BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the Matter of the Application of: Creative Electric, LLC	)))	Zone Change Case No. 25-002

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1488

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 Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff, to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn T5S; R1W, Section 19A; Tax Lot 1800).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on May 15, 2024, and on July 8, 2025, issued a decision denying the zone change. Official notice was taken of the Planning Division file and the Hearings Officer's decision. The Hearings Officer decision was appealed to the Board on July 23, 2025. The Board held a public hearing to consider the appeal, application, and findings on October 29, 2025. The Board closed the public hearing the same day. A motion to approve the appeal was made and passed the same day. The Board has considered all the evidence in the record, 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 overturns the Hearings Officer's decision on this matter, and adopts its own the Findings of Fact which is attached as Exhibit A, subject to conditions attached as Exhibit B.

SECTION IV. Action

The requested zone change from UT-5 (Urban Transition) to CG (Commercial General) is hereby **GRANTED**, subject to conditions identified in Exhibit A, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is identified on a map in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed

pursuant to Marion County Code Section 16.01.040 to reflect the new zoning subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

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 11th day of March, 2026, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

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. Findings of Fact and Conclusions of Law

The Board of Commissioners, after careful consideration of the testimony and evidence in the record, issues the following findings regarding ZC 25-002:

1. No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony by any party during the public hearing before the Board or otherwise during the appeal.

2. Creative Electric LLC proposes to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre property located in the 900 block of S Pacific Hwy 99E, Woodburn, (T5S; R1W; Section 19A; Tax lot 1800). The subject property is within the Woodburn Urban Growth Boundary (UGB) and designated Commercial in the Woodburn Comprehensive Plan. The Applicant does not seek and is not eligible for annexation nor City urban services. The property is currently under the zoning jurisdiction of Marion County. The applicant proposes establishing an electrical contractor business on the subject parcel.

3. The subject property is located south of the City of Woodburn on the west side of Highway 99E, off undeveloped Novaya Ln NE, a private access easement. The subject property is a currently vacant field. The property consists of three parcels created by Partition recorded in 1989 and approved by Partition case (P88-061). The subject property was created in the current configuration by an approved Partition and is therefore legal for land use purposes.

4. Adjacent properties to the north, and south are zoned UT-5 and within Woodburn's UGB. The northern adjacent parcel is zoned UT-5 and has a permitted dwelling and accessory structure. The south adjacent parcel is zoned UT-5 and is developed with a pre-existing non-conforming auto wrecking yard. To the east, across Highway 99E and outside of the UGB, are parcels zoned Exclusive Farm Use (EFU) with a commercial nursery. To the west of the subject parcel, outside of the UGB, is the Belle Passi Cemetery which is in a Public (P) zone.

5. The Marion County Planning Division requested comments from various governmental agencies. The following comments were received:

   Marion County Building Inspection commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to any development and/or utilities installation on private property."

   Marion County Septic Division commented: "A Site Evaluation followed by an installation-Construction permit is required prior to site development."

   Marion County Land Development Engineering and Permits (LDEP) submitted the following:

ENGINEERING ADVISORIES

A. PW Engineering has no action items for the proposed Zone Change itself.

B. The following are PW Engineering advisories for future development:

• The plat for partitioning case P88-61 pertaining to the subject property is depicted on MCSR 031947 and recorded at Reel 732 / Page 127 in the Clerks records for Marion County. The plat created the private easement named 'Novya Lane' along the south property from S Pacific Hwy 99E, a State Hwy. An access approach to Novya Lane was not been constructed.

• The proposed access location in the middle of the subject property does not align with Novya Lane. At the time of application for building permits, Applicant will be required to confirm application having been made for an ODOT approach permit, if required.

• County Transportation System Development Charges (SDCs) will be assessed at the time of application for building permits.

• Development of the property as generally depicted on the land use application site plan will require stormwater detention meeting county standards, and possibly also to ODOT standards that could include water quality treatment if discharging to the State Hwy.

• DEQ has jurisdiction over construction erosion for total ground disturbances of 1-acre plus.

• Fire turnaround and pullout easement(s) may be required by the local fire district or State Fire Marshal.

Oregon Department of Transportation (ODOT) commented: "We do not have any comments on the zone change, however we will have comments on future applications for development of the property with respect to frontage improvements and access considerations."

The City of Woodburn Community Planning and Development Department submitted letters arguing that the proposal is not consistent with either Woodburn Comprehensive Plan or the Woodburn/Marion County Urban Growth Coordination Agreement (UGCA). These letters can both be found in the record.

All other agencies either failed to comment or stated no objection to the proposal.

II. Executive Summary

The subject 5.02-acre property is situated in the Urban Growth Boundary and is subject to the Marion County "Urban" Land Development Code. The property is planned "Commercial" and zoned Urban Transition (UT). Applicant seeks to rezone property from UT to Commercial General (CG) to conform the zone to the applicable plan designation. The application does not seek approval for any "use" or "development." The proposal seeks a zone change that is limited by the County's Limited Use Overlay (LU) zone to control impacts to respond to

concerns expressed by the City of Woodburn. The City of Woodburn testified that it cannot and will not seek to annex the property at this time. The property is ineligible for annexation to the City of Woodburn because it is too distant from the City's limits, however, the property can be adequately served with its own onsite septic, onsite domestic water well, and onsite stormwater control. The Application does not seek and is ineligible for access to City services due to the Subject Property's distance from the same.

As noted, because the Subject Property is in the UGB, it is subject to the Marion County "urban" zone provisions in Marion County Code (MCC) Chapter 16. The MCC 16 provisions authorize the County to approve zone changes that meet the County's acknowledged urban zone change criteria. The Board finds that the proposal meets all MCC criteria.

The City of Woodburn opposed the application and initially argued that conversion of the property from UT to CG is not permitted by the Urban Growth Coordination Agreement (UGCA), as well as the Marion County Code, Woodburn Comprehensive Plan, and the Marion County Comprehensive Plan. Notably, when the City of Woodburn was asked during the appeal hearing if it was the City's position that the County does not have the authority to change the UT zone in land that the County is the land use authority of, the City testified that was not the City's position. **The City testified it was not saying that the UCGA effectively allows the City to veto County land use decisions within the UGB, which the City acknowledged would be an "absurd" position.** The City reiterated these concessions multiple times and fell back to arguing that the development was not a good fit for the area. The City's concessions at the hearing effectively waived prior arguments, resolved the core legal issues of the application, and limited the City's objections to a policy disagreement that the City acknowledged the County had authority to decide. The Board's decision is consistent with what the City recognized to be the relevant legal standards at the hearing.

To the north and south, the lands are zoned UT-5 with existing commercial and industrial uses, including M&M Auto Wrecking & Recycling and D&G Nursery. M&M Auto Wrecking & Recycling is a salvage and recycling operation, which involves heavy equipment, significant truck traffic, material storage. D&G Nursery operates as a commercial plant nursery, involving frequent truck deliveries, customer visits, and large-scale irrigation and storage operations.

The Hearings Officer determined that the application satisfied all applicable Marion County Comprehensive Plan and Urban Code provisions but mistakenly denied the application on the basis of the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement, and Statewide Planning Goal 14.

The Board finds that the application satisfies all applicable County Plan and Urban Land Use Code Requirements, that the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement is not an applicable approval standard for this zone change and regardless, even if it were, the proposal is consistent with its terms.

III. Additional Findings of Fact and Conclusion of Law

1. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395 (1987).

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Zone Change Criteria

2. Under MCC 16.39.050, approval of a 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 description and policies for the applicable Comprehensive Plan land use classification.

The Subject Property is located within the City of Woodburn's Urban Growth Boundary and has a Comprehensive Plan designation of Commercial. The Board finds that the proposed zone is appropriate for and implements the underlying comprehensive plan designation of Commercial. The Board finds Marion County's Commercial General zone, with the Limited Use Overlay applied, is appropriate for the Commercial comprehensive plan designation.

The Board finds that the Marion County Comprehensive Plan is the applicable Comprehensive Plan that governs the County CG zone. The Board finds that applying the CG zone is consistent with the description and policies for the applicable commercial plan designation. In this regard, the MCP "Economic Element" contains nine "major economic goals". The Board finds that the proposal is consistent with all of them and, therefore, meets this standard, as follows.

The Board finds that the proposal meets Economic Element(a), which states that it is a major economic goal of the County to ensure the "Provision of increased employment opportunities for all residents of the County." The Board finds that the proposal achieves that by providing the option for not only the continuation of appropriate UT zone uses for the CG zone, but also the opportunity for a Marion County home base for an electrical specialty trade contractor and associated warehousing that will provide employment opportunities for all residents of the County.

The Board finds that the proposal is consistent with Economic Element(b), which states that it is a major economic goal of the County to ensure the "maintenance of a strong agricultural economy." The Board finds that the proposal has no impact on this goal and therefore is consistent with it. The Board finds that the proposal does not affect the maintenance of the agricultural economy. The only agricultural operations in the area are located across Highway 99 from the Subject Property. Those operations are already affected by the significant traffic on

Highway 99 and the proposal's traffic impacts are consistent with and not greater than the traffic impacts of uses that are now allowed in the existing UT zone, as demonstrated in the Applicant's transportation analyses in the record. Those agricultural operations are now affected by the adjacent uses of an auto wrecking and recycling yard as well as a contractor's yard, situated across Highway 99 from those agricultural operations. The proposal allows uses now allowed in the UT zone and a single specialty trade contractor and associated warehousing. The Board finds that the credible and persuasive evidence in the record demonstrates that the one additionally allowed specialty trade contractor use and associated warehousing has either substantially the same or fewer impacts than UT zone uses now allowed in the existing UT zone. The Board agrees with the Applicant that the proposal does not introduce any impacts that will adversely affect the maintenance of the agricultural economy.

The Board finds that the proposal is consistent with Economic Element(c), which states that it is a major economic goal of the County to ensure the "Preservation of appropriate areas for timber production." The proposal has no impact on this goal and therefore is consistent with it because there is no land anywhere near the subject property that is now or in the future appropriate for timber production.

The Board finds that the proposal is consistent with Economic Element(d), which states that it is a major economic goal of the County to ensure "Diversification of the economic base of communities, and expansion of seasonal employment opportunities to year-round status wherever possible." The Board finds that the proposal is consistent with this goal because it allows a variety of year round employment to include an employment type that is not now allowed on the property, providing diversification of the economic base of the Marion County community.

The Board finds that the proposal is consistent with Economic Element(e), which states that it is a major economic goal of the County to ensure "Provision of sufficient areas for future industrial land use." The proposal has no impact on this goal and therefore is consistent with it. The Board finds that the property and area are not now designated for industrial use and that is not changing one way or the other under the proposal.

The Board finds that the proposal is consistent with Economic Element(f), which states that it is a major economic goal of the County to ensure "Development of a transportation system for the safe and efficient movement of persons and goods for present needs." The Board finds that the proposal is consistent with this goal for three independent reasons. One, the proposal does not affect the safe and efficient movement of persons and goods as they are planned at the site. In this regard, the Board finds that the property is Planned Commercial and so the TSP already accounts for commercial trips at the site. In this regard, the Board finds that Highway 99 at this location has adequate capacity for the safe and adequate movement of persons and goods under the commercial designation for the proposed CG zone for the site, because the Commercial plan designation on the Subject Property contemplates the property will be developed at this location with commercial uses. Second, the Board finds that the proposal has no adverse effect on the movement of persons and goods on Highway 99 because its traffic impacts are modest and no greater than the impacts that are now allowed on the subject property under the existing UT

zone that applies, as the Applicant's traffic report demonstrates. Third, the Board finds that the proposal meets this policy because as conditioned, it provides for dedication of land for Highway 99 to enable it to have its desired width, something that it does not now have.

The proposal is consistent with Economic Element(g), which states that it is a major economic goal of the County to ensure "Coordination of planning and development of public facilities." The Board finds that this policy does not apply because it focuses on coordination and planning and not individual zone change or individual development applications. Rather, the Board finds that it is a policy governing coordination and planning between governments for water, sewer and stormwater infrastructure that is to be used by the public. Nonetheless, even if this policy applied to this zone change, the Board finds the proposal is consistent with this goal because, as explained below, the public facilities of a private domestic well, private septic system and private storm water disposal will be adequate to serve the modest suite of allowed uses under this zone change and the proposal facilitates coordination and planning to extend City water, sewer and storm are eventually extended to the property when the City chooses to do so. In this regard, a condition of approval is imposed on this zone change that the property will connect to City water, sewer and storm water when they are available to the Subject Property, as opposed to the City having to deal with an objecting owner, when such connection is available. The proposal is also consistent with this goal because it does not seek approval of, nor does it require or contemplate, connection to any City water or sewer or storm system over the City's objection or before annexation occurs.

The Board finds that the proposal is consistent with Economic Element(h), which states that it is a major economic goal of the County to ensure "Development of a strong tourist economy in appropriate areas." The Board finds that the proposal has no impact on this goal and therefore is consistent with it. The Board finds that the same uses that could be developed on the property now, can be developed on the property in the future (until a new commercial zone is applied upon City annexation), with the one exception the proposal allows an additional allowed use being provided – a single specialty trade contractor (electrical contractor) and their associated warehousing. The Board finds that the area is not identified by the City or the County as an "appropriate area" for tourist related uses. The Board finds that the facts that there is a wrecking yard adjacent to the subject property and that the property is ineligible for annexation due to distance, makes it implausible that the property could be an appropriate area to contribute to the development of the tourist economy in the foreseeable future.

The Board finds that the proposal is consistent with Economic Element(i), which states that it is a major economic goal of the County to ensure "Achievement of a natural resource use pattern which provides for tomorrow's needs, today's needs and the protection of the environment." The Board finds that the proposal has no impact on this goal and therefore is consistent with it. The Board finds that the Subject Property is not in an area with a "natural resource use pattern" now and given that it is has a plan designation of "Commercial," and is in the City's UGB with no particular natural features on or around it, the Board finds that the Subject Property is not going to become a natural resource area.

The Board finds that the proposal is consistent with the economic goals of the County.

Concerning the description of the land use classifications, the Board finds that the CG zone implements the Commercial plan designation that applies. The Board finds that applying the CG zone as proposed here with the LU Overlay meets this standard. The Board further notes that when comparing between Marion County and Woodburn's Commercial General codes, Marion County's CG zone is consistent with the City of Woodburn's version of this zone. In Woodburn's version of the CG zone, outdoor storage for contractor shops is not permitted. The City has expressed concern about the proposed zone change to the extent that it would allow outdoor storage. To avoid the impact that the City objects to concerning outdoor storage, the Board imposes a condition of approval prohibiting outdoor storage in the approved CG zone.

The Board finds that the proposed zone change is consistent with the Marion County Comprehensive Plan and that this standard is met.

B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.

With respect to transportation networks, the Board finds that the subject parcel is adjacent to Highway 99E. The Board finds that the evidence in the record from registered transportation engineer Chris Clemow demonstrates that the traffic trips generated by the uses allowed by the proposed zone – as limited by the LU overlay - are already accounted for considering the commercial comprehensive plan designation, and Marion County's Transportation System Plan, and the Board so finds. The Applicant's transportation engineer, Mr. Clemow, also submitted evidence that the allowed uses under the proposed zone change with the LU Overlay will have transportation impacts that are the same or less than uses that are now allowed in the existing UT-5 zone. The Board finds that evidence to be credible and persuasive and agrees with it.

The Board finds that there is no dispute that Highway 99 is adequate to support the uses allowed by the proposed zone change. The Board finds that Highway 99 has no capacity limitations or other limitations at the subject property, as Mr. Clemow's report confirms and the Board so finds.

Accordingly, the Board finds that there are adequate transportation networks in place to serve the Subject Property concurrent with any development of the property for uses allowed in the proposed County CG zone with the LU Overlay applied.

Concerning "adequate public facilities, services" being "in place *** concurrently with the development of the property", the Board finds this standard is met. First, the Board finds that that the "public facilities" referred to by this standard are adequate domestic water, adequate sewage disposal and adequate stormwater management and that those facilities can either be systems or individual facilities provided on individual properties (*i.e.* a domestic well, a septic system and a single-property private stormwater management system). The Board also finds that the referenced public services are fire and police services. There is no dispute about the adequacy of public services being in place at the time of the development of the Subject Property with the uses allowed under this zone change. In this regard, there is no dispute that there is adequate fire and sheriff patrol services available to the property now and that that will continue to be the case at the time the property is developed with the uses allowed by this zone change. The Board finds that adequate

public services either are in place or will be in place concurrently with the development of the property.

Regarding public facilities, the Board observes that presently, there are neither publicly *owned* water nor publicly *owned* sewer nor publicly *owned* storm facilities available to the subject parcel and the nearest of those publicly *owned* facilities are located more than 500 feet away from the subject property. The City of Woodburn testified that it will not be extending any of those facilities that it owns to the property in the next few years. The Board finds that City of Woodburn publicly owned facilities of water, sewer and stormwater are not available to be extended to the property at this time. The Board also finds, however, that the evidence in the record demonstrates that each of these types of public facilities and services – domestic water, sewerage, and storm facilities - will be provided to the Subject Property by the property owner, using an individual domestic well, individual septic system and individual storm water management system specific to the subject property, prior to or concurrently with the development of the Subject Property with uses allowed in the proposed zone. The Board finds that this meets the standard.

The City argues that this standard requires City owned facilities and services be available to the Subject Property by the time it is developed with uses allowed by the zone change.

The Applicant argued that this standard is functional and looks to facility and service types, not ownership and argued that the standard requires a showing that there is or will be by the time of development, adequate domestic water, adequate sewerage disposal and adequate storm water management – provided by either a public or private provider, the latter including a single owner.

The Board agrees that the Applicant's interpretation of the standard is correct.

Specifically, the Board interprets that the standard may be met if there is evidence demonstrating that adequate publicly owned or privately owned –- water, sewerage (including a septic system) and storm water disposal will be available to the Subject Property concurrently with its development with the uses allowed by the proposed zone change. The Board finds that the ownership of the facility or service is not the operative requirement of the standard. The Board finds the operative requirement is that the facility or service itself adequately exists at the time of property development and is of a type generally understood to be facility and service types that members of the public must have in place to develop their property. The Board finds that its interpretation is consistent with the text, context and purpose of the standard.

In this regard, the phrase "adequate public facilities, services, and transportation networks" describes the types and capacity of infrastructure and service systems available to serve development, not the identity of the entity that owns or operates them. The Board finds that the standard is functional and asks whether, at the time of the development allowed by the zone change, the Subject Property will be served with adequate transportation networks regardless of whether they are public or privately owned, and whether the property will be served with adequate publicly or privately owned domestic water, sanitary sewer (including an individual septic system), stormwater management, police and fire protection. Indeed, development in much of the unincorporated urban areas throughout the county has occurred with privately owned domestic water, sanitary sewer, and stormwater facilities.

The Board finds that nothing in the text of the standard ties the adequacy of these facility and service types to public ownership or to a requirement that facilities be owned by a particular government. If the Board had intended an ownership limitation, the standard would have been written to say so (for example, by requiring "publicly owned" facilities, "City facilities," or facilities "provided by a special district or local government"). Instead, the standard uses broad system terms—facilities and services—that the Board finds commonly include public, quasi-public, and privately owned components – which the Board finds meets this standard so long as they are available at the time of development and sufficient to meet the demand of development allowed by the proposed zone change, both of which the Board finds is the case here.

Additional support for the Board's interpretation of this standard is found in the MCC definition of "public utilities," to "mean water, gas, sanitary sewer, electricity, telephone, and wire communication service, and CATV (cable television) service lines, mains, pumping stations, reservoirs, poles, underground transmission facilities, substations, and related physical facilities ***." Many of those are provided by private companies (for example NW Natural Gas, PGE, AT&T are all private). This reinforces that the use of the term "public" does not describe ownership, but rather a facility/utility type that the public would rely upon when they go to develop their private property.

Other support can be found in the state law definition of public facilities in OAR 660-011-0005(5) which states it "includes water, sewer, and transportation facilities" and OAR 660-011-0005(6) which describes a "public facility project as one that is either "funded *or utilized*" by members of the public. (Emphasis supplied.) Similarly, the state law prohibition on "sewer service to rural lands" under the Goal 11 "Public Facilities Planning" rule, OAR 660-011-0060(1)(b)(f), prohibits extending a "sewer system" outside of UGBs, which refers to a "sewer system" that serves one or more lots or parcels, by *either* a public or private provider. Again, it is not ownership that matters, but the adequacy of water, sewer and storm services.

Moreover, further support for the Board's interpretation is found in the context of the provision, in that the County similarly requires "adequate public facilities and utilities" in the County's *Rural Code* in Title 17 as an approval standard for zone changes outside of UGBs. MCC 17.123.060(C). However, the County's acknowledged rural code, MCC Chapter 17 to include MCC 17.123.060(C) only applies outside of UGBs. State law generally forbids publicly owned facilities or utilities being extended outside of UGBs – to the "rural" areas covered by the County's "rural" code. If this standard were interpreted to apply only to publicly *owned* or entire systems as opposed to allowing for a showing of adequate individual facilities of a single domestic well, or a septic system, or a single lot or parcel storm management facility by the time of the development authorized by the zone change, then there would be no point in the County code including a provision authorizing zone changes at all because, as a practical matter, no zone change could ever be approved in the areas of the County outside of UGBs. The Board finds that is not what the County intends by applying the standard as a basis for approval of zone changes.

The Board finds the evidence presented by the Applicant persuasive and credible that adequate public facilities of a single domestic water well, single septic system and single storm management system, transportation networks and public services are in place or planned to be

provided concurrently with the development of the property. Accordingly, the Board finds that this criterion is met.

C. The request shall be consistent with the purpose statement for the proposed zone.

The proposed zone is the County CG (Commercial General) zone. The County CG zone's purpose statement listed under MCC 16.07.000 states:

> *The purpose of the CG (commercial general) zone is to provide areas suitable for warehousing, wholesale commercial sales and services with related outdoor storage or retail sales. The commercial general zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan where the location has access to an arterial street or highway for transport of bulk materials and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones.*

The Board finds that the proposed CG zone is appropriate for the underlying Comprehensive Plan designation of Commercial. The Subject Property is in the "urban area" and is adjacent to Highway 99E, a highway. The Board finds that it is in an area suitable for warehousing or wholesale commercial sales and services because the property has access to Highway 99 and the impacts of the authorized uses in the proposed zone will not create significant adverse impacts on local streets or residential zones, because neither are near to the Subject Property. Moreover, the Board observes that the proposed zone with the LU Overlay only allows UT uses that are now authorized in the UT that are also authorized in the CG zone plus the additional use of a single type of specialty contractor (electrical contractor) and their associated warehousing the CG zone allows under MCC 16.07.010(A)(3). The proposed zone change is consistent with the purpose statement for the CG zone. This standard is met.

D. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

The Board finds that this standard has two elements. First, it applies when the proposed zone allows uses that are "more intensive" than uses allowed in other County Commercial zones. Second, when the standard applies, then the uses allowed by the proposed zone must not have a significant adverse effect on adjacent properties that are themselves zoned for less intensive uses. Each element of the standard is addressed separately below.

As explained below, the Board finds that the proposed zone change, as limited by the LU Overlay, will not allow uses that are more intensive than the uses allowed by other County commercial zones. In the alternative and as a precaution only, the Board also finds that even if the uses allowed by this zone change were more "intensive" than uses allowed by other County commercial zones, they do not "significantly adversely impact allowed uses on adjacent properties that are zoned for less intensive uses." Regarding the latter, the Board finds that there

are no adjacent properties that are zoned for less intensive uses than the uses allowed by this zone change.

1. **The proposed zone does not allow uses that are "more intensive" than uses allowed in other County Commercial zones that implement the Commercial Plan Designation.**

County commercial zones implement the Commercial plan designation that applies to the Subject Property. There are five such County commercial zones that implement the "Commercial" Plan designation that applies: Commercial Office, Commercial Retail, Highway Commercial, Industrial Commercial and the subject CG zone.

The proposed zone change to Commercial General (CG) with the LU Overlay will allow only a limited suite of uses to control impacts in response to concerns expressed by the City of Woodburn. Specifically, this zone change will only allow uses that are both allowed in the UT zone and the CG zone plus one new use type allowed in the CG zone of a single specialty contractor and associated warehousing – specifically a single electrical contractor and its associated warehousing. The Board finds that all are allowed by the CG zone and that specifically this single additional electrical contractor and associated warehousing use is allowed in the CG zone per MCC 16.07.010(A)(3). The uses allowed under this zone change are limited to the following under the LU Overlay that is also applied by this decision:

Uses permitted out right:

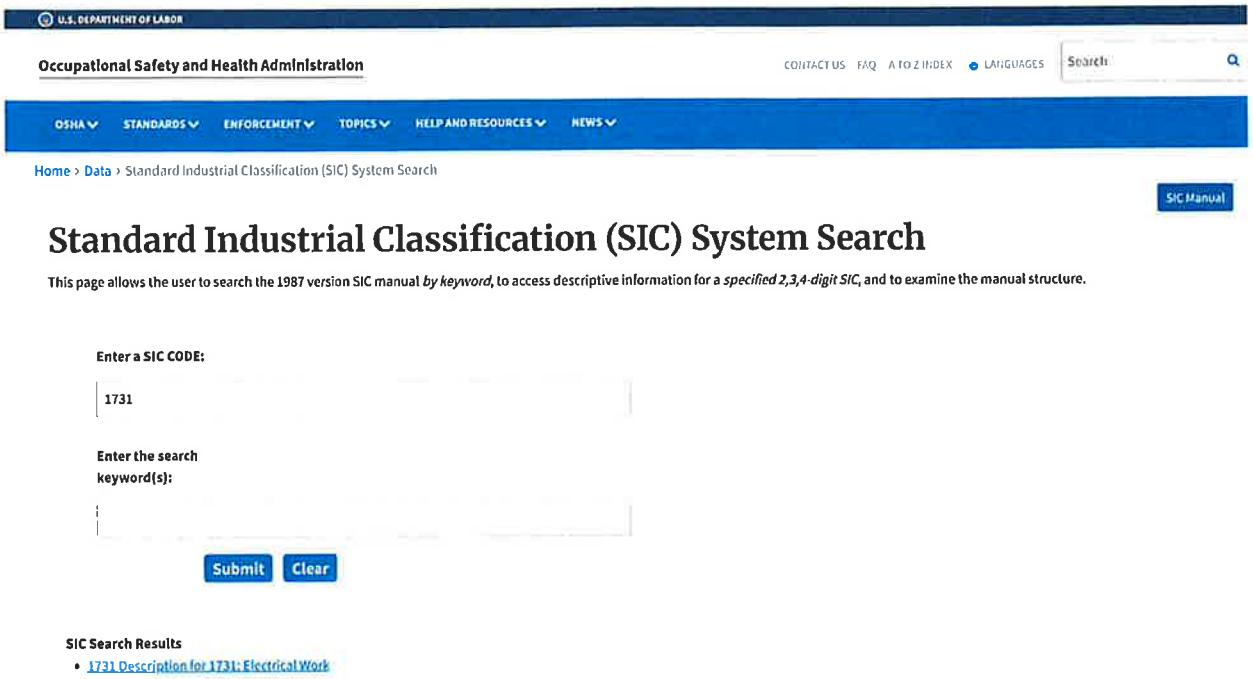
- SIC 1731, Electrical contractor business and associated warehousing
- MCC 16.25, Permitted Uses Generally
- MCC 16.31, Signs

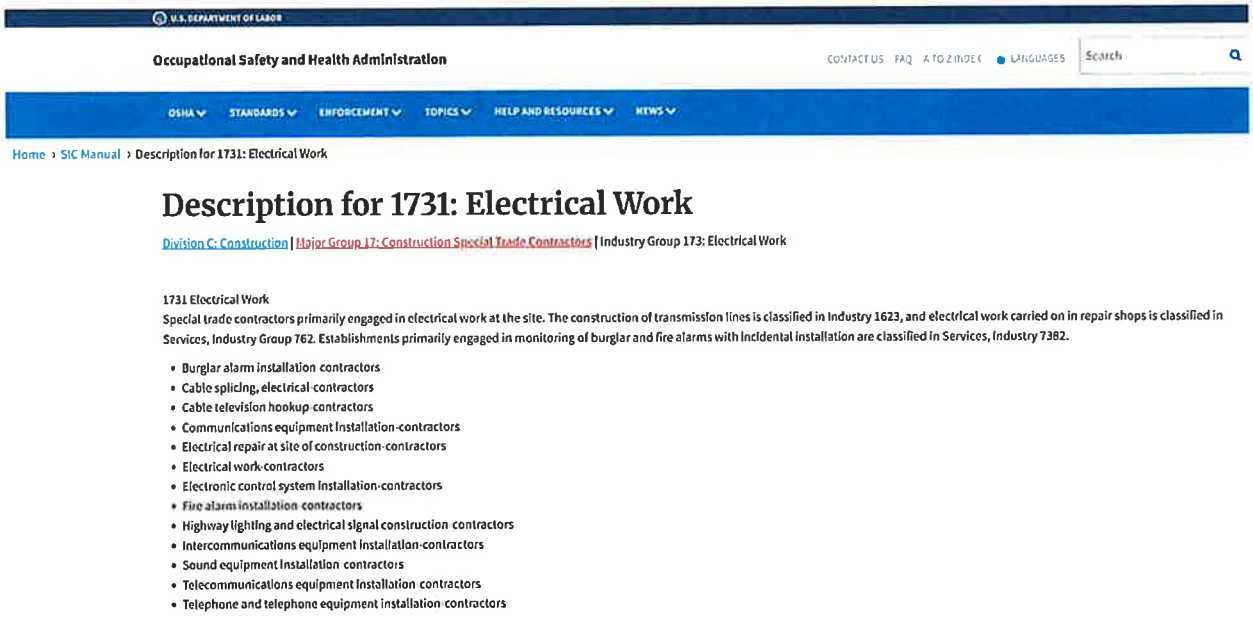
Uses permitted conditionally:

- One dwelling unit or lodging room in conjunction with a commercial use.
- Educational services, SIC 82.
- Social services, SIC 83.
- Amusement and recreation services, SIC 79.
- General government, not elsewhere classified, SIC 919.
- Fire protection, SIC 9224.
- Administration of economic programs, SIC 96.
- Public utilities* without outdoor truck parking or outdoor material storage.
- The following use is additionally subject to the special standards in Chapter 16.26 MCC: Religious organization and membership organization, SIC 86 (see MCC 16.26.600).

The one new allowed CG use of a single electrical contractor business with associated warehousing is within the SIC Classification of "17" authorized as a permitted use in MCC

16.07.010(A)(3). In this regard, MCC 16.49.246 establishes that "SIC" designation means the Standard Industrial Classification Manual published in 1987, as referenced in MCC 16.35.220. The relevant SIC Manual, published in 1987, is maintained by the Occupational Safety and Health Administration:





SIC Code 1731-01 Description (6-Digit)

Electric Contractors are companies that specialize in the installation, maintenance, and repair of electrical systems in residential, commercial, and industrial settings. They are responsible for ensuring that electrical systems are safe, functional, and up to code. Electric Contractors work with a variety of clients, including homeowners, businesses, and government agencies. They may work on new construction projects, remodels, or repairs.

Parent Code - Official US OSHA

1731 - Electrical Work

Official 4-digit SIC codes serve as the parent classification used for government registrations and OSHA documentation. The marketing-level 6-digit SIC codes extend these official classifications with refined segmentation for more precise targeting and detailed niche insights. Related industries are listed under the parent code, offering a broader view of the industry landscape. For further details on the official classification for this industry, please visit the OSHA SIC Code 1731 page

Tools

Wire strippers	Circuit tracers	Crimping tools
Pliers	Multimeters	Cable pullers
Screwdrivers	Power drills	Cable ties
Voltage testers	Hole saws	Label makers
Cable cutters	Reciprocating saws	Insulation testers
Conduit benders	Pipe threaders	
Fish tapes	Pipe cutters	

Industry Examples of Electric Contractors

Residential wiring	Solar panel installation	HVAC electrical work
Commercial lighting	Generator installation	Data center electrical systems
Industrial machinery installation	Security system wiring	
Electrical system maintenance	Fire alarm system installation	

MCC 16.35.220(A) recognizes that uses can be functionally described in the MCC or described with reference to their SIC code. The MCC 16.35.220(C) also recognizes that uses can be neither described in the SIC or the MCC, and, in that case, their "ordinarily accepted meaning" is what should be used to describe such uses. MCC 16.35.220(A) further provides that if the relevant use is defined in the MCC, then the MCC definition "takes precedence" over the relevant SIC classification. MCC 16.35.220(A) states that when an SIC code is attached to uses in the MCC then that is not definitive to describe the use but rather "is an aid to interpretation." Accordingly, per the latter, the Board finds that where a use is described in the SIC Code, that the SIC Code provides the interpretive scaffolding for the scope of the allowed use, but that the Board may interpret and apply limiting parameters for the use.

Here, the CG zone to be applied under this zone change describes the relevant use as "Construction contractor's offices and related outdoor storage, SIC 15, 16, 17." This use is not defined in MCC 16.49. Therefore, the SIC Code of 15, 16 and 17 applies an "aid to interpretation" of the scope of that use.

The SIC subset under SIC 17 that applies here is SIC 1731 to which the LU Overlay attaches to limit CG uses on the property. SIC Code 1731 is for "electrical work", which is an SIC

subcategory that falls under SIC Code "Division C Construction" and further falls under "Major Group 17: Construction Special Trade Contractors". The Board finds that the specific type of use allowed under SIC 17 per MCC 16.07.010(A)(3) and specifically SIC 1731 which the LU Overlay limits this allowed use category to for this zone change, is a single electrical contractor business and associated warehousing. Regarding the authorized associated warehousing, the Board finds that even though "associated warehousing" is not specifically identified as an allowed use under SIC Code, 15, 16 and 17, the Board interprets the allowed uses in MCC 16.07.010(A)(3) to include associated warehousing. The Board finds that warehousing associated with permitted and conditional uses is not listed as allowed at all in any of the CG zone, but that the CG zone expressly contemplates warehousing as a component of allowed uses. In this regard, the purpose of the CG zone begins by observing that the purpose of the CG "zone is to provide areas suitable for warehousing ***." The Board finds that "warehousing" is an implicit allowed use authorized as a part of the uses that MCC 16.07.010(A)(3) - "Construction contractor's offices and related outdoor storage, SIC 15, 16, 17,"- authorizes.

As noted, the LU Overlay is being applied to the Subject Property to limits the uses authorized by this zone change to uses allowed in the UT zone that are also allowed in the CG zone and a single electrical contractor with associated warehousing which is a use described in SIC Code 1731, all of which is designed to limit impacts in response to concerns expressed by the City of Woodburn.

Also, in response to concerns by the City of Woodburn, outdoor storage is prohibited for any use that is established under the proposed zone change. Other conditions are imposed on this zone change to respond to Woodburn's concerns.

The Board finds that the question under the first part of this standard is whether allowing the limited suite of CG authorized UT uses that are now allowed on the property and in the CG zone plus the newly permitted SIC 1731 use of a single electrical contractor business and associated warehousing allows uses that are "more intensive" than the uses allowed by other candidate County CG zones. The Board finds the proposed zone change does not allow uses that are "more intensive" than uses allowed in other candidate Commercial zones.

First, the Board interprets the terms "more intensive" used by this standard to refer to uses allowed in the proposed zone with LU Overlay having significantly greater impacts such as traffic and adverse visual impacts than the potential impacts associated with uses allowed by the other candidate commercial zones. While tautological, the Board finds that uses with the same impacts do not have greater impacts and would not be "more intensive." The Board finds that "more intensive" uses have noticeably more impacts than uses allowed in other candidate commercial zones. In this regard, Websters Online Dictionary defines the term "intensive" to mean: "of, relating to, or marked by intensity or intensification: such as (a): highly concentrated," and "tending to strengthen or increase." Websters defines the term "intense" as "existing in an extreme degree." Thus, the Board finds that the use comparison under this standard asks whether the uses in the proposed zone with the LU Overlay are noticeably more extreme in degree than uses that are allowed in other candidate Commercial zones.

At the outset, the Board notes that there is no dispute that the proposed zone is not "more intensive" than the Highway Commercial and Industrial Commercial zones. The Highway Commercial zone authorizes gas stations and automotive dealers among other uses that are clearly at least as intensive in terms of traffic, visual and other impacts, than the uses allowed by the proposed zone change with LU Overlay. By their nature, gas stations and automotive dealers are auto-oriented and rely upon frequent visits by members of the public for their business. Similarly, the Industrial Commercial zone authorizes "Building Materials, hardware, garden supply and mobile home dealers," "general merchandise stores" "food stores" and "automotive dealers" among others that are also clearly at least as intensive if not more intensive than the uses allowed by the proposed zone change with LU Overlay, in terms of traffic and visual impacts. The Board notes that the IC zone also allows "Construction contractor's offices and related outdoor storage, SIC 15, 16, and 17" per MCC 16.09.010(6), that are not limited as here and so would allow outdoor storage, which the proposed zone change prohibits. The City has argued that allowed CG uses with outdoor storage are particularly impactful to the City. Therefore, the Board finds that this facet of the IC zone – that it allows outdoor storage for specialty contractors – is "more intensive" than the uses allowed by the proposed zone with the LU Overlay. The Board finds that the proposed zone is not "more intensive" than the uses allowed in either of the HC or IC zones.

The Board finds that the Commercial Office, Commercial Retail zones allow the UT uses allowed by this zone change but that those zones do not allow an electrical contractor business and associated warehousing. The Board finds that the UT uses allowed by the proposed zone change are not "more intensive" than the uses allowed in the CO or CR zones.

The question then under this standard is whether this zone change allowing a single electrical contractor's business with associated warehousing is "more intensive" than the uses authorized by the CO and CR zones. The Board finds that it is not.

CR explicitly allows (outright) major use categories that are "more intensive" because they generate more traffic, longer operating hours, and customer turnover, including: Retail sales categories (building materials/hardware, general merchandise, food stores, apparel, furniture, miscellaneous retail); Eating and drinking places; Hotels and lodging; Entertainment / recreation uses (theaters, bowling, dance studios, etc.) The Board finds that the proposed zone is not "more intensive" than the uses allowed in the County's CR zone.

The CO zone is designed for "professional and general commercial offices, membership organizations, similar low intensity, nonretail commercial services and medium density residential accommodations." MCC 16.05.000. Uses the CO zone allows include "organization hotels and lodging houses on membership basis" (MCC 16.05.010(8)), and offices for a variety of professionals, all of which would have a greater number of daily trips, parking demand, and intensity of site use versus a single electrical contractor and associated warehousing. Further, the Board finds that per MCC 16.05.010(40) and MCC 16.25.200(H),[1] the CO zone allows all uses

[1] "Subject to the requirements in subsection (H)(2) of this section, uses permitted outright in certain zones are permitted as an accessory use in a more restrictive zone as follows:

allowed under MCC 16.25. MCC 16.25 in turn allows as accessory uses *all of the uses that are allowed in the CR zone* (MCC 16.06.010). Thus, in the CO zone, general merchandise stores, food stores, eating and drinking places, hotels, gas stations, automobile deals etc. are all allowed – so long as they are accessory to a MCC 16.05 use.

For example, there could be in the CO zone an automobile parking use plus an accessory café, or an international affairs center and associated accessory retail store and café, or a vocational school teaching automotive repair and associated accessory car sale lot with fueling positions, and so forth. The Board finds that the proposed zone is not "more intensive" than the County's CR and CO zones.

Moreover, the Board observes that each of the CO and CR zones allow "schools (CO zone - MCC 16.05.010(A)(2), (22) and MCC 16.06.010(A)26), (33)), which the Board finds Mr. Clemow's traffic analysis dated May 14, 2025, establishes have significantly greater traffic impacts than the uses allowed by the proposed zone change with the LU Overlay. Therefore, the traffic impacts of uses allowed in the CR and CO zones are significantly greater than the traffic impacts from a single electrical contractor and associated warehousing as described in Mr. Clemow's report. That alone makes the CO and CR zones "more intensive" than the proposed zone. Finally, the Board observes that any single electrical contractor and associated warehousing established on the property will be consistent with the site plan subjected by the Applicant per a condition imposed by this decision to respond to Woodburn's concerns and limit impacts.

The Board finds that the proposed zone with the LU Overlay is not "more intensive" than the other candidate commercial zones.

2. **Even if the proposed zone change does allow uses that are more intensive than uses in other possible commercial zones that implement the Commercial Plan designation, there are no adjacent zones zoned for less intensive uses and even if they were zoned for less intensive uses, the uses allowed by the proposed zone will not allow uses that will have a significant adverse affect on such adjacent properties that are zoned for less intensive uses.**

As explained above, the Board finds that the uses allowed by the proposed zone with the LU Overlay applied are not "more intensive" than the uses allowed in the candidate County

---

1.**** Uses permitted in MCC 16.06.010 of the CR zone, other than a medical marijuana dispensary*, are an accessory use in the CO zone. Uses permitted in MCC 16.07.010 of the CG zone are allowed as an accessory use in the CR zone. Uses permitted in MCC 16.11.010 of the IG zone are permitted as accessory uses in the IP zone.
2. Requirements.
a. The area occupied by accessory uses permitted in subsection (H)(1) of this section shall not exceed 40 percent of the area occupied by uses permitted outright or conditionally in the primary or overlay zones.
b. Any development requirements in Chapters 16.24 and 16.26 through 16.34 MCC shall be met for the accessory use as if it was a primary use.
c. The accessory use shall be located on the same lot as the primary use and any structures associated with the accessory use shall be owned or leased by the owner of the primary business.
d. The allowance of accessory uses in a more restrictive zone shall not be considered a basis for a zone change to a less restrictive zone.

commercial zones. Accordingly, the Board finds it is unnecessary to proceed to the second part of this standard concerning adverse impacts on adjacent properties in less intensive zones. Rather, the Board finds and reinforces that the second part of the standard is only triggered if the uses allowed by the proposed zone with the LU Overlay applied are "more intensive" than the uses allowed in the candidate County commercial zones. As explained above, the Board finds that the second part of this standard is not triggered and there is no need to address it.

However, as a precaution and without waiving the County's position that it is unnecessary to do so, the Board determines that the second part of the standard is also met, if it applies. In this regard, the Board interprets this standard to require that the proposed zone, with the LU Overlay applied, will not allow uses that will have a significant adverse effect on the current uses of adjacent properties that are zoned for less intensive uses. As discussed below, the proposal does not allow uses that will have a significant adverse effect on adjacent properties that are zoned for less intensive uses.

First, none of the adjacent properties are zoned for less intensive uses. All of the surrounding properties are zoned UT except for one zoned Public and one zoned EFU. The "allowed" uses on the "adjacent properties" include, for the UT zone, the full list of UT permitted and conditional uses; for the Public zone, the full list of permitted and conditional uses; and for the EFU zone, the full list of permitted and conditional uses.

The Board finds that the Public zone allows more intensive use than the uses allowed by this zone change. The Public zone allows "terminal and service facilities for motor vehicle transportation." This use describes places where people are picked up and dropped off or transferred for paid passenger travel by road vehicles plus support staff and can include passenger terminal functions: waiting areas, ticketing/check-in, customer service counter, luggage handling, platforms/bays, vehicle operations: bus/shuttle/van staging areas, layover space, dispatch/operations office, as well as service/maintenance support: fueling/charging, washing, light maintenance/inspection, driver break room, storage, parts/equipment. The Board finds that such uses are at least as intensive if not more intensive than the uses allowed by the proposed zone change. Thus, the Board finds that the proposed zone does not authorize uses that are "more intensive" than zones that apply to adjacent properties.

The UT zoned properties allow uses that allow the same traffic impacts as the majority of the uses allowed by this zone change which are predominately UT allowed uses that are also allowed in the CG zone. It is axiomatic that the same uses cannot be "more intensive" than another of the same use. Further, the undisputed evidence in the record demonstrates that many CG uses that will continue to be allowed under this zone change have far greater traffic impacts than the single electrical contractor business with associated warehousing that is allowed by the proposed zone. Specifically, the Board finds that the proposed zone will allow "Educational Services" which includes public and private schools. As the evidence below demonstrates, the Board finds that allowed educational use on the surrounding properties zoned UT demonstrates that the UT zone allowed uses here in the new CG zone as limited by the LU Overlay, are as intensive in terms of traffic impacts and the proposed zone and in particular the Board notes that UT zone uses are more

intensive than the traffic impacts of the one new allowed use of a single electrical contractor with associated warehousing:

TL#1 – TABLE 1 – DEVELOPMENT TRIP GENERATION[1]									
Development	ITE Code	Size	Daily Trips	AM Peak Hour			PM Peak Hour		
				Enter	Exit	Total	Enter	Exit	Total
Current Marion County UT-5 Zone – Conditional Uses									
Private School (K-8)	530	200 Students	822	113	89	202	24	28	52
— OR —									
Day Care Center	565	50 Students	205	21	18	39	19	21	40
— OR —									
Library	590	10,000 SF	721	7	3	10	39	43	82
Proposed Marion County CG Zone – Specific Development									
Specialty Trade Contractor	180	5,000 SF	49	6	2	8	3	7	10
Warehousing	150	32,500 SF	56	4	2	6	2	4	6
Total Proposed Development			**105**	**10**	**4**	**14**	**5**	**11**	**16**

[1] Trip generation estimated using the *Average Rate* per recommended practice in the ITE *Trip Generation Handbook*, 3rd Edition.

As noted here and elsewhere this zone change as conditioned will only allow the property to be developed with UT zone uses now allowed on the property (that are also allowed in the CG zone) and a single additional allowed use of one electrical contractor with associated warehousing so long as it is established on the property substantially in conformity with the Applicant's submitted site plan.[2] The Board agrees with the Applicant that as conditioned, the impacts of the proposed zone change are modest, do not have significantly greater impacts such as traffic and adverse visual impacts than the potential impacts associated with uses allowed in the UT zone. Put another way, the Board finds that the proposed zone will not have noticeably more impacts in any extreme degree than uses allowed in the UT zone. Therefore, the Board finds that the allowed uses under the proposed zone change are not "more intensive" than the allowed uses in the UT zone that applies to adjacent properties.

The remaining adjacent zone is the EFU zone. The Board finds that the EFU zone allows uses that are "more intensive" than the uses allowed by the proposed zone change and so, put in reverse, the proposed zone does not allow uses that are more intensive than the EFU zone. The EFU zone allows multiple agritourism events under MCC 17.136.040(9); a winery (MCC 17.136.040(B)), cider business or farm brewery (MCC 17.136.040(P) and (Q)); as well as "public and private schools" (MCC 17.136.040(D) – except that the design capacity of school buildings must be for 100 people or less; a slaughterhouse (MCC 17.136.040(F)); landscape contracting business (MCC 17.136.040(D)(6)); and "commercial activity in conjunction with farm use" MCC 17.136.060(D). The Board finds that each of these uses are at least as intensive as the uses allowed

[2] As the Applicant explained, the site plan was submitted to respond to City of Woodburn concerns about the one new allowed CG use to demonstrate and limit its impacts.

by the proposed zone change – as limited by the LU overlay. In particular, the Board finds the following:

- Commercial activities in conjunction with farm use are allowed in the EFU zone and can be intensive and involve significant traffic. *See Friends of Yamhill County v. Yamhill County*, 255 Or App 636 (2013).
- As demonstrated in Mr. Clemow's traffic report submitted with the application, dated February 14, 2025, a 12,000 sq ft "nursery/garden center" generates significantly more traffic trips than uses allowed in the proposed zone. The Board finds that a "nursery garden center" can be a type of "landscape contracting business" that is allowed in the EFU zone if selling products produced on the farm – as is occurring on the nursey that is across Highway 99 from the Subject Property.
- The Board finds that even with a 100 person design limit on public or private schools, the EFU authorization of the use of public and private schools is at least as intensive as the uses allowed by the proposed zone change. Put another way, both the proposed zone and the EFU zone allow the use of the property with a school with a total 100 person design limit. The Board finds that cutting in half the traffic trips outlined in Mr. Clemow's report to account for a 100 person building design limit, the EFU zone authorization of "public and private schools" authorizes a use which is at least as intensive if not more so than the uses allowed in the proposed zone. In particular, the Board observes that Mr. Clemow's report establishes that a 200-student private school generates significantly more traffic than a single electrical contractor with associated warehousing. The Board finds that even cutting the student load in half, based upon Mr. Clemow's analyses, which the Board finds credible and persuasive, a private school will still generate significantly greater trips than the one new allowed electrical contractor use authorized for the proposed zone.

The Board finds that the proposed zone does not allow uses that are "more intensive" than uses that are allowed in the zones applied to adjacent properties. The Board finds that as compared to uses allowed in the EFU zone, the proposed zone does not allow uses will have noticeably more impacts in any extreme degree than uses allowed in the EFU zone. Put another way, the Board agrees with the Applicant that as conditioned, the impacts of the proposed zone change are modest, and do not have significantly greater impacts such as traffic and adverse visual impacts than the potential impacts associated with uses allowed in the EFU zone.

However, the Board also finds in the alternative, that even if the uses in the proposed zone are more intensive than uses allowed in the zones on adjacent properties, that the uses allowed by the proposed zone change will not have a "significant adverse affect" on the uses that are now occurring on those properties, in those zones.

To begin with, the Board finds that Websters Dictionary defines the term "significant" to mean "having meaning", "full of import" having or likely to have influence or effect: important" and "large enough to be noticed or to have effect." The Board interprets the term "significant adverse effect" here to refer to an adverse effect that is large enough to be noticed and important to the occupants of adjacent property.

The Board additionally interprets this standard to look only at impacts from uses allowed under the proposed zone change on uses that are now being made of adjacent property.

The Board further interprets this standard to mean that uses that are now allowed as permitted or conditional uses in the existing UT zone, cannot "significantly adversely affect" allowed uses on adjacent properties under this standard – regardless of whether those adjacent properties are zoned for less intensive uses. This is because the UT zone that now applies to the property already allows uses with impacts and potential impacts that adjacent properties can or do experience under the current UT zoning. Those UT zone use impacts are unchanged under the proposal – except that the proposed zone with the LU Overlay allows fewer UT uses than are now allowed on the subject property because the proposed zone change limits the allowed UT zone uses to those that are allowed also in the CG zone. Accordingly, the Board finds that the only use that the Board must consider under this second prong of the standard, is the new allowed CG use of a single specialty trade contractor – specifically a single electrical contractor under SIC Code 1731 - and associated warehousing allowed under MCC 16.07.010(A)(3), as that use is conditioned to be established in this decision.

The transportation impacts of the single new electrical contractor use that this zone change will allow are described in the Applicant's transportation reports dated February 14, 2025, and May 14, 2025, prepared by Mr. Clemow. The Board finds the traffic impacts described by Mr. Clemow to be credible and correct including in the analyses for the one new CG use that this zone change will allow. The Board finds that the transportation impacts of that one newly allowed use are modest and will not cause any "significant adverse impact" on the uses now being made on adjacent properties. In this regard, to further limit the impacts of the zone change, the Board imposes a condition of approval that any electrical contractor and associated warehousing developed on the site be substantially in conformity with the Applicant's submitted site plan upon which Mr. Clemow's transportation analysis was framed and that there be no outdoor storage.

Uses on adjacent properties include a wrecking yard (auto wrecking and recycling). The evidence in the record demonstrates that such uses have significant traffic and visual impacts and the Board finds that the uses allowed in the proposed zone will not have a significant adverse impact on the uses being made of adjacent properties. The Board further observes that no one argued that the uses on adjacent properties would experience significant adverse impacts under the proposed zone change. Adjacent properties also include a cemetery on the Public zoned property. That cemetery now coexists with the wrecking yard with no known issues. The Board finds that the impacts of the one new use allowed by this zone change – as it is conditioned by this decision - will not cause any significant adverse impacts to the cemetery use of the adjacent property zoned Public. Finally, the Board finds that the remaining property to be evaluated in the EFU zoned property across Highway 99 from the subject property that is a commercial nursery. That use is located on Highway 99. It is also adjacent to the wrecking yard and contractor yard described above. As conditioned, the Board finds that the use made of that property will not have any significant adverse impacts from the one new use that is allowed by this zone change, as conditioned.

For the above reasons, the Board finds that the one new allowed single electrical contractor shop and associated warehousing as conditioned by this decision will not have a significant adverse impact on uses on adjacent properties. Accordingly, the Board finds that this standard is met.

Limited Use Overlay Zone

3. MCC 16.22.010 explains the purpose of the limit use overlay zone:

> *The purpose of the 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 that 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 or to limit, modify or restrict a specific permitted or conditional use. It is the intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.***

MCC 16.22.010 establishes that the purpose of the LU zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for the site. The City of Woodburn has expressed numerous suitability concerns. The LU zone is applied to significantly reduce the list of allowed uses to respond to the City's concerns.

MCC 16.22.010 requires that, if possible, zone changes are to be approved using the LU zone as mechanism to resolve conflicts.

The Board interprets MCC 16.22.010 as appropriate to apply here. As noted, the City of Woodburn objects to the potential uses that could be authorized by the proposed zone change. The Applicant offered to limit the potential uses of the subject property to "identify the appropriate uses" and to "delete objectionable permitted or conditional uses from the zone" as well as "to limit, modify or restrict a specific permitted or conditional use." The City was concerned that uses requiring City services could be established if the CG zone is applied and also argued that CG uses could be established that had particular impacts that the City finds objectionable like outdoor storage. The Board finds that the application of the LU overlay resolves the identified concerns.

Thus, per the purpose of the LU Overlay, the Board finds that rather than deny the requested zone change, the County may implement a limited use overlay to limit allowable uses in the proposed CG zone. In this regard, the applicant has specifically requested that the only new CG use to be allowed is SIC 1731, electrical contractor business and associated warehousing. The applicant also requested to include the uses permitted in the UT zone that are also allowed by the CG zone. The Board observes that not all permitted or conditional uses in the UT zone are permitted or conditional uses in the CG zone. All of those UT zone uses that are allowed in the CG zone are listed in Exhibit B under condition J which outlines the uses permitted on the subject parcel under the Limited Use Overlay Commercial General zone established by this approval. In summary, the

limited use overlay will restrict the proposed CG zone to only those uses which are currently outright permitted, or which could potentially be permitted as conditional uses under the UT zone and also are allowable in the CG zone, as well as a single electrical contractor business and associated warehousing. The only new use of the subject parcel that would be permitted by the proposed zone will therefore be the single electrical contractor business and associated warehousing.

The County policy on zone changes is to utilize a limited use overlay rather than deny an application whenever possible. The Board of Commissioners determines that this application presents a situation where a limited use overlay is appropriate. Therefore, the Board finds that this criterion is met.

16.22.030 Procedures and criteria for limited use overlay

The limited use overlay zone is applied at the time the underlying zone is being changed or by legislative action by the Marion County board of commissioners. 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;

The Board finds that the proposed zone is proper for implementation of the underlying comprehensive plan designation of Commercial. The proposed CG zone is the most restrictive Commercial zone which permits all of the authorized uses to include SIC 1731. The criterion is met.

B. The proposed zone is the best suited to accommodate the desired uses;

The desired uses are an electrical contractor's business and associated warehousing, and a reasonable suite of UT uses. The Board finds the proposed zone is the best suited to accommodate the desired uses.

The purpose of the CG zone is established in the Marion County Urban Land Development Code at 16.07 and establishes that the zone is "appropriate in those areas designated commercial *** where the location has access to an arterial street and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones." The Board finds that describes the Subject Property. The Board also notes that the Subject Property is designated commercial. The CG zone allows an electrical contractor business and associated warehousing as a permitted use and also allows a reasonable number of UT zone uses. Other candidate commercial zones do not allow an electrical contractor business and associated warehousing as a permitted use (CO, CR and HC). The Industrial Commercial zone is poorly suited for the "desired uses" because it is only appropriate for "areas designated industrial" in the comprehensive plan. The subject Property is designated Commercial and not Industrial. The property is located on Highway 99, a highway. The criterion is met.

C. It is necessary to limit the permitted or conditional uses in the proposed zone; and

The subject parcel must rely upon onsite individual domestic water service, a septic system and individual property private storm water management because it is too far away from City of Woodburn infrastructure. This is a significant limiter on the uses that could be made of the property

that are otherwise allowed in the CG zone. The Board finds that continuing to allow some of the UT zone uses on the site plus the addition of a single electrical contractor shop and associated warehousing can appropriately function on a private well, septic system and storm water management system. Therefore, the Board finds that it is necessary to limit the CG zone with a limited use overlay. The Board finds that the criterion is met.

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.*

The proposed zone change retains all of the UT zone uses that are also allowed by the CG zone and authorizes the use of a single electrical contractor shop and associated warehousing. That is the maximum number of acceptable allowed uses under the proposed zone change. In this regard, the lens of acceptability is both the Applicant's lens and the City of Woodburn's lens. The applicant has stated that this suite of allowed uses is acceptable to them. This zone change also responds with the maximum number of allowed uses that can respond to the acceptability issues that the City of Woodburn has raised. All of the allowed uses that are permitted and conditionally allowed by this zone change are listed in Exhibit B conditions, as required. The Board finds this standard is met.

City of Woodburn/Marion County Urban Growth Coordination Agreement ("UGCA")

The Subject Property is situated within the Urban Growth Boundary of the City of Woodburn. The City and County are parties to an intergovernmental agreement called the UGCA. The UGCA specifies coordination processes between the city and County on certain land use matters. The City initially argued that the terms of the UGCA have been adopted into the County's Comprehensive Plan and are an approval standard for this zone change application, although the City later walked back this position at the appeal hearing. The Board finds that the UGCA has not been incorporated into the County plan or zoning ordinance as would be necessary for it to serve as an approval standard for individual land use applications, including this one. The Board finds that the UCGA is not listed in the MCC as a standard for zone changes. The Board finds that the UCGA does not create any land use requirements that apply to the applicant for this zone change application. All County-City coordination provisions in the UCGA have been met.

Importantly, when the City of Woodburn was asked during the appeal hearing if it was the City's position that the County does not have the authority to change the UT zone in land that the County is the land use authority of, the City testified that was not the City's position. The City testified it was not saying that the UCGA effectively allows the City to veto County land use decisions within the UGB, which the City acknowledged would be an "absurd" position. The City reiterated these concessions multiple times and fell back to arguing that the development was not a good fit for the area. The City's concessions at the hearing effectively waived prior arguments, resolved the core legal issues of the application, and limited the City's objections to a policy disagreement that the City acknowledged the County had authority to decide. The Board's

decision is consistent with what the City recognized to be the relevant legal standards at the hearing. Since the City withdrew most of its arguments about the UGCA, the following analysis is precautionary only.

The intent of the UGCA was to assist Woodburn with obtaining approval for its remanded UGB and not to independently set out any additional criteria for land use applications. Both the UCGA and a City ordinance with new land use criteria were adopted at the same time. If the UCGA independently created new land use criteria for applicants, then the City ordinance would not have been needed.

The City mistakenly argues that the UCGA was adopted as a land use ordinance by the County as a part of its Comprehensive Plan on December 14, 2015, in a joint city/County legislative hearing. Specifically, the city takes the position that: "the City and County concurrently adopted modifications to their respective Comprehensive Plans" at that meeting. The City is mistaken. The City points to meeting minutes and a *City* ordinance – *City* Ordinance 2530. However, at that meeting the County approved entering into the UGCA, but did not enter into it at that meeting and the County did not adopt or amend any land use regulation or comprehensive plan provision to include the County and did not adopt the UGCA as a part of the County's comprehensive plan.[3] The December 14, 2015 minutes and attachments the City discusses, do show that the City adopted certain documents concerning a court of appeals remand of LCDC's approval of additions to Woodburn's UGB. However, with respect to Marion County, the record does not demonstrate the same. Those minutes discuss "Marion County Ordinance Consideration" and that Marion County "read the Ordinance by title only twice" and that reading was "seconded" and that "Ordinance" "passed unanimously" by "emergency procedure." The record does not shed much light on what "Ordinance" those minutes referred to. However, to the extent the Ordinance was City Council Bill 2922 and City Ordinance 2530, the Board finds that City ordinance was not adopted by the County as a land use ordinance then or later. There are several reasons why this is so.

First and foremost, Ordinance 2530 was by its terms a City ordinance not a County ordinance or County code amendment:

[3]The County entered into the UCGA later on December 23, 2015. The Board finds that the County did not then or later adopt any post acknowledgment plan or land use regulation amendments respecting the UCGA or apply post acknowledgment procedures necessary to do so to make the UCGA a part of the County Comprehensive Plan or its provisions a standard or criteria applicable to local land use applications.

COUNCIL BILL NO. 2992

ORDINANCE NO. 2530

AN ORDINANCE RESPONDING TO A LCDC REMAND ORDER BY ADOPTING AN URBAN GROWTH BOUNDARY; AMENDING THE WOODBURN COMPREHENSIVE PLAN AND URBAN GROWTH COORDINATION AGREEMENT TO DESIGNATE AN URBAN RESERVE AREA AND CREATE TWO 20-YEAR UGB EXPANSION LIMITATIONS; MAKING LEGISLATIVE FINDINGS TO EXPLAIN THE CITY COUNCIL'S ACTION ON REMAND; AND DECLARING AN EMERGENCY

"*****

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. In response to the Remand Order, the UGB is amended as provided in Exhibit 1.

Section 2. In response to the Remand Order, the Woodburn Comprehensive Plan is amended as provided in Exhibit 2 to designate an Urban Reserve Area and two 20-year UGB Expansion Limitations.

Section 3. In response to the Remand Order, a modification of the City of Woodburn/Marion County Urban Growth Coordination Agreement (Exhibit 3) is authorized, which will include establishment of an Urban Reserve Area and two 20-year UGB Expansion Limitations.

Section 4. The actions taken in Sections 1 through 3 are in response to the Remand Order and are taken after reconsideration by the City Council of the facts and evidence in the existing record.

Section 5. The actions taken in Section 1 through 3 are explained and justified by the Legislative Findings on Remand, which are attached hereto as Exhibit 4 and incorporated herein.

Section 6. Section 2 of Ordinance 2391 (2005), which adopts a Comprehensive Plan Map and UGB boundary that is inconsistent with this Ordinance, is repealed.

Section 7. This Ordinance being necessary for the immediate preservation of the public peace, health and safety (because of the need for a timely response to the Remand Order) an emergency is declared to exist and this Ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Approved as to form: _____ 12/9/2015
City Attorney Date

Approved: _____
Kathryn Figley, Mayor

Passed by the Council December 14, 2015

Submitted to the Mayor December 14, 2015

Approved by the Mayor December 14, 2015

Filed in the Office of the Recorder December 14, 2015

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

Second, under ORS 203.045 and Marion County Code 1.10.020, ordinances of the County must be adopted following certain requisites, which did not occur here with respect to City Ordinance 2530. ORS 203.045(2) states that an "ordinating clause of an ordinance" adopted by the governing body shall be "The [Marion County Board of Commissioners] ordains as follows." The same is required in Marion County Code 1.10.020(A). City Ordinance 2530 has no Marion County "ordaining clause." Respectfully, there is nothing in the record to demonstrate that the County adopted City Ordinance 2530 or ever made the UGCA an approval standard for zone changes approved by the County.

The fact that the County ultimately entered into the UGCA does not mean that the UGCA is a part of the County plan or is a standard that can be applied to land use applications like the applicant's requested zone change. In this regard, LUBA has held that intergovernmental agreements like the UGCA do not automatically become a part of the County plan. *City of Albany v. Linn County*, 81 Or LUBA 104 (2020). The Board observes that LUBA has also held that even if an intergovernmental agreement like the UGCA calls for a County to incorporate it

into the County Plan, if the County does not do so, it is not a part of the County plan and is not an approval standard. *Nez Perce v. Wallowa Co.*, 47 Or LUBA 419 (2004).

By its own terms, the UGCA is not self-executing as a creation of land use approval criteria. The UGCA does set notice requirements, all of which have been followed here, and goals for coordination on changing approval criteria. However, those goals are not binding on their own without further adoption into County regulations.

To have the force of law and be added to the County Comprehensive Plan (*i.e.* to amend the County plan to add it to the plan), requires County legislative action.[4] In this regard ORS 203.035 states that "the governing body of a county may by *ordinance* exercise *authority* within the county ***". Amending the County plan is an exercise of County legislative authority. This principle is reinforced by Marion County Code 1.10.010 which states a "legislative ordinance" is how the County exercises its authority over matters of County concern per ORS 203.035 and identifies a separate type of Ordinance – an "administrative ordinance" for exercises of County authority in quasi-judicial matters.[5] Legislative actions can take many types, but the Board finds that legislative actions that change County laws, including amending the County Plan, requires the adoption of a County ordinance. With respect to amending the County Comprehensive Plan to add the UGCA, there is no evidence in the record that this happened.

The fact that legislative action is necessary to adopt or make changes to a County Comprehensive Plan or land use regulations is settled beginning with *Baker v. City of Milwaukie*, 271 Or 500, 513-14 (1975), which held that "comprehensive plans are legislative and permanent in nature." Here, as noted, there is no evidence in the record of a Marion County ordinance adopting the UGCA as a part of the County plan.

Further, the Board observes that state statutes and administrative rules govern amendments to County Plans or land use regulations. In this regard, ORS 197.610–.615 establishes the required procedures for post-acknowledgement plan and zoning ordinance amendments to take an action like to amend the County plan to add the UGCA to the County plan or to make its terms a land use standard or criteria applicable to zone changes. Similarly, OAR 660-018-005 through 150 governs the specific processes for post-acknowledgment plan amendments. The Board finds that

---

[4] The reason for the required formalities to exercise County authority is not trifling – this is how the citizens are ensured of notice of new County laws and the chance to provide comment to the governing body concerning any such new laws.

[5] Amending the County Comprehensive Plan to add the UGCA invokes legislative authority (not quasi-judicial authority), and requires an ordinance to do so. Amending the County plan to add the UGCA and also to amend the County code to make the UGCA an approval standard for zone changes, requires the exercise of legislative authority as outlined by the Oregon Supreme Court in *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm*, 287 Or. 591, 602, 601 P.2d 769 (1979) (whether a particular action is legislative versus quasi-judicial is determined by evaluating the processes for which a decision is made: must the process result in a decision? Must the process apply preexisting criteria applied to concrete facts and does the outcome affect only to a closely circumscribed factual situation or a small number of people?) Where the answers to the *Strawberry Hill 4 Wheelers* inquiry are "yes" the action is quasi-judicial in nature and in Marion County if the action seeks to wield County authority, it would require an "administrative ordinance." However, exercising the County's police power to create obligations on a land use applicant to require that they demonstrate compliance with approval standards, requires that those approval standards be adopted by the County by an ordinance under Post-Acknowledgement procedures required by state law.

there is no evidence in the record of any post acknowledgement amendment process under these statutes and rules ever occurring to make the UGCA a part of the County plan or a requirement for zone changes.

ORS 197.175(2) further provides that local governments must:

(a) Prepare, adopt, amend, and revise comprehensive plans in compliance with statewide planning goals;
(b) Enact land use regulations to implement their comprehensive plans;
(c) Make land use decisions in compliance with either the goals or acknowledged plans, depending on the status of acknowledgment.

Adopting an agreement, standing alone, does not comply with ORS 197.175(2) to create requirements for individual land use applications.

Together, all of these laws demonstrate that an intergovernmental agreement standing alone is more in the nature of a contract and is not a land use regulation. While both intergovernmental agreements and land use regulations may be adopted through legislative action, the procedures for their adoption as explained above and below and legal consequences differ significantly. For example (by no means exclusive):

- IGAs under ORS chapter 190 do not require public notice, evidentiary hearings, or opportunity for appeal.
- Land use regulations, by contrast, must follow strict procedural requirements, including:
    - Submission of the full proposed text to DLCD prior to adoption (*OAR 660-018-0020(2)-(3)*);[6]
    - A public evidentiary hearing before the local decision-maker (*ORS 197.610*);
    - Notice to affected parties and the Department of Land Conservation and Development (DLCD) (*OAR 660-018-0050*);
    - Public participation as required by Statewide Planning Goal 2 (*OAR 660-015-0000(2)*);
    - Submission of the full final text to DLCD after to adoption (*OAR 660-018-0040(3)*); and

[6] "Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless [an emergency exception applies], the local government shall submit the proposed change to" DLCD, OAR 660-018-0020(1), including "[t]he text of the proposed change to the comprehensive plan or land use regulation implementing the plan, as provided in section (3) of this rule[.]" OAR 660-018-0020(2)(a). "The proposed text submitted to comply with subsection (2)(a) of this rule must include all of the proposed wording to be added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal or its purpose, by itself, is not sufficient." OAR 660-018-0020(3).

- Opportunity to appeal (*ORS 197.620*), among others.

When two or more local governments are required by coordination agreements to adopt mutually agreed changes to comprehensive plans or land use regulations, all of the above procedural requirements apply. Moreover, once plan and land use regulation amendments are adopted, the local government must provide DLCD with a copy of the final amendment decision and the amended text of the comprehensive plan or regulation. OAR 660-018-0040(3).

Respectfully, the Board finds that the County's Comprehensive Plan was never amended to add the UGCA and that the UGCA does not, by itself, impose land use standards for individual land use applications. To either add it to the County plan or to convert its provisions to land use standards that apply to individual quasi-judicial land use applicants in the County, the County must do so to include to enact the desired standards, through post acknowledgement amendment procedures for adopting or amending comprehensive plans or implementing regulations. Without this step, the UGCA remains a coordination framework, not a land use regulation.

The Board also observes that ORS 215.427(3)(a) locks in the standards and criteria that can be applied to a zone change to those that were in effect at the time that the application was first submitted. Here, the application was submitted at a time when the UGCA had not been adopted as a part of the County Plan or made relevant under any County land use regulation. Therefore, the UGCA cannot be a standard or criteria for this proposed zone change under ORS 215.427(3)(a). Instead, the Board finds that the standards and criteria for this zone change are as set forth MCC 16.39.000, 010, 020 and 030. A zone change in the UGB is expressly allowed by the County's acknowledged land use regulations. The Board observes that initially the City essentially argued that any zone change in the UGB where services have not been provided was prohibited, but respectfully that argument is not supported in law and without significantly changing the County's acknowledged rules for zone changes, the County cannot adopt the City's initial view. The City itself walked back that position at the appeal hearing. Under the County's code, a zone change is to be approved if it meets County zone change standards, as the proposal does.

Additionally, the County notes that even if the County had adopted Ordinance 2530 as a part of the County plan and had applied post acknowledgement procedures, the Board finds that City Ordinance 2530 does not have the effect of making the UGCA a part of the County plan or its provisions an approval standard for this application regardless.

City Ordinance 2530 amended the City of Woodburn UGB to add land to that UGB -land that is not near the subject property. City Ordinance 2530 added urban reserves but here there is no issue concerning and no dispute about urban reserves. City Ordinance 2530 "authorized" "a modification to the City of Woodburn/Marion County Urban Growth Coordination Agreement" to show the UGB amendment and urban reserves. That authority and any modification of the UGCA is not in dispute. City Ordinance 2530 is "in response to the [LCDC] Remand Order and are taken after reconsideration by the *City Council* of the facts and evidence in the existing record." This statement that the ordinance is a *city* response to an order, is undisputed. City Ordinance 2530 does not say that the UGCA (1) was adopted by the County into its

Comprehensive Plan, or (2) that it or any of its provisions was adopted by the County as an approval standard for zone changes.

The UGCA can only create approval criteria if it is incorporated through Marion County's Comprehensive Plan, which is one thing the City argues. However, the County has authority to interpret its own plan and has interpreted it as promoting agreements like the UGCA but not mandating that they be followed as approval criteria in specific land use applications.

Marion County Comprehensive Plan, Section II (Goals and Policies: Urbanization: Urban Area Planning) states: "The County and each of the cities have adopted intergovernmental agreements in the form of urban growth boundary and policy agreements or urban growth boundary coordination agreements for establishment of the urban growth boundaries, to address coordination requirements regarding Plan amendments and changes to the boundaries, and for identification of areas of special mutual concern." This section makes clear that County-City intergovernmental agreements govern how plan amendments are made and do not set out independent criteria for individual land use applications.

The Board finds that this provision means what it says- that intergovernmental agreements between a county and a city address coordination regarding Plan amendments and changes to UGBs and for the identification of areas of special mutual concern. The proposal involves none of those. There is no plan amendment at issue here, no changes to any UGB are at issue here and no area of special concern is at issue. The Board expressly finds that the Subject Property is not in any area of special concern. The Board finds that this proceeding concerns a zone change. The Board finds that the city's cited County Plan provisions do not make the UGCA (1) a part of the County Plan, or (2) an approval standard for this zone change.

Marion County Comprehensive Plan, Section II (Goals and Policies: Urbanization: Urban Area Planning) states: "Each urban growth program should consist of an urban growth boundary, urban development policies or ordinances to achieve the desired purpose, and joint city-County agreements to coordinate land use planning activities." The Board finds that this provision contemplates that agreements like the UGCA related to coordination are different from "urban development policies or ordinances to achieve the desired purpose." In other words, the Board finds that this provision reinforces that the UGCA is different than land use standards.

The City argues that numerous provisions in the UGCA concerning "development" must be applied as approval standards to this zone change. The County respectfully disagrees. The proposal at issue here is a zone change; it is not the approval of any "development." The UGCA sets out goals for coordination on establishing and changing UGBs, changing plan designations, notice provisions, rights of comment, provisions regarding urban reserves and establishes an area of mutual concern that does not include the subject property. The Board observes that nothing in the UGCA purports to establish approval standards for zone changes. The Board notes that it could not serve in such role because the UGCA itself (1) specifies that it may be reviewed "every year," assumedly for the purpose of revising it, and (2) either the city or County may end the agreement with 30 days' notice. The Board observes that these provisions are inconsistent with the UGCA serving as a standard for zone changes at all because it is inconsistent with the required post

acknowledgement plan and land use regulation amendment processes applicable to land use regulations.

The Board finds persuasive the credible evidence that Legal Counsel who worked on the UGCA in 2015, as well as a current County Commissioner who approved the UGCA in 2015, both recalled the intent of the UGCA was to assist Woodburn with obtaining approval for its remanded UGB and not to establish approval criteria for County zone change applications. The Board further observes that these recollections are supported by the fact that both the UGCA and a city ordinance with new land use criteria that binds the City of Woodburn were adopted at the same time. If the UGCA independently created new criteria, then the City ordinance creating City land use standards would have been unnecessary.

In the alternative and without waiver of the County's position that the UGCA was never adopted as a part of the County Comprehensive Plan and none of its provisions were ever adopted as an applicable standard for zone changes, the County finds that this application is consistent with the UGCA as follows:

- The County has authority to interpret its own land use regulations, which would include the UGCA if it is a land use criteria.
- Page 2, Whereas clauses, the County determines that "whereas" clauses are not binding standards or the operative provisions of the UGCA. This is consistent with normal contract interpretation. The County also interprets the "whereas" clauses of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.
- RE: Section I "Coordination Policies and Procedures," by its terms this section deals with how the City and County will coordinate certain land use matters. Coordination does not suggest or give any party veto power over the land use decisions of another unit of government, as the City recognized in its own testimony. This is confirmed by the first policy under this section -Policy 1 that makes clear that the County retains responsibility for regulating land use until such time and lands are annexed to the City.
    - RE: Section I "Coordination Policies and Procedures," Policy 2 and 3, no one claims the processes identified were not followed and the Board finds that all such processes were followed here.
    - RE: Section I "Coordination Policies and Procedures" Policy 4, says "All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan and the County's land use regulations." The Woodburn Comprehensive Plan designates the subject property as "Commercial" and this application would align the zone with that "Commercial" designation, which is more than sufficient to be "consistent." The proposal is consistent with the "County's land use regulations" as specified in this decision. The City argues a variety of city Plan provisions apply as approval standards under this provision in the UGCA. The County respectfully disagrees. Only County code zone change approval standards apply for all the reasons discussed in this decision and none of the County's

approval standards for this zone change include a requirement to comply with the Woodburn plan provisions that the city argues apply. Regardless, even if the city plan could be said to apply as a standard for this zone change, the proposed zone change is consistent with the cited Woodburn plan policies.

- RE: Woodburn Plan G-1-1 – it simply would not apply. It imposes obligations on the City about managing its growth and coordinated population projections. It has nothing to do with the proposal.
- RE Woodburn Plan G-1.12 this provision acknowledges that the County has responsibility for regulating land in the UGB until such lands are annexed to the city and that such land is considered to be "available over time for urban development." There is nothing about the proposed zone change that is inconsistent with this policy.
- RE: Woodburn Plan G-1.14, requires that all land use actions in the urban growth area and outside the City limits "shall be consistent with the City's Comprehensive Plan and County Land use Regulations." The proposal is entirely consistent with the City plan Commercial designation – the only potentially relevant Woodburn plan element under the city's position and County land use regulations.
- RE: Woodburn Plan G-1-18, this provision concerns conversion of land "within the boundary to urban uses shall be based *upon consideration* of orderly provision of public facilities and services." (Emphasis supplied). This provision applies to the conversion of land in the UGB to urban uses and presumably that means the approval of uses that require city facilities. As noted elsewhere, the proposed zone change does not approve any particular uses and as explained below the uses it allows to be established are not "urban" uses under any reasonable understanding of what that term means in the context of land in the UGB. The Board observes that by definition land in the UGB is considered "urban" and in fact this property is governed by the County's "urban" land use standards in Title 16 "urban" code.

  Regardless, this city plan provision is not a mandatory standard even where it does apply but rather it calls for "consideration" of a factor. And even if a "consideration" could be viewed as a standard, "considering" the "orderly provision of public facility and services" is met here because that was clearly considered here - there is no disorder in the provision of the private individual public facilities and services that will be used to support the uses allowed by the proposed zone change. Rather, the property will rely on-site septic, a domestic well and an onsite storm water system and is required per the requested conditions of approval to connect to city water and sewer when it is available at the property.

  The Board finds that the proposal is consistent with the city plan designation for the property of Commercial. The Board also finds that

specific city plan policies do not apply, but that if they did that the proposal is consistent with them.

- UGCA Page 4, Section I(7) "The County shall not allow uses requiring a public facility provided by the City within the Urban Growth Area prior to annexation to the City unless agreed to in writing by the City" This provision applies to "uses" that require a City facility. This *zone change* is not a "use." Regardless, any use established under this zone change will not require "a public facility provided by the City." The Board finds the evidence is credible and persuasive that the Subject Property can feasibly, and will only, be served by a private domestic water well, a private septic system, and private stormwater facilities—just like other properties in unincorporated areas of the County – until such time as city facilities are available at the property on or after annexation.UGCA Page 4, Section I(9) "Conversion of land within the Urban Growth Area to urban uses shall occur upon annexation . . ." The city argues that the proposal converts the subject property to "urban uses" without annexation. Relatedly, the city cites a *city* plan policy G-1.17 which states that "The County shall not allow urban uses within the [UGB] prior to annexation to the City unless the City agrees in writing." The first issue with the City's argument is that, respectfully, the City plan cannot determine whether the County approves or denies County land use applications. The City's own hearing testimony effectively admitted this. Rather, the County is bound to apply the standards and criteria codified in the County's land use code to land use applications that come before it. Second, these provisions do not apply to zone changes in any case because they apply to "uses" and the approved zone change is not approval of any particular "use." Third, even if a zone change can be considered the approval of a "use," the proposal does not approve or allow any "urban use" within the meaning of these provisions. The proposal allows all of the uses that are now allowed in the UT zone and allows one additional use – a single specialty trade contractor (electrical contractor) and associated warehousing. The Board finds that the UT uses that the zone change allows are now allowed in the existing UT zone applied to the property and so those are not considered to be "urban." The Board further finds that the one new allowed CG use under this zone change – the single electrical contractor and associated warehousing – would have fewer impacts than the uses that the UT zone allows and is not itself "urban." Further, there is no proposal to connect, and no possibility to connect, to any use allowed by this zone change to city water or sewer or storm disposal system. Accordingly, the Board finds that the proposal does not convert the Subject property to "urban uses" without annexation given the impacts of the allowed uses are, at worst, the same as the intensity of uses allowed in the *existing* UT zone and no use allowed under the zone change will require or will use any City facilities unless and until City public facilities are available to the Subject Property on or after annexation.

- RE: IGA Policy 5, this policy cannot apply because no changes are proposed to any plan.
- RE: IGA Policy 6 the subject property is not outside the UGB. This policy cannot apply.
- RE: IGA Policy 7 – this policy talks about promoting logical and orderly development within the Urban Growth Area in a cost effective manner. It also says that the County "shall not allow uses requiring a public facility provided by the City" in the Urban Growth Area before annexation. This policy by its terms does not apply because the proposal is not for either "development" or for a "use." It is for a zone change. Regardless, even if the proposal were for a "use" or for a "development" it is logical – applying the commercial zone to commercially designated property. It is also orderly to conform the zone to its plan designation. It is further orderly because the allowed uses are consistent with what is allowed now on the Subject Property under existing zoning adding just one more use type that there is no dispute has fewer impacts than uses that are presently allowed under the existing UT zone. The subject property and allowed uses under the proposed zone change do not *require* and do not contemplate any public facility provided by the city. Rather, ***the only*** evidence in the record is that uses or development allowed by this zone change can and must be served by on-site water, septic and on-site storm water. The Board finds that they do not *require* any City service.
- RE: IGA Policy 8 – this policy states that City sewer and water shall not be extended beyond the UGB. This policy does not apply regardless because it refers to what happens outside of the UGB. The property is in the UGB.
- RE IGA Policy 9, this policy, reasonably read, says that annexation decisions shall be based upon applicable annexation policies in the city plan. There is no proposal for annexation. The proposal is a zone change for land in the County and there is no application for annexation. This provision could not apply.
- RE: IGA Policy 10, it simply says that the City shall discourage extension of public facilities into the UGB. It is not a mandatory standard that applies to anyone but the city. But there is no proposal to seek the extension of any city public facility into the UGB.
- RE: IGA Policy 11, this simply says that the city is the provider of public water, sewer and stormwater facilities within the UGB. The County respects this provision by conditioning this zone change to connect only to on-site septic, a domestic well and on-site stormwater facilities unless and until city facilities are at the Subject Property.

The Board finds that this proposal complies with all UGCA policies even if they applied, – though the Board also respectfully determines that they do not.

The Board respectfully disagrees with the City that not applying the subject UGCA to the applicant's zone change request would create a dangerous precedent by effectively negating other similar agreements. The Board finds to the contrary– that providing certainty to County land use decisions by applying only land use standards adopted as such is how the state and local land use program is supposed to work. As explained in these findings, the subject UGCA (1) is not a part of the County Comprehensive Plan, (2) its provisions are not adopted into any County land use standard, (3) does not add any relevant standards to the subject proposed zone change, (4) and even if it did, approval of the proposal is entirely consistent with the UGCA which expressly retains County authority and, in the main, prohibits the County from approving the provision of city water, sewer, and storm utilities, to unannexed property unless the city agrees, which the proposal is entirely consistent with. In fact, the Board finds that the County is improving the

City's position in that regard because the applicant will be required to hook up to City water, sewer and storm when it is available at the property, annex to the City when the City wants the property to annex, not have outdoor storage, and pave parking areas per City requirements, among other things.

Finally, the Board finds that there are multiple legal issues that would arise if the County were to interpret the UGCA to apply City regulations that the County has never adopted as approval standards. Applicants would be unaware that uncodified and unacknowledged land use rules not adopted in any post-acknowledged land use process existed. This raises concerns under Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning) for lack of a process allowing a hearing with public participation on standards that apply to land use applications. This also raises potential constitutional concerns regarding due process and delegation of authority.

Concerning other provisions of the UGCA, the Board finds and there is no dispute that the County has provided the City all required notices and comment opportunities.

Concerning the Section in the UGCA concerning "Administration of Zoning and Subdivision Regulations" the Board finds that the County has complied with all of its provisions.

The Board responds to specific "Administration of Zoning and Subdivision Regulations," as a precaution below.

The Board the notes that paragraph 3 of that section of the UGCA states the following:

> *The County may require City development standards for development within the Urban Growth Area, including dedication of additional right-of-way or application of special street setbacks when requested by the City. The County may require compliance with City development standards, in lieu of County standards if the development is other than a single-family dwelling.*

The Board notes that the UGCA expressly leaves the decision to decide whether to apply City standards to the discretion of the County. The Board further notes that the Applicant proposed a non-remonstrance agreement that the property owners or successors will not object to the formation of a local improvement district or other public financing mechanizing for improvements to Highway 99 required in the future, and furthermore that the property owner or successor will pay their share of such improvements. To respond to City concerns, the Board imposes the Applicant's proposed non-remonstrance agreement as a condition of approval.

> 4. *For development approved under (1) or (2), if public sewer and water facilities or city limits are located within 300 feet of the subject property, the County shall require that the development connect to the facilities under use of wells or other means are allowed in writing by the City. The City will require any property connecting to City sanitary sewer or water facilities to annex to the City. The City shall provide the County information about the location of public sewer and water. The County may approve development of permitted uses on properties more*

than 300 feet from the city limits, or from a public sewer or water facility using wells and DEQ approved wastewater disposal systems.

To begin with, the Board notes that this provision applies to "development" and the proposal is a zone change not an application for the approval of any development. Further, when this provision does apply, it applies to development that is more than 300 feet from city limits and expressly states that the County may approve such development "using wells and DEQ approved wastewater disposal systems". Here, the Board finds that development of the uses that are allowed by the proposed zone change will occur on the Subject Property that is more than 300 feet from city limits and more than 300 feet from the city's water and sewer and stormwater systems, and so this provisions expressly allows the approval of that development using onsite septic and a domestic water well.

5. *If a proposed use is not specifically identified in the Marion County Urban Zone Code, and the County is proposing an interpretation classifying the use as permitted in the applicable zone under the interpretation provisions of the Zone Code, the County shall give the City an opportunity to comment before the County makes a final land use decision.*

Applicant is seeking a zone change to CG under an LU overlay and not the approval of any specific use. Regardless, the City has been given the opportunity to comment before any final decision was made.

Woodburn Comprehensive Plan

As explained in these findings, the Board finds that the City of Woodburn Comprehensive Plan applies to the Applicant's proposal insofar as that the underlying land use designation of the subject parcel is consistent with the proposed zone. The underlying designation is Commercial, which is consistent with the proposed zone change to Commercial General. The Board respectfully finds that the Woodburn Comprehensive Plan Goals and Policies do not apply to the proposal as approval criteria. This finding is consistent with the City's recognition at the appeal hearing that the City does not have a veto over County approval.

Statewide Planning Goals

The proposal is for a zone change that complies with the County's Comprehensive Plan. The proposed zone change makes the zone that applies to the subject property consistent with its plan designation. Therefore, the statewide planning goals do not apply. However, while the Board finds it unnecessary, as a precaution the Board analyzes Statewide Planning Goals 2, 12, and 14:

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 base for such decisions and actions.

The process for evaluating the proposed zone change is outlined in MCC 16.39.050. The process allows the opportunity for public comment, staff review, and requires review by a

hearings officer. The Planning Division notified multiple governmental entities, including Marion County departments and the City of Woodburn for comment. With respect to comments from the City of Woodburn, this decision responds to the City's concerns by applying the LU overlay and significant conditions. The Board finds that this decision followed the County's acknowledged planning process and is fully coordinated with all relevant governmental units. The Board further finds that this decision is supported by an adequate factual base. The Board finds that this decision is consistent with Goal 2 – Land Use Planning.

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

Goal 12 is implemented by the Oregon Transportation Planning Rule (TPR) which applies to zone changes that have a "significant affect" on a transportation facility. As outlined in Mr. Clemow's traffic analyses in the record, which the Board finds credible and persuasive, the proposed zone change will not have a "significant affect" on any transportation facility. In this regard, the Board finds that the transportation impacts of the proposed zone change are no greater than the transportation impacts of the existing zone. Moreover, as Mr. Clemow explains, with the existing plan designation of Commercial, rezoning to a Commercial zone does not result in a "significant affect" on a transportation facility because applying the Commercial designation means the proposal will generate trips that are already accounted for within current Transportation Systems Plan for Marion County. The subject property of the proposed zone change is adjacent to Highway 99E, which is classified as an Arterial Road. As is explained above, the proposed CG zone is appropriate for property, like the Subject Property, that is adjacent to Highway 99 and where, as here, the proposed zone change meets all zone change criteria. The Board finds that the proposal is consistent with this goal.

> *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 Board finds that the Subject Property is situated in the UGB, is designated Commercial and that this zone change meets all applicable standards. The Board further finds that all applicable standards to this zone change have been acknowledged as complying with Goal 14. Therefore, the approved zone change that is consistent with all applicable standards complies with Goal 14. The Board finds that the proposal is consistent with Goal 14.

EXHIBIT B

Zone Change 25-002 / Creative Electric, LLC
Conditions of Approval

A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.

B. At the time of development, the applicant shall meet the requirements of MCC 16.07.250 and MCC 16.07.100, and MCC 16.30.220, related to landscaping and exterior lighting.

C. At the time of development, the applicant must satisfy the development standards in the CG zone (MCC 16.07) and the general development standards found in Chapters 16.26 through 16.40 of the MCC.

D. The applicant shall record an agreement ensuring that neither they nor their successors will object to annexation, including if requested by the City of Woodburn when any adjacent property annexes into the City.

E. The applicant shall record an agreement ensuring that they or their successors will connect to city water, sewer, and stormwater services at the time they are available to the subject property.

F. At the time of development, the applicant shall dedicate right-of-way on the frontage of the subject parcel as shown on the site plan submitted by the applicant for the record in this proceeding.

G. At the time that the property is developed, the driveway and parking spaces shall be paved consistently with the requirements of Woodburn Development Ordinance 3.04.04 and 3.05.02F. Evidence in the form of a completion letter from the City of Woodburn Public Works office provided to Marion County Planning is a means to demonstrate this requirement is met.

H. The outdoor storage of equipment or vehicles for any electrical contractor business shall be prohibited except that vehicles may park in designated parking spaces.

I. If the property is developed with an electrical contractor business and associated warehousing, the applicant shall develop the Subject Property consistent with the conceptual site plan submitted with their application for an electrical contractor business.

J. The uses on the property shall be limited to only the following:

Uses permitted out right:

- SIC 1731, Electrical contractor business and associated warehousing
- MCC 16.25, Permitted Uses Generally
- MCC 16.31, Signs

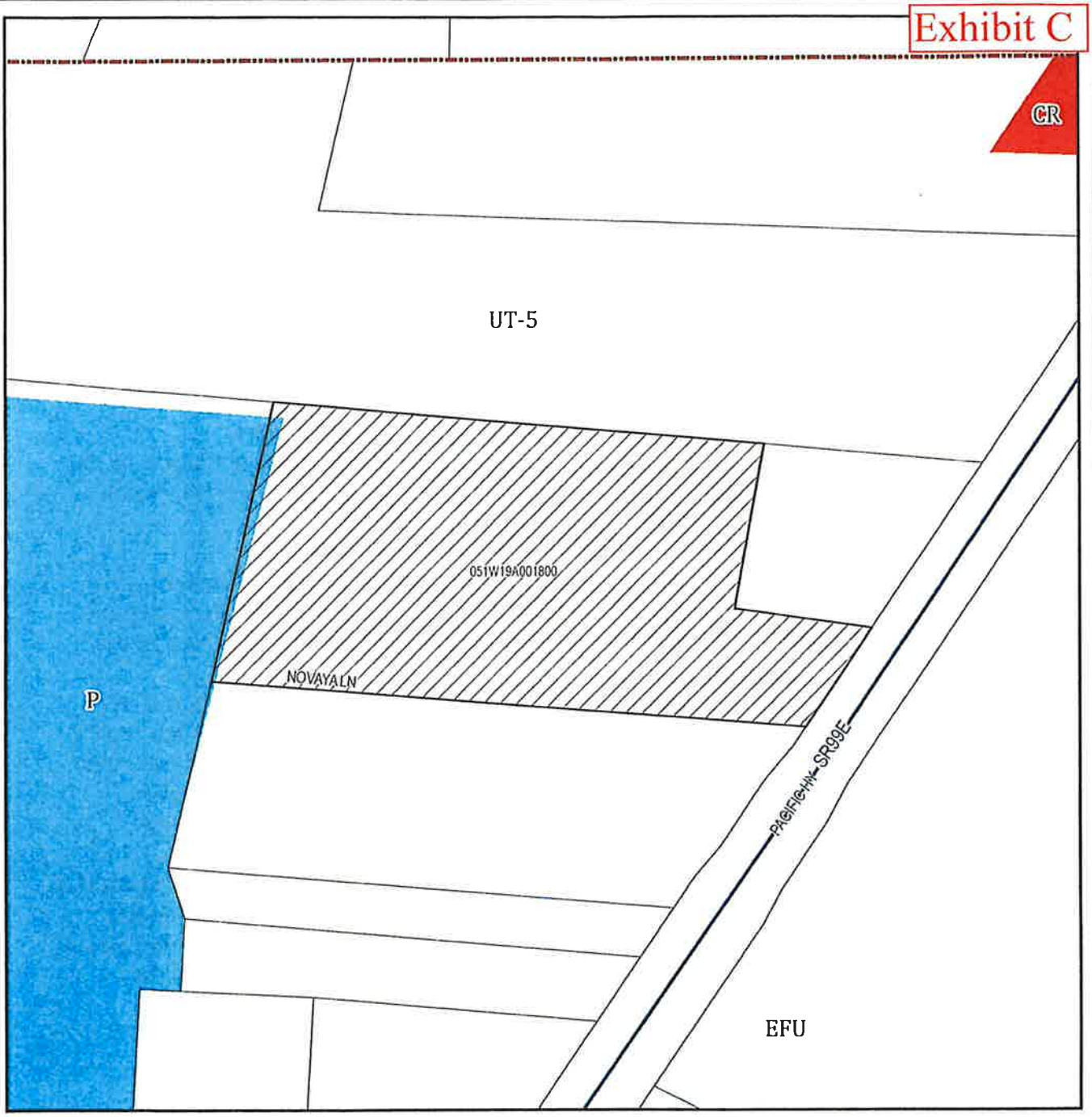
Uses permitted conditionally:

- One dwelling unit or lodging room in conjunction with a commercial use.
- Educational services, SIC 82.
- Social services, SIC 83.
- Amusement and recreation services, SIC 79.
- General government, not elsewhere classified, SIC 919.
- Fire protection, SIC 9224.
- Administration of economic programs, SIC 96.
- Public utilities including truck parking and material storage yard.
- The following use additionally subject to the special standards in Chapter 16.26 MCC: Religious organization* and membership organization, SIC 86 (see MCC 16.26.600).

K. Prior to the issuance of a building permit, the applicant shall execute and record, on a form approved by the City Attorney, or if the City Attorney do not wish to review and approve then by County Counsel, a Non-Remonstrance Agreement. This Agreement shall apply to the subject property and shall:

- Include a covenant running with the land, binding upon the applicant and all successors, which states that the applicant (and successors) will not object to the formation of, nor withdraw from, any local improvement district (LID) or other public financing mechanism established for the design, acquisition, and/or construction of street or right-of-way improvements benefiting the subject property.
- Acknowledge that the applicant and successors will be responsible for payment of their equitable and proportionate share of the cost of any such improvements.
- Clarify that the obligation to pay arises if and when the improvements or LID are formed or constructed, and that the share allocated to the property shall be assessed in accordance with applicable laws and regulations.
- Be recorded in the office of the Marion County Recorder.

Exhibit C



ZONING MAP

Input Taxlot(s): 051W19A001800

Owner Name: GRIGORY MELKOMUKOV RLT
MELKOMUKOV, GRIGORY C/O
CREATIVE ELECTIRC
Situs Address: *(No Situs Address)*
City/State/Zip:
Land Use Zone: UT-5; P
School District: WOODBURN
Fire District: WOODBURN

Legend

Input Taxlots
Lakes & Rivers
Highways
Cities

Marion County

N

scale: 1 in = 173 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.

Marion County Planning, 503-588-5038

February 26, 2025

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 11, 2026

Department: Public Works

Title:	Consider adoption of an administrative ordinance approving Zone Change 25-002/Creative Electric, LLC
Management Update/Work Session Date:	N/A **Audio/Visual aids** ☐
Time Required:	5 min **Contact:** John Speckman **Phone:** 503-566-4173
Requested Action:	Staff recommended motion: Approve the administrative ordinance approving Zone Change 25-002/Creative Electric, LLC. Other motion options for consideration are: 1. Direct staff to make changes and approve a modified ordinance. 2. Not approve the ordinance.
Issue, Description & Background:	The Marion County Hearings Officer held a duly noticed public hearing on May 15, 2025 and issued a decision on July 8, 2025, to deny Zone Change 25-002. Applicants appealed the Hearings Officer's decision. The Board held a duly noticed public hearing on the application on October 22, 2025, and considered all the evidence in the record and approved the request. The ordinance and findings have been prepared and the notice of adoption was given on March 4, 2026. The administrative ordinance is now set for formal adoption.
Financial Impacts:	None
Impacts to Department & External Agencies:	None
List of attachments:	Ordinance
Presenter:	John Speckman
Department Head Signature:	for Brad Mark