



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: May 18, 2016

Department: Public Works Agenda Planning Date: May 12, 2016 Time required: 30 min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Public hearing for Zone Change/Comprehensive Plan (ZC/CP) Case 15-001/Coastal Forest Products, LLC.

Issue, Description & Background Coastal Forest Products, LLC submitted an application to change the zone from Exclusive Farm Use (EFU) to Industrial (I), and to change the comprehensive plan designation from Primary Agriculture to Industrial on a 6.25 acre portion of a 7.14 acre parcel located at 6242 Portland Road NE, Salem. A public hearing was held before the hearings officer on August 5, 2015, and the record was left open until August 21, 2015. During the open record period the hearings officer became aware that the recording of the hearing was inadvertently deleted and the testimony of record was lost. Hearing participants were notified and the open record period was extended to September 4, 2015. On November 10, 2015, the hearings officer issued a recommendation to deny the request. In summary, the hearings found that an exception to Statewide Planning Goal 3 (Agricultural Lands) is not recommended, and that additional information is needed to satisfy Goals 6 (Air, Water and Resources quality), 11 (Public Facilities and Services), 12 (Transportation) and 13 (Energy Conservation) and Rural Industrial Policy 2 of the Marion County Comprehensive Plan. In addition, the applicant needs to show how the proposed use fits in the proposed Industrial zone. Without the goal exception the proposal does not meet the comprehensive plan policies or zone change criteria. The board received the recommendation during its regular session on December 2, 2015. The applicant asked public works staff to delay scheduling a hearing before the board in order to gather more information. At the applicant's request, during its regular session on March 16, 2016, the board scheduled a public hearing for May 4, 2016. Prior to holding the hearing it was discovered that the hearing notice was faulty and at its regular session on May 4, 2016, the board rescheduled the public hearing for May 18, 2016.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Continue the public hearing. 2. Close the public hearing and leave the record open. 3. Close the public hearing and approve, modify, or deny the request. 4. Remand the matter back to the hearings officer.

Recommendation: Hearings officer recommends the request be denied.



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List of attachments:

*Hearings officer's recommendation
*Summary of applicant's supplemental information.

Presenter:

Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Joe Fennimore gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. ZC/CP 15-001
Application of:) Clerk's File No.
COASTAL FOREST PRODUCTS, LLC) **Zone Change/Comprehensive
Plan Amendment**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Coastal Forest Products, LLC to take an exception to Statewide Planning Goal 3, change the comprehensive plan designation from Primary Agriculture to Industrial, and change the zone from EFU (EXCLUSIVE FARM USE) to I (INDUSTRIAL) on a 6.25-acre portion of a 7.41-acre parcel at 6242 Portland Road NE, Salem, Marion County, Oregon (T6S, R2W, S31A, tax lot 1100).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and the Marion County Code (MCC) title 17, especially chapter 17.123.

III. Public Hearing

A public hearing was held August 5, 2015. At hearing, the Planning Division file was made part of the record. The following persons appeared and testified at hearing:

1. Brandon Reich Planning Division
2. Donald Kelley Applicant's attorney
3. Noah Jones For applicant
4. Joseph Paratore Opponent
5. Rick Breen Opponent

The following documents were presented, marked and entered into the record as exhibits:

- Ex. 1 April 10, 2015 letter from Leah K. Feldon
- Ex. 2 Oregon Department of Transportation permit packet
- Ex. 3 Aerial photograph of subject and surrounding property
- Ex. 4 August 4, 2015 letter from Barbara Breen
- Ex. 5 August 5, 2015 memorandum for record from Richard and Peggy Breen

No objections were made to notice, jurisdiction, conflict of interest, evidence or testimony at hearing. The record was kept open until August 12, 2015 for opponents and August 21, 2015 for applicants to submit additional information. On August 19, 2015, the hearings officer found out the August 5, 2015 hearing recording was inadvertently deleted and the testimony of record was lost. Hearing participants were notified in writing and the record was reopened until August 28, 2015 for opposing oral participants to submit final information, and until September 4, 2015 for applicant to submit final information. On September 1, 2015, the hearings office received two letters from participant Richard Breen; an August 27, 2015 letter with envelope postmarked August 31, 2015 and a second letter dated August 28, 2015 with envelope also postmarked August 31, 2015. The second letter containing new evidence was received outside of opponents' open record period, sealed, placed in the file, and not considered in the hearings officer's recommendation to the Marion County Board of Commissioners (BOC). After this recommendation is issued, the evidence may be unsealed and considered by the BOC.

The August 27, 2015 letter was also received outside opponents' open record period and addressed mostly procedural issues involving the August 5, 2015 hearing recording and the record reopening. The hearings officer clarified that new information was allowed during the initial open record period but not during re-opened record period. New evidence, testimony, argument may be brought up at the mandatory BOC hearing. Mr. Breen's August 27, 2015 letter and the hearings officer's response are in the record but not marked as exhibits. The following additional documents were presented, marked and entered into the record as exhibits by close of record:

- Ex. 6 August 6, 2015 letter from William Jones
- Ex. 7 August 9, 2015 letter from Dan and Debbie Harvey
- Ex. 8 August 7, 2015 letter from Lee Clark
- Ex. 9 August 9, 2015 letter from Richard Breen with attached photos
- Ex. 10 August 10, 2015 letter from Bennett, Paratore, and Olsen, with attachments
- Ex. 11 August 20, 2015 response from Donald Kelley, with attachments

In exhibit 7, Dan and Debbie Harvey, 6285 Lakeside Drive, state they were not informed of Coastal Forest Products, LLC's request for zone change. The notification map in the record shows tax lot 062W21A01800 is owned by Pelogia Almero, mailing address, 6285 Lakeside Drive. The certification of mailing in the record shows Pelogia Almero was sent notice of the hearing at the 6285 Lakeside address. Under ORS 197.763(2)(a)(C), for quasi-judicial land use hearings, notice of the hearings shall be provided to owners of record of property on the most recent property tax assessment roll when the property is within 500 feet of the property that is the

subject of the notice, is within a farm or forest zone. Under MCC 17.111.030(C)(2), the notice area is expanded to 750' but mailing is again determined by property owner information contained in the latest tax rolls. Notice was mailed to the property owner of record to the address of record. Notice was proper. If it is later found there was defect in notice, defect was cured as evidenced by the Harvey's open record submission.

In exhibit 8, Lee Clark from the Free Church in Christ in Jesus Name notes the church is at 6275 Lakeside Drive, abuts the subject property, and was not informed of the subject request for zone change. The notification map in the record shows tax lot 062W21A01700 is owned by the church, but its mailing address is 965 D Street NE in Salem. The certification of mailing in the record shows the church was sent notice of the hearing at its D Street NE address. Notice was proper. If it is later found there was notice defect, defect was cured as evidenced by the church's open record submission.

Some materials were submitted to the record electronically. The hearings officer compared electronic and printed record submissions and found four electronically submitted photographs were not in the print record. Because the photographs were submitted prior to hearing, the hearings officer printed and placed the four roadway-related photographs in the record. The photographs are marked, "Originally submitted electronically prior to hearing. Printed for the record post hearing." The hearings officer also notes that the Oregon Department of Environmental Quality (DEQ) memorandum attached to exhibit 10 is missing its page 6, and the page was also missing in the electronic submission. In the exhibit 10 narrative, opponents demand submission of a copy of a contract mentioned by applicant but not submitted at hearing. The hearings officer has no subpoena power and cannot order documents produced. Also submitted with exhibit 10 is a copy of a driver's license. The hearings officer redacted the license number from the submission under the 2007 Oregon Identity Theft Protection Act.

IV. Findings of Fact

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

1. The subject property is a 6.25-acre portion of a 7.41-acre parcel. The front 1.16 acres is designated Commercial in the MCCP and zoned C (COMMERCIAL). The rear portion is designated Primary Agriculture in the MCCP and zoned EFU.
2. The 7.41-acre parcel is fan-shaped, with the rectangular 1.16 C zoned "handle" abutting and gaining access from Portland Road (Highway 99E). The EFU zoned portion of property fans out

easterly on a 590' radius from the southwest corner of the handle, intersects Lakeside Drive to the south, follows the road westerly for 171', turns briefly north and then west to the fan's pivot point. A drive-in theater once occupied the fanned portion of the site. The entire 7.41-acre property contains a wholesale and retail landscape material operation. The fanned portion of the parcel forms the proposed exception site.

3. Properties to the north and south are zoned C and I and contain trailer sales and automobile wrecking yard uses. Properties to the west and east are zoned EFU and are in farm use.
4. Applicant proposes changing the MCCP designation from Primary Agriculture to Industrial and change the zoning from EFU to I on the fanned portion of the site.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Fire District #1 (MCFD1) provided information on fire district standards.

Marion County Public Works Land Development and Engineering Permits (DPW LDEP) commented:

ENGINEERING CONDITION

Public Works Engineering requests that the following condition lettered A is included in the approval of the land use case.

Condition A - *Within 60 calendar days following land use approval, under an Access Permit from MCPW Engineering complete Lakeside Drive access modification to pave the Lakeside Drive commercial access graveled approach with Hot Mix Asphaltic Concrete for a minimum distance of 75 feet measured from the roadway edge-of pavement.*

Access management work is typically an Engineering Requirement; however, it is being elevated to a Condition status relative to its timing for completion within a specified timeframe to better assure compliance. Nexus is to meet MCPW Engineering standards for driveways in terms of sight distance, design, spacing, and safety by authority under Marion County Driveway Ordinance #651. The access location and current surfacing had been approved during year 2004 under Access Permit #D04-125 at the time of a prior office expansion. The nature of exclusive use by large trucks at this access warrants paving to minimize the potential for gravel on the public road as well as degradation of the pavement edge due to inevitable rutting.

ENGINEERING REQUIREMENTS

The following comments lettered B through D, are with regard to County requirements and issues that the applicant must address if the proposal is approved and Re-Plat recorded. MCDPW Engineering requirements are only generally referenced in land use Notice of Decisions.

B. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing and safety standards. The following sub-requirements, numbered #1 and #2, pertain to access:

1) The land use application states that the vast majority of wholesale and retail traffic utilize the Portland Road entrance. Portland Road is under ODOT authority. The Applicant is advised to seek ODOT access approval or waiver thereof. Evidence of ODOT access concurrence would be a stipulation for issuance of future County building permits tied to business expansion and/or redevelopment.

2) Per MCDPW Engineering Condition A, the Lakeside Drive access approach shall be paved with asphalt under an Access Permit.

C. At 7.41 acres in size, the property as a whole is subject to MCPW Engineering's stormwater management standards. There is currently an estimated one (1) acre of semi-pervious to pervious surfaces between the Commercial portion and proposed Industrial portion of the property, consisting of gravel, pavement and buildings. Marion County requires stormwater attenuation at 0.5-acres of development. Depending on the level of future development and/or redevelopment, it may be required to submit a drainage plan and engineering design to control the release of stormwater from the site. Submission of plans would be due prior to issuance of building permits. Construction and acceptance of stormwater management facilities would need to be completed prior to final building inspection. Please note that Marion County currently has no stormwater quality treatment requirement for the vicinity.

D. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R.

Oregon Department of Land Conservation and Development (DLCD)
Under ORS 197.610 and MCC 17.111.030(C), DLCD must be notified of any comprehensive plan amendment. The Planning Division notification sheet states that the Land Conservation and

Development Commission (LCDC) was notified rather than DLCD, but an DLCD notice form shows DLCD was notified as required. DLCD provided no comment.

Other contacted agencies failed to respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met. This is a recommendation to the BOC. The BOC is the final decision making authority in this matter.
2. Applicant seeks an exception for industrial designation and zoning of the subject 6.25-acre site to continue its current use on the current EFU zoned portion of the 7.41-acre parcel. Uses in the industrial, commercial and interchange zones are linked to the *Standard Industrial Classification Manual* (SIC) (available in print and on line). The hearings officer compared MCC chapter 17.165 (I zone) allowed and conditionally permitted uses with SIC numbers referenced in the chapter, and found no classification that would, on its face, allow or conditionally permit the site's current use. Applicant argues that the proposed exception area contains a wholesale operation and would qualify for I zoning. The hearings officer is unconvinced, based on the information in the record, that the C and EFU zoned operations are separate. Stockpiled material on the proposed exception area is likely used to replenish retail bins and for delivery sales to the retail public. And, applicant stated its trucks enter the subject site through the C zoned access. Applicant's site plan shows product bins on the EFU zoned portion of the property that are no distinguished from bins on the C zoned property, and the retail parking lot is partially in the proposed exception area. The well and septic for the retail operation are on the proposed exception area, as well as a koi pond and display garden that appear directed toward the retail customer. Use of the property appears to be an integrated whole and may not qualify for industrial zoning.

Applicant must show the BOC in detail how its proposed use fits within MCC chapter 17.165 uses, evaluate the proposal based on the most intensive I zone uses, limit on-site uses, or modify the application to request designation and zoning allowing or conditionally permitting the current use.

GOAL 3 EXCEPTION

3. Under OAR 660-004-0000(1), specific substantive standards in other OAR 660 divisions control more general standards of OAR 660-004 but definitions, notice, and planning and zoning

requirements of OAR 660-004 apply to all types of exceptions. Applicant asks for a Goal 3; Agricultural Lands, exception. Goal 3 is subject to the OAR 660-004 goal exception process.

4. There are three types of exceptions to statewide planning goals under OAR 660-004. The first is based on the concept that a property is too physically developed to be available for resource zone uses. The second is based on the concept that land surrounding a property is developed to such an extent that the property is irrevocably committed to uses other than resource use. The third requires the county to show other reasons why a goal exception is appropriate. Applicant states its proposal meets all three exception types.

OAR 660-004-0025 - Physically Developed Exception

5. OAR 660-004-0025 deals with physically developed exceptions:

- (1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).

- (2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

6. Applicant's site plan shows no paved areas but a soil scientist's report shows a 0.93 acre pavement area in the southwest perimeter and south center portions of the property. Applicant's site plan depicts product piles, a perimeter ditch, and two catch basins to the east; koi pond, well, small portion of a parking area, septic tank, leach lines, product bins and gravel drive to the west; and more product bins in the south central area. The site was graveled and developed as a drive-in movie theatre in the past, but the screen and projection house were removed, and the raised automobile parking berms leveled.

To take a physically developed exception, a property must be developed to the extent that it is no longer available for uses allowed by the applicable goal. Applicant argues that the property can no longer be cultivated, but as explained in *Cotter v. Clackamas County*, 53 Or LUBA 25, 29 (2006), uses foreclosed by a property's development include all uses that must be allowed outright, may be allowed, or are conditionally allowed. ORS 215.283 authorizes over 50 allowed and conditionally permitted goal 3 uses. Very little of the site appears to be physically developed or at least permanently physically developed, and applicant has not addressed how all goal 3 uses are precluded. As noted in *Cotter*, the "standard for approving a physically developed exception is demanding." *Id.* at 30. Applicant has not met that demanding standard. **The physically developed exception is not recommended.**

OAR 660-004-0028 - Irrevocably Committed

7. Standards for approving an irrevocably committed exception to Goal 3 is also demanding. *Sandgren v. Clackamas County*, 29 Or LUBA 454, 457 (1995). Under OAR 660-004-0028:

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

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.

(c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

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

(a) The characteristics of the exception area;

(b) The characteristics of the adjacent lands;

- (c) The relationship between the exception area and the lands adjacent to it; and
 - (d) The other relevant factors set forth in OAR 660-004-0028(6).
- (3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:
- (a) Farm use as defined in ORS 215.203;
 - (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
 - (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).
- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.
- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.
- (6) Findings of fact for a committed exception shall address the following factors:
- (a) Existing adjacent uses;

- (b) Existing public facilities and services (water and sewer lines, etc.);
- (c) Parcel size and ownership patterns of the exception area and adjacent lands:
 - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.
 - (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;
- (d) Neighborhood and regional characteristics;
- (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines,

easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

8. **Exception area characteristics.** The exception area is the fanned 6.25-acre, EFU zoned portion of a 7.41-acre parcel addressed off of Portland Road NE, Salem, Marion County, Oregon. Part of applicant's landscape product business occupies the proposed exception area. Applicant's site plan depicts a perimeter ditch, two catch basins and product piles to the east; koi pond, well, septic tank, leach lines, product bins, gravel drive and a small portion of a parking area to the west; and more product bins in the south central area of the site. The site plan does not show any paved areas but a soil scientist's report map shows 0.93 acre of pavement in the southwest perimeter and south center portions of the property. The site is accessed through the C zoned portion of the property and via the Lakeside Drive NE truck entrance.

The subject site was zoned commercial in 1959. In 1975 the property was rezoned EFU, and on adoption of the MCCP in 1980, only the commercial portion of the property was excepted from EFU zoning. At one time the EFU zoned portion of the property was graveled and developed with a drive-in movie theatre. The drive-in eventually closed, the screen and projection house removed, and the raised automobile parking berms leveled. The site's fan shape reflects its drive-in movie theatre heritage. It is unclear when the current landscape material operation began on the site, but the use is not allowed or conditionally permitted in the EFU zone.

According to the *Soil Survey of Marion County Area, Oregon* (1972), the proposed exception site contains 100% Wapato, class III, high value soil. A soil scientist examined the site and reclassified most on-site soils as class IVs and class VIs, but

assumed a 0.84 acre display garden as class III soil and did not rate a 0.93 acre paved area. Under the *Soil Survey*, class IV soils have very severe limitations that reduce the choice of plants, require very careful management, or both. Class VI soils have severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture or range, woodland, or wildlife. The "s" indicates the soil is limited mainly because it is shallow, droughty, or stony. Class IV soils are not categorically excluded as high value farm soils, but class VI soils are excluded from high value soil classification. The report's summary and conclusion states surface soil was scraped off and the site graveled and compacted, a significant change from the originally mapped class III Wapato soils.

9. **Adjacent land characteristics.** The subject site is northeast of the Highway 99E-Lakeside Drive intersection. The remaining areas around the intersection are zoned EFU and contain farm uses. The Highway 99E-Lakeside Drive intersection is about 1,000' north of the Salem-Keizer urban growth boundary (UGB). The C zoned portion of applicant's property forms a rectangular east-west handle to the proposed exception site's fan. This portion of the parcel contains product bins, parking and a sales office. It abuts and has access off of Highway 99E, a state controlled highway and MSCP Rural Transportation Systems Plan (RSTP) identified arterial road. Four C zoned tax lots are south of the handle and north of Lakeside Drive (an RSTP identified local road). Tax lot 62W31A1200 (0.23 acre), tax lot 62W31A1300 (0.46 acre), tax lot 62W31A1303 (0.27 acre), and tax lot 62W31A1400 (1.02 acres) are in commercial use. EFU zoned tax lot 62W31A1600 (1.0 acre) is east of tax lot 62W31A1400 and south and west of the proposed exception area and is not in apparent farm use. The proposed exception area runs adjacent to and has access onto Lakeside Drive east of tax lot 62W31A1600. Labish Ditch is just across Lakeside Drive, between the road and EFU zoned parcels in farm use. Two small EFU zoned parcels, 0.28 acre tax lot 62W31A1700 and 0.24 acre tax lot 62W31A1800 front Lakeside Drive NE east of the subject site. A church is on tax lot 62W31A1700 and a house is on tax lot 62W31A1800. Tax lot 62W31A400A, a 33-acre EFU zoned parcel in farm use, is adjacent east and north of the arc portion of the fan. Photographs show the parcel is in farm use but applicant has not identified the particular use. Between tax lot 62W31A400 and Highway 99E, are I zoned tax lots 62W31A600 (2.34 acres) and 62W31A700 (4.28 acres). East of the proposed exception area and north of the "fan handle" are I zoned tax lots 62W31A800 (0.85 acre) and 62W31A900 (1.13 acres), and C zoned tax lot 62W31A1000 (0.50 acre), all with Highway 99E frontage, and developed with commercial and industrial uses. Applicant does not identify particular farm uses on adjacent or nearby EFU zoned land.

10. **Relationship between exception area and adjacent lands.** The proposed exception area is used in concert with the C zoned portion of applicant's property. The C zoned area contains product bins, parking and a sales office while the proposed exception area contains a portion of the parking area, the well and septic system for the office, display garden, product bins and large product storage piles. The proposed exception area can be accessed via the C zoned portion of the subject property.

C and I zoned properties border the proposed exception area to the west. C zoned properties border EFU zoned properties south of the subject property, and I zoned properties border EFU zoned properties north of the subject property. Photographs show no obvious farm use on the small EFU parcel south of the proposed exception area, though it could be in pasture or similar use. Large farmed parcels are south of the subject parcel across Lakeside Drive and the Labish Ditch. The larger EFU zoned property north and east of the subject property is in production and would not inhibit farm use of the subject property. Surrounding properties result in no apparent interference with farm use of the subject site.

Surrounding properties have no topographic or vegetative buffers from the proposed exception area. Applicant points to an on-site ditch around the arced portion of the site as an impediment, but it is not an impassable canal or a naturally occurring drainage that cannot be disturbed. The ditch drains water from the subject site to the Labish Ditch, a private drainage facility formed to drain water from West Labish Drainage & Water Control Improvement District (WLD) member farm land. WLD claims applicant is not a WLD member and has no right to use Labish Ditch, but there was no testimony that the WLD is a closed group or that applicant is ineligible for membership and ditch usage.

11. **Other relevant factors under OAR 660-004-0028(6).** Committed exception findings must address OAR 660-004-0028(6) factors:

Existing adjacent uses. Existing adjacent use findings in section V9 above are incorporated here. I and C zoned parcels are west of the subject site. Aerial photographs show adjacent EFU zoned parcels are mostly in farm use, but applicant does not detail the particular uses.

Existing public facilities and services. The subject site does not front State Highway 99E, a functionally classified arterial road, but the highway provides access to the whole of applicant's business. According to RSTP table 5-1, arterial roads link cities, larger towns and other major traffic generators; provide interstate and inter-county service; are spaced so all developed areas of the region are within

reasonable distance of an arterial, serve higher travel density, trip length, and overall travel speed that collector and local systems. Lakeside Drive NE to the south is functionally classified as a local road. Under RSTP table 5-1, local roads primarily provide access to adjacent lands and provide relatively short travel distances compared to higher classed facilities. The 2005 RSTP roadway inventory shows this area of Lakeside Drive has two travel lanes, with 1' gravel shoulders and a 19' paved travel surface within a 60' right-of-way. In 2005, the pavement was rated as very good, but opponents contend the pavement in the area of the subject site is in a deteriorated condition attributable to truck traffic going to and from applicant's business. DPW LDEP asks for any access onto Lakeside Drive to be paved back 75' from the road to minimize the potential for gravel on the public road and pavement edge degradation due to "inevitable rutting" from use by large trucks. There are no public water or sewer service facilities on the subject property or in the area. Water and sewer services are provided on-site and shared by the C and EFU zoned portions of applicant's parcel. Utilities such as electricity and telephone services are available in the area. No public parks or other public service facilities are noted on the property or in the area, though Labish Ditch, a private drainage facility, runs adjacent to Lakeside Drive on the opposite side of the road, and culverts carry water from the subject site to Labish Ditch.

Parcel size and ownership patterns. Tax lots are often used as short hand for parcels. Many times the two are equivalent but not always. Tax lots are created for tax purposes. Creating tax lots does not create legally separate parcels. Still, tax lots in separate ownerships can be pretty good indicators of separate legal parcels. Three commercial tax lots south of the C zoned portion of applicant's property, all less than one half acre in size, are in one ownership. The neighboring 1.02-acre C zoned parcel is in separate ownership. The 0.5 acre C zoned tax lot north of applicant's C zoned property is in the same ownership as the 1.31 and 0.85 acre I zoned tax lots to the north. North of these parcels are 4.28-acre and 2.34-acre I zoned tax lots in separate ownership. The neighboring 33-acre farm parcel north and east of the subject site is in separate ownership and it is not clear whether it is in the same ownership as other parcels outside of the notification area. The small tax lots just east along Lakeside Drive from the subject property are 0.28 and 0.24 acre and in separate ownerships. About 425' east along Lakeside Drive, also inside the notification area, are three small parcels of 0.25, 0.26 and 3.0 acres. The 0.25 and 3.0 acre parcels are in the same ownership but are separated by the 0.26 acre parcel that is in a separate ownership. Across Lakeside Drive and in the notification area are five parcels in farm use. The 8.41-acre tax lot at the corner of the Highway 99E-Lakeside

Drive intersection is in separate ownership from the next four tax lots to the east which are in one ownership and range in size from 5.9 to 11.17 acres, totaling just over 38 acres. Two large tax lots across Highway 99E are in separate ownerships. The acreage of these parcels is not shown in the record but they appear to be significantly larger than the other parcels in the notification area.

Neighborhood and regional characteristics. The proposed exception area is a commercial and industrial node within a thousand feet of the Salem-Keizer UGB. Farm use of surrounding properties appears stable.

Natural or man-made features or other impediments separating the exception area from adjacent resource land. There are no apparent impediments between the subject property and immediately adjacent EFU zoned parcels. Highway 99E and intervening C and I development separates the subject property from farm property to the west. Lakeside Drive separates the subject property from EFU zoned parcels to the south but Lakeside Drive is a local road intended to serve adjacent properties, including farm vehicle access. Labish Ditch abuts Lakeside Drive to the south and it is not clear from aerial photos whether southern ownerships have access onto Lakeside Drive over the ditch. No natural hydrologic features are apparent from maps or photographs, nor are there apparent on-site easements or utility lines.

Physical development. Applicant's site plan shows no paved areas but a soil scientist's report shows a 0.93 acre pavement area in the southwest perimeter and south center portions of the property. Applicant's site plan depicts product piles, a perimeter ditch, and two catch basins to the east; koi pond, well, small portion of a parking area, septic tank, leach lines and product bins and gravel drive to the west; and more product bins in the south central area. The site was graveled and developed as a drive-in movie theatre in the past, but the screen and projection house were removed, and the raised automobile parking berms were leveled. The site is not permanently physically developed.

Other relevant factors. The subject site was significantly altered from its natural condition by former commercial development, but about 4.5 acres are composed of class III and IV soils. It is doubtful the site is specially assessed for farm or forest use.

12. When determining whether uses or activities allowed by an applicable goal are impracticable for irrevocably committed exceptions, local governments do not need to demonstrate that

every use allowed by the applicable goal is impossible, just that farm use as defined in ORS 215.203, propagation or harvesting of a forest product as specified in OAR 660-033-0120, and forest operations or forest practices as specified in OAR 660-006-0025(2)(a) are impracticable.

When determining whether uses specified in the rule are practicable, the county cannot limit its analysis to commercial-level operations. *Gordon v. Polk County*, 54 Or LUBA 351 (2007), citing to *Lovinger v. Lane County*, 36 Or LUBA 1, 18 (1999).

13. *Farm use*. Under the current version of ORS 215.203(2), farm use:

(a) As used in this section, means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

(b) "Current employment" of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3); and

(K) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

(i) Only the crops of the landowner are being processed;

(ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

(iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a

profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a marketable species;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

Applicant argues the subject site cannot be put to farm use, but more than half of it, according to applicant's soil report, contains class III and IV soils. The OAR narrows the type of uses that must be examined, but the farm use definition and its encompassed uses must be considered. It may likely be impracticable to make farm use of the site, but applicant needs to give the BOC enough information to allow it to reasonably evaluate whether farm use, as defined in the ORS (including non-commercial level farm use), of the site is practicable.

14. *Propagation or harvesting of a forest product.* OAR 660-033-0120 lists propagation or harvesting of a forest product as an allowed use in the EFU zone. Forest product is not defined in OAR 660-033-0120 and no minimum OAR standards apply to propagation and harvesting of a forest product under 660-033-0130. But, the subject site is not forested or adjacent to or near any forested areas. As such, it is unlikely forest use of the site is practicable.
15. *Forest operations/forest practices.* Under OAR 660-006-0025(2), forest operations and forest practices include, but are not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash. As noted above, the subject site is not forested or adjacent to or near any forested areas, and forest use of the site is impracticable. As such, forest operations and practices are also impracticable.

16. Applicant focuses heavily on on-site conditions that diminish resource use of the subject property, and not on adjacent uses as impediments to resource use of the subject property. "Like Goal 2 and ORS 197.732(1)(b), OAR 660-04-028(1) makes the nature of 'existing adjacent uses' the focal criterion for an irrevocably committed exception for particular property...For a county to give exclusive or 'preponderant' weight to the characteristics of the exception area alone, in performing its analysis, would be contrary to the fundamental test for an irrevocable commitment exception" *DLCD v. Curry County*, 151 Or App 7, 11-12 (1997) (emphasis in the original). Based on the evidence provided, there appears to be no significant interplay or interference between the subject and surrounding properties. **Without additional information and analysis, the irrevocably committed exception is not recommended.**

OAR 660-004-0020 and -0022 - Reasons exception

17. Reasons exceptions are complicated, yet might be a valid option in this case. Listing OAR considerations would involve about ten pages of text and at this point such a listing would not benefit the BOC because applicant did not directly or specifically address or provide criterion by criterion evaluation for a reasons exception. **Based on lack of information and evaluation by applicant, a reasons exception is not recommended.**

OAR 660-004-0018

18. If the BOC grants the goal 3 exception, it must designate and zone the property in accordance with OAR 660-004-0018:

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

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

plan and zone designations shall limit uses, density, and public facilities and services to those:

- (a) That are the same as the existing land uses on the exception site;
- (b) That meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
- (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22; and
- (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.
- (3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.
- (4) "Reasons" Exceptions:
 - (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and

activities to only those that are justified in the exception.

- (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.
- (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

19. Under OAR 660-004-0018(1), an exception must be taken for a site's current use. The current use does not appear to be allowed or conditionally permitted under Industrial designation and I zoning. The use would have to cease and OAR 660-004-18(2)(a) would not be met.

Under *Ooten v. Clackamas County*, 270 Or App 214, 223 (2015), OAR 660-004-0018(2)(a) through (d) must all be met. OAR 660-004-0018(2)(a) contains the same current use requirement that would again fail.

OAR 660-004-0018(1) and (2)(a) are not satisfied, so OAR 660-004-0018(2) and OAR 660-004-0018(3) criteria are not evaluated. This leaves applicant with the OAR 660-004-0018(4) reasons exception option and back to OAR 660-004-0020 and -0022. As noted above, applicant has not specifically addressed or evaluated OAR 660-004-0020 and -0022 considerations.

OAR 660-004-0018 is not satisfied under the record as it now stands. Applicant should provide additional information/argument to the BOC.

STATEWIDE PLANNING GOALS

20. The MCCP plan amendments section states that comprehensive plan amendments must be consistent with statewide planning goals.

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

The notice and hearings process before the hearings officer and BOC provides opportunity for citizen involvement. Goal 1 is satisfied.

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

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

Applicant proposes a site-specific comprehensive plan amendment. The Planning Division notified applicable local and state entities and received only MCFD1 and MCDPW LDEP comments. Approval can be conditioned on meeting appropriate MCFD1 and MCDPW LDEP requirements to satisfy goal 2.

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

If an exception is approved, goal 3 will not apply.

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

The subject site is not on or near designated forestland. Goal 4 does not apply.

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

Marion County's goal 5 resources are identified in the MCCP. No MCCP-identified resource uses are on or near the subject property. Goal 5 is not applicable.

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

Applicant operated a compost use that did not protect water quality. Applicant ceased the compost operation under Oregon Department of Environmental Quality (DEQ) order. LWD complains applicant is draining the subject property to Labish Ditch without required LWD membership. Applicant counters that the natural slope of the property is toward the south. Applicant has made much of the fact that the subject site has been altered from its natural state so it is not clear whether the topographic map is current. A ditch and other on-site channels have been constructed to direct drainage to the south and into Labish Ditch. The hearings officer cannot settle and will not evaluate this private dispute between applicant and LWD, but the dispute and DEQ action tend to show on-site drainage is an issue and can impact water quality. **Without more specific information on the state of the drainage, applicant has not proven that water and land resources are protected under goal 6.**

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

No identified geologic hazard or floodplain areas are on the subject site, a FEMA floodplain area is just across Lakeside Drive. Goal 7 does not appear to apply.

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

No identified goal 8 resources are on the subject site or implicated by this application. This goal is not applicable.

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

Goal 9 addresses commercial and industrial development, primarily in urban areas. OAR chapter 660, Division 009 applies only to comprehensive plans for areas within urban growth boundaries. Goal 9 is not applicable.

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

OAR 660-008 is intended to define standards for compliance with Goal 10. OAR 660-008 deals with providing an adequate number of needed housing units, and efficient use of buildable land within urban growth boundaries. The subject property is not within an urban growth boundary. Goal 10 does not apply.

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

Electric and telephone utilities are available in the area. No public water and sewer services will be required. Truck traffic and its impact on the local road are a concern for Lakeside Drive residents. Residents testified that roadway deterioration and unsafe turning movements are a problem with the use. DPW commented on inevitable rutting due to truck traffic. Drainage is also an apparent problem at the site. **Without additional information, and perhaps mitigation, applicant has not proven that goal 11 is satisfied.**

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

Under OAR 660-012-0060(1), if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP [transportation system plan]. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
 - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Lakeside Drive is an RTSP identified local road and in 2005 it was inventoried as in good condition and operating at level of service A. Applicant has not provided specific traffic trip numbers or numbers of each type of vehicle that will access the site via Lakeside Drive. Opponents testified that truck traffic attributable to applicant's current operation is interfering with the function and safety of the road. It is unclear whether the number and type of trucks involved with the use will change the functional classification of the road, degrade its performance standards, worsen its performance or otherwise cause it to not meet performance standards. **Without additional and accurate traffic information, goal 12 is not satisfied.**

Goal 13: Energy Conservation. To conserve energy.

The current use does not appear to be a large consumer of energy, but an industrial zone would allow potentially more energy-consuming uses. **Applicant should address the worst possible scenario for industrial use, provide for limited, non-high energy consumption uses, or seek different designation or zoning of the property to prove goal 13 will be satisfied.**

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Changing the MCCP designation to Industrial and zoning to I will not urbanize the subject property with assumed compliance with MCC chapter 17.165 requirements. Goal 14 does not apply.

Goals 15-19, Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. The subject site is not in the Willamette River Greenway, or near ocean or coastal related resources. These goals do not apply.

21. **Statewide planning goals are not all met.**

MCCP AMENDMENT

22. Under MCCP plan amendment policy 2, plan changes directly involving five or fewer properties are considered quasi-judicial amendments. Comprehensive plan amendments are reviewed by zone change procedure established in MCC title 17. A plan amendment application may be processed simultaneously with a zone change request. The proposed comprehensive plan amendment involves one ownership and is a quasi-judicial plan amendment accompanied by zone change request.
23. The MCCP does not contain specific plan amendment review criteria, but any amendment must be consistent with applicable MCCP goals and policies. This request is for Industrial designation. Rural industrial policies are examined.

Rural industrial policy 1. Industrial uses in conjunction with farm or forest uses shall be evaluated to determine if they need to be located on resource lands or whether an equally suitable location is available in an urban area or on non-resource lands in a rural area.

Applicant does not propose an industrial use in conjunction with farm or forest use. Rural industrial policy 1 does not apply.

Rural industrial policy 2. Rural industries should be compatible with existing development and farm or forest uses in the vicinity, should not involve a large number of employees, should not require heavy truck traffic through residential areas or on unimproved roads, and should not have the potential to exceed the environmental capacity of the site or require urban services.

No worst case industrial use scenario or proposed limited use overlay information have been provided. Lack of detail makes compatibility with existing development and farm uses difficult to evaluate. No forest uses are nearby. The current use directs heavy truck traffic to an MCCP-identified local road, but there are no apparent residential uses from the Highway 99E-Lakeside Drive intersection to applicant's truck entrance. As noted above, more information is needed on the environmental capacity of the proposed exception area. **Without additional information, applicant has not proven that rural industrial policy 2 is met.**

Rural industrial policy 3. A non-resource-related industrial use should not be permitted on resource lands unless an evaluation of the relevant County and State goals and the feasibility of locating the proposed use in an urban growth boundary or rural non-resource lands show that the proposed site on resource lands is the most suitable.

Applicant proposes a non-resource related use on the subject resource zoned land. Applicant provided no evaluation of other available lands but, if an exception to goal 3 is granted and statewide planning goals are met, this policy will not apply.

24. **The comprehensive plan amendment is not recommended.**

ZONE CHANGE

25. Under MCC 17.123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:

- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
- B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
- C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
- D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
- E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

26. Applicant asks to change the comprehensive plan designation from Primary Agriculture to Industrial. As part of that process, rural industrial policies were evaluated, and the hearings officer found not all policies were satisfied. If the BOC approves the goal exception and finds compliance with statewide planning goals and comprehensive plan policies, the proposed I zone will be consistent with the Industrial plan designation. **Without additional information, MCC 17.123.060(A) is not satisfied.**

27. The area surrounding the subject property is zoned EFU, I and C, and is in mixed farm, industrial and commercial use. No worst case industrial use scenario or proposed limited use overlay information have been provided, and lack of specific detail makes compatibility with existing development and farm uses difficult to evaluate. **Without additional information, MCC 17.123.060(B) is not satisfied.**
28. Electric, telephone and other utilities and services are available in the area. Lakeside Drive is showing wear, and at least some is attributable to the current use. No water or sewer services are provided on-site. DPW commented on inevitable rutting attributable to the use. Drainage issues have been shown. No worst case industrial use scenario or proposed limited use overlay information have been provided. Lack of detail makes compatibility with existing development and farm uses difficult to evaluate. It is not clear that adequate public facilities, services and transportation networks are in place, or will be provided concurrently with development of the property. **MCC 17.123.060(C) is not satisfied.**
29. Applicant states:

There are no other lands in the county already designated for the proposed use that are either available as well suited for the anticipated uses due to location, size or other factors. The subject property is very unique. It is unlikely that there are other properties in the county that (1) are bordered on one entire side of the property by industrial and commercial uses, (2) have their soil removed and replaced by compacted gravel and other hard pavement, (3) are cut off from EFU land by drainage ways and roads, (4) have all necessary services, (5) are owned jointly with adjacent commercial land and (6) have a demonstrated history of compatibility. In addition, the uniqueness of the subject property lies in its location between Brooks and Salem and having safe and ready access to a major highway such as 99E.

Based on soils, location and size, as well as the surrounding uses, the subject property is best suited for conversion to the industrial zone and plan designation. The subject property is best suited to this use. There are no other available lands similarly situated that already have the appropriate zone for this landscape supply business.

Applicant's evaluation is based on continuation of the current use, which may not be possible in an I zone. There is no request

to recognize the current use as a legal nonconforming use so appears the current use was established in violation of the MCC. Whether an inappropriately established use can be the basis of a finding of uniqueness because of its location adjacent to its partner conforming use is questionable. If the current use is not allowed in an I zone, much of applicant's statement is not applicable. And, applicant does not detail which properties applicant looked at when evaluating availability of other properties. Applicant's blanket statements without underlying proof are not substantial evidence upon which a decision maker may rely. Nor can a decision maker rely on what the property is "best suited" for or unidentified "other factors". **MCC 17.123.060(D) is not satisfied.**

30. The I zone is the only zone allowed outside of a rural community under the Industrial designation. MCC 17.123.060(E) is not applicable.

31. **The proposed zone change is not recommended.**

VI. Recommendation

It is hereby found that applicant has not met its burden of proving that applicable standards and criteria for approval of a statewide planning goal 3 exception, comprehensive plan amendment and zone change have been met. As the record stands, the hearings officer recommends the BOC **DENY** the exception, comprehensive plan amendment and zone change application.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 10th day of November 2015.



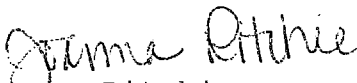
Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

	<u>Agencies Notified</u>
Don Kelley 110 N 2 nd Street Silverton, OR 97381	Planning Division Building Inspection Public Works Engineering
Noah Jones 110 N 2 nd Street Silverton, OR 97381	Oregon DLCDC 635 Capitol St. NE, Ste. 150 Salem, OR 97301
Joseph Paratore 6415 Lakeside Dr NE Salem, OR 97305	Barbara Breen 6325 Lakeside Dr NE Salem, OR 97305
Rick Breen 6345 Lakeside Dr NE Salem, OR 97305	Dan and Debbie Harvey 6285 Lakeside Dr NE Salem, OR 97305
Lee Clark 6275 Lakeside Dr NE Salem, OR 97305	
Joseph Paratore Greg Bennett Duane Olson West Labish Drainage & Water Control 6984 Lakeside Drive NE Salem, OR 97305	

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes, addressed as noted above, and deposited in the United States mail at Salem, Oregon, on the 10th day of November 2015, and that the postage thereon was prepaid.


Joanna Ritchie
Secretary to Hearings Officer

SUPPLEMENTAL MEMORANDUM
Zone Change/Comprehensive Plan Amendment
Case No. ZC/CP 15-001
Coastal Forest Products, LLC

The applicant responds to the Hearings Officer's finding and conclusions below. The section and paragraph numbers refer to those in the Hearings Officer's recommendation.

IV 5. The Applicants accept the conditions of the Marion County Public Works, Land Development and Engineering Section.

V. The Applicant's business is primarily wholesale and fits in the industrial zone under SIC Code 5032.

The Applicant proposes and is willing to accept a limited use overlay limiting the property to the current use, i.e., primarily sales of landscaping products including but not limited to stone, rock, pavers, sawdust, barkdust, hog fuel, sand and soil.

V5, 6. Exceptions to Goal 3:

Physically Developed Exception. As shown on the attached map, the subject property includes roadways, a .93 acre paved area, a drainage ditch, a well and a septic system. As shown by the soils report performed by Andy Gallagher which is already in the record and the Supplemental Soil Report attached as Exhibit "B", the land that is not paved or in the drainage ditch has had the topsoil removed, the subsoil is compacted and infiltrated with gravel and there is 8 to 12 inches of compacted gravel over the whole area.

The property was previously used as a drive-in movie theater. Outdoor movie theaters included underground wiring to the location of every potential vehicle. Contact with the previous owner and operator of the outdoor movie theater indicates that they have no reason to believe that the wires to each of the speaker locations were ever removed. Indeed, every time the Applicants have had to dig on the property, they dig up cables, pipes, conduit and large pieces of concrete. The affidavit of Noah Jones demonstrates that the property is riddled with underground wires, pipes, concrete, steel, an abandoned septic system and other obstacles (Exhibit "C")

Water and septic are available on the property and the property is served by two (2) public roads, Highway 99E and Lakeside Drive, both of which are in good condition, have in the past operated and continue to operate at acceptable levels. The property is served by the Keizer Fire District although there are no buildings on the subject property. No other public services or utilities are required.

As shown in the attached report by Frank Walker and Associates (Exhibit "A") and the Soil Report and Supplemental Soil Report by Andy Gallagher (Exhibit

“B”) the property can no longer be put to use for any of the uses allowed outright, uses which may be allowed or are conditionally allowed in the EFU zone.

This is further supported by the Affidavit of Noah Jones.

V 7. **Irrevocably Committed.** The Applicant incorporates the discussion above under the Physically Developed Exception. In addition, the report by Frank Walker and Associates attached shows that the characteristics of the exception area, the characteristics of the adjacent lands, the relationship between the exception area and the lands adjacent to it and discusses the other relevant factors set forth in OAR 660-004-0028(6). As Exhibits “A” and “B” demonstrate, all farm uses are impracticable.

V19. The use is allowed in the industrial zone as above.

V20. **Goal 2.** The Applicant accepts the proposed conditions.

Goal 6. The composting has been discontinued at this site. In addition, the Applicant has retained a storm drainage engineering firm to assure that all water quality standards are met.

Goal 11. The Applicants did a traffic count from September 1 to November 30, 2015 (Exhibit “D”). This traffic count shows that approximately 3.5% of the traffic on Lakeside Drive is going either into or out of the Applicant’s Lakeside Drive access. A summary of the totals it shows:

DRIVE-BY TRAFFIC

Passenger Vehicles	13,148
Commercial Vehicles	151
OHV	102

ENTERING BACK GATE

Commercial Vehicles (non-Applicant)	272
Commercial Vehicles (Applicant)	3

EXITING BACK GATE

Passenger Vehicles	16
Commercial Vehicles (non-Applicant)	191
Commercial Vehicles (Applicant)	7

Goal 13. As noted by the Hearings Officer, the current use is not a large consumer of energy. With the use of a limited use overlay, this goal is met.

NCCP AMENDMENT

Rural Industrial Policy 2. A limited use overlay is proposed.

The Applicant has redirected most of its traffic from the Lakeside Drive entrance to the Highway 99 entrance.

See report of Frank Walker attached as Exhibit "A".

See Traffic Count attached as Exhibit "D".

Rural Industrial Policy 3. The Applicant has justified a Goal 3 exception, therefore this does not apply.

Zone Change.

27. A limited use overlay is proposed.

28. The Applicant accepts the condition of paving and has limited truck traffic on Lakeside Drive.

A limited use overlay is proposed.

29. The fan shape of this property makes it ideal for the existing use, because it allows less land to be taken up in traffic patterns. Likewise, the proximity to its partner parcel which is already zoned commercial and which allows for retail sales is ideal. The property, both the commercial and proposed industrial properties, have a history of being used as it is currently being used, and is recognized by the community as a source of Applicant's products. The subject property has a history of proven compatibility with the area. Since the days of the outdoor movie theater, the property has been compatible with this type of use due to the soil removal and significant overlay of packed gravel. The subject property has been approved for access by both the Marion County Department of Public Works and ODOT (See Exhibits "E" and "F"). The subject property is significantly away from any significant amount of residential use and is surrounded by non-residential uses. Indeed, it is significantly bordered by commercial and industrial uses and a public use building (the church).

660-004-0028

**Exception Requirements for Land Irrevocably
Committed to Other Uses**

**Prepared for:
Coastal Forest Products**

**Prepared By:
Frank Walker and Associates
1480 Jamestown Street S.E.
Salem, Oregon 97302
(503) 588-8001
frankwalkerandassociates@yahoo.com**

EXHIBIT A

Introduction:

This report addresses the Exception Requirements for Land Irrevocably Committed to Other Uses pursuant to 660-004-0028 1 and 2.

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

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

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.

(c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

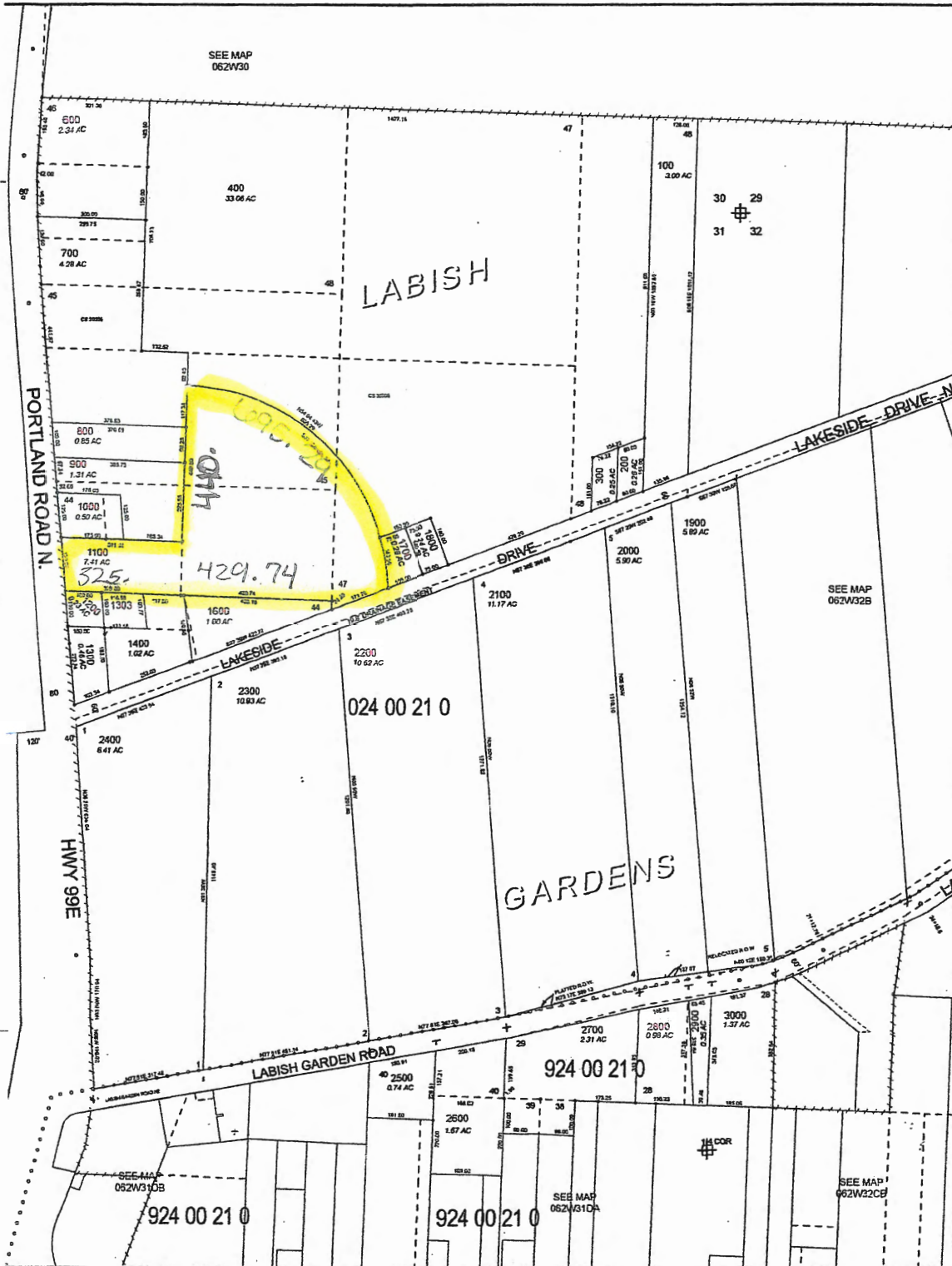
(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

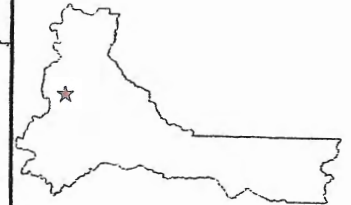
Response: The subject property is located at 6242 Portland Road NE, Salem, Oregon 97305. The parcel size is 7.41 acres or 49,976 square feet. The site was formerly a Drive-In Movie Theater which accounts for the semi-circle configuration that forms the eastern and northern boundaries. **Figure 1**, shows the location of the property with respect to surrounding uses and ownerships. **Figure 2**, is a current aerial photograph of the property and all adjacent parcels.

According to permit records, the Drive-In had been in existence until the early 1990's. **Figure 3**, is an aerial photograph of the Drive-In taken May 22, 1994. Some of the improvements were placed on the commercially zoned portion of the property, but according to the Approved Site Plan, the septic tank, drainfield, replacement drainfield and existing well were on the EFU Zoned portion of the site. The well on the Approved Site Plan appears to be on the zone boundary line.

Figure 1 Property Location



06 2W 31A



MARION COUNTY, OREGON
NE1/4 SEC31 T6S R2W W.M.
SCALE 1" = 200'

LEGEND

LINE TYPES	
Taxlot Boundary	Historical Boundary
Road Right-of-Way	Easement
Railroad Right-of-Way	Railroad Centerline
Private Road ROW	Taxcode Line
Subdivision/Plot Bndry	Map Boundary
Waterline - Taxlot Bndry	Waterline - Non Endry

SYMBOL TYPES	
• Survey Monument	+ 1/16TH Section Cor.
• Road Station	+ 1/4 Section Cor.
⊙ DLC Corner	16, 15 Section Corner
	21 22

NUMBERS
Tax Code Number
000 00 00 0

Acreage 0.25 AC All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs

NOTES
Tick Marks: If a tick mark is indicated on the end of a line, then the dimension goes to the tick mark. This is used when dimensions extend into public right-of-ways.



CANCELLED NUMBERS	
1301	
1302	
1500	
2601	

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 10/7/2015

06 2W 31A

Figure 2
Current Aerial Photograph

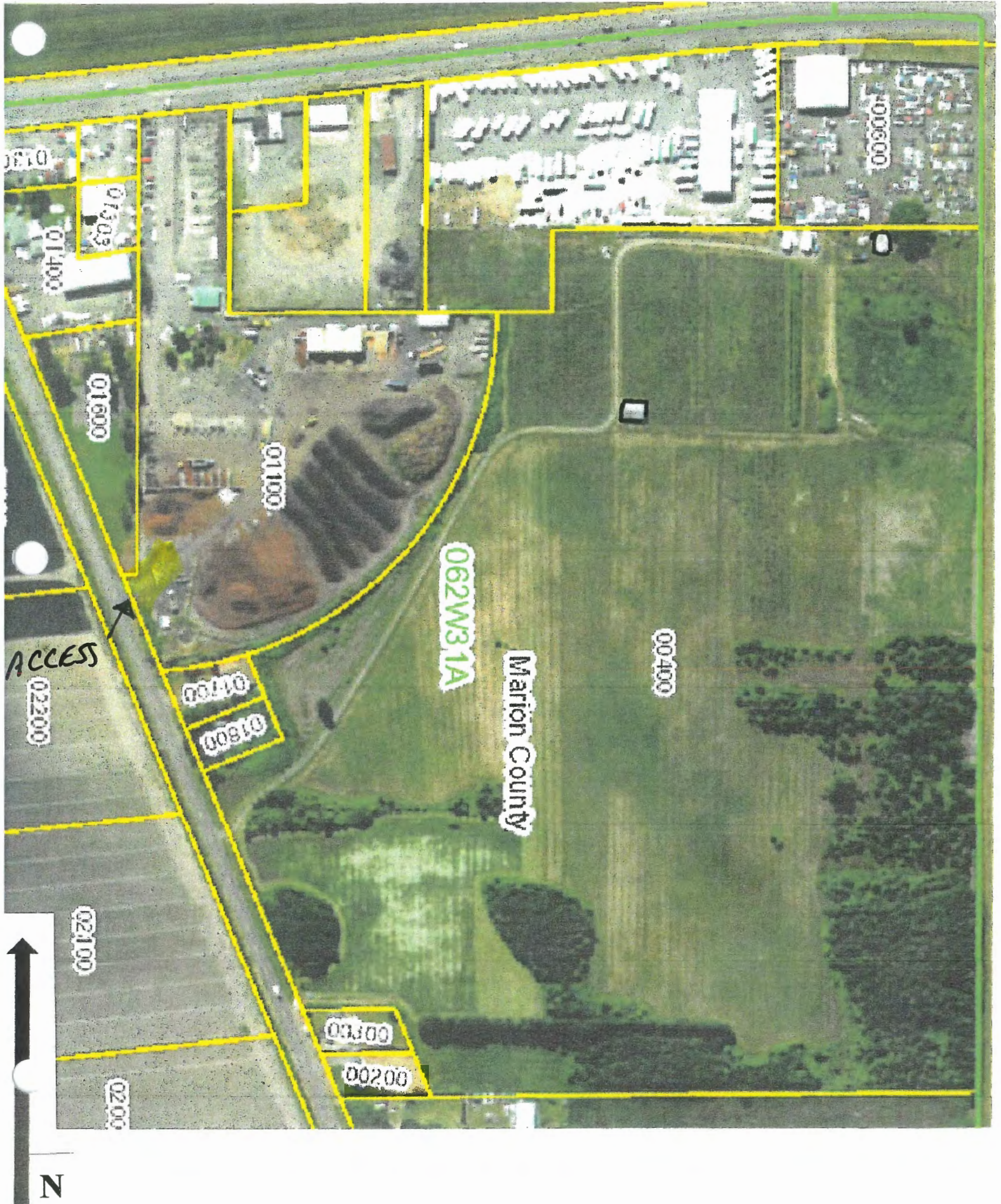


Figure 3
Aerial Photograph
May 22, 1994

North Salem Drive-In - ortnor2007



N

In addition to the obvious improvements that can be seen above the ground, there are extensive underground improvements throughout the entire site which include but are not limited to the following:

- Electrical wires that formerly serviced each speaker pedestal.
- 14 to 18 inches of packed gravel overlaying the B Horizon (subsoil).
- Deeply entrenched concrete supports approximately three feet square that were formerly used to hold up a sight obscuring barrier fence.
- Drainage pipes for conveying water to adjoining ditches.
- Concrete drop boxes for on-site sewage disposal.
- Septic drainfields comprised of perforated pipe, tar paper and round river rock.
- Concrete septic tanks.
- Septic tight lines that convey treated water from the septic tank to the drainfields.
- Water lines.
- Supports for the Drive-In Theater screen are located in the southwest corner of the EFU Zoned Area.
- Support infrastructure to the projection booth as shown in **Figure 3**.
- The modern day surface of the property contains concrete pads and large areas with large crushed rock (3 inch minus). The 3 inch minus rock is customary a base rock.
- The individual bins where the products are displayed have paved surfaces.
- The property has three large weatherproof but open aired material sheds. See **Figure 2** for location.
- The facility has a 60 foot wide access apron onto Lakeside Drive as shown in yellow on **Figure 2**.
- Small areas of woody vegetation are located along the entire northern and eastern boundaries. Thick blackberries totally obscure the view of a church that is located immediately to the east.
- The southern boundary of the site also has some woody plant material and a metal sight obscuring fence.
- Large pools of shallow standing water were found throughout the site despite the fact that large volumes of gravel were present.
- The CI Zoned portion of the property is fully paved and has a new building to control ingress and egress to the site.
- Nearly the entire property is covered with asphalt, concrete, and rock of varying sizes, except for the margins of the northern and eastern boundaries.

The electrical wires that provided power to the speaker pedestals is the most extensive underground utility. A close examination of the 1994 aerial photograph shows parking rows that generally run from northwest to southeast.

(b) The characteristics of the adjacent lands;

Response: A field visit was conducted to examine conditions on all adjacent parcels irrespective of zoning or use. The adjacent land analysis starts at the northern boundary and rotates clockwise back to the point of origin. Each individual property is described in terms of current use and

existing improvements. In addition, **Appendix 1** contains First American Title Company printouts entitled "Property Profiles" for all adjacent properties, some of which contain photographs.

All of the adjacent properties are in Township 6 South, Range 2 West, Section 31A:

Tax Lot 400: This Tax Lot can be seen on **Figure 2**. This parcel is 33.06 acres, is zoned for Exclusive Farm Use and forms all of the northern boundary and part of the eastern boundary. This property contains two outbuilding as shown on the aerial photograph of the information packet. The property is zoned Exclusive Farm Use but is specially assessed Improved Forest Lands. This property is used for propagating timber seedlings, though none are planted at the present time. The only portion of the common boundary that has been used for seedling production is 150 foot stretch on the northern boundary. Approximately 15% of the property is under tree cover. No timber seedling production occurs over the majority of the common boundary area. The red dots and dashed line shown on the aerial represent an area that is too wet for seedling production or agriculture. A dirt road originating on Lakeside Drive connects to the northwest corner of the property.

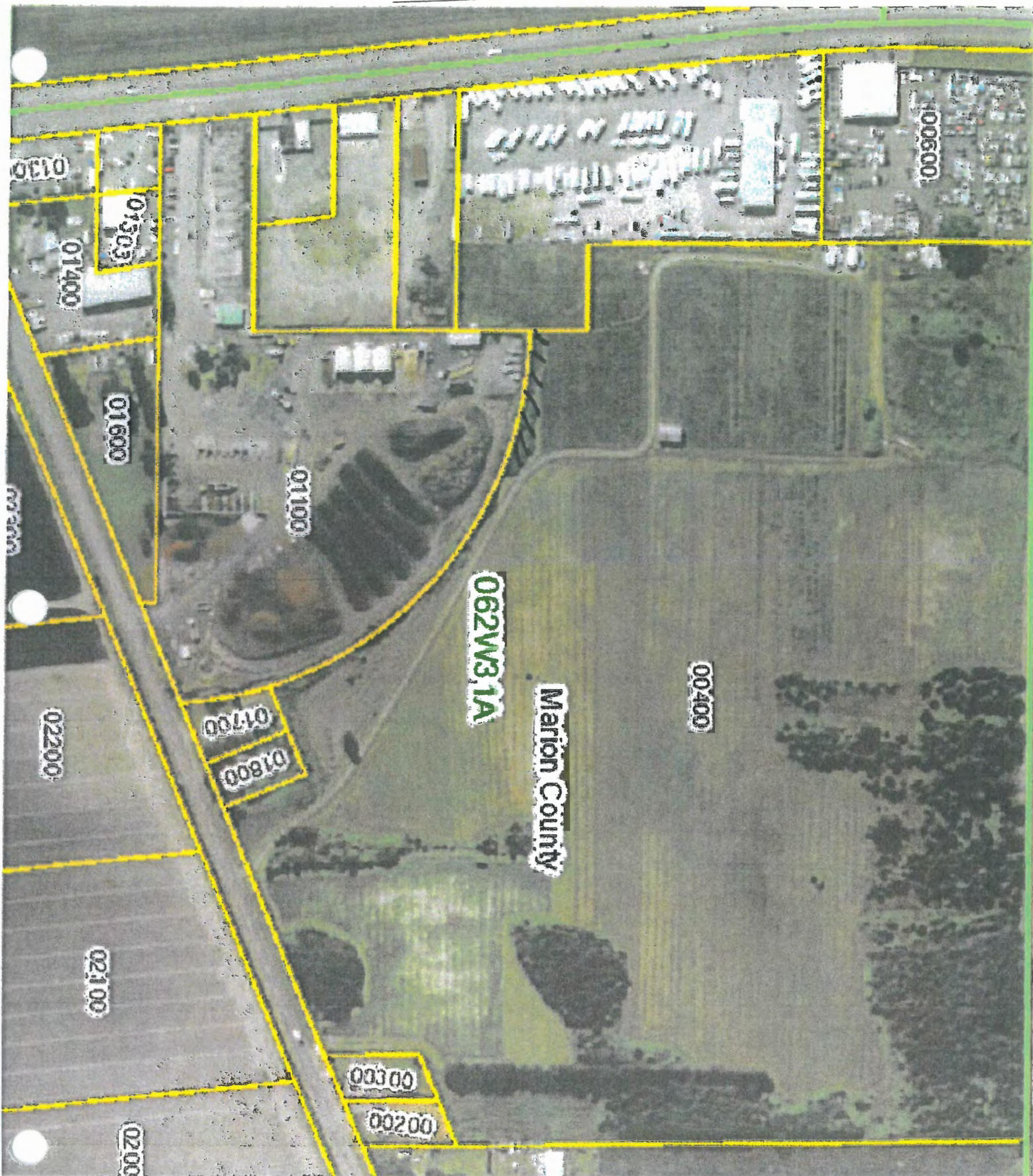
No portion of Tax Lot 400 is currently being used for farming except the area that is the cross patch pattern on the aerial (**Figure 4**). This pattern is on the northern end of the subject property.

Tax Lot 1700: This parcel is .28 acres, is zoned for Exclusive Farm Use and has a common boundary of 143.56 feet with the subject property. This common boundary is with the southeast corner of the property. No agricultural or forest production occurs on this property because it is occupied by a church. This church has an access that is approximately 60 feet from the southeast survey pin of the subject property. The church is not visible from the subject property because there is a thick patch of Armenian Blackberries. The church structure is 2,448 square feet on a lot of 12,290 square feet and accounts for 20% of the parcel size. The church also has a small parking area and driveway. The access for this parcel is from Lakeside Drive.

Tax Lot 1600: This parcel is 1 acre, zoned Commercial, and has a common boundary of 454.02 feet with the subject property. This common boundary is on the south side of the subject property. This property is largely unused though it contains 24 individual trees. Five of the trees are Douglas fir and the balance of the trees are small understory species. This property has no farming activity whatsoever despite being open. The western and eastern ends of the property are higher in elevation than the cleared portion in the middle. **Appendix 5** of this report contain the NRCS Custom Soil Resource Report for this Tax Lot. This property has no history for farming or timber. This property does not have any road access as shown on the aerial photograph. There are encroachments on the western end of the property that apparently originate from the well drilling operation to the west. A well drilling truck with a drilling boom is parked on the subject property. There are other objects on the ground in that area as well. This property is not specially assessed and receives no deferrals.

Tax Lot 1400: This parcel is 1.02 acres, zoned Commercial Industrial (CI), and is fully improved. The only common boundary with the EFU Zoned portion of the subject property is the

Figure 4
Aerial Photograph of
Tax Lot 400



northeast corner pin. This property does have a common boundary of a 117 feet with the CI zoned portion of the subject property. The aerial photograph shown in the Property Profile clearly establishes that this property is fully improved border to border, obviously there is no resource use on this property.

Tax Lot 1303: This parcel is .27 acres, is zoned Commercial Office and only borders that portion of the subject property that is commercial. Consequently, it is not adjacent to the EFU Zoned portion of the subject property.

Tax Lot 1200: This parcel is .23 acres, zoned Commercial Office, and is under the same ownership as Tax Lot 1303. Both Tax Lots 1303 and 1200 have direct access to Highway 99E. Tax Lot 1200 is fully paved and utilized as a used car lot according to the Property Profile documents from First American Title Company. A distance of 117 feet separates these lots from the EFU portion of the subject property. The status of Tax Lot 1200 and 1303 was further affirmed by a field visit and from published title company data stating "used car lots".

Tax Lot(s) 800, 900 and 1000: All three of these properties are owned by Winters LLC. Each individual tax lot will be examined separately but collectively they form one large auto wrecking yard according to the Property Profile documents from First American Title Company.

Tax Lot 900: This parcel is 1.31 acres and is the largest one of the ownership. This parcel is zoned Industrial and is fully improved with paved parking and buildings. This tax lot has 223.38 feet common boundary with the EFU zoned section of the subject property and 166.34 feet common boundary with the CI Zoned portion of the subject property. This wrecking yard contains at last count 160 vehicles. This parcel contains one large building near the frontage which is 1440 square feet.

Tax Lot 1000: This parcel is .50 acres and is zoned Commercial Office. This parcel contains four outbuildings. This tax lot borders the CI portion of the subject property.

Tax Lot 800: This parcel is .85 acres and is zoned Industrial. It shares a common boundary of 99.28 feet with the subject property. No resource uses are located on Tax Lot 800 nor are there any on the subject property.

Tax Lot 700: This parcel is 4.28 acres and is zoned Industrial. This parcel shares a common boundary of 117.34 feet with the subject property to the east. No resource activities are present on this property which is used for recreational vehicle sales. An abbreviated summary of adjacent properties is herein contained as **Appendix 2**.

There is one more adjacent ownership that is not private property. Portland Road North (99E) is an 80 foot right-of-way. This 80 foot highway connects Salem to Woodburn. The large onion fields of Lake Labish are located immediately west of Portland Road. The distance between the fields and the EFU zoned portion of the subject property is 405 feet. According to Don Jordan of the Oregon Department of Transportation, the average daily traffic count is 8,800 vehicles. It should be noted for the record, that the right-of-way decreases from 120 feet to 80 feet

immediately north of Lakeside Drive. This traffic volume is capable of supporting the businesses that surround the property.

(c) The relationship between the exception area and the lands adjacent to it; and

Response: The Oregon Legislature has not specifically defined the term relationship in the statute or administrative rules. In the context of land use planning the words that most specifically describe relationship are: connection, association or involvement. For the sake of analysis, the relationship will be considered reciprocal. The reciprocity will express a mutual action or relationship, or even the absence of a relationship. Further, the relationship may also describe adversity in the relationship, particularly with the respect to impacts.

Tax Lot 400: This parcel is 33.06 acres, is zoned for Exclusive Farm Use and forms all of the northern boundary and part of the eastern boundary with a common boundary of 838.87 feet. No road connections exist between the two properties. It would be difficult to establish a transportation linkage between the two properties, because of obstructions on the subject property. Some areas on the subject property are committed to large mounds of bark dust material and other ancillary uses that block easy access. **Appendix 3** of this report is a NRCS Custom Soils Resource Report.

Tax Lot 400 is not dependent on the subject property for access, irrigation water, drainage or materials for conducting their seedling operations. Tax Lot 400 has its own access farther east on Lakeside Drive. The Well Log Query results show there is no well on the site. It is obvious from examining the relationship that there are no complementary functions nor are there any adverse impacts from one property to another. It is apparent that farming cannot be conducted across boundaries nor can the bark dust and landscaping operation be expanded onto Tax Lot 400. In final summary, there are no connections, associations or involvements between the two parcels. A finding can be made that there is no relationship between the only adjacent farm parcel and the subject property. The activities on the subject property such as topsoil removal, 14 to 18 inches of compacted gravel, concrete pads, buried pipes and wires and concrete obstructions prevent farming rather than activities associated with Tax Lot 400.

Tax Lot 1700: This parcel is .28 acres, is zoned for Exclusive Farm Use and has a common boundary of 143.56 feet with the subject property. Heavy obstructive vegetation prevents any easy access between the two properties. The church structure occupies 20% of the parcel and the septic drainfield and parking area comprise .17 acre. Eighty percent of this lot is occupied by the church, drainfield and parking area. The remaining 20% is a buffer of blackberries. In fact, the blackberries are so thick that the church is not visible from the subject property. There is no relationship between this property and the subject property with respect to access, storm drainage or water. The limited size of the church property in conjunction with the property improvements eliminates corresponding complementary uses. This church has an access that is approximately 60 feet from the southeast survey pin of the subject property. There is no plausible possibility for either use expanding to the other property.

Tax Lot 1600: This parcel is 1 acre, is zoned Commercial, and has a common boundary of 454.02 feet with the subject property. The uses on either property are not dependent upon the

adjoining property for access, water or utilities. A 6 foot high sight obscuring fence defines the common boundary and segregates the uses. Tax Lot 1600 is lower and wetter than the subject property and it is also lower than Tax Lot 1400 to the west. The resultant effect is that Tax Lot 1600 functions as a recipient watershed. The only portion of Tax Lot 1600 that is at the same approximate elevation of the subject property is at the westernmost 100 feet.

There is no history of any complimentary uses and there is no opportunity to expand the subject property into this area without a major fill. No adverse impacts were apparent between the parcels either.

Tax Lot 1400: This parcel is 1.02 acres, zoned Commercial Industrial (CI), and is fully improved. The only common boundary with the EFU Zoned portion of the subject property is the northeast corner pin. Buildings and other obstructions preclude the opportunity to establish a relationship between the parcels. Tax Lot 1400 is much smaller and has a separate access on Lakeside Drive. The CI zoned portions of each parcel has its own development profile. Tax Lot 1400 houses a well drilling business with large drilling apparatus, whereas the subject property is utilized for retail sales of landscaping materials.

The respective uses on each property neither limit nor restrict the uses on the adjoining property. These properties have two completely different functions, but do not interfere with each other.

Tax Lot 1303: This parcel is .27 acres, zoned Commercial Office and only borders that portion of the subject property that is commercial. Consequently, it is not adjacent to the EFU Zoned portion of the subject property. The uses on each respective parcel are complementary with no history of adverse conditions. Both properties have access from Portland Road (Highway 99E). There are no established connections or associations between the two properties.

Tax Lot 1200: This parcel is .23 acres, zoned Commercial Office, and is under the same ownership as Tax Lot 1303. The uses on each respective parcel are complementary with no known history of conflict. The activities on Tax Lots 1200 and 1300 have no effect on the EFU zoned portion of the subject property.

Tax Lot 900: This parcel is 1.31 acres and is the largest one of the ownership. This parcel is zoned Industrial and is fully improved with paved parking and buildings. This tax lot has 223.38 feet common boundary with the EFU zoned section of the subject property and 166.34 feet common boundary with the CI zoned portion of the subject property. This wrecking yard contains at last count 160 vehicles. Wrecking yards have a history of contaminating adjacent properties with effluent from automobile fluids. These fluids include but are not limited to crank case oil, transmission fluids, gasoline, diesel fuel, oil leaks, brake fluid, antifreeze, paint, power steering fluid, asbestos, battery acid, rubber, metallic fragments, and rear end differential fluid.

The runoff from the wrecking yard can be accelerated by the fact that the storage area is paved and the subject property is slightly lower in elevation. When wrecking yards are abandoned, topsoil has to be removed to a specified depth and new soil needs to be brought in to rest the land. This process is called capping and filling so that soil contaminates can be reduced to

acceptable levels. In extreme cases, a process known as “in situ vitrification” is employed. This process involves burring contaminants out of the soil at temperatures as high as 3000 degrees.

There is a potential innate incompatibility based on the difference between the two uses. Bark dust and landscaping material on the property could be vulnerable to contamination from the wrecking yard. In addition, the well on the subject property is located approximately 130 feet from the southeast corner of the wrecking yard. The entire area between the well and this corner is paved and could facilitate the overland flow of water from the wrecking yard.

In summary, the potential for incompatibility between the uses is the greatest where the wrecking yard directly abuts the subject property. The uses currently coexist without apparent problems. If the subject property were to be converted back to agricultural uses, the issue of contamination would most certainly have to be addressed especially for foods that are used for direct human consumption.

Tax Lot 1000: This parcel is .5 acres and is part of the wrecking yard, but is farther removed from the EFU section of the subject property. Contaminates from this Tax Lot are less likely to effect the EFU zoned portion of the subject property. There is no connection, association or involvement between this property and the subject property.

Tax Lot 800: This parcel is .85 acres and is zoned Industrial. It shares a common boundary of 99.28 feet with the subject property. There is no relationship between this property and the subject property especially with respect to resource use. This portion of the wrecking yard has a lesser density of vehicles and has less common boundary. There are no reciprocal impacts except for the contamination potential described for Tax Lot 900.

Tax Lot 700: This parcel is 4.28 acres and is zoned Industrial. This parcel shares a common boundary of 117.34 feet with the subject property to the east. No resource activities are present on this property which is used for recreational vehicle sales. This parcel has a vegetative buffer of approximately 200 feet that separates the RV display area from the northwest corner of the subject property. There is a high innate compatibility factor between these properties because there is far less contamination potential from new RV's and well maintained older ones. This vegetative strip also borders a portion of the subject property that is most in a natural state.

Neither property is dependent on the other property for water, access, drainage or utilities. Tax Lot 700 is clean and well maintained and poses no immediate challenges for the subject property. A positive finding can be made that while there are no obvious conflicts between the properties there is also an absence of a relationship with respect to farming.

2013 ORS 215.283

Uses Permitted in exclusive farm use zones in nonmarginal lands counties

Introduction

The purpose of this evaluation is to determine whether the uses allowed by statute in the Exclusive Farm Use Zone are suitable for the subject property. Further, this analysis established the relationship between the subject property and adjacent parcels dedicated to resource use.

Each use permitted in the zone is evaluated to determine if that use could reasonably be extended to the subject property.

Churches: What works for the church next door would not work for the subject property because the subject property it is already built and committed with underground infrastructure including storm drainage pipes, electrical wires from the former drive-in theatre, 3-foot square concrete support pads for exterior sight obscuring curtains, underground tanks and other concrete support structures. The only area on the subject property that would be suitable for a septic drainfield is the existing approved site that formerly serviced the drive-in theatre. This system currently serves the office located in the commercial zoned portion of the property. Any area other than that specific area would be unusable because all of the original soil for the entire site was stripped off to a depth of 18 inches according to the ARCPACS Certified Soil Scientist.

Finding: Generally unsuitable for church use due to extreme soil limitations and buried infrastructure.

Cemeteries: In Oregon, cemetery plots have to be platted in a recordable form as a Subdivision. The cemetery lot is recognized as “real estate” with a legal description. Lots can be purchased and sold much like any lawfully created lot or parcel. Cemetery lots are historically situated on higher elevation properties that are well drained and that have no possibility of flooding. Cemeteries are placed at these higher locations for religious and aesthetic purposes but are also placed there because the potential for flooding is usually non-existent. Cemeteries are also placed on higher ground with appropriate soil types to avoid contamination, and are not placed in low lying areas where groundwater contamination could potentially occur.

Finding: Cemeteries are generally unsuitable where there are high organic content, hydric soils similar to those mapped on the subject property and surrounding area. The subject property is too wet and too impacted by underground infrastructure to support cemeteries. In ground burial is not possible due to excessive underground obstructions and seasonally high water tables.

Forest Products: Tax lot 400 to the north and east has been utilized for growing forest tree seedlings. Tax Lot 400 is also receiving a forest deferral with respect to property taxes. However, the conditions that are favorable for timber seedling trees do not exist on the subject property. There is a small sliver of land on Tax Lot 400 that follows most of the common boundary. An existing gravel road and narrowly configured land to the west of that road precludes easy

assimilation with the subject property. That area is shown in **Figure 4** as the hashed line area, which would be impractical to assimilate. Forest products would also be difficult to propagate on the subject property because 18 inches of the top soil has been stripped off the site.

Finding: The conditions that are favorable for timber seedling production on Tax Lot 400 are non-existent on the subject property.

Utilities facilities necessary for public service: Most utility facilities are underground with the exception of electric power, cable and high speed internet. Other utilities principally underground include: telephone, high speed internet, water, sewer and storm drainage. Other underground facilities that are public include pump stations and electrical vaults. The key word in this use is “necessary”. The subject property and immediate surrounding area already has public utility services. There is no need to extend public services in this area because they already exist.

Finding: Utility facilities necessary for public service already exist in this area but would be difficult to establish on the subject property due to underground obstructions and high water table.

A dwelling on real property used for farm use: A dwelling on real property used for farm use may work on Tax Lot 400, but would be extremely difficult to establish on the subject property for various reasons, including but not limited to: shallow depth of soil, obstructive improvements left over from the drive-in theater and the difficulty of establishing support infrastructure for the dwelling. The high water table combined with highly compressible soils would make the establishment of a farm dwelling very difficult. Any proposed dwellings would face the issues related to the large amount of infrastructure underground.

Finding: A dwelling on real property is impractical at this location because of adverse underground conditions.

Exploration for and production of geothermal resources: The subject property and surrounding area have no history of geothermal exploration because the site characteristics are unfavorable. Geothermal resources usually originate near known geologic hot spots “geysers and hot springs”. Neither the subject property nor surrounding area is large enough to mitigate the effects on water and air emissions. This use is especially unrealistic for the subject property because it takes 13 acres per megawatt produced.

Finding: Adjoining resource properties and the subject property are too small and lack other appropriate characteristics for geothermal energy.

Exploration for minerals: The subject property and surrounding area are absent of minerals that can be explored for commercial uses including but not limited to hard rock quarries, limestone or other specialized minerals that are generally located in the mountainous regions of the state.

Finding: The subject property and surrounding area is located on a lakebed that has no history of mineral exploration and no known deposits of commercial rocks and minerals.

Climbing and passing lanes within the right-of-way: The subject property is located too far back from Highway 99 East to be considered for reconstruction or modification for climbing or passing lanes within the right-of-way.

Finding: Existing public roads and highways can be widened without impacting the subject property. Road widenings for climbing and passing would only apply to Lakeside Drive. Major ditch improvements belonging to the Labish Drainage District would have to be undertaken at great expense to allow passing lanes. In addition, passing lanes are totally unnecessary for lightly traveled Lakeside Drive.

Reconstruction or modification of public roads and highways: The subject property has frontage from the Commercial Zoned portion of the property on Highway 99E. The second access to the property is into the EFU zoned portion fronting on Lakeside Drive. The only potential expansion will be addressed for Lakeside Drive only. If Lakeside Drive were to be expanded to the north into the subject property, the potential for limitations from underground improvements increases.

Finding: Existing public roads could be expanded to some degree with no adverse impacts to the subject property other than some possible dedication of right-of-way on Lakeside Drive. If modifications were to be done to Lakeside Drive, those modifications could only be done on the north side. Any significant intrusion into the subject property would result in challenges because of underground infrastructure, particularly old storm drainage lines.

Temporary public road and highway detours: It would be difficult to envision how a temporary road or highway detour would impact the subject property. In the event that Lakeside Drive was used as a detour, the subject property could accommodate that use without any adverse impacts.

Finding: Only Lakeside Drive could be a temporary public road or detour. The likelihood of this happening are very low. If a public road had to be expanded onto the subject property, it would be on Lakeside Drive at the southeast corner of the property. This use could only be established to the extent that underground utilities would remain unaffected.

Maintenance yards: Depending on the size of the maintenance yard, the subject property could accommodate that use if it is for the purpose of maintaining stockpiles of rock and other aggregate. Buildings associated with maintenance yards might be hard to establish because of underground obstructions.

Finding: Maintenance yards requiring structural improvements would be difficult because of in ground improvements. Maintenance yards throughout Oregon are characteristically at highly accessible locations next to state or federal highways, not side roads.

Weigh stations: Weigh stations customarily have large underground scales for weighing heavy trucks. This use would be difficult to establish because of deep excavations that would need to happen. The location of the property especially on Lakeside Drive is not conducive because of access.

Finding: It is difficult to envision a weigh station at or on this property due to size and access limitations.

Rest areas: Though the property is close to Highway 99 East, the potential for a rest area is unlikely. Rest areas customarily accommodate large trucks, RV's and other oversized vehicles. Rest areas also have public toilet facilities, some of which are serviced with septic drainfields. Pit toilets would not work at this location because of the underground constraints of the underground utilities from the drive-in.

Findings: Rest areas are a permitted use in an agricultural zone, but the subject property has too many constraints to accommodate this use, most notably shallow depth to water table and the presence of underground obstructions.

Replacement dwellings: This use suggest that there is already a dwelling on the subject property. The subject property does not have a dwelling.

Finding: The subject property already has a drainfield and no other portions of the property are suitable because 18 inches of soil has been removed from the site.

Creation, restoration or enhancement of wetlands: The creation, restoration and enhancement of wetlands could be conducted on adjoining properties but to suggest these uses on the subject property has obvious limitations. First and foremost, the soils that would be ideal for restoration have been removed from the subject property long ago. The medium for wetland restoration today would be 18 inches of porous rock and underground obstructions. The property has only the septic drainfield as the remaining natural area on the property suitable for wetland restoration.

Finding: Wetland restoration is a near impossibility on this site because of soil removal and soil disturbance.

A winery: The subject property lacks the appropriate characteristics for a winery because wineries are required to process large volumes of wine. According to the Marion County Code 17.125.030, a winery may be established in the EFU Zone subject to the following criteria:

1. A winery with a maximum annual production of less than 50,000 gallons shall:
 - a. Own an on-site vineyard of at least 15 acres;
 - b. Own a contiguous vineyard of at least 15 acres;
 - c. Have a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
 - d. Obtain grapes from any combination of subsection (A)(1)(a), (b), or (c) of this section; or
2. A winery with a maximum annual production of at least 50,000 gallons shall:

- a. Own an on-site vineyard of at least 40 acres;
 - b. Own a contiguous vineyard of at least 40 acres;
 - c. Have a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
 - d. Obtain grapes from any combination of subsection (A)(2)(a), (b), or (c) of this section; or
3. The winery complies with the following:
- a. The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
 - b. The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection (A)(3)(a) of this subsection; and
 - c. The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.

The adjoining farm properties lack the appropriate characteristics for any varietal wines because of extreme hydric soil conditions. Wine grapes cannot survive hydric soil conditions because of disease to the root stock. Lake Labish is very suitable for onion and garlic production and some other water tolerant crops. The presumption must be made that the soils cannot be tile drained to the degree that they would be dry enough to support wine grapes. There are no vineyards anywhere on the Lake Labish soils. The requirements for having a winery are linked to ownership of a contiguous vineyard that is between 15 and 50 acres. There is one provision that a winery can be at a different location if at least 150,000 gallons of wine were produced in three of the five calendar years before the winery was established. Given these constraints, it is difficult to make the argument that the subject property could be used to justify a winery, especially since there is nothing that is contiguous. The only option for producing wine at this site would be from wine grapes grown at a different location.

The establishment of a 150,000 gallon winery on the subject property would have to meet compliance standards for impact. The Marion County Code reads that “The winery shall not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability; air and water quality.” A winery of this size must have abundant water, storm water detention and multiple employees to process at least 150,000 gallons of wine. A winery also involves the construction of a large building that meets exacting standards for health and sanitation. The subject property has only one area suitable for on-site sewage disposal for use by employees and vendors. In addition, wineries generate large volumes of water that need to be treated prior to discharging. The subject property has too many limitations for the needs of a winery because of soils and underground utility limitations. Any water discharge into the Labish drainage ditches would have to be engineered.

Finding: The demanding performance standards for a winery at this location would be difficult to meet. The main challenges would be impact to the watershed, groundwater, fish habitat and soils. All of the buildings and tanks associated with a large scale winery could not be easily established on the site given the amount of underground obstructions.

Farm stands: The Marion County Code reads as follows:

1. Structures shall be designed to be used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area.
 - a. 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 the local agricultural area. 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.
 - b. As used in this section, “local agricultural area” is limited to the state of Oregon.
2. The sale of incidental retail items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand is permitted, provided 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.
3. “Farm stand” shall 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.

Farm stands usually involve a structure where business can be conducted. The products being sold can either be from the farm or other farm operations in the local agricultural area. Incidental retail items may also be sold from a farm stand but are limited to 25% of the total sales. A farm stand could be established on Tax Lot 400 because it has access to a paved road, suitable exposure and visibility to a public road. The portion of Tax Lot 400 with frontage on Lakeside Drive is level enough to accommodate a farm stand. The same thing cannot be said for Tax Lot 1600 directly south of the subject property, due to parcel size and extreme wetness. The conditions that are favorable to a farm stand on Tax Lot 400 would not be favorable on the subject property. The subject property not only has limited frontage but it also has all of the challenges resulting from buried underground infrastructure.

Finding: The subject property has limitations for a farm stand because of soils, location, and the presence of underground obstructions. It should be noted for the record, that neither Tax Lot 400 or the subject property have access on Highway 99E which has an average daily traffic loading of 9,000 cars. Exposure, access and visibility are poor compared to conditions on Highway 99E and the success of farm stands depends on those factors being favorable.

Site for the takeoff and landing of model aircraft: The conditions on adjoining properties are more favorable for this use because of lack of obstructions in the area. The subject property has a substantial tree line along the southern property and there are more than 10 buildings to the west. Tax Lot 400 to the east has large open fields that can easily accommodate this use. By contrast, the subject property has multiple obstacles including but not limited to compost heaps, bark dust piles, “mixing sheds”, concrete bins and other structures on the commercial zoned portion of the site.

Finding: Tax Lot 400 to the east has favorable conditions for this use but the subject property does not, due to obstructions, limited parking areas and nearby commercial uses.

A facility for the processing of farm crops: Farm crop processing facilities require buildings, water, access, and sewage disposal. The conditions that would allow such facilities on Tax Lot 400 to the north and east are not present on the subject property. The absence of soils and the presence of underground utilities largely preclude the property from a farm crop processing facility. For example, if a farm processing building was located immediately north of the subject property, it would not be possible to extend that use to the subject property.

Finding: A facility for processing farm crops also require extensive improvements for water treatment and storm drainage.

Production of biofuel: The production of biofuel requires an engineered fire proof facility. While this use could be easily established on Tax Lot 400 to the north and east, it would be difficult to establish a building with a foundation on the subject property because of excessive rock and the underground infrastructure. Biofuel production also has the risk of explosion and catastrophic fires. Placing this use closer to existing businesses, houses or a church would be unadvisable.

Finding: The subject property is not suitable for biofuel production or collection.

Fire service facilities: Modern fire service facilities that rely on federal funding must be built to earthquake standards and be capable of being an emergency care facility. The adjoining agricultural properties are suitable for this type of facility but the subject property is not, because of soil removal and soil obstructions. Rural fire protection districts have ambulances, firetrucks and tenders. Rural fire protection services are housed in structures that have a full complement of utilities including septic systems “substation excepted”.

Finding: The adjoining farm properties are suitable for this uses, except for Tax Lot 1600, which is too small and too wet. Tax Lot 400 to the north and east is suitable for this use, but the subject property has too many site limitations related to soils and underground infrastructure.

Irrigation reservoirs: Adjoining farm properties could be used for irrigation reservoirs because the soils have slow permeability. The subject property lacks this condition because the soils have been removed. Water could not be impounded on the subject property because irrigation reservoirs are usually 9 to 12 feet deep. The modification of the soils and the presence of the underground infrastructure would preclude this type of facility.

Finding: The subject property is totally unsuitable for this use.

Canals: The subject property lies within the Lake Labish Drainage District. The surrounding area is literally crisscrossed with the drainage district ditches and canals. A very large and deep ditch is located on the south of Lakeside Drive. Consequently, there is no need for a canal in this area.

Finding: Drainage ditches could be constructed on Tax Lot 400, but they could not be extended onto the subject property because of different conditions. Those conditions are the presence of fill material and a broad array of underground infrastructure.

Delivery lines: In consultation with planning staff members, delivery lines are irrigation lines that run from irrigation intakes to farm fields. Most of the area surrounding the subject property is highly suitable for this type of delivery system, however; this type of a line might be able to pass through the extreme southeast or northwest corners of the property. The majority of the subject property has too much rock and underground improvements to accept of this type of use.

Finding: The likelihood of establishing a delivery line across the subject property is low based on the fact that the majority of the site is very different from the adjoining farm zoned parcels. The amount of packed rock and underground infrastructure would limit potential extensions of irrigation lines into or through this site.

Utility facility service lines: Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is being received by the customer. This permitted use in farm zones can be overhead or underground. Overhead lines are more likely to be extended into the subject property than underground lines.

Findings: The subject property is not as suitable for underground utility facility service lines as surrounding EFU zoned properties due to the presence of obstructions in the soil. Single utility poles could be established in most locations throughout the site. Limitations could be so great as to preclude this site from consideration for this use.

Sewage disposal service: The definition of sewage disposal services is very broad and includes sewage disposal services, water quality permits, sewerage treatment systems, use of effluent on agricultural lands, biosolid applications and irrigation with sewage effluent.

The adjacent and nearby properties are ideally suited for the above-referenced uses. The subject property is sufficiently different in soil characteristics, size, existing uses and configuration to accommodate any of the above uses. The absence of agricultural soils on the site precludes all of the above uses.

Finding: Sewage disposal services are not feasible on the subject property.

Horticulture or silvicultural production: Reclaimed water may be used for agricultural, horticultural and silvicultural practices. These applications of water for those uses can easily be done on adjoining farm lands. All three of those uses have actually occurred on Tax Lot 400 to the east and north. Those uses cannot be extended into the subject property, because of the absence of farm soils and the presence of underground obstructions.

Finding: The use of reclaimed water for the above referenced uses is nearly impossible on the subject property since there is not agricultural potential left due to soil removal, the addition of large volumes of rock (18 inches thick) and the presence of underground obstructions.

Law enforcement facility: Because this did not exist on August 20, 2002 this criterion is not applicable.

Dog training classes: Tax Lot 400 does have the appropriate characteristics to establish a building that in turn could be used for the training of dogs. The potential for the some use on the subject property would be much more challenging. If a building were to be placed on the subject property, it would require support services such as sanitation, water, road access, and storm drainage. Dog training facilities in other counties require daily removal of dog waste to prevent a cumulative build up. The lack of absorptive soils and the presence of rock and underground obstructions all but preclude this use. If this use was to originate on Tax Lot 400 the subject property would be a poor choice for connection or association. There is no opportunity for mutual, shared or complementary obligations.

Finding: The conditions on the subject property are simply too difficult to overcome especially in light of the fact Tax Lot 400 has 33 acres for such a facility.

Processing of farm crops into biofuel: Please see page 18 of this report for all information regarding biofuel.

Mining and processing of geothermal resources: Please see page 13 of this report for information regarding this criterion.

Processing of aggregate into asphalt or portland cement: According to ORS 517.750 processing includes, but is not limited to, crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete located within the operating permit area. This use could occur on adjoining farm lands, but it is not feasible on the subject property because the equipment for crushing, washing, milling and screening require foundations. The subject property has too many obstructive barriers in the ground to establish the processing machinery. The subject property also lacks the appropriate drainage for processing washing water.

Findings: The subject property has too many limitations to conduct the mining process. If the farm land to the east and north were used for these facilities, they could not be reasonably be extended into the subject property.

Mining, crushing or stockpiling of aggregate: Please see the above criterion for an explanation of this criterion.

Private parks, Playgrounds, Hunting and fishing preserves, Campgrounds: These uses could be established on tax Lot 400 to the east and north, but not to Tax Lot 1600 to the south. The farm zoned property to the east has forested areas, potential pond sites for fishing, large level areas for playgrounds and campgrounds. These uses require on-site sewage disposal and water. These uses also require ease of access and internal road and campground sites. These uses could not readily expand to the subject property because of wet areas and the presence of concrete barriers on the perimeter of the subject property. The sanitation and water facilities on the farm land would not be operational on the subject property, due to high rock content in the soil and underground obstructions.

Finding: The subject property could only accommodate a minimum of 10 camp sites, therefore; it is not economically feasible to establish all of the infrastructure required for camp sites.

Public park and playground: OAR 195.120 reads as follows:

(3) Rules and goal amendments adopted under subsection (2) of this section shall provide for the following uses in state parks:

- (a) Campgrounds, day use areas and supporting infrastructure, amenities and accessory visitor service facilities designed to meet the needs of park visitors;
- (b) Recreational trails and boating facilities;
- (c) Facilities supporting resource-interpretive and educational activities for park visitors;
- (d) Park maintenance workshops, staff support facilities and administrative offices;
- (e) Uses that directly support resource-based outdoor recreation; and
- (f) Other park uses adopted by the Land Conservation and Development Commission.

The above permitted uses do require roads, storm drainage, buildings, sanitary facilities, domestic water and maintained trails. Tax Lot 400 has the appropriate soils and configuration to accommodate these uses. If the property were developed into a public park, the possibility of the park expanding to include the subject property would be very limited.

Finding: The subject property lacks the inherent site characteristics to establish public park uses. The soils have been removed from the subject property and replaced with 18 inches of crushed rock and beneath the gravel are various obstructive improvements, such as drain field lines, drainage pipes, electrical lines, concrete structures, old foundations and tanks.

Community centers owned by a governmental agency: Community centers owned by a governmental agency require a full complement of support infrastructure including roads, buildings, septic systems, utilities, storm drainage, and parking areas. These could be established relatively easy on Tax Lot 400 but not on Tax Lot 1600.

Finding: The subject property lacks the inherent site characteristics to establish Community centers uses. The soils have been removed from the subject property and replaced with 18 inches of gravel and beneath the rock are various obstructive improvements, such as drain field lines, drainage pipes, electrical lines, concrete structures, old foundations and tanks.

Golf courses on land determined not to be high-value farmland: This use would not be permitted on adjacent farm land because the soils are high value farm land.

Finding: This use could not be established on the subject property.

Commercial utility facilities: Tax Lot 400 to the east and north is large enough and level enough to generate power for public use by sale. The likelihood of a facility being established is low because there is already a commercial use facility in Brooks, Oregon about 4 miles to the

north. A power generating facility requires a full complement infrastructure. Should a facility locate on Tax Lot 400 the restrictions on the subject property would prevent a future expansion of a commercial utility facility. The reason again is soils and buried infrastructure.

Finding: The subject property is unsuitable for a commercial utility facility.

Personal-use airports for airplanes and helicopter pads, hanger, maintenance and service facilities:

Helicopter pads have a relatively small space requirement for takeoff and landing but personal use airports require a long runway depending on the size and performance of the aircraft. Runways for fixed winged single engine aircraft are usually between 1500-2000 feet long. The property lacks the dimensions for a personal use airport but

Tax Lot 1100 has limited space for a personal helicopter pad. The EFU zoned portion of the property has the physical space to land a helicopter but not enough space to adequately buffer adjoining uses from impacts.

According to Urban Planning and Design Criteria (Joseph DeChiara/Lee Koppelman) helicopters can range from as small as 32 feet 5 inches up to 80 feet (see page 350, Third Edition).

Helicopters require 1.5 times their rotor diameter for safe clearance. Markers used to define the takeoff and landing area of a turfed heliport should provide visible contrast against the natural background of the site. Flush type markers may be located at the edge of the touchdown pad.

Figure 5 is a diagram showing the setbacks and required space needed to land a helicopter at this site.

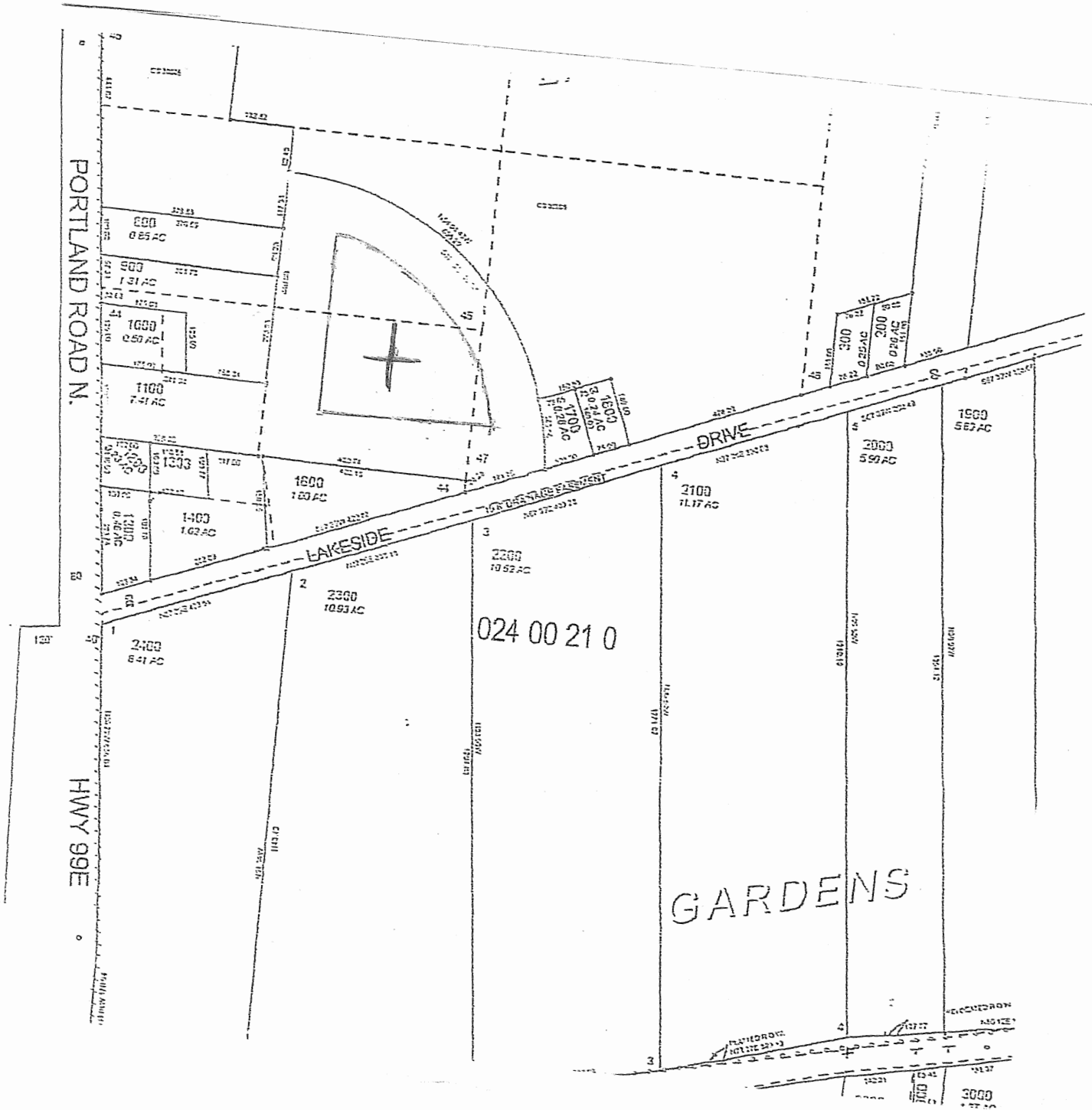
Based on an examination of all the factors listed in **Appendix 7** of this report, one could only conclude that this site is unsuitable for a personal use helicopter pad. The site is too close to an active church, four businesses, powerlines, and major highways and traffic intersections to be safely established. Also, next door are tall well drilling rigs with towers that could impede takeoff and landings.

The retail businesses in the immediate area of the subject property have large outdoor displays of automobiles and recreational vehicles. The takeoff and landing of a helicopter would increase the risk of liability, due to the fact the surrounding business are conducted outdoors. Noise and dust alone would impact the adjoining businesses, and their customers. Dust would also coat displayed sales vehicles and Recreational Vehicles with dust.

The potential impacts from a helicopter pad will be addressed as follows:

- Noise: All published literature on helicopter noise rates them from a low of 70 decibels up to as high as 140 decibels. The percussion of the sound of the engine coupled with the downward air pressure of the helicopter blades are most disruptive. The decibel measure is geometric rather than arithmetic. Eight decibels is almost twice as loud as 70 decibels. A human fetus can be damaged at decibels as low as 70. These noise levels during normal business hours are disruptive but at night are sleep disturbing. There is not

Figure 5
 Diagram of Helicopter
 Landing Areas



enough distance from the landing pad shown in Figure 5 to adequately mitigate the noise generated from helicopters.

- **Vibration:** This often overlooked impact can shake windows, disturb sleep and conversations and cause physical damage to property. Vibration also has a cumulative impact through time on structural components of buildings and other structures. Again, there is not enough buffer to adequately address impacts to people working outside in the area and to physical improvements.
- **Dust and wind damage:** Helicopter wind speeds can exceed that of hurricanes. The wind can send dust spiraling in all directions even in areas that are surfaced because the wind speeds are so high as to affect adjacent non-surfaced areas. This particular area has two car lots and one RV facility that openly display product. The dust generated can impact these displayed products. There is not enough room to assure that dust damage will not occur. There is also a church next door and downwind from the subject property. The church has group gatherings and on days other than just Sundays. The noise, dust and vibration are a very interrupting impact to church related activities.
- **Proximity to public improvements:** One county road, State Highway 99E and power lines are as little as 150 feet away from the proposed landing pad. The high traffic volume on Highway 99E (Over 8,100 trips at Lake Drive and Highway 99E) and its nearby intersection with Lake Drive could be vulnerable from helicopter impact. An errant landing, a weather incident or even pilot error could result in a helicopter landing on a business or in a public roadway. The risk of placing a helicopter landing pad close to outdoor workers and structures should not be approved.

Finding: Adjacent farm zoned parcels lack the appropriate and safe configuration for personal use airports. The subject property and both adjacent farm parcels cannot reasonably accommodate helicopter landing pads due to multiple impacts and liability.

Home occupations: According to ORS 215.448 a home occupation shall be operated substantially in the dwelling or other building associated with uses permitted in the zone. This requirement immediately connotes that a dwelling would have to be present for that use to occur. It further connotes that there must be support infrastructure for that dwelling such as utilities, storm drainage, sewage disposal, domestic water and a driveway for access. Tax Lot 400 could likely qualify for a dwelling based on farm income potential and consequently a home occupation could be allowed. This same use would not likely be approvable on the subject property because the establishment of a dwelling would be problematic. The NRCS Custom Soil Resource Report does have the property mapped as Wapato Silty Clay Loam. **Appendix 4** of this report is the NRCS Custom Soil Resource Report for the subject property. If the soil survey mapping units are recognized as being accurate a dwelling would not be permitted because the soils require an income threshold of \$80,000.00 per year.

The property owner retained the services of an ARCPACS Soil Scientist who determined that the top 18 inches of topsoil have been removed from the site and backfilled with compacted gravel.

The soil modification in conjunction with extensive underground obstructions render the property unsuitable for a dwelling and all of the complementary infrastructure.

Finding: A home occupation will not work on the subject property because the probability of establishing a dwelling would be very low.

Facility for the processing of forest products: The owner of the subject property markets forest products such as bark dust but is not a processing facility. According to ORS 215.283(2) (j); “the primary processing of forest products as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of forest product in order to enable its shipment to market.” The subject property does not meet this definition of processing.

Tax Lot 400 is large enough to accommodate this use with room to spare but Tax Lot 1600 is clearly inadequate. If Tax Lot 400 had a processing facility and needed to expand, the subject property would pose challenges because there is a road and a small strip of wetter ground separating the two properties. The curvilinear configuration of the east and north boundary is not conducive to easily maneuvering fixed equipment and truck traffic. The conditions are highly favorable on Tax Lot 400 for this use but are less favorable on the subject property due to limiting obstructions and poor configuration.

The subject property, Tax Lot 1100, is unsuitable for the processing of forest products for the following reasons:

1. Distanced to raw materials: The subject property far removed from the raw material areas which are principally 30-40 miles to the east and west in the Cascade Mountains and Coast Range Mountains respectively.

2. Size of facility: Distance alone is not as much of a factor if a processing facility is larger than five acres as attested to by the fact that Rexius Forest Products is in northwest Eugene. The largest processing facility in Clackamas County is near the Clackamas Town Center. Marr Brothers in Monmouth, Oregon and Coastal Fiber in Willamina, process trees for bark dust, saw dust and wood chips for paper production respectively. WKP Inc. in Sweet Home, Oregon has a 20 acre mill site where trees are chipped into wood fiber. All of these properties have in common a processing yard that exceeds 20 acres.

3. Impacts: Producing sawdust, bark dust and wood chips (for fiber) involves extremely large chippers and grinders that have extreme environmental impact with respect to noise and vibration. The location of the grinders require large setbacks to other uses.

Site for the disposal of solid waste approved by the governing body: The statute defines a solid waste facility to include equipment and facilities or buildings necessary for its operation. There are recycling facilities located in Brooks and East Salem which likely means that another facility is not needed at this location. Nevertheless, Tax Lot 400 does have the size, configuration and access to accommodate such a use. Tax Lot 1600 is clearly inadequate for such a use.

Finding: The subject property has appropriate size and access for such a facility but the potential for this use that incorporates buildings diminishes the potential because buildings would likely

require foundations and utilities which are difficult to establish based on the surface rock of the site and subterranean wires, pipes, tanks and concrete buttresses.

One manufactured dwelling or recreational vehicle: The statute restricts this use to be in conjunction with an existing dwelling. Tax Lot 400 has no dwelling but may have the potential for one based on the potential for gross sales of farm commodities. Tax Lot 1600 is likely not buildable for even a Non-Farm Dwelling because the soils, though adverse, are Class III or better. **Appendix 5** of this report is the NRCS Custom Soil Resource Report for Tax Lot 1600.

Finding: This use could be established on Tax Lot 400 if the site was ever approved for a dwelling. The subject property, by contrast, could not likely be approved for a dwelling based on the inability to establish a dwelling due to extreme soil limitations resulting from past disturbance and buried infrastructure.

Transmission towers over 200 feet in height: Tax Lot 400 is suitable for the construction of transmission towers over 200 feet high; however, the main distribution line coming into Salem from the north is a mere one-half mile west of the subject property on the west side of Interstate Highway 5.

Finding: Tax Lot 400 is suitable for a transmission tower but Tax Lot 1600 is not. The subject property is not likely suitable because large transmission towers have large concrete foundations and “grounding rods.” These grounding rods for transmission lines are very deep and require extensive space. The towers are bolted to concrete pedestals. The grounding rods can be 20 feet or deeper under the ground.

Residential homes: Residential homes are defined in ORS 197.660 and ORS 443.400 (5)(6). Residential homes have a full complement of support infrastructure including water, sewer, storm drainage and utilities. In addition, a residential home must be on a slab or foundation. Tax Lot 400 could definitely be improved with a residential home, but Tax Lot 1600 is not suitable for a residential home because of small size, narrow configuration and wetlands.

The subject property is clearly unsuitable for this type of facility because of the absence of soil for a septic drainfield and obstructions in the ground that would adversely affect all of the utilities. The group home would also require parking areas, landscaping and open areas that the land would not support.

Finding: The subject property lacks the appropriate characteristics for this use.

The propagation, cultivation, maintenance and harvesting of aquatic species: Tax Lot 400 is suitable for this use because there are large level areas where a water impoundment areas can be established.

Finding: The subject property, in stark contrast, has so many obstructions that a pond could not easily be excavated. If a large aquatic facility was to be established on Tax Lot 400 it could not expand onto the subject property because of ground barriers.

A destination resort that is approved: According to ORS 197.435 none of the adjacent properties are large enough to qualify for a destination resort.

Finding: This is not applicable because none of the adjacent properties or the subject property is large enough to qualify.

Room and board arrangements: None of the adjacent parcels have an existing dwelling therefore, this criterion is not applicable.

Operations for the extraction and bottling of water: A water bottling facility requires at least 12 machinery components and a full complement of utilities (water, sewer, storm drainage, utilities). All of this equipment and processing space has to be conducted within a structure. Tax Lot 400 is capable of sustaining this use as long as there is a potable water source.

The subject property has too many impediments to establish a processing facility. These limitations include but are not limited to disturbed soils and large amounts of underground obstructive materials that would prevent the easy construction of a bottling facility.

Finding: The subject property cannot be readily adapted to this use.

A living history related to resource based activities owned and operated by a governmental agency or a local historical society: According to ORS 215.283 (2)(x) requires a building which would act as a museum. The adjacent farm land could be adapted for this use, but the potential for expanding onto the subject property is virtually nil, because of high rock contact in the soil and the underground obstructions.

Finding: The subject property is a relatively poor location for this use given the limitations of the site.

An aerial fireworks display business: This criterion is not applicable because no continuous properties have been in operation since December 31, 1986.

Landscape contracting business: This use could easily be accomplished on tax Lot 400 but could not be expanded to the subject property, because of the soils being stripped away and large amount of underground obstructions.

Finding: The subject property is not suitable for this use for the reasons mentioned above.

Public or private schools for kindergarten through grade 12: Tax Lot 400 to the east and north could be easily adapted for public or private schools, because the land is cleared and level. In addition, Tax Lot 400 has excellent access and large level areas for playing fields. The subject property by contrast is covered with rock material and underground obstructions. It would be difficult to establish school buildings at this location.

Finding: The subject property is extremely unsuitable for this because of inadequate size, extreme soil disturbance and high rock content.

The agri-tourism or other commercial event or activity: Tax Lot 400 to the east and north would be well suited for an agri-tourism event or other outdoor gatherings. The subject property has limitations for parking and temporary sanitation.

Finding: The subject property does not meet the minimum 10 acre tract size according to the Marion County Code, Chapter 17.125.130(F).