660-033-0135(11)(b). Noncontiguous lots or parcels designated for exclusive farm 2013 Update 136-8 use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law;
 - (2) The tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing on lands designated for

exclusive farm owned by the farm operator or on the farm operation); and

- (3) The dwelling will be occupied by a person or persons who produced the commodities which provided the income under subsection 1 above.
 - (4) At the time of application for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide a title report, for those lots or parcels located within a contiguous county, that was generated within 30 days of date the application is submitted.
 - (5) Prior to issuance of construction permits for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide for the recording of a deed restriction with the Polk County Clerk consistent with that required by OAR 660-033-0135(9) for the properties subject to the application that precludes:
 - (a) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
 - (b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling. **[Amended by Ordinance 16-01]**
- (E) *Dwelling for the Farm Operator on Other Farmland - Income Standard* [OAR 660- 033-0135(3), (5) and (6)]. A farm dwelling may be authorized on a tract of land, not classified as high value, subject to the following standards:
- (1) The subject tract is currently employed for farm use and has produced at least \$40,000 in gross annual income from the sale of farm products during each of the past two (2) years or three (3) of the past five (5) years. Only gross income from land owned, not leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation. Noncontiguous lots or parcels designated for exclusive farm use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law; or
 - (2) The subject tract is currently employed for farm use and has produced gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture during each of the past two (2) years or

three (3) of the past five (5) years. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income;

- (3) The subject tract, and all parcels subject to the application are currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing); and
 - (4) The dwelling will be occupied by a person or persons who produced the commodities during each of the past two (2) years or three (3) of the past five (5) years.
 - (5) At the time of application for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide a title report, for those lots or parcels located within a contiguous county, that was generated within 30 days of date the application is submitted.
 - (6) Prior to issuance of construction permits for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide for the recording of a deed restriction with the Polk County Clerk consistent with that required by OAR 660-033-0135(9) for the subject properties that precludes:
 - (a) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
 - (b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling; **[Amended by Ordinance 16-01]**
- (F) Dwelling for the Farm Operator on Other Farmland - Sales Capability Test [OAR 660-033-0135(2)]. A farm dwelling may be authorized on a tract of land, not classified as high-value that is:
- (1) At least as large as the median size of those commercial farm and ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract;
 - (2) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size under subsection 1 above, provided, however, that marijuana is not used as a county indicator crop; **[Amended by Ordinance 16-01]**
- (K) Accessory Farm Dwellings [OAR 660-033-0130(24)]. Each accessory dwelling customarily provided in conjunction with farm use is authorized, subject to review and approval under the following criteria:
- (1) Each dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use, such as planting,

harvesting, marketing, or caring for livestock, is or will be required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates the farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing;

- (2) The accessory dwelling will be located:
 - (a) On the same lot or parcel as the primary farm dwelling; or
 - (b) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcel in the tract; or
 - (c) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is re-authorized under these rules; or
 - (d) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph shall be removed, demolished, or converted to an authorized non-residential use when farm worker housing is no longer required; or
 - (e) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable, and
- (3) There is no other dwelling on lands zoned for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and
- (4) The primary farm dwelling, to which the proposed dwelling would be accessory, meets one of the following:
 - (a) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use and produced in each of the last two years or three of the last five years, the lower of the following:
 - (i) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products (Note: Gross

farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract); or

- (ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. (Note: Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. In determining the gross income, the cost of purchased livestock, shall be deducted from the total gross income attributed to the tract); or
- (b) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use and has produced at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling;
- (c) On land defined as a commercial dairy pursuant to OAR 660-033- 0135(11) and the following:
 - (i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (ii) The Oregon Department of Agriculture has approved a permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
 - (iii) The Oregon Department of Agriculture has approved a permit for a Producer License for the sale of dairy products under ORS 621.072.
- (5) A partition shall not be approved that separates the accessory farm dwelling from the primary farm dwelling, unless a subsequent land use application determines that the accessory farm dwelling and the primary farm dwelling both qualify pursuant to the applicable provisions contained in Sections 136.040(A), (D), (E), or (F). A parcel may be created consistent with the minimum parcel size for the zone.
- (6) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use.

Note: "Accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code. [Amended by Ordinance 16-01]

COMMERCIAL USES

- (P) *Farm Stand [OAR 660-033-0130(23)]*, A farm stand, not including those farm stands that are outright permitted in Section 136.030(Q), may be approved if:
- (1) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
 - (2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
 - (3) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. Notwithstanding the foregoing, a farm stand used in conjunction with a marijuana crop is not permitted. [Amended by Ordinances 11-03, 13-05 and 16-01]

136.050 CONDITIONAL USES [OAR 660-033-0130]. The following uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, applicable state and federal regulations, and other specific criteria as may be indicated:

COMMERCIAL ACTIVITIES

- (I) *Commercial Activities that are in Conjunction with Farm Use [ORS 215.283(2)(a)]*, including the processing of farm crops into biofuel not permitted under the definition of "farm use" in ORS 215.203(2)(b)(L) or Section 136.040(Q) but not including the processing of farm crops as described in Section 136.040(Q), subject to compliance with Section 136.060. Notwithstanding the foregoing, a commercial activity carried on in conjunction with a marijuana crop is not permitted. [Amended by Ordinances 11-03, 13-05 and 16-01]

138.040 USES PERMITTED BY RIGHT. The following uses are permitted, subject to applicable standards set forth in the Polk County Zoning Ordinance and as may otherwise be indicated by federal, state and local permits or regulations:

RESOURCE USES

- (A) Farm use, as defined in ORS 215.203, including marijuana production as defined in PCZO 110.371(A). A marijuana crop is a “farm crop” for the purposes of Chapter 138. [Amended by Ordinance 16-01]

COMMERCIAL

- (M) Farm Stand [OAR 660-033-0130(23)], subject to the following requirements:
- (1) The structures are temporary, do not require building permits under the Oregon Structural Specialty Code, and are used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon, including the sale of retail incidental items to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items do not make up more than 25 percent of the total annual sales of the farm stand; and
 - (2) If retail incidental items are offered for sale, they shall be offered for sale at the same time and location as the farm crops and livestock sold by the farm stand.
 - (3) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
 - (4) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. Notwithstanding the foregoing, a farm stand used in conjunction with a marijuana crop is not permitted.
 - (5) Farms stands that would include fee based activities to promote the sale of farm crops or livestock sold at the farm stand shall be reviewed under PCZO 138.050(C). [Amended by Ordinance 13-05 and 16-01]

138.050 USES SUBJECT TO ADMINISTRATIVE REVIEW. The following uses are permitted, subject to review and approval under the prescriptive standards specified herein, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, and as may otherwise be indicated by federal, state and local permits or regulations.

COMMERCIAL

- (C) Farm Stand [OAR 660-033-0130(23)], A farm stand, not including those farm stands that are outright permitted in Section 138.040(M), may be approved if:
- (1) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
 - (2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and

does not include structures for banquets, public gatherings or public entertainment.

- (3) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. Notwithstanding the foregoing, a farm stand used in conjunction with a marijuana crop is not permitted. [Amended by Ordinances 11-03, 13-05 and 16-01]

138.060 CONDITIONAL USES. The following conditional uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, applicable state and federal regulations, and other specific criteria as may be indicated: [Amended by Ordinance 11-03]

COMMERCIAL ACTIVITIES

- (H) *Commercial Activities that are in Conjunction with Farm Use [ORS 215.283(2)(a)]*, including the processing of farm crops into biofuel not permitted under the definition of "farm use" in ORS 215.203(2)(b)(L) or Section 138.050(A) but not including the processing of farm crops as described in Section 136.050(A), subject to compliance with Section 138.100(A). Notwithstanding the foregoing, a commercial activity carried on in conjunction with a marijuana crop is not permitted. [Amended by Ordinances 11-03, 13-05 and 16-01]

138.080 USES SUBJECT TO ADMINISTRATIVE REVIEW AND BASED ON THE DETERMINATION OF PREDOMINATE USE OF TRACT IN ACCORDANCE WITH SECTION 138.070.

The following uses are permitted, subject to review and approval under the prescriptive standards specified herein, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, and as may otherwise be indicated by federal, state and local permits or regulations.

- (A) **FARM LAND TRACT** - Uses subject to administrative review on a tract where the predominate use has been determined to be farm use:

DWELLINGS

- (1) *Dwelling for the Farm Operator on High-Value Farmland [OAR 660-033-0135(4) and (9)]*. A Farm Dwelling may be authorized on a tract of land classified as high-value, where the tract meets the following criteria:
 - (a) The subject tract is currently in farm use and has produced at least \$80,000 gross annual income from the sale of farm products, each of the last 2 years or 3 out of the past 5 years. Only gross income from land owned, not leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation as defined in OAR 660-033-0135(11)(b). Noncontiguous lots or parcels designated for exclusive farm 2013 Update 136-8 use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to

qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law;

- (b) The tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing on lands designated for exclusive farm owned by the farm operator or on the farm operation); and
 - (c) The dwelling will be occupied by a person or persons who produced the commodities which provided the income under subsection 1 above.
 - (d) At the time of application for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide a title report, for those lots or parcels located within a contiguous county, that was generated within 30 days of date the application is submitted.
 - (e) Prior to issuance of construction permits for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide for the recording of a deed restriction with the Polk County Clerk consistent with that required by OAR 660-033-0135(9) for the properties subject to the application that precludes:
 - (i) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
 - (ii) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling. **[Amended by Ordinance 16-01]**
- (4) *Dwelling for the Farm Operator on Other Farmland - Income Standard* [OAR 660-033-0135(3), (5) and (6)]. A farm dwelling may be authorized on a tract of land, not classified as high value, subject to the following standards:
- (a) The subject tract is currently employed for farm use and has produced at least \$40,000 in gross annual income from the sale of farm products during each of the past two (2) years or three (3) of the past five (5) years. Only gross income from land owned, not leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation. Noncontiguous lots or parcels designated for exclusive farm use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law; or
 - (b) The subject tract is currently employed for farm use and has produced gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture during each

of the past two (2) years or three (3) of the past five (5) years. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income;

- (c) The subject tract, and all parcels subject to the application are currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing); and
 - (d) The dwelling will be occupied by a person or persons who produced the commodities during each of the past two (2) years or three (3) of the past five (5) years.
 - (e) At the time of application for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide a title report, for those lots or parcels located within a contiguous county, that was generated within 30 days of date the application is submitted.
 - (f) Prior to issuance of construction permits for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide for the recording of a deed restriction with the Polk County Clerk consistent with that required by OAR 660-033-0135(9) for the subject properties that precludes:
 - (g) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
 - (h) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling; **[Amended by Ordinance 16-01]**
- (5) *Dwelling for the Farm Operator on Other Farmland - Sales Capability Test [OAR 660-033-0135(2)]*. A farm dwelling may be authorized on a tract of land, not classified as high-value that is:
- (a) At least as large as the median size of those commercial farm and ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract;
 - (b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size under subsection 1 above, provided, however, that marijuana is not used as a county indicator crop;
 - (c) Currently employed for farm use at a level capable of producing the gross annual sales requirement under subsection 2 above. (Note: If no farm use has been established at the time of application, land use approval shall be subject to full establishment of the farm use, as described under subsection 2 above, prior to issuance of a building permit for the dwelling);
 - (d) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock at a commercial scale;
 - (e) At least 10 acres in size; and

- (f) Currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing). [Amended by Ordinance 16-01]
- (9) Accessory Farm Dwellings [OAR 660-033-0130(24)]. Each accessory dwelling customarily provided in conjunction with farm use is authorized, subject to review and approval under the following criteria:
 - (a) Each dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use, such as planting, harvesting, marketing, or caring for livestock, is or will be required by the farm operator. (Note: The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates the farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing);
 - (b) The accessory dwelling will be located:
 - (i) On the same lot or parcel as the primary farm dwelling; or
 - (ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcel in the tract; or
 - (iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is re-authorized under these rules; or
 - (iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph shall be removed, demolished, or converted to an authorized non-residential use when farm worker housing is no longer required; or
 - (v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable, and
 - (c) There is no other dwelling on lands zoned for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and
 - (d) The primary farm dwelling, to which the proposed dwelling would be accessory, meets one of the following:
 - (i) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently

employed for farm use and produced in each of the last two years or three of the last five years, the lower of the following:

- (A) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products (Note: Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract); or
 - (B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. (Note: Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. In determining the gross income, the cost of purchased livestock, shall be deducted from the total gross income attributed to the tract); or
- (ii) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use and has produced at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling;
 - (iii) On land defined as a commercial dairy pursuant to OAR 660-033-0135(11) and the following:
 - (A) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (B) The Oregon Department of Agriculture has approved a permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
 - (C) The Oregon Department of Agriculture has approved a permit for a Producer License for the sale of dairy products under ORS 621.072.
- (e) A partition shall not be approved that separates the accessory farm dwelling from the primary farm dwelling, unless a subsequent land use application determines that the accessory farm dwelling and the primary farm dwelling both qualify pursuant to the applicable provisions contained in Sections 138.080(A-E). A parcel may be created consistent with the minimum parcel size for the zone.
 - (f) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use.

Note: “Accessory farm dwellings” include all types of residential structures allowed by the applicable state building code. [Amended by Ordinance 16-01]

148.060. CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in any NPC-C Zone:

- (C) Uses which are small-scale, low-impact:
 - (1) General warehousing and storage (4225);
 - (2) Motor freight terminal offices (421);
 - (3) Funeral service and crematories (726);
 - (4) Billboards;
 - (5) Radio and TV transmitter stations and towers (483);
 - (6) Telephone and telegraph communication facilities (482);
 - (7) Miniature golf course;
 - (8) Athletic club, club house (7991)(7997);
 - (9) Dance hall, ballroom (791);
 - (10) Summer recreational camp;
 - (11) Swimming pool;
 - (12) Marina;
 - (13) Utilities, secondary truck parking and material storage yard;
 - (14) U-Haul concrete mix store (5032);
 - (15) Cabinet shop and sales firm (see Specific Conditional Uses, Section 119.150(E));
 - (16) Cottage Industry Home Occupations (see Section 116.040);
 - (17) Marijuana retailing as defined in PCZO 110.371(D), provided the use is a minimum of 1,000 feet from public parks and public or private elementary, secondary or career schools; [Amended by Ordinance 16-01]
 - (18) Medical marijuana dispensary uses as defined in PCZO 110.371(F), provided the use is a minimum of 1,000 feet from public parks and public or private elementary, secondary or career schools; and [Amended by Ordinance 16-01]
 - (19) Any other commercial use, where the buildings do not exceed 4,000 square feet of floor space provided that the use will not exceed the capacity of water and sewer service available to the site on December 5, 1994, or if such services are not available to the site, the capacity of the site itself to provide adequate water and absorb waste water.

155.560. CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in the Rickreall UC-I Zone:

- (B) Industrial uses which are small-scale, low-impact:
 - (1) Any use permitted under 154.560(C);

- (2) Kennels (boarding and raising of animals);
- (3) Cottage Industry Home Occupations;
- (4) Metals, primary, manufacturing facilities (33);
- (5) Manufacturing of fabricated metal products (34);
- (6) Machinery facilities;
- (7) Railroad equipment manufacture and repair (374);
- (8) Auto wrecking yard, perimeter fenced and landscaped;
- (9) Paper and allied products manufacturing facilities (265)(267);
- (10) Bulk fuel storage;
- (11) Petroleum, petroleum products, and storage facilities (29);
- (12) Marijuana processing as defined in PCZO 110.371(B); [Amended by Ordinance 16-01]
- (13) Marijuana wholesaling as defined in PCZO 110.371(C); [Amended by Ordinance 16-01]
- (14) Marijuana testing laboratory as defined in PCZO 110.371(E); [Amended by Ordinance 16-01]

161.040. CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in an IL zone:

- (C) Food, grain, feed and derivative products processing facilities:
 - (1) Livestock auctions and sales, including feed lots
 - (2) Marijuana processing as defined in PCZO 110.371(B) [Amended by Ordinance 16-01]
 - (3) Marijuana wholesaling as defined in PCZO 110.371(C) [Amended by Ordinance 16-01]

177.030. USES PERMITTED BY RIGHT. No building, structure, or premise shall be used, arranged, or designed to be used, erected, structurally altered or enlarged, except for one or more of the following uses.

- (B) *Farm use*, as defined in ORS 215.203, including marijuana production as defined in PCZO 110.371(A). A marijuana crop is a “farm crop” for the purposes of Chapter 177. [Amended by Ordinance 16-01]