



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 20, 2017

Department: Public Works Agenda Planning Date: Dec. 14, 2017 Time required: None

☐ Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Receive hearings officer's recommendation and schedule a public hearing for Zone Change/ Comprehensive Plan (ZC/CP) Case 17-002/Video Acquisitions, Inc.

Issue, Description & Background The hearings officer issued a recommendation on December 11, 2017, to approve ZC/CP 17-002. As part of the land use process, the board of commissioners must officially receive this decision and schedule a public hearing. The suggested hearing date is January 3, 2018.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Receive the recommendation and schedule a public hearing for January 3, 2018.
2. Receive the recommendation and schedule a public hearing for a later date.
3. Receive the recommendation and do not schedule a public hearing at this time.

Recommendation: Staff recommends the board receive the hearings officer's recommendation and schedule a public hearing for January 3, 2018.

List of attachments: Hearings officer's recommendation

Presenter: Joe Fennimore

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

Copies to: Joe Fennimore - gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No. ZC/CP 17-002
)	
Application of:)	Clerk's File No.
)	
VIDEO ACQUISITIONS, INC.)	Zone Change/Comprehensive
)	Plan Amendment

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Video Acquisitions, Inc. to amend the comprehensive plan designation from Rural Residential to Industrial, and change the zone from AR (ACREAGE RESIDENTIAL) to IUC (Unincorporated Community Industrial) on a 0.615 acre parcel at 3511 Brooklake Road NE, Salem, Marion County, Oregon (T6S, R2W, S18BC, tax lot 1900).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP), including the Brooks-Hopmire Community Plan (BHCP), and the Marion County Code (MCC) title 17, especially chapters 17.123 and 17.164, Oregon Administrative Rule (OAR) 660 division 004, and Oregon Statewide Planning Goals (OSPG).

III. Public Hearing

A hearing on this matter was held on September 6, 2017. The Planning Division file was made part of the record. The following persons appeared at hearing:

- | | | |
|----|------------------|----------------------|
| 1. | Brandon Reich | Planning Division |
| 2. | Michael Halliday | Applicants' attorney |
| 3. | Jeff Tross | For applicant |
| 4. | Jim Woodry | For applicant |

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

- | | |
|-------|--|
| Ex. 1 | Annotated zoning map for Hopmire area |
| Ex. 2 | Applicant's objection to condition of approval G |

No objections were raised to notice, jurisdiction, conflicts of interest, evidence or testimony.

IV. Findings of Fact

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

1. The subject 0.615 acre property is designated Rural Residential in the MCCC and zoned AR. The property is in the MCCC designated Brooks-Hopmere urban unincorporated community (UUC).
2. The subject property is on the north side of Brooklake Road NE near the Brooklake Road-River Road intersection. The parcel contains a metal storage building and a well that supplies water to the market on the adjacent CC (Community Commercial) zoned property to the east. The CC zoned property may also contain the septic drain field for the store (see Marion County Public Works comments below). The CC zoned market property and the subject AR zoned property are under one ownership. Property to the northeast is zoned AR and contains a dwelling accessed from River Road. Properties north and west are zoned IUC and are in industrial use. South of the subject property, across Brooklake Road are two small parcels with dwellings and a large farm parcel in an EFU (Exclusive Farm Use) zone.
3. Applicant asks to change the MCCC designation from Rural Residential to Industrial and the zoning from AR to IUC.
4. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Public Works (MCPW) Land Development and Engineering Permits (LDEP) section asked to include A below as a condition of the land use decision:

Condition A - Prior to issuance of building permits, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 30 feet for a rural Major Collector road along the subject property Brooklake Road frontage.

Nexus is due to the anticipated addition of traffic to the public road, and to accommodate sufficient width for future road improvements and utilities. It appears an additional 5 feet is needed. However, the dedication shall be shown as the total (30 feet) versus differential.

LDEP also provided the following "informational" engineering requirements and advisories:

ENGINEERING REQUIREMENTS

- B. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. The following sub-requirements, numbered 1 through 3, pertain to access:

- 1) A total of one (1) direct access to Brooklake Road will be allowed, being the existing access.
 - 2) The location of the Brooklake Road access shall not be relocated closer to River Road due to access management spacing requirements, and, so as not to conflict with a septic drainfield (see engineering advisory section below).
 - 3) At the time of application for building permits, an Access Permit will likely be required to widen and lengthen the paved apron because of the change to allowed industrial uses.
- C. Prior to application for building permits, it is required to submit an engineered civil site plan depicting existing features plus proposed grading, stormwater management facilities and parking. Stormwater attenuation is triggered for development of 0.5-acre or more.
- D. The subject property is within unincorporated Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R.
- E. Any excavation work within the public right-of-way for utility work requires permits from MCPW Engineering.

ENGINEERING ADVISORIES

- F. The subject property was once part of a parcel that included #9005 River Road on which the current convenience store is situated. The septic drainfield system for the store lies on the subject property in proximity to Brooklake Road.
- G. To accommodate an anticipated future roadway intersection signalization improvement, the access to the head-in parking at #9005 River Road under similar ownership that serves the convenien[ce] store could be restricted.

The Marion County Building Inspection Division commented that a building permit is required for new construction.

The Marion County Tax Office provided comments regarding taxes on the subject property.

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

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

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.
2. Under MCCC plan amendment policy 2, plan changes directly involving five or fewer properties are quasi-judicial amendments. Comprehensive plan amendments are reviewed by zone change procedures established in MCC title 17. A plan amendment application may be processed simultaneously with a zone change request.

The proposed comprehensive plan amendment involves one ownership, is a quasi-judicial plan amendment request and is being processed with a zone change application.

3. The Oregon Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified and provided no comments.
4. An exception to statewide planning goal 3, Agricultural Lands, was taken for the subject property when it was taken into the Brooks-Hopmire UUC. Residential designation and zoning were applied to the property. Applicant now asks to re-designate and rezone the property for industrial use.

OAR 660-004-0018

5. OAR 660-004-0018 contains requirements for plan designation and zoning in exception areas:
 - (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.
 - (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):
 - (a) That are the same as the existing land uses on the exception site;

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

- (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-002-0030, whichever is more stringent.

In July 2000, the county adopted the Brooks-Hopmere Community Plan, bringing the 1980 Hopmere, Brooks Interchange, and Brooks exception areas into the Brooks-Hopmere UUC. The subject and other small parcels that were outside of original Hopmere exception area were also brought into the Brooks-Hopmere UUC under a new Goal 3, Agricultural Lands, built and committed exception, and were planed and zoned for residential and industrial use. The 2000 exception allowing the residential and industrial uses in the new exception area states:

The uses on the exception properties are primarily residential and contain dwellings and residential accessory structures. Tax Lot 1700 is used for storage and access for an adjoining industrial use (general contractors business) and Tax Lot 1900 contains a storage structure. The exception area is primarily residential in character and use even though the properties are located in proximity to the intersection of two major streets in the county, River Road and Brooklake Road. *The continued use of these developed properties is likely to remain residential though location factors along a transportation corridor and in proximity to commercial and industrial uses may result in a transition in use to nonresidential uses over time.* These properties have been physically developed and committed to residential, nonfarm uses due to the size of the properties. Lands surrounding the existing exception area and these properties are in farm/resource use and zoned EFU. The exception area and the uses within the exception area have historically co-existed with the surrounding resource lands, and the residential uses will not commit surrounding resource lands to nonfarm uses as the land use pattern in the Hopmere area has been established by past development and uses for this area.

The uses of the properties within the exception area will be limited through the designation and application of AR (Acreage Residential) zoning to the properties. The AR zoning will allow for the continuation of the existing residential uses. *Changes in the use of property to nonresidential use will require application and approval through the quasi-judicial plan/zone change process.* The surrounding resource lands outside the established Plan boundary are zoned EFU and cannot be added to the boundary under the provisions of the Unincorporated Communities Rule once the boundary has been established.

(Emphasis added.)

This excerpt from the exception document shows that the subject property was never in residential use (it contained and still contains a non-residential related storage building) and that transition to nonresidential designation and zoning over time was anticipated when the property was residentially designated. The 2000 exception to goal 3 recognized, justified and authorized industrial and residential uses in the exception area. Since industrial designation and zoning are allowed under the current exception, and expansion of industrial uses to the subject property was expected, the proposed industrial use of the subject property allows continuation of existing types of development in the exception area. OAR 660-004-0018(a) is met.

STATEWIDE PLANNING GOALS

6. Under the M CCP plan amendments section, comprehensive plan amendments must be consistent with statewide planning goals.

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

Notice and the hearings process before the hearings officer and BOC provide an opportunity for citizen involvement. Goal 1 is satisfied.

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

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific, and applicant proposes a site-specific M CCP amendment. The Planning Division notified Marion County Fire District 1, Gervais School District, DLCD, the Brooks Sewer District and Marion County departments of the proposed comprehensive plan amendment. No concerns were expressed by any outside agency but MCPW requested roadway dedication as a condition of approval. The requested condition is discussed below and the BOC will consider the matter in its decision. Goal 2 is satisfied.

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

The subject property is in an existing exception area. Goal 3 does not apply.

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

The subject and surrounding properties are not identified as forest lands and no forest use is apparent in the area. Goal 4 is not applicable.

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

No MCCC-identified goal 5 resources are on or near the subject property. Goal 5 is not applicable.

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

Industrial designation and IUC zoning allow only low impact "dry" industrial uses. Septic site review will be required at development to ensure the proposed use will not interfere with septic systems. The property is flat, reducing potential erosion and runoff issues. The proposed mini-storage use is fairly passive and will not result in any direct air emissions. In-place regulations will maintain the quality of air, water and land resources, and Goal 6 will be satisfied.

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

The subject property is not in an MCCC identified geologic hazard or floodplain area. Goal 7 is not applicable.

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

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

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

OAR chapter 660, Division 009 does not require or restrict planning for industrial and other employment uses outside an urban growth boundary (UGB), but counties must comply with the division requirements within UGBs. The subject property is not within a UGB. Goal 9 is not applicable.

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

OAR 660-008 defines standards for compliance with Goal 10 regarding adequate numbers of needed housing units and efficient use of buildable land within urban growth boundaries. The subject property is not within a UGB. Goal 10 does not apply.

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

The Brooks-Hopmire plan has been acknowledged to comply with goal 11. Compliance with the BHCP ensures that Goal 11 is satisfied.

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

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

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

performance standards identified in the TSP or comprehensive plan; or

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

The subject property fronts Brooklake Road NE, a Marion County Rural Transportation System Plan (RTSP) identified major collector road. The BHCP transportation planning section references a 1999 update of the Brooklake Interchange Management Plan (BIMP) recognizing that full build out of the BHCP area, including the Brooks interchange and the large NORPAC property east of the freeway could make the major intersections within the plan area functionally unacceptable by 2015. In the BHCP process, the county considered adding some properties to the area that could add nearly 4,000 daily vehicle trips, but found that adding 11 other properties would result in little or no traffic increase in the area. The county noted that intensifying the use of any parcels should be approached with caution, and added a requirement that land use changes resulting in more than minimal added traffic trips would require submission of a Traffic Impact Analysis (TIA) and mitigation improvements.

The 2013 RSTP appendix B inventory update (not yet adopted), shows Brooklake Road, from Wheatland Road to River Road, the segment fronted by the subject property, operating at level of service (LOS) B, and from River Road to Huff Avenue at LOS C, from Huff Avenue to I-5 right-of-way (ROW) west at LOS D, I-5 ROW east to the Southern Pacific Railroad Crossing at LOS C, from the railroad crossing to Highway 99E at LOS D, and from Highway 99E to its eastern terminus operating at LOS A. In rural areas, the county considers LOS D or better as acceptable for signalized and four-way stop intersections and LOS E or better for other unsignalized intersections.

Applicant's traffic engineer looked at the proposed use and assumed a 12,000 square foot mini-storage facility on a 0.61 acre property would generate 2.5 trips per day per 1,000 square feet, or 30 additional trips per day. The engineer found residential use of the property would generate 9.52 traffic trips per day, resulting in a 20 trip per day net increase in daily traffic trips. The engineer stated this would, at most, represent a 0.195% increase of daily road volume, and would not significantly affect the Brooklake Road-River Road intersection. Applicant points out that under MCC 17.164.060(D), the IUC zone 40% lot coverage limit for buildings would, at most, allow 10,716 square feet of building development rather than 12,000 square feet. At 10,716 square feet, maximum trips would be 26.79 per day, reducing net trips to 17.25 rather than 20, and reducing the impact of the proposed use.

MCPW asked to include a condition of approval requiring applicant to dedicate approximately five feet of additional right-of-way along the subject property's Brooklake Road frontage. PW explained:

Nexus is due to the anticipated addition of traffic to the public road, and to accommodate sufficient width for future road improvements and utilities.

PW's comments express no concern about the proposal significantly affecting Brooklake Road's major collector functional classification or standards implementing the functional classification of the road. Nor do the comments show concern about significant degradation of the performance of Brooklake Road, and PW does not recommend denial of the application if the condition is not imposed.

Traffic impacts in the Brooklake corridor are an area of concern, but the BHCP recognizes that some proposals will have much less impact than others. The subject property is small, limited by lot coverage restrictions, and is in a high functioning area of Brooklake Road. The proposed use will generate minimal additional traffic. It is more likely than not that the proposal will not *significantly* affect existing transportation facilities by allowing uses or levels of development inconsistent with the road's functional classification that would degrade its performance standards, worsen its performance, or otherwise not meet the performance standards. Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

The proposed use is more passive and less energy intensive than traditional manufacturing industries. Goal 13 is satisfied.

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

The Brooks-Hopmere community plan was developed under OAR 660, division 22 that interprets goals 11 and 14 in unincorporated communities. The BHCP was acknowledged to comply with goal 14. Goal 14 is satisfied.

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

Applicants' proposal is consistent with statewide planning goals.

MCCP AMENDMENT

7. The MCCP contains no specific plan amendment review criteria, but an amendment must be consistent with applicable MCCP policies. The BHCP (an adopted part of the MCCP) also contains policies that must be considered.

8. BHCP land use and transportation policies:

1. County plans and land use regulations shall ensure that new uses authorized within the Brooks-Hopmere Community do not adversely affect agricultural uses in the surrounding EFU areas.

The subject property is well insulated from farm properties to its north, east and west. EFU zoned property is 50' to the south across Brooklake Road. Two small parcels are across from the subject property and are surrounded by a large farm parcel. The small parcel directly opposite is owned by applicant and appears to be in residential use. Under the acknowledged BHCP, the size and nature of permitted uses within the BHCP are restricted to insure continued compatibility with surrounding uses. Consistent with this, the subject site's small size and lot coverage restrictions ensure any use will be limited and have little off-site impact. The dry nature of the use ensures no interference with agricultural water use. The proposal will not interfere with farm uses in the area. This policy is met.

2. New development shall be reviewed to ensure that it will not result in the capacity of the transportation system within the community being exceeded.

According to the RSTP, roadway capacity describes the ability of a transportation facility to carry a certain number of vehicles or people. It allows engineers and planners to determine what potential improvements will likely become necessary. The capacity of a roadway or intersection is specific to that location and traffic characteristics. Level-Of-Service (LOS) is a concept used to measure the quality of flow on or through a facility. It attempts to grade the amount of delay a motorist must experience while traveling through an intersection or the level of congestion on a segment of roadway. LOS is designated by a letter grade from A to F where LOS A represents free-flowing traffic with little or no delay, and LOS F represents severe congestion.

The subject property fronts Brooklake Road NE between Wheatland Road NE and River Road NE. This segment of Brooklake Road operates at LOS B according to the 2013 RSTP update. Though the 2013 update is not yet adopted, its appendix B table offers the latest LOS information available. At LOS B, speeds of 55 mph or slightly higher are expected on level terrain. Passing opportunities needed to maintain desired speeds are still available although not as often as LOS A. Some platoons of three or more are observed. Drivers spend up to 45 percent of the time following slower vehicles. Remaining segments of Brooklake Road within the Brooks-Hopmere UUC to the east operate at LOS C and D to Highway 99E, and LOS A east of Highway 99E.

Traffic is clearly a concern in the Brooklake corridor, but applicant demonstrated that the proposed comprehensive plan amendment and zone change will generate a small amount of traffic that will have little effect on

Brooklake Road's carrying capacity. Although MCPW asks for roadway dedication to allow for future roadway improvements, PW did not provide any capacity-related argument or the need for the dedication, nor was a TIA requested, again suggesting no capacity issues arise as a result of this proposal. It is more likely than not that the proposal will not result in the capacity of the transportation system within the community being exceeded. This policy is met.

3. New development shall be limited to prevent excess demand on the Brooks Community Sewer System.

The proposed use will not require water or sewer services, and the BHCP restricts new uses to dry uses or requires new uses to be reviewed for sewer capacity before it can be established. This policy is met.

4. No parcels will be rezoned to multifamily in the Brooks-Hopmere Community unless the applicant can demonstrate there will be no unacceptable adverse impact to the transportation system.

No multifamily designation or zoning is proposed and none is allowed in the IUC zone. This policy is met.

5. Marion County will adopt performance based criteria and procedures to create a trip allocation bank to provide flexibility in the development of the Norpac site, while still ensuring adequate performance of the transportation system.

The NORPAC site is east of I-5 and not near the subject property. This policy does not apply.

6. Parcels subject to a Limited Use overlay zone designation that was based on a reasons exception to statewide Goal 3 prior to adoption of the Brooks-Hopmere Community Plan shall continue to be subject to the limitations of the overlay zone.

This property was not subject to a limited use overlay zone when excepted from farm use. This policy does not apply.

9. BHCP utilities policies

1. New uses or expansion of existing uses requiring land use approval in Brooks-Hopmere shall be approved only upon confirmation from the Brooks Community Sewer District that it can provide sewer services to the property, unless an on-site system has been approved by Marion County or the Oregon Department of Environmental Quality.

The proposal requires no water or sewer services. This policy is met.

2. Industrial uses that require water as part of their industrial or manufacturing processes shall be required to demonstrate a capability for on-site sewage disposal.

No manufacturing is proposed for the site. The proposed use will not require water or sewer services. The BHCP restricts new uses to dry uses or requires new uses to be reviewed for sewer capacity before it can be established. This policy is met.

3. Marion County will encourage and support the development of a community water system serving all or a portion of the Brooks-Hopmere community.

This policy is directed to Marion County and is not applicable.

10. M CCP policies:

General Rural Development Policy 2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.

The subject property is in the Brooks-Hopmere UUC and its development is anticipated in the BHCP. General rural development policy 2 is satisfied.

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

The Brooks-Hopmere UUC is acknowledged under OAR 660-022. The zoning that applies in the community ensures industrial, commercial and public uses are suited to the location of the community, compatible with existing rural developments and agricultural goals and policies. General rural development policy 3 is satisfied.

Rural development policy 1. Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.

The proposed use of the property is industrial, not commercial. Rural development policy 1 does not apply.

Rural development policy 2. The boundaries of identified unincorporated communities shall not be expanded to accommodate additional development.

This proposal does not expand the Brooks-Hopmere UUC boundaries. Rural development policy 2 does not apply.

Rural development policy 3. Service districts within unincorporated communities may be created and expanded to serve the entire designated

rural community; however, services shall not be extended outside of the community unless necessary to correct a health hazard.

The Brooks sewer service district boundaries are not being changed or expanded by this proposal. Rural development policy 3 does not apply.

Rural development policy 4. Public facilities in rural communities and rural service centers should be designed to service low density rural development and not encourage urbanization.

The proposed use does not rely on water or sewer services. Rural development policy 4 does not apply.

Rural development policy 5. Additional residential development should be discouraged within Interchange District zones at rural service centers. Only rural service businesses and related uses should be located at these centers.

The subject property is not within the Brooks Interchange area. Rural development policy 5 does not apply.

Rural development policy 6. Zoning ordinance provisions shall ensure that new uses permitted in unincorporated communities will not adversely affect agricultural and forestry uses.

The IUC zone was acknowledged as appropriate to implement the rural communities rule in the Brooks-Hopmire UUC. It contains a set of uses limited in size and nature to ensure the property remains compatible with surrounding uses. The zoning proposed to be applied to the property ensures that rural development policy 6 is satisfied.

The remaining rural development policies address multifamily housing and interchange issues and are not applicable.

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

The proposed plan designation and zone change will not require new rural services. No additional water or wastewater disposal use is proposed for or required on the site. Sheriff and fire/life safety services are in place. Electric and telephone services are already available in the area. Brooklake Road NE is an MCCP-identified major collector road in fair condition and operating at LOS B. The proposed use will add negligible traffic to Brooklake Road. Rural services policy 1 is met.

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

The boundaries and development intensity of the Brooks-Hopmire UUC were planned for and set by the county with adoption of the BHCP. Rural services policy 2 is met.

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

The Brooks-Hopmire UUC boundaries and MCC chapter 17.164 for the IUC zone were acknowledged as appropriate. Service levels were considered and provisions applied that ensure appropriate levels of development will not result in an urban density. Rural services policy 3 is met.

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

The proposed comprehensive plan amendment and zone change will not result in a new need for water or sewer services. Rural services policy 4 is met.

ZONE CHANGE

11. Under MCC 17.123.060, approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:
 - A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
 - B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
 - C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
 - D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
 - E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

12. Applicable MCCC (including BHCP) policies were evaluated above and found to be met. If the MCCC amendment re-designating the property from Rural Residential to Industrial is approved, the proposed IUC zone would be consistent with the Industrial plan designation and MCC 17.123.060 (A) would be satisfied.
13. Most surrounding lands are within the Brooks-Hopmire UCC which was adopted and the designations and zoning acknowledged as appropriate for the area. The subject property is between an industrial zoned property to the west and a commercially zoned property to the east. Another industrially zoned parcel borders the subject property to the north. The IUC zone is compatible with these industrial and commercial zones. The subject property also shares a portion of its eastern boundary with the rear portion of an AR zoned parcel in residential use that also fronts River Road. Land across Brooklake Road is zoned EFU and is in farm and residential use. The proposed use is limited by the size of the subject property, a 40% building limitation, and the dry use requirement. Additionally, under MCC 17.164.050, in any zone change to an IUC zone where the territory proposed to be changed abuts upon a residential zone, conditions to preserve neighborhood qualities may be imposed by the governing body. These requirements also act to ensure the proposed zone change is appropriate considering the surrounding land uses and the density and pattern of development in the area. As found in V(18) below and incorporated here, MCC 17.164.050 conditions will be imposed. If the comprehensive plan amendment is approved, and with MCC 17.164.050 conditions imposed below, IUC zoning of the subject property would be appropriate considering area uses, density and development in the area. MCC 17.123.060(B) will be satisfied.
14. Electric, telephone and other utilities and services are available in the area. No public water or sewer services are required. Brooklake Road NE is in fair condition and operates at a level of service B at the subject property. MCPW asked to include a condition of approval requiring applicant to dedicate approximately five feet of additional right-of-way along the subject property's 115' Brooklake Road frontage (575 square feet). PW explained:

Nexus is due to the anticipated addition of traffic to the public road, and to accommodate sufficient width for future road improvements and utilities.

Applicant objects to the proposed condition of approval. Applicant provided information from a traffic engineer estimating only a 20 trip per day net increase in traffic trips. The engineer also found, based on 2015 traffic counts that, at most, the proposal would raise traffic volumes only 0.195%, and would not significantly affect the daily volume. The engineer's estimate of 20 additional trips per day was based on a 12,000 square foot mini-storage facility. Applicant points out that the IUC zone allows only 40% building coverage, or a maximum 10,716 square foot facility, and only a

17.27 net trip increase per day; a lesser impact than the engineer's estimate.

Zone changes may be conditioned under MCC 17.123.070:

- A. Purpose and Criteria. A zone change allowing more intensive use of property may be conditioned to require provisions for buffering or provision of off-site public facilities. In order to impose conditions on a zone change, findings must be adopted showing that the use of the property will be intensified and that the conditions:
 - 1. Are reasonably related to development allowed in the proposed zone or to the specific development proposed on the subject property;
 - 2. Will serve a public purpose such as mitigating the negative impacts of allowed uses on adjacent properties; and
 - 3. Are based upon policies or standards in the Comprehensive Plan or other standards adopted by the board of commissioners or by state and federal agencies.
- B. Scope of Conditions. Conditions that could be imposed and satisfy the criteria in subsection (A) of this section include, but are not limited to:
 - 1. Granting a right-of-way for public roads, including easements, etc.;
 - 2. Improvement of private or public roads, including bike paths, curbs, and sidewalks;
 - 3. Provision of storm drainage facilities;
 - 4. Extension of public sewer and water service, including over-sizing to permit development on other lands;
 - 5. Provision of fire suppression facilities and equipment;
 - 6. Provision of transit and traffic control facilities;
 - 7. Special building setbacks, orientation, landscaping, fencing, berming, and retention of natural vegetation;
 - 8. Special locations for truck loading, parking, access routes, or any outdoor activity that could impact adjacent property;
 - 9. Administrative review of development plans to ensure that conditions of approval have been satisfied; and

10. Financial contributions to public agencies to offset increased costs for providing services or facilities related to the intensification of the use of the property.
- C. The following limits and requirements apply to conditions imposed pursuant to this section:
1. Conditions shall be stated with specificity; shall be reasonably related to the public health, safety, and welfare; and shall be designed to reasonably effectuate their intended purpose.
 2. Conditions that would have the effect of limiting use of the subject property to one particular owner, tenant, or business shall not be imposed, except as authorized under a limited use overlay zone. Conditions shall not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.
 3. If the dedication of street right-of-way or street improvements are required, provision of dedication, improvements or funding shall be deferred until a building permit or final inspection is required.
- D. Enforcement. Unless otherwise specified, conditions relate to the development of the property and are not enforceable until development is imminent. No building permit shall be issued on property subject to conditional zoning without a determination that all conditions are satisfied. Compliance is a continuing requirement applicable to subsequent building permits unless the use of the land has been changed and the director finds that the conditions no longer apply. Extensions of time for compliance with conditions may be granted by the director, hearings officer, planning commission, or board of commissioners upon a finding that no negative impacts on the public or nearby landowners will occur and there are extraordinary circumstances justifying the extension.

The subject zone change will allow more intensive use of the subject property for industrial rather than residential uses and may be conditioned to require buffering or off-site public facilities. Under MCC 17.123.070(B)(1), conditions may be imposed to grant rights-of-way for public roads. Under MCC 17.123.070(A) to impose conditions on a zone change, additional findings must be adopted. Conditions related to right-of-way dedication have also led to considerable case law on the subject (*Nollen, Dolan* and progeny).

In *Nollen v. California Coastal Commission*, 107 S.Ct. 3141 (1987), the US Supreme Court held that a condition of approval must substantially advance a legitimate public purpose and must have a rational nexus with the

proposed development. In *Dolan, v. City of Tigard*, 114 S.Ct. 2309 (1994), the US Supreme Court found a condition must be proportional to the impact of the development. No precise mathematical calculation is required, but findings must be individualized with considerable particularity. In land use cases, it normally falls on applicants to prove standards and criteria are met. *Dolan* provides an exception by shifting the burden to the governmental body when it asks for conditions that amount to takings. MCPW did not appear at hearing, leaving its one sentence justification as its only input, "Nexus is due to the anticipated addition of traffic to the public road, and to accommodate sufficient width for future road improvements and utilities." There are county regulations requiring right-of-way dedications, but under *Dolan*, citation to ordinance standards is not enough to satisfy a government's burden of proof. The additional dedication may be justified here, but with a lack of information in the record, the hearings officer cannot make the necessary individualized findings on the reasonable relationship or rough proportionality to the impact of the development.

MCC 17.123.070(A) is not met as to the right-of-way dedication, but, MCPW did not indicate the application should be denied based on safety or other concerns if dedication is not required, and did not require a TIA as suggested under the BHCP if land use changes result in more than minimal added traffic trips. As such, an adequate transportation network is in place to serve the subject zone change. And, as shown above other public facilities and services are available or will be put in place. MCC 17.123.060(C) is satisfied.

15. The IUC zone is only allowed in MCCP identified unincorporated communities. According to the Marion County Rural Unincorporated Communities Findings and Analysis adopted December 13, 2000, IUC zoning is allowed only in Brooks-Hopmire, Mehema, Monitor, Quinaby and Shaw. Monitor, Quinaby and Shaw allow only existing uses in their IUC zones. Mehema allows a wider variety of IUC uses but it is many miles distant on Highway 22 in the mid-Santiam Canyon. No other suitable properties are within a reasonable distance from the subject property, and none are reasonably available alternatives. With an MCCP amendment approval, MCC 17.123.060(D) will be satisfied.
16. The IUC zone is the only zone allowed under the Industrial designation in the Brooks-Hopmire UUC and is the UUC's least intensive zone. MCC 17.123.060(E) is not applicable.
17. The zone change is recommended.
18. Once a comprehensive plan amendment and zone change are granted, use of a property is not restricted to the originally proposed use unless restrictions are imposed as part of the land use process. Here, the intensity of development is reasonably restricted by BHCP requirements, the size of the property, and IUC building coverage and other limitations. No limited use overlay zone is recommended in this instance.

19. Under MCC 17.164.050, in any zone change or reclassification of property to an IUC zone where the territory proposed to be changed abuts upon a residential zone, or abuts upon a street or alley which would be the boundary line between the proposed IUC zone and the residential zone, conditions to preserve neighborhood qualities may be imposed by the governing body relating to:
- A. Size and location of signs;
 - B. Size, type and location of outdoor lighting;
 - C. Landscaped areas;
 - D. Screening;
 - E. Building setbacks;
 - F. Ingress and egress for industrial uses.

The subject property abuts a residential property to the east. Applicant accepted MCC 17.164.050 conditions by stating that any sign on the property would be on Brooklake Road, not visible to the neighboring residential property; lighting will be designed to avoid reflection on the residential property; landscaping will be maintained adjacent to the residential property and provide adequate screening; no windows or doorways of a building developed on the IUC zoned property will face the residential property to the east; any building on the IUC property will maintain the required setback of 10 feet; and access to the property will be from Brooklake Road. These are the types of conditions allowed under MCC 17.123.070, and are reasonably related to development allowed in the IUC zone and the development proposed on the subject property, will serve the public purpose of mitigating the negative impacts on the adjacent residential property, and are based on BOC adopted MCC provisions. With these imposed as conditions of approval, the proposal will not affect the residential property to the east.

VI. Recommendation

The hearings officer **RECOMMENDS THE BOC GRANT** the proposed comprehensive plan amendment to Industrial and zone change to IUC, subject to the following conditions necessary for the public health, safety and welfare:

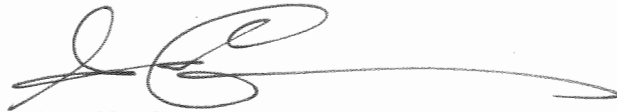
- A. Any sign on the property shall be placed so that it is visible from the Brooklake Road frontage.
- B. Lighting shall be directed away from the neighboring residential property.

- C. Landscaping (a six foot fence, wall or hedge) shall be provided and maintained adjacent to the residential property and shall provide screening from the industrial use.
- D. The portion of the building located along the boundary of the residential property to the east shall have no windows or doorways facing the residential property.
- E. Buildings on the subject property shall comply with the setback requirements and property development standards of the zone.
- F. Access to the property shall be from Brooklake Road.

VII. Referral

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

DATED at Salem, Oregon, this 11th day of December 2017.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Michael Halliday
Attorney at Law
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Agencies Notified

Planning Division

(via email: gfennimore@co.marion.or.us)

Public Works Engineering

(via email: jgrassmussen@co.marion.or.us)

Tax Collector

(via email: adhillon@co.marion.or.us)

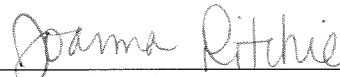
Building Inspection

(via email: deubanks@co.marion.or.us)

Code Enforcement

(via email: bdickson@co.marion.or.us)

by mailing to them copies thereof, except as specified above for agency notifications. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 11th day of December 2017, and that the postage thereon was prepaid.



Joanna Ritchie

Secretary to Hearings Officer