



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 21, 2018

Department: Public Works Agenda Planning Date: Nov. 15, 2018 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Schedule final consideration to adopt an administrative ordinance granting Zone Change/ Comprehensive Plan Amendment/ Conditional Use (ZC/CP/CU) Case 18-001/McCallum Powder, LLC.

Issue, Description & Background The Marion County Hearings Officer held a duly noticed public hearing on this application on March 21, 2018, and on September 19, 2018, issued a report recommending the Marion County Board of Commissioners approve the request if satisfactory additional evidence is provided. The board held a duly noticed public hearing on October 24, 2018, and considered all the evidence in the record and approved the request. The ordinance and findings have been prepared and the matter needs to be scheduled for final consideration and adoption.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Schedule adoption of the ordinance at the next board session. 2. Direct staff to prepare a modified ordinance. 3. Choose not to proceed with adopting an ordinance at this time.

Recommendation: Staff recommends the board of commissioners schedule final consideration and adoption of the attached ordinance at the next regular board session.

List of attachments: Ordinance

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 BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the)	Case No. ZC/CP/CU18-001
Application of:)	
McCallum Powder, LLC)	Clerk's File No. 5781

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of McCallum Powder, LLC on property owned by PNP Properties, LLC to change the zone from SA (Special Agriculture) to I (Industrial), change the Comprehensive Plan designation from Special Agriculture to Industrial, with an exception to Statewide Planning Goal 3 (Agricultural Lands), and a Conditional Use to store explosives on approximately two (2) one acre tracts of a 79.66 acre parcel 1,500 feet east of the 10,000 block of Enchanted Way SE, Jefferson, Marion County, Oregon (T9S, R3W, S02, tax lot 0600).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on March 21, 2018. On September 19, 2018, the Hearings Officer issued a report recommending the Board approve the request if satisfactory additional evidence is provided. The Board held a duly noticed public hearing on the application on October 24, 2018, and considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Special Agriculture to Industrial, with an exception to Statewide Planning Goal 3 (Agricultural Lands) is hereby **GRANTED**. The requested zone change from SA (Special Agriculture) to I-LU (Industrial – Limited Use) and

conditional use to establish explosive storage facilities is hereby **GRANTED**, subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____, 2018, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

Exhibit A

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the application of McCallum Powder, LLC¹ on property owned by PNP Properties, LLC to change the zone from SA (Special Agriculture) to I (Industrial), change the Comprehensive Plan designation from Special Agriculture to Industrial, with an exception to Statewide Planning Goal 3 (Agricultural Lands), and a Conditional Use to store explosives on approximately two (2) one acre tracts of a 79.66 acre parcel 1,500 feet east of the 10,000 block of Enchanted Way SE, Jefferson, Marion County, Oregon (T9S, R3W, S02, tax lot 0600).

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 chapters 17.119, 17.123 and 17.165.

III. Findings of Fact

The Marion County Board of Commissioners, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is an approximately 79.66-acre parcel designated Special Agriculture in the MCCP and zoned SA. The property is about 1,800 feet east of Interstate 5 and the PNP rock quarry, and was the subject of previous land use cases. CU94-45 approved a non-farm dwelling on the property. The dwelling was never placed on the property and the approval expired. CP99-06 approved an expansion of the existing PNP quarry onto the property and added the quarry site to the MCCP inventory of significant mineral and aggregate sites. The subject property is considered a legal parcel for land use purposes.
2. All adjacent properties, except the P (Public) zoned PNP gravel mining site, are zoned SA. Applicant asks Marion County to take an exception to Statewide Planning Goal 3 (Agricultural Lands), change the MCCP designation from Special Agriculture to Industrial, change the zone from SA to I, and to store explosives on two approximately one-acre portions of the parcel as a conditional use.
3. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

¹ The application refers to McCallum Powder, LLC as applicant. The hearings officer and board follows suit to avoid confusion, and refers to PNP Properties, LLC as PNP or property owner.

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

ENGINEERING REQUIREMENTS

The following comments are informational only regarding Public Works Engineering requirements and issues that the applicant must address if the proposal is approved.

A. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing and safety standards. Within 30 calendar days following final land use approval, obtain an Access Permit to pave the driveway approach off Ridgeway Drive with Hot mix asphalt, including installation of a culvert pipe. Complete the work within 60 calendar days thereafter.

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

C. Any excavation work within the public right-of-way for utility work requires permits from MCPW Engineering.

Marion County Code Enforcement commented that there are no code enforcement issues on the property.

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. DLCD was notified as required, but provided no comment.

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

IV. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.

GOAL 3 EXCEPTION

2. Under OAR 660-004-0000(1), 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. Applicant asks the county to take a "reasons" exception to goal 3 under OAR 660-004-0020 and -0022.

OAR 660-004-0022

3. Under OAR 660-004-0022, an exception under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal. The types of reasons that

justify certain types of uses not allowed on resource lands are set forth in the rule. Rural industrial development is at OAR 660-004-0022(3):

- (3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include, but are not limited to, the following:
 - (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;
 - (b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or
 - (c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

Applicant provided information from the Bureau of Alcohol, Tobacco and Firearms (ATF), the federal agency that regulates explosives. ATF table 555.218 shows distances that must be maintained between stored barricaded and unbarricaded explosives and inhabited buildings and transportation facilities (railways and highways), and between barricaded and unbarricaded storage magazines containing the explosives. Distances are determined by amount of explosives stored. Applicant proposes storing 80,000 pounds of explosives. Under the ATF table, for 80,000 to 85,000 pounds of explosives, the distance required for barricaded and unbarricaded storage is 1,730' and 2000' for inhabited buildings, and 500' to 2,000' for transportation facilities, depending on traffic volume. Applicant states that a 1,730' radius circle would envelope 216 acres, a property size not usually found within (or without) urban growth boundaries in Marion County. Cities must plan for industrial uses for a 20-year planning period. Using 216 acres of urban industrial land to accommodate one small storage use that would preclude any on-site inhabited buildings and most other industrial uses of property is counter to efficient use of land and would likely require an urban growth boundary expansion, contrary to state philosophy of compact city boundaries. The proposed use cannot be located inside an urban growth boundary because precautionary ATF rules for explosives storage render the use incompatible in densely populated areas. There are reasons under OAR 660-004-0022(3)(b) that can allow an exception for the proposed use that is not allowed on resource land if OAR 660-004-0020 criteria are met.

OAR 660-004-0020

4. Under OAR 660-004-0020:

- (1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception...
- (2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are...:
 - (a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;
 - (b) "Areas which do not require a new exception cannot reasonably accommodate the use"...:
 - (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;
 - (B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:
 - (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?
 - (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?
 - (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?
 - (iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

- (C) The "alternative areas" standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.
- (c) "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a Goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;
- (d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

- (3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.
 - (4) [This subsection considers exceptions in unincorporated communities. The subject property is not in an unincorporated community. This section is not applicable.]
5. OAR 660-004-0020(1) - *Comprehensive plan exception*. If approved, the comprehensive plan will be amended and incorporate BOC findings justifying the exception. OAR 660-004-0020(1) will be met.
 6. OAR 660-004-0020(2) - *Four standards*.

(a) Reasons. Findings in V(5) above show applicant provided substantial evidence that ATF regulations, more likely than not, prevent applicant from storing the requested amount of explosives within an urban growth boundary:

Applicant provided information from the Bureau of Alcohol, Tobacco and Firearms (ATF), the federal agency that regulates explosives. ATF table 555.218 shows distances that must be maintained between stored barricaded and unbarricaded explosives and inhabited buildings and transportation facilities (railways and highways), and between barricaded and unbarricaded storage magazines containing the explosives. Distances are determined by amount of explosives stored. Applicant proposes storing 80,000 pounds of explosives. Under the ATF table, for 80,000 to 85,000 pounds of explosives, the distance required for barricaded and unbarricaded storage is 1,730' and 2000' for inhabited buildings, and 500' to 2,000' for transportation facilities, depending on traffic volume. Applicant states that a 1,730' radius circle would envelope 216 acres, a property size not usually found within (or without) urban growth boundaries in Marion County. Cities must plan for industrial uses for a 20-year planning period. Using 216 acres of urban industrial land to accommodate one small storage use that would preclude any on-site inhabited buildings and most other industrial uses of property is counter to efficient use of land and would likely require an urban growth boundary expansion, contrary to state philosophy of compact city boundaries. The proposed use cannot be located inside an urban growth boundary because precautionary ATF rules for explosives storage render the use incompatible in densely populated areas. There are reasons under OAR 660-004-0022(3)(b) that can allow an exception for the proposed use that is not allowed on resource land if OAR 660-004-0020 criteria are met.

Because the proposed use cannot be accommodated within an urban growth boundary, it must be located on rural land. If the analysis below finds the use cannot be sited on already excepted lands, then reasons justify why state agricultural policies should not apply to the proposed 2-acre exception site.

(b) Areas not requiring new exceptions.

(A) *Map location.* Applicant included a map showing alternate areas of industrially zoned properties under Marion County jurisdiction, along with a spreadsheet describing each of the properties. The proposed exception areas are depicted on an aerial photograph in applicant's supplemental written statement, and on the map attached as exhibit A to applicant's supplemental written statement. The exception areas are completely within the subject 80-acre property. Applicant submitted a metes and bounds legal description for the exception areas attached applicant's supplemental written statement.

(B) *Reasonably accommodate.*

(i) *Nonresource land not requiring an exception.* ATF explosives storage regulations require certain distances to be maintained from inhabited buildings, railways and highways, depending on the amount of explosives stored. Applicant proposes storing 80,000 pounds of explosives. For 80,000 to 85,000 pounds of explosives, the distance required for barricaded storage is 1,730'. Based on the 1,730' setback distance, applicant asserts a 216-acre property would be required for the use.

Regulations at 27 CFR 555.11 define "inhabited building" as "[a]ny building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials."

Applicant provided a map of industrial properties in its exhibit H. Narrowing the list to industrially zoned properties is reasonable because SIC 2892 (explosives) is only allowed in I and IUC (Unincorporated Community Industrial) zones. To be sited on nonresource properties that do not require a new exception area, an industrial site would essentially need to be vacant and surrounded by 216 acres with no inhabited buildings, and not near highways or railways.

Existing industrial sites often already contain buildings regularly inhabited by two or more workers on a regular basis and applicant's map shows most industrial areas are located in or near urban growth boundaries, and near I-5, state highways and railroads. Applicant's spreadsheet shows the Norpac property in Brooks is the only Marion County industrial site large enough to theoretically accommodate applicant's proposed use entirely within its boundary.

The 287-acre Norpac site is subject to the Brooks-Hopmere Community Plan (BHCP) adopted by the BOC as part of the M CCP. Under this plan, the Norpac site is zoned IUC and is subject to a limited use (LU) overlay zone put in place under a Goal 14 exception (Marion County Ordinance #1027, October 11, 1995). BHCP transportation land use development assumptions for the Norpac site are for the "Oregon Agricultural Center and associated industrial park that received tentative subdivision plat approval."

The Norpac site's planned purpose, agricultural attraction and industrial park, are inconsistent with an explosives storage use that would leave most of the site unusable. Additionally, as the photo at applicant's exhibit J shows, much (but not most) of the site is already developed and contains a rail spur. It is also bordered by I-5 to the west and a railway to the east, both protected by ATF distance regulations.

The Norpac and other properties not requiring an exception are not suitable alternative sites.

(ii) Resource land already committed to nonresource use. Applicant provided argument in its supplemental written statement explaining why the use cannot be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses. The County does not maintain an inventory of all resource land committed to nonresource use, so a site-by-site analysis is not plausible. However, the alternative areas standard may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Applicant persuasively argues that the ATF siting requirements preclude siting the storage use in an area that is already irrevocably committed to a nonresource use due to the inevitable proximity to inhabited buildings. Property containing resource land irrevocably committed to nonresource uses will undoubtedly contain an inhabited building due to the time and effort required in such a process. This would make siting the storage area in these areas impossible due to the ATF distance requirements. The exception areas could not be located in unincorporated communities or by increasing density of uses in committed lands for the same reasons. Additionally, the proposed exception areas are economically advantageous due to its proximity to I-5 and Highway 22, allowing blast crews efficient access to blasting sites across the state.

(iii) Within an urban growth boundary. The analysis of industrial land within urban growth boundaries included in the OAR 660-004-0020(2)(b)(B)(i) evaluation above is adopted and incorporated here. Properties within urban growth boundaries are not suitable alternative sites.

(iv) Public facilities. The proposed use does not require public water or sewer services. The subject property has access to public roadways via PNP quarry's P zoned parcel and an easement to Ridgeway Drive. Fire services are provided by the Turner Fire District. Applicant's representatives testified about discussions that have been held with the fire district and a neighbor also had discussions with Turner fire chief and reports that the

chief said the district's needs were met. The Marion County Sheriff's Office (MCSO) provides law enforcement in the area.

Conclusion. Based on evidence and argument provided in applicant's supplemental written statement and additional application materials, applicant has adequately proven that alternative sites are not available.

(c) Environmental, economic, social, and energy (ESEE) consequences compared with other potential exception sites. This criterion requires specific comparison with other resource sites that would also require a Goal exception. No detailed evaluation of specific alternate sites is required if not brought up during the local exception process. Neither applicant nor other participants brought up specific comparison sites. While specific sites need not be detailed, there must still be comparison with typical resource lands. The application and supplemental written statement adequately analyze alternative urban growth boundary and industrially zoned lands as well as resource zoned lands already irrevocably committed to nonresource use. Additionally, applicant does not rely solely on previous evaluations, and points out advantages of siting the use on the subject property.

Environmental. Environmental impacts would likely be similar for the subject and many other resource properties because characteristics of the use would be the same for any site. The explosive material is inactive while stored and not mixed for use until at the blast property. The steel and hardwood storage magazines that are used are built to prevent unauthorized access. Any spill during transfer from magazine to vehicle would need to be cleaned up according to applicable regulations, and on-site clean up materials and equipment could be a condition anywhere. But, this site has advantages over some others. As a hard rock mining site, site chemical infiltration to the aquifer may be slowed. The proposed exception sites are not in or near a floodplain and contains no hydrologic features, while much Marion County has a fairly extensive hydrology system and some major farming areas are in floodplains. The proposed exception area is not in a geologically hazardous zone. Some portions of the 80-acre parcel are within a geo-hazard zone, but they are away from the proposed exception area. And, the subject site is in a fire district that can accommodate the use. The subject exception area will generally be equally or more suitable for the use than other resource properties in terms of possible environmental impacts.

Economic. Allowing the proposed use at this site will have economic advantages for applicant, its customers, and the county as a whole. Applicant's current primary location is in the South Salem Industrial Park, just minutes away. Applicant anticipates it could double its 15-person Salem area workforce within a year by siting its storage facility nearby. Applicant serves customers up and down the Willamette Valley, on the coast and in central and eastern Oregon. I-5 is readily available for north-south transport, and Highway 22 allows convenient east-west travel, and coastal routes can be accessed from I-5. The proposed site's location near major

transportation routes can reduce circuitous travel and road time for deliveries. And, collocating the site with a quarry customer will reduce costs for both. The subject property is an already approved quarry site, so the proposed use will take no additional land out of resource use. These factors make this site economically advantageous because it increases efficiency and will not reduce the county's agricultural land base.

Social. Applicant points out that the proposed site is secluded and well-shielded from residential areas and commercial centers, easing possible social conflicts. The site is treed and elevated rather than in an open, lowland field so the storage facility will not be obvious to others, giving the site security advantage over many farm sites. This site is equal to or more socially advantageous than other resource-zoned sites.

Energy. The proposed use will not be a large on-site energy consumer no matter where placed. The energy savings advantage of this site, rather than other typical resource sites, is its central location near major north-south and east-west travel corridors. The site has nearly immediate access to I-5, which provides excellent access to east-west corridors. Travel efficiency means fuel efficiency as well. And, trips to the on-site customer will use practically no energy at all.

Conclusion: Siting the use in the proposed exception area will, overall, have equal or more positive long term ESEE consequences compared to other resource areas requiring a goal exception.

(d) Compatible with adjacent uses. The proposed exception area is next to an active mining operation and in the quarry's future expansion site. The site is elevated, treed and separated from other farm uses. PNP and Ted Painter (PNP manager) own 262 acres surrounding the proposed 2-acre exception area. Based on distances estimated from Assessor's map 092W02, it appears the land owner's property will insulate the exception area from surrounding uses by around 1,730' in most directions, and to a lesser extent to the northeast, south and south west. The nearest inhabited building is 1,730' to the northwest. With conditions of approval, applicant has proven the proposed use will be compatible with adjacent uses.

7. CONCLUSION. Applicant has provided sufficient information through its application materials, supplemental written statement, and testimony to meet the criteria set forth in OAR 660-004-0020. The exception is well taken and approved subject to the conditions of approval set forth below.

OAR 660-004-0018

8. OAR 660-004-0018(1) covers planning and zoning in exception areas. Exceptions to one goal do not relieve the county from requirements from other goals. Oregon statewide planning goals are addressed below.
9. Under OAR 660-004-0018(4)(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 uses, density, public facilities and services, and activities to only those justified in the exception. Applicant seeks industrial comprehensive plan designation and zoning for the exception areas, along with a conditional use to store explosives. A limited use overlay zone discussed below will limit the use to storage and transport of explosives. OAR 660-004-0018 is met.

STATEWIDE PLANNING GOALS

10. The MCCP plan amendments section states that comprehensive plan amendments must be consistent with statewide planning goals, and OAR 660-004-0010(3) and 660-004-0018 also say that an exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for proposed uses at an exception site. Each statewide planning goal must be examined for compliance.

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 provide 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. Applicant proposes a site-specific comprehensive plan amendment. The Planning Division notified local and state agencies, including the Oregon DLCD, for comments. Few comments were submitted, but the BOC will review and accommodate them to the extent feasible. Goal 2 is satisfied.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands. Applicant requests an exception to this goal.

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 property is not in a forest zone, this goal is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces. The site is part of an existing quarry operation and is on the MCCP inventory of significant mineral and aggregate sites. The exception is being sought in cooperation with the quarry operator. Natural resources are protected. There are no MCCP-identified scenic, historic, or open space resources on the subject or nearby properties. Goal 5 is satisfied.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state. The proposed use will not result in particulate discharges that would affect air and water quality. The stored product is inactive while on the site. If a spill should occur, applicant must clean the site in accordance with environmental regulations. The proposal will not degrade air, water, or land resources. Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards. The exception area is not within identified hazard areas. Goal 7 is satisfied.

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 Goal 8 resources are identified on or near 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. The proposed use does not require water and sewer facilities. Electrical service is available in the area. PW LDEP did not object to the proposal but noted driveway permitting for the proposed Ridgeway Drive access would be required. The driveway permit will address sight distance, design, spacing and safety standards for access to the public right-of-way. Under the permit, applicant would be required to pave the driveway approach with hot mix asphalt and install a culvert pipe. Access permitting will help ensure safe and adequate access to the public right-of-way. 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 the rule, unless the amendment

is allowed under section (3), (9) or (10) of the 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.

Applicant submitted a transportation memo from Scot Mansure, PE, PTOE, addressing Goal 12 and OAR 660-012-0060. The memo assumed a 78 daily trip worst case scenario based on a two-acre manufacturing site. The engineer referred to Oregon Highway Plan, policy 1F, mobility standards, and stated that with a small increase in daily traffic of less than 400 trips, the proposed zone change will cause no further degradation to the surrounding network. The Highway Mobility Standards background section states the Highway Mobility Policy establishes *state highway* mobility targets. State highway transportation standards may have little in common with county road standards. A 400 or even 78-trip increase on roads currently experiencing 250 and 1,400 daily trip volume may or may not be considered small in the context of the local road system, but the memorandum also acknowledged far fewer trips are anticipated at the site. The engineer found the number of projected trips actually associated with the proposed land use will not significantly impact congestion on county roads and require no mitigation measures.

The subject property has two accesses to public rights-of-way; one via internal road through the gravel pit to Enchanted Way, a state controlled I-5 frontage road, and the other via 20' private easement to Ridgeway Drive SE. Access to Enchanted Way would require Oregon Department of Transportation review. The preferred access is to Ridgeway Drive. Under the MCCP-adopted Rural Transportation System Plan (RTSP), Ridgeway Drive SE is a county designated local road. As trucks come off the easement to Ridgeway Drive, they would travel north and connect with Cloverdale Drive SE, a county designated minor collector road. The trucks would then travel west and connect with the state roadway system at Enchanted Way. Trucks would then travel south to the North Jefferson I-5 interchange.

RTSP appendix B shows the 0.44 mile segment of Cloverdale, from Ridgeway to Enchanted Way, has two lanes, with 3' gravel shoulders and 20' asphalt travel way within a 50' right-of-way, in very good condition and is operating at a level of service (LOS) A, the best LOS rating. RTSP appendix B shows Ridgeway Drive, from Cloverdale to the easement intersection, is two lanes, with 1' gravel shoulders and a 19' asphalt travel way within a 40' right-of-way, in good condition and operating at a LOS A. That segment, based on Assessor's map 093W02 is estimated to be about 1,000' to 1,100'. Trucks traveling to and from the site would traverse less than one mile of county roads in good condition that are operating at the highest levels of service. Applicant foresees no more than six daily traffic trips (three in and three out), based on one to two daily jobs and one bulk product delivery every three to four days. Even if business doubled, applicant could see no more than six round trips per day. PW LDEP has no objection to the proposal, but driveway permitting will be required for the proposed Ridgeway Drive access to address sight distance, design, spacing and safety standards. Under the permit, applicant would be required to pave the driveway approach with hot mix asphalt and install a culvert pipe. Access permitting will help ensure safe access to the public right-of-way.

The proposed use will not change the functional classification of Cloverdale Drive or Ridgeway Drive, change any standards implementing a functional classification system, affect types or levels of travel or access inconsistent with roadway functional classifications, degrade roadway performance standards, nor are any affected roadways projected to fail RSTP performance standards. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy. The proposed use will not significantly impact energy consumption. The proposed use is not a significant user of on-site energy. The site is proximate to major transportation routes and centrally located to applicant's customer base, reducing circuitous travel and saving fuel resources. Goal 13 is 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. The proposed use is a listed conditional use in the rural zoning code and applicant requests a limited

use overlay zone permitting only this use. Because the conditional use criteria are satisfied, the use will be a rural use and Goal 14 will not apply.

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

CONCLUSION. Statewide Planning goals are met.

COMPREHENSIVE PLAN AMENDMENT

11. The MCCP does not contain specific review criteria for plan amendments, but plan amendments must be consistent with applicable MCCP goals and policies. The following policies apply the MCCP amendment request.

Plan Amendment Policy 2: Plan changes directly involving five or less properties will be considered a quasi-judicial amendment. Quasi-judicial amendments may be initiated by the subject property owners..A Plan amendment application of this type may be processed simultaneously with a zone change request. This request involves only one parcel and is requested by the property owner (and lessee). It is a quasi-judicial plan amendment being processed with a zone change request. This policy is met.

General Development Policy 3: Rural industrial, commercial and public uses should be limited to those activities that are best-suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

ATF regulations make the proposed use inappropriate within urban growth areas. MCC 17.165.040(S) lists trucking and storage uses not listed in MCC 17.165.020 and .030, not exceeding 35,000 square feet in standard industrial classifications (SIC) 20 through 39 (which includes SIC 2892, explosives) as a conditional use in the acknowledged rural industrial zone. If a goal exception is justified, and rural industrial designation and zoning are applied, and conditional use criteria are met, the proposed use will be appropriate for a rural location. This policy is met.

Rural Industrial Policy 1 deals with farm and forest-related industrial uses. Although applicant performs some resource-related blasting, blasting for other uses, such as gravel extraction, is most common. This policy is not applicable.

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.

Roadways used to reach the subject site travel through agricultural rather than residential zones. The use involves few employees. The employees will make one to two trips to the site per day to transfer product and transport it off-site. One bulk delivery of product is anticipated every three to four days. Only minimal traffic impacts are expected. The proposed exception area will be surrounded by PNP-owned property, and meets the 1,730' distance requirement from inhabited buildings, and the 2,000' separation requirement from I-5. Applicant detailed the surrounding farm and forest uses in the notice area. The notification area was measured from all adjacent PNP properties, resulting in a large notice area. The proposed use will have little to no effect on the surrounding farm and forest uses. There will not be a large number of employees and the use will not require heavy traffic. This policy 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.

As noted in the goal exception analysis, applicant analyzed alternative locations and determined that the proposed use cannot be sited within an urban growth boundary or on non-resource rural lands. Siting the proposed use on resource land is most suitable. This policy can be met.

Rural Services Policy 1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The property is currently served by the Turner Fire District and Marion County Sheriff's Office. The Turner fire chief finds the use compatible with the fire district but a condition of approval should require fire district sign off on a site identification and access plan. The BOC may require MCSO coordination. The proposed use will not require public sewer and water services. The use will add little traffic to the existing road system and MCPW will require an access permit to ensure roadway access meets county standards. This policy is met.

Rural Services Policy 2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.

If all conditional use criteria are met, the proposed use will be considered rural in character. This policy is met.

Rural Services Policy 3. Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

The use can be accommodated on the subject property with existing rural services, and will not encourage additional uses. This policy is met.

Rural Services Policy 4. The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.

The use can be accommodated on the subject property with existing rural services. This policy is met.

Transportation System Management Policy 7. Land use changes that could result in increased development levels and thus higher traffic levels will be assessed for their impact to current and future traffic volume and flow, and these impacts must be appropriately mitigated (as determined by the Public Works Director in accordance with applicable standards and practices) in order for the development to be allowed.

The proposed use will generate little traffic, and though it will be truck traffic, the volume will be low enough that it will not have a significant impact on the existing transportation system. MCPW did not identify any roadway capacity or safety concerns, but will require driveway permitting to ensure county access standards are met. This policy is met.

Transportation Development and Access Policy 7. To prevent exceeding the function and capacity of any component of the transportation system, the County will consider roadway functional classification, capacity and current conditions as primary criteria for proposed changes in land use designations and proposed land use developments. In addition, present and anticipated safety issues shall also be significant criteria.

The transportation route to the state roadway system involves less than one mile of local and minor collector roads. The proposed use will generate little traffic, and though it will consist of truck traffic, the volume will be low enough that the use will not have a significant impact on the existing transportation system. MCPW did not identify with roadway capacity or safety concerns, and will require driveway permitting to ensure county access standards will be met. This policy is met.

Transportation Development and Access Policy 9. Access to developments must be from roadways with appropriate functional classifications and improved to appropriate standards. [Reference to RTSP table 10-3.]

RTSP table 10-3 shows maximum trip generation of developments by functional roadway classification. Local roads with paved surfaces list 750 trips per day, and minor collector roads list 1,500 trips per day. RTSP appendix B shows only 250 trips per day on Ridgeway Drive and 1,400 daily trips on Cloverdale Drive. No roadway improvements were requested by PW. Adding

three to four trips per day to these roads will not exceed the functional classification capacity for either road. This policy is met.

Transportation Development and Access Policy 25. All new developments shall be reviewed to ensure that they have an adequate stormwater system. Specific requirements can be found in Marion County's Engineering Standards (or subsequent document).

Neither LDEP nor DEQ commented on this issue, but any development would be required to meet LDEP and DEQ standards prior to any construction. This policy will be met.

12. CONCLUSION. Applicant has submitted sufficient information to show MCCC policies can be met and the comprehensive plan amendment is well taken and approved subject to the conditions of approval.

ZONE CHANGE

13. 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.
14. This application includes an MCCC amendment request that would change the MCCC designation from Special Agriculture to Industrial. With the approval of the MCCC amendment, the proposed I zone is consistent with the Industrial plan designation and applicable MCCC policies. MCC 17.123.060(A) is satisfied.

15. The proposed site is in an existing quarry and surrounded by lands zoned SA. The use will be taking place in the existing quarry site and involves only storage and minimal traffic. Applicant has submitted information examining surrounding farm and forest uses and has shown the use will have no effect on the density or land use pattern of the area. MCC 17.123.060(B) is satisfied.
16. The property is served by the Turner Fire District and law enforcement is provided by Marion County. The fire chief, when contacted by a concerned citizen stated that the chief is comfortable with the proposal. The BOC may require a fire district approved site identification and access plan for the development, along with proof of MCSO coordination. No public water or sewer services are required. Access to Ridgeway Drive will require access permitting during the development phase to ensure adequate access to the public right-of-way. Existing public facilities are or will be made adequate to the serve the use. MCC 17.123.060(C) will be satisfied.
17. As noted above in the goal exception findings (incorporated here), there are no existing sites designated industrial that can accommodate the proposed use. MCC 17.123.060(D) is satisfied.
18. I and IUC zones are the only zones allowed in the Industrial designation. The IUC zone is only applicable in unincorporated communities. The proposed exception area is not in a designated unincorporated community. The I zone is the only applicable industrial zone. MCC 17.123.060(E) does not apply.
19. CONCLUSION. Applicant has supplied satisfactory information to show that with the exception taken and the Comprehensive Plan Amendment approved, the zone change is appropriate.

CONDITIONAL USE

20. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application and a lessee with written consent of the owner. The case file contains a warranty deed recorded in Marion County deed records at reel 1376, page 11 showing that the subject property was conveyed to PNP Properties, LLC on March 3, 1997. Ted Painter, PNP Manager signed the application along with Tyler McCallum, 50% member of lessee McCallum Powder, LLC, and they could file the application. MCC 17.119.020 is satisfied.
21. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including the owner of the property subject to the application and a lessee with written consent of the owner. The case file contains a warranty deed recorded in Marion County deed records at reel 1376, page 11 showing that the subject property was conveyed to PNP Properties, LLC on March 3, 1997. Ted Painter, PNP Manager signed the application along with Tyler McCallum, 50% member of lessee McCallum

Powder, LLC, and they could sign the application. MCC 17.119.025 is satisfied.

22. Under MCC 17.165.040(S), manufacturing, processing, trucking, wholesale distribution, and storage uses not listed in MCC 17.165.020 or 17.165.030 and not exceeding 35,000 square feet of floor area (SIC 20 through 39 and 42) can be permitted with conditional use approval if certain criteria are satisfied. The proposed use is listed an SIC 2892 use provided it is limited to 35,000 square feet of floor area.
23. MCC 17.165.050 contains the following review criteria:
 - A. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use;
 - B. The proposed use will not, by itself or in combination with existing uses, result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations;
 - C. The proposed use will not, by itself or in combination with existing uses, exceed the carrying capacity of the soil or of existing water supply resources and sewer services;
 - D. The traffic generated by the proposed use is consistent with the identified function, capacity, and level of service of transportation facilities serving the use; or improvements are imposed that maintain the existing level of service;
 - E. The proposed use will not create significant adverse effects on existing uses or permitted uses on adjacent land, considering such factors as noise, dust and odors; and
 - F. The proposed use shall not have industrial or manufacturing processes that require water or discharges of wastewater except upon demonstration that the use has an on-site sewage disposal site approved by Marion County or the Oregon Department of Environmental Quality.
24. *Farm practices.* MCC 17.165.050(A) incorporates ORS 215.196(1) requirements. ORS 215.196(1) as interpreted in *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), requires a three-part analysis to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the County must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require the County to consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

Surrounding lands is not defined in the MCC, but it makes sense to consider properties within the 750' notice area. The notice requirement presumes properties within that area might be affected by a proposed use. Applicant provided information and analysis regarding the specific farm and forest uses and practices on surrounding lands and has shown that the storage and transport uses will not impact surrounding farming practices. MCC 17.165.050(A) is met.

25. The proposed use is heavily regulated by the ATF and meeting ATF standards will be required to help ensure no public health hazards are associated with the use. The product is inactive while on the subject property. Any spill occurring during transfer of product from storage to truck, must be cleaned up in accordance with any local, state and federal laws and regulations. Additionally, no water use is proposed or should be approved under this application. With conditions requiring applicant to follow all environmental and other regulations associated with the use, MCC 17.165.050(B) will be met.
26. The use does not require sewer or water services. The storage function is fairly benign. The carry capacity of the soil will not be affected. MCC 17.165.050(C) is met.
27. As noted in traffic discussions above, access will be onto a local county road that intersects with a county minor collector before connecting with the state roadway system. The roads operate at level of service A and are in good condition. Addition of the few truck trips anticipated will not affect the functional classification of the roadways. PW LDEP did not identify any transportation capacity improvements needed to accommodate the use. MCC 17.165.050(D) is met.
28. The storage facility will not generate noise, dust, odor or other emissions. The transportation element of the use may generate some dust but it will be infrequent. The exception area is in an existing quarry and is surrounded by over 200 acres of the owners' property. The proposed use will not create significant adverse effects on existing uses or permitted uses on adjacent lands. MCC 17.165.050(E) is met.
29. No manufacturing or processes will take place on the site, and no water or sewer services are required. MCC 17.165.050(F) is met.
30. Conclusion. The conditional use criteria are met.

LIMITED USE OVERLAY

31. Under MCC 17.176.010, the purpose of the LU (limited use overlay) zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if

certain criteria are met. However, on a particular property certain of these uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone.

The limited use overlay zone may also be applied to comply with use limitations for a Goal exception required by OAR 660-004. It is the intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.

Under MCC 17.176.020, when the limited use overlay zone is applied, the uses identified in the underlying zone shall be limited to those permitted or conditional uses specifically referenced in the ordinance adopting the limited use overlay zone. Until the overlay zone has been removed or amended the only uses permitted on the property shall be those specifically referenced in the adopting ordinance. Uses that would otherwise be permitted, or permitted subject to a conditional use permit, may only be allowed if the list of permitted or conditional uses in the limited use overlay zone is amended or the limited use overlay zone is removed from the property.

Applicant asks the BOC to apply a limited use overlay to the property limiting uses to the proposed explosives storage and transport facility only. Under OAR 660-004-018(4), "[i]f the exception is approved, the land use designation, zoning and uses of the property are limited to those approved in the exception. Any change would require a new exception." To meet this OAR 660-004-018(4) and other requirements, approval is conditioned to allow only the requested use and will require a new reasons exception to approve any expansion of this use or any other use.

32. Under MCC 17.176.030, the limited use overlay zone is applied at the time the underlying zone is being changed. It shall not be necessary to mention in the hearing notice of a rezoning application that this overlay zone may be applied. The ordinance adopting the overlay zone shall include findings showing that:

(A) no zone has a list of permitted and conditional uses where all uses would be appropriate;

(B) the proposed zone is the best suited to accommodate the desired uses;

(C) it is necessary to limit the permitted or conditional uses in the proposed zone; and

(D) the maximum number of acceptable uses in the zone have been retained as permitted or conditional uses. The ordinance adopting the overlay zone

shall by section reference, or by name, identify those permitted uses in the zone that become conditional uses and those permitted or conditional uses that are deleted from the underlying zone. A use description may be segmented to delete or require a conditional use for any aspect of a use that may not be compatible.

Under this comprehensive plan and zone change application, the property would be zoned I. This is the only zone, other than the IUC zone, an unincorporated community zone not applicable here, that would allow the proposed use. Not all uses allowed or conditionally permitted in the zone are appropriate at this site, or allowed under the proposed Goal 3 exception. Under these circumstances, the proposed use is the maximum use that can be allowed. The MCC 17.176.030 criteria for the requested limited use overlay zone are met.

33. Under MCC 17.176.040, the official zoning map shall be amended to show an LU suffix where the limited use overlay zone has been applied. This shall be a condition of approval.
34. The Marion County Board of Commissioners TAKES an exception to Oregon Statewide Planning Goal 3, Agricultural Lands, and APPROVES the Comprehensive Plan Amendment, Zone Change, and Conditional Use Application with the conditions of approval set out below.

EXHIBIT B

The Marion County Board of Commissioners adopt the following conditions in ZC/CP/CU 18-001:

Zone Change:

- A. A limited use overlay shall apply to the property. Only the following use shall be permitted: Explosives Storage Facility (SIC 2892).
- B. A new reasons exception is required prior to approval of any use other than an Explosives Storage Facility as described in this decision.

Conditional Use:

- C. The conditional use permit is valid only when exercised within two years of the effective date of this decision. The effective period may be extended for additional one year periods, however, the extensions must be filed prior to the expiration date.
- D. The applicant shall obtain any permits required from the Marion County Building Inspection Division.
- E. On-site explosives storage capacity is limited to 80,000 pounds.
- F. The official zoning map shall be amended to show an LU suffix on the subject exception area.
- G. Applicant shall provide proof of Marion County Sheriff Office coordination.
- H. Applicant shall provide proof of fire district approval of applicant's site identification and access plan.
- I. If an inhabited building is erected closer than 1,730' to the exception area, applicant will reduce the amount of explosives stored at the site to match the lesser distance required by AFT regulations.
- J. The storage containers must be placed on a cleared graveled area.
- K. The explosives storage area shall be barricaded.
- L. No more than 35,000 square feet of floor area is allowed.

- M. Applicant shall provide a metes and bounds description of the exception area, along with a final detailed site plan.
- N. Clean up materials and equipment shall be available on site.
- O. Applicant must continually comply with all applicable local, state and federal environmental, health and safety laws and regulations.

EXHIBIT C

LEGAL DESCRIPTION OF EXCEPTION AREA

TWO PARCELS IN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 9 SOUTH, RANGE 3 WEST, OF THE WILLAMETTE MERIDIAN, IN MARION COUNTY, OREGON, WITHIN THE BOUNDARIES OF MARION COUNTY RECORD OF SURVEY 25514, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A

BEGINNING AT A POINT FROM WHICH THE SOUTH SIXTEENTH CORNER COMMON TO SECTIONS 1 AND 2, TOWNSHIP 9 SOUTH, RANGE 3 WEST, OF THE WILLAMETTE MERIDIAN, MARKED BY A GEAR SHAFT, AS PER MARION COUNTY RECORD OF SURVEY 25514, BEARS NORTH 81-43-28 EAST 1823.27 FEET, FROM WHICH THE EAST QUARTER CORNER OF SECTION 2, TOWNSHIP 9 SOUTH, RANGE 3 WEST, OF THE WILLAMETTE MERIDIAN, MARKED BY A ONE-HALF INCH IRON PIPE, AS PER MARION COUNTY RECORD OF SURVEY 14446, BEARS NORTH 1330.76 FEET; THENCE SOUTH 01-00-49 EAST 208.71 FEET; THENCE SOUTH 88-59-11 WEST 208.71 FEET; THENCE NORTH 01-00-49 WEST 208.71 FEET; THENCE NORTH 88-59-11 EAST 208.71 FEET, TO THE POINT OF BEGINNING.

THE DESCRIBED AREA CONTAINS 1.000 ACRES, MORE OR LESS.

PARCEL B

BEGINNING AT A POINT FROM WHICH THE SOUTH SIXTEENTH CORNER COMMON TO SECTIONS 1 AND 2, TOWNSHIP 9 SOUTH, RANGE 3 WEST, OF THE WILLAMETTE MERIDIAN, MARKED BY A GEAR SHAFT, AS PER MARION COUNTY RECORD OF SURVEY 25514, BEARS NORTH 70-22-57 EAST 1140.06 FEET, FROM WHICH THE EAST QUARTER CORNER OF SECTION 2, TOWNSHIP 9 SOUTH, RANGE 3 WEST, OF THE WILLAMETTE MERIDIAN, MARKED BY A ONE-HALF INCH IRON PIPE, AS PER MARION COUNTY RECORD OF SURVEY 14446, BEARS NORTH 1330.76 FEET; THENCE SOUTH 01-00-49 EAST 208.71 FEET; THENCE SOUTH 88-59-11 WEST 208.71 FEET; THENCE NORTH 01-00-49 WEST 208.71 FEET; THENCE NORTH 88-59-11 EAST 208.71 FEET, TO THE POINT OF BEGINNING.

THE DESCRIBED AREA CONTAINS 1.000 ACRES, MORE OR LESS.