



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: July 24, 2019

Department: Public Works Agenda Planning Date: July 18, 2019 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: Brian Nicholas

TITLE: Receive notice of hearings officer's recommendation and schedule a public hearing for Zone Change/ Comprehensive Plan Amendment/Conditional Use/Partition (ZC/CP/CU/P) Case 18-006/Marion Investment Group, LLC.

Issue, Description & Background: The hearings officer held a public hearing on January 30, 2019, and on July 5, 2019, issued a recommendation based on the existing record to deny ZC/CP/CU/P18-006. As part of the land use process, the board of commissioners must officially receive notice of this recommendation and schedule a public hearing. The suggested hearing date is August 14, 2019, or later.

Financial Impacts: None.

Impacts to Department & External Agencies: None.

Options for Consideration: 1. Receive the recommendation and schedule a public hearing for August 14, 2019. 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 August 14, 2019.

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 18-006
)
Application of:) Clerk's File No.
)
MARION INVESTMENT GROUP, LLC) **Zone Change/Comprehensive Plan Amendment/
) Conditional Use/Partition**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Marion Investment Group, LLC, on property owned by Marion Investment Group LLC, to amend the Comprehensive Plan designation from Industrial to Primary Agriculture, and change the zone from IUC (Unincorporated Community Industrial) to EFU (Exclusive Farm Use), on 5.35 acres (T6S, R2W, S18C, tax lot 900); the application of Odin A Hollin and Ellen J. Hollin, Trustees of the Hollin Living Trust, to partition a 17.03-acre parcel in an IUC and EFU zone into three parcels of approximately 14 acres, 2 acres and 0.71 acre (T6S, R2W, S18C, tax lot 1800); and the applications of Odin A Hollin and Ellen J. Hollin, Trustees of the Hollin Living Trust 50% and the Odin Hollin ST Bypass Trust 50%, Ellen J. Hollin, Trustee (T6S, R2W, S18C, tax lot 1400), and the Donald Clark Long Decedents Family Trust and Janet Long Trust and the Dorris I Long 1992 Trust 25% (T6S, R2W, S18C, tax lots 1500 and 1600), for a conditional use to expand an existing solid waste disposal site onto an adjacent approximately 16.9 acres in an IUC and EFU zone at 3680 Brooklake Road NE, Salem, Marion County, Oregon.

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 17.119, 17.123, 17.136, 17.164 and 17.172.

III. Public Hearing

A hearing on this matter was held on January 30, 2019. The Planning Division file was made part of the record. The files in cases AR 08-024 and CU 87-92 were also made a part of the record. The following persons appeared at hearing:

1. Brandon Reich Marion County Planning Division
2. Trisha Olson Applicant Marion Investment Group, LLC's Attorney
3. Jeff Tross Applicant Marion Investment Group, LLC's consultant
4. Kevin Hines Proponent/Marion Resource Recovery Facility (MRRF)

The following documents were entered into the record as exhibits:

- Ex. 1 Annotated zoning map showing current and proposed expansion MRRF sites
- Ex. 2 Annotated Brooks-HopmERE map showing current MRRF and Covanta sites
- Ex. 3 Oregon Department of Environmental Quality (DEQ) solid waste disposal facility inspection form

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. Marion Investment Group, LLC (Marion Investment) owns the current MRRF property, tax lot 062W18C00900 (TL 900). TL 900 and a small portion of tax lot 062W18C01800 (TL 1800) owned by Odin A Hollin and Ellen J. Hollin, Trustees of the Hollin Living Trust (Hollin Trust), are within the Brooks-HopmERE urban unincorporated community (UUC), designated Industrial, zoned IUC, and subject to the BHCP. Most of TL 1800, and all of the other properties subject to the application, Tls 062W18C 1400 and 1700 (Hollin Trusts), and 1500, 1600 (Donald Clark Long Descendants Family Trust and Janet Long Trust and the Doris I Long 1992 Trust 25% (Long Trusts), are outside the BHCP boundary, designated Primary Agriculture and zoned EFU.

The Brooks Community Service District (BCSD) does not provide TL 900 with sewer services. It is not clear whether BCSD water service is provided. The application statement, at page 12 says, "Water is provided by the Brooks Community Service District." The Planning Division recommendation, at page 6 states the site is served by an existing well. **Applicant must clarify whether TL 900 is within the boundaries of the Brooks Community Service District, and whether BCSD provides water services to the property.**

2. TL 900 previously received land use approvals to operate a recycling facility (CU 87-92) and to expand the recycling facility (AR 08-24), and is considered a legal parcel for land use purposes. No prior case information is in the record for other parcels that might indicate legal status. Deeds in the record for the properties do not predate 1977, which might also indicate legal status of the parcels (see MCC 17.110 lot and parcel definitions). **Additional information on the status of the parcels may be supplied to assist Marion County Board of Commissioners (BOC) evaluation of the subject applications.**
3. The subject IUC zoned properties abut other IUC properties in industrial use to the east and west, EFU zoned properties in farm use are north and south, and a CC (Community Commercial) zoned parcel in commercial use is to the northwest. The subject EFU zoned properties are surrounded by other EFU zoned property, except for the north property lines of Tls 1400 and 1800, and the east property line of TL 1800, which abut IUC zones. The subject properties are all south of Brooklake Road and east of the Burlington Northern railway line that abuts Tls 1400, 1500 and 1600.
4. Marion Investment proposes expanding the MRRF onto portions of TL 1800, and onto Tls 1400, 1500, 1600 and 1700. TL 1800 is a rectangular parcel with an approximately 0.71

acre arm abutting the east side of the existing MRRF, and a longer arm south of the MRRF facility, extending west toward the railway line. These two strips are to be divided from the rest of TL 1800 for MRRF use.

5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

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

ENGINEERING CONDITIONS

Condition A - Prior to building permit issuance, record dedication of right-of-way along the subject property Brooklake Road NE frontage to achieve a 33-foot wide public right-of-way halfwidth per the Marion County Rural Arterial standard.

Condition B - Prior to building permit issuance, record a Non-Remonstrance Agreement for financial participation at the time of project inception, toward future public improvements to Brooklake Road NE in order to meet the Rural Arterial standard that would include the subject property frontage.

Nexus for the above Conditions is the eventual need for Brooklake Road NE to meet Marion County Engineering Standards for a Rural Arterial due to the intensification of traffic from the proposed development as well as surrounding developments. The improvement would add a continuous center turn lane. *Improvements are anticipated to include pavement widening, striping, and closed system drainage system improvements, as appropriate.*

Condition C - Prior to building permit issuance, contribute a proportional share financial contribution toward the identified Brooklake Road/Huff Avenue intersection signalization and ramp improvements at the Brooklake Road/I-5 Interchange.

Nexus for the above Condition is that the proposed development will add traffic to the I-5 Interchange ramps, which exceed both Marion County and ODOT operating standards, and well as the Brooklake Road/Huff Avenue intersection. A discussion of these intersections is included in a sub-area plan in the Marion County Rural Transportation System Plan (RTSP). Proportional share amounts will be determined according to a trip distribution analysis, which the Applicant will need to provide.

ENGINEERING REQUIREMENTS

D. The County requires any development having 0.5-acre or more of impervious (hard) surface to provide storm water detention. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved by Public Works prior to final building inspection.

E. In accordance with Marion County Code (MCC) 11.10, if this land use action is approved, the Applicant will be required to apply for a driveway "Access Review" and make changes, if necessary, to establish a safe and compliant access. If changes to access are

deemed necessary by the County Inspector, an "Access Permit" will be required. Driveways must meet sight distance, design, spacing, and safety standards.

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

ENGINEERING ADVISORY

G. Brooklake Road NE is classified as a Rural Arterial per the Marion County RTSP. Per MCC 17.112.020, a special setback of 50 feet measured from the centerline of the road right-of-way applies to all Arterials to accommodate future expansion of the right-of-way.

Marion County Surveyor commented that no survey is required on parcels created over ten acres, parcels ten acres and less must be surveyed, per ORS 92.050, a plat must be submitted for review, checking fee and recording fees required, and a current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

Marion County Onsite Wastewater Specialist commented that there may be septic permits required and to contact Marion County Building Inspection regarding each individual lot.

Marion County Fire District 1 (MCFD1) commented on fire suppression, roadway, identification and other requirements.

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

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

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving 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 at 394-95 (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.)

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If the evidence for

every criterion is in applicant's favor, then the burden of proof is met and the application must be approved.

2. Under MCCP plan amendment policy 2, plan changes directly involving five or fewer properties are quasi-judicial amendments. Quasi-judicial comprehensive plan amendments are reviewed by zone change procedures established in MCC title 17 and may be processed simultaneously with a zone change request.

Though the subject applications involve more than five properties, the proposed comprehensive plan amendment involves one property and one ownership, and is a quasi-judicial plan amendment request being processed with a zone change application. The Marion County BOC has original jurisdiction in this matter. The BOC and will hold another hearing and make the decision on the applications.

3. The Oregon Department of Land Conservation and Development (DLCD) must be notified of any comprehensive plan amendment. DLCD was notified but provided no comments on the proposal.

GOAL EXCEPTIONION

4. 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 660-022-0030, whichever is more stringent.

The MRRF facility and the IUC-zoned portion of TL 1800 were part of the Hopmere Statewide Planning Goal 3, Agricultural Lands, exception area (area 16.2) taken when the MCCP was adopted in 1980. That exception recognized Commercial, Public and Industrial

designations and related zones. Brooks (area 16.4) and the Brooks interchange (area 16.3) were also subjects of 1980 exceptions. (See M CCP Appendix A, books 1-3.) In 2000, the Brooks, Brooks interchange, and Hopmere exception areas were taken into the Brooks-Hopmere UUC boundary, along with additional newly excepted properties from outside the original exception boundaries. The UUC designation was adopted under the unincorporated communities rule, OAR 660, division 22 (see BHCP, Part III).

OAR 660-022-0010(10), contains a definition of unincorporated community that includes:

- (a) It is made up of lands subject to an exception to Statewide Planning Goal 3, Goal 4 or both;

The county's response to the provision is that lands within the Brooks-Hopmere Community "will have exceptions to Statewide Planning Goal 3 as part of the community planning process." TL 900 was under an exception and met this requirement. The only exception to the exception requirement was the Covanta (then Ogden-Martin) waste to energy facility, brought into the UUC under OAR 660-022-0020(4):

Community boundaries may include land that is designated for farm or forest use pursuant to Goals 3 and 4 if all the following criteria is met:

- (a) The land is contiguous to Goal 3 or 4 exception lands included in the community boundary;
- (b) The land was occupied on the date of this division (October 28, 1994) by one or more of the following uses considered to be part of the community: Church, cemetery, school, park, playground, community center, fire station, museum, golf course, or utility facility;
- (c) Only the portion of the lot or parcel that is occupied by the use(s) in subsection (b) of this section is included within the boundary; and
- (d) The land remains planned and zoned under Goals 3 or 4.

The waste to energy facility was deemed a utility facility and met all applicable requirements. It is not clear to the hearings officer that the MRRF qualifies as a utility facility, though it was set up by independent garbage haulers to meet local and state recycling mandates, and it provides services to the waste to energy facility. **This will be for BOC interpretation. If the BOC determines TL 900 can qualify as an exception to the exception, then applicant's proposal to re-designate and rezone the property may be feasible.**

In, *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015), Yamhill County had rezoned part of a tract of land from EFU to Public Works-Safety (PSW) to allow a solid waste disposal site. After a number of years, the property owner wanted to expand the disposal site, but the PWS zone no longer allowed waste facilities. Applicant still owned abutting EFU zoned land, and though a new disposal facility would not be allowed on EFU zoned property, an existing facility on EFU zoned land could be expanded onto other EFU

zoned land. Yamhill County rezoned the PWS property to EFU and allowed the disposal site expansion. On appeal, the Land Use Board of Appeals found the PWS property could be rezoned to EFU to allow disposal facility expansion onto the contiguously owned EFU land. LUBA's decision was further appealed but not on this issue, so this part of LUBA's decision stands.

If the request to withdraw the subject property from its goal 3, agricultural lands exception is successful, OAR 660-004-0018 would not be applicable.

MCCP AMENDMENT

5. This is an unusual proposal. Only TL 900, containing the current MRRF, is proposed for the MCCP amendment and zone change, but applicant proposes expanding the MRRF onto adjacent property three times the size of TL 900. It seems counterintuitive to not consider the impacts of the entire proposal that would flow from the comprehensive plan amendment and zone change, but the hearings officer could find no case law interpreting the situation presented here. **The hearings officer will look at TL 900 when evaluating the plan amendment and zone change, but invites the BOC to consider whether impacts of the proposal as a whole should be looked at when evaluating the MCCP amendment and zone change requests.**
6. **Statewide planning goals.** Under the MCCP 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. Applicant proposes a site-specific MCCP amendment. The Planning Division notified Marion County Fire District 1 (MCFD1), Gervais School District, BCSD, Marion County departments, DLCD, Oregon Department of Transportation (ODOT) and DEQ of the proposed comprehensive plan amendment. Marion County departments requested dedication of right-of-way, a non-remonstrance agreement for road frontage improvements, proportional financial contribution toward intersection improvements, survey requirements and septic permitting. MCFD1 commented on fire suppression, roadway, identification and other requirements. The BOC will consider all comments in evaluating this application. Goal 2 will be satisfied.

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

TL 900 is in an existing goal 3 exception area, and goal 3 does not currently apply to the property. Applicant asks to re-designate TL 900 Primary Agriculture, making it subject to goal 3. After re-designation and rezoning, the existing non-farm use would remain. LUBA determined that non-EFU zoned property developed with a solid waste facility could be rezoned EFU in *Stop the Dump Coalition v. Yamhill County*. If re-designated, goal 3 will be applicable and resource planning and zoning requirements will be examined to ensure goal 3 compliance.

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 MCCP-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.

Use of the subject property will not change. DEQ air quality permitting requirements for the wood grinding operation will still apply. No sensitive waters are on or near the subject property and it is not within a sensitive groundwater overlay zone. The site is flat. Water and sewer services must meet all applicable standards. Goal 6 can 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 MCCP 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 division 009 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 in a UGB nor residentially developed or designated, or proposed for residential designation or development. 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.

There is some question about whether the BCSD serves the subject site, but the Brooks-Hopmore plan and procedures have been acknowledged to comply with goal 11.

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.

Applicant's transportation planning rule (TPR) letter provides two analyses to address transportation impacts to TL 900. The traffic engineer first projected a worst case scenario for TL 900 under IUC versus EFU zoning. The engineer calculated 476 trips for IUC zoning under the Institute of Transportation Engineers (ITE) Manual, and because there is no ITE estimate for agricultural uses, the engineer estimated 40 trips as appropriate for EFU zoning. The engineer deduced that EFU zoning would result in 436 fewer trips than IUC zoning on TL 900, but Marion Recycling staff found 350 truck trips and 50 employee trips at the site already per day for 400 daily trips. If TL 900 uses remain basically the same after re-designation and rezoning, the hearings officer questions the use of 40 trips per day as the worst case scenario for a use that already generates 400 traffic trips per day.

The letter's second analysis relies on Marion Recycling staff's current traffic trip estimate of 400 trips per day, and staff's estimate of 442 truck trips and 70 employee trips (512 total) after TL 900 is re-designated and rezoned. The 112 trip increase is presumed to apply only to traffic generated by the TL 900 portion of the MRRF though not specifically stated. According to the engineer, the 112 trip increase would not generate a need for a traffic impact analysis (TIA) under Marion County's rules. Not triggering a TIA is not equivalent to "no impact" nor does it directly address functional classifications of roadways.

In the end, the engineer's summary refers only to the ITE analysis in its summary:

The Trip Generation section of this memorandum shows that the difference in daily trips between the reasonable worst case of the proposed zoning (EFU) and the reasonable worst case of the existing zoning (IUC) is actually a reduction in daily trip potential. The proposed zone change will have no negative impacts on the Marion County or ODOT transportation system. Therefore, it can be concluded that the proposed zone change will not significantly impact and would cause "no further degradation" to the Marion County transportation system.

The TPR letter is insufficient to determine whether the proposed re-designation of TL 900 to Primary Agriculture would trigger a change to Brooklake Road's arterial classification.

MCPW requested conditions of approval relating directly to Brooklake Road's status as an MCCP-identified arterial road in the Marion County Rural Transportation System Plan. MCPW asks BOC for right-of-way dedication, improvement non-remonstrance agreement,

and proportional contribution to intersection and I-5 ramp improvements that would address OAR 660-012-0060 criteria. Applicant accepted these conditions at hearing. With these conditions of approval, the BOC could find OAR 660-012-0060 and goal 12 met.

Goal 13: Energy Conservation. To conserve energy.

The on-site use will continue recovering recyclables and help with Covanta waste to energy facility operations. 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.

With conditions, applicants' proposal would likely be consistent with statewide planning goals.

7. **MCCP policies.** 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.

General Rural Development Policy 1. All land divisions should be reviewed by Marion County for their compatibility with County goals and policies.

No land division is proposed or allowed for TL 900. Policy 1 is not applicable.

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

No commercial or residential uses are proposed or allowed under this application. General rural development policy 2 is not applicable.

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. According to applicant, MRRF operations at the current level have been compatible with surrounding farm uses. Applicant does not fully explain what surrounding farm uses occur, or what impacts any change in operation or the estimated 112 traffic trip per day on TL 900 might cause for

neighboring farm uses. Applicant should clarify how TL 900 operations will change and what impacts might be expected from those changes. **With additional information on potential impacts to farm uses to the north and south, applicants may show that general rural development policy 3 can be 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.

No commercial use is sought. Rural development policy 1 is not applicable.

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

The proposed comprehensive plan amendment would change the subject site to agricultural land, but would not expand the Brooks-Hopmere UUC boundary. Rural development policy 2 is satisfied.

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.

It is not clear whether TL 900 is within the BCSD boundary or what services are currently provided. Re-designation by itself will not cause services to be extended outside the current BCSD boundaries. Still, to ensure rural development policy 3 is met, any approval of this proposal should forbid use of any BCSD provided water from serving the expansion area, whether for fire suppression or office and employee uses.

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.

Applicant is providing on-site wastewater disposal, but it is unclear whether BCSD is providing water service for TL 900. If BCSD is providing water service, a condition of approval could be applied to make sure water service is not extended off site, and that resulting uses will meet rural development policy 4.

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 and no residential development is proposed. 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.

This proposal is subject to zone change criteria, examined below, to help ensure that new uses permitted in unincorporated communities will not adversely affect agricultural and forestry uses. 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.

Looking just at TL 900, there will be some intensification of use on the current site, but potential impacts of the increase were not thoroughly discussed. Still, applicant accepted conditions of approval from PW LDEP to address the transportation network. Proof of wastewater permitting can be required. With further information on the water source for the parcel, and a showing of the feasibility of covering any increased need, water service capacity can be shown. Sheriff services are in place. Electric and telephone services are available in the area. MCFD1 provided information on what may be required for a showing of adequate fire services. A condition of approval requiring applicant to provide proof from MCFD1 that applicant's fire plan is acceptable. Noted conditions will help ensure rural services policy 1 can be 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.

As noted above, conditions of approval can help ensure that an urban level of services are not required to support the proposed use and that rural services policy 2 will be 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.

As noted above, conditions of approval can help ensure that an urban level of services are not required to support the proposed use and that rural services policy 3 will be 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.

This policy is directed to public and private service providers, not individual applicants. Rural services policy 4 is not directly applicable.

Agricultural Lands Policy 1: Preserve lands designated as Primary Agriculture by zoning them EFU (Exclusive Farm Use). Lands designated as Special Agriculture should be protected by the corresponding SA zone and farmland in the Farm/Timber designation should be protected by the Farm/Timber zone.

Applicant is requesting Primary Agriculture designation and EFU zoning. With re-designation and rezoning, agricultural lands policy 1 would be met.

Agricultural Lands Policy 2: Maintain primary agricultural lands in the largest areas with large tract[s] to encourage larger scale commercial agricultural production.

TL 900 is a single lot that will not be divided. Agricultural lands policy 2 is not applicable.

Agricultural Lands Policy 3: Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do not cause adverse impacts on farm uses.

TL 900 contains an already developed waste disposal site. Agricultural lands policy 3 is not applicable.

Agricultural Lands Policy 4: This policy relates to residential uses on agricultural land. No residential uses are proposed or allowed on TL 900 under this application. Agricultural lands policy 4 is not applicable.

Agricultural Lands Policy 5: Divisions of agricultural lands shall be reviewed by the County and comply with the applicable minimum parcel size and the criteria for the intended use of the property.

TL 900 is a single lot that will not be divided. Agricultural lands policy 5 is not applicable.

Agricultural Lands Policy 6: Farmland should be taxed at agricultural use value.

No qualifying agricultural use will result from this proposal that would allow farm deferral. Agricultural lands policy 6 is not applicable but a copy of the BOC decision should be provided to the Marion County Assessor's Office to ensure the subject property is properly taxed.

Agricultural Lands Policy 7: This policy relates to residential uses on agricultural land. No residential uses are proposed or allowed on TL 900 under this application. Agricultural lands policy 7 is not applicable.

Agricultural Lands Policy 8: The location of new dwellings must comply with density limitations intended to protect major and peripheral big game habitat.

No residential uses are proposed or allowed on TL 900 under this application. TL 900 is not within major or peripheral big game habitat. Agricultural lands policy 8 is not applicable.

Agricultural Lands Policy 9: This policy relates to creation of parcels for non-farm uses. The subject parcel and use are preexisting. Agricultural lands policy 9 not applicable.

8. **BHCP land use and transportation policies.**

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

The M CCP, including BHCP, and MCC Title 17 are plans and regulations acknowledged by the state. Review under these planning and zoning documents address adverse affects on BHCP authorized uses. TL 900 is across Brooklake Road from farm properties to the north, and directly abuts farm properties to the south. Types of farm uses to the north are not identified but it appears from photos in the record that property to the north contains a plant nursery. Land to the south is in Christmas trees and grass seed. **To allow proper evaluation of this policy and potential impacts on farm uses, applicant should provide more detail about farm uses on agricultural land to the north.**

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.

Statewide planning goal 12 findings in Section V(5) above are adopted here by reference. By including PW requested conditions of approval, the capacity of the transportation system will not be exceeded.

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

Applicant claims no water use in the manufacturing process, and limited use for office and employee purposes. Wastewater disposal is currently provided by an on-site septic system. Applicant must prove capacity for wastewater disposal exists with expanded use of TL 900. A condition of approval can require wastewater permitting review for proposed TL 900 expansion.

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

No multifamily designation or zoning is proposed or allowed under this application. 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 subject property is not in or near the Norpac site. 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.

According to plan maps in the record, the subject property was not the subject of a limited use overlay zone. 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 subject site is served by an on-site wastewater disposal system. A condition of approval can require septic permitting review to validate on-site wastewater disposal capacity.

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.

Applicant states no water is used in the recycling/reclamation process. On-site sewage disposal capability is feasible and can be affirmed through septic permitting review.

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. With additional information, conditions, and a finding that the proposed re-designation of TL 900 to Primary Agriculture is allowed under OAR 660-02, the property may be re-designated Primary Agriculture.

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. With additional information, conditions of approval and a finding that the proposed re-designation of TL 900 to Primary Agriculture is allowed under OAR 660-02, the proposed EFU zone will be consistent with the Primary Agriculture plan designation and MCC 17.123.060(A) would be satisfied.
13. Land on two sides of the subject property are within the Brooks-Hopmereg UCC and are zoned IUC. The IUC zone does not contain particularly sensitive uses, so with industrial uses on these neighboring properties, the use is appropriate considering other IUC uses and the commercial use northwest across Brooklake Road. EFU zoned land is to the north between CC zoned property to the west and P (Public) zoned property to the east containing Powerland Heritage Park. From photos in the record, it appears the property may be in plant nursery use. Large fields in grass seed are on EFU zoned property to the south. The proposed EFU zone could be consistent with surrounding EFU zoned properties with the additional information about surrounding farm uses, explanation of possible impacts to the uses, and any needed mitigation measures. With the additional information, EFU zoning of the subject property could be found appropriate considering area uses, density and development in the area. If found appropriate, MCC 17.123.060(B) would be satisfied.
14. Electric and telephone services are available in the area. Applicant accepted proposed conditions of approval that will help ensure roadway capacity and safety are preserved with the associated increase in TL 900 traffic. Sheriff and fire/life safety services are in place. As a condition of any approval, applicant should be required to provide proof from MCFD1 that applicant's plan for increased activity on TL 900 complies with fire protection requirements. Wastewater is handled on-site and requiring septic review for the proposed intensified use will ensure continued on-site disposal will be appropriate. It is not clear whether BCSD provides water services. Applicant will need to provide more information on water services, and if water is BCSD provided, proof of the ability to handle the intensified use can be required. If BCSD capacity is not available for water services, an on-site well may be provided to serve the use. **Applicant should provide additional information to allow proper BOC consideration of this criterion.**
15. Marion County unincorporated communities are Brooks, Butteville, Labish Village, MacLeay, Mehema, Marion, Monitor, Quinaby and Shaw. Fargo and Turner interchanges are rural service centers. EFU zoning exists only in the Brook-Hopmereg UUC, but it is unclear to the hearings officer whether EFU zoning on this particular property is allowed under the BHCP

and OAR 660-022. The use cannot be sited on other EFU zoned land because state law does not allow new disposal sites in the EFU zone. However, the proposed use is already on-site, and there appear to be no other suitable properties or reasonably available alternatives. With an MCCP amendment approval, MCC 17.123.060(D) would be satisfied.

16. The EFU zone is the only zone allowed under the Primary Agriculture designation. MCC 17.123.060(E) is not applicable.

TL 1800 INDUSTRIAL PLANNING AND IUC ZONING

17. Applicant proposes using the IUC zoned portion of TL 1800 for access to the expansion site but did not have it re-designated or rezoned to EFU, and did not address MCC chapter 17.164 to determine whether the proposed use is permitted or conditionally permitted in the IUC zone.

A recycling facility such as MRRF is not a listed use in the IUC zone. MCC 17.164.020(E)(1) permits uses legally established and existing on July 19, 2000 only on the lot(s) or parcel(s) where they existed on July 19, 2000. The IUC portion of TL, 1800 was not a part of the MRRF facility at that time and would not qualify under this provision.

MCC 17.164.020(E)(2)(a) permits expansion of a use existing on November 15, 1994. As shown by the 1987 conditional use case for TL 900, the MRRF facility existed on November 15, 1994. Facially, this provision does not restrict expansions onto adjoining lots or parcels, but it may assume IUC to IUC expansion. Applicant should address whether, with TL 900 taken out of IUC designated and rezoning, the TL 900 use can be expanded into the IUC zone. **The BOC should make specific findings on expansion of the MRRF use to the IUC zoned portion of TL 1800 to determine whether MCC 17.164.020(E)(2)(a) is met.**

CONDITIONAL USE

MCC 17.119

18. The proposed conditional use applies only to Hollin Trusts and Long Trust properties, Tls 1400, 1500, 1600, 1700 and EFU zoned a portion of TL 1800. Under MCC 17.119.020 and MCC 17.119.025, a conditional use application may be filed by, and shall include signatures of certain people, including the owner of the property subject to the application. The case file contains several deeds recorded in the Marion County deed record showing conveyance to Hollin and Long trusts. The Hollin Trusts applications are signed by Ellen J. Hollin as trustee. The Long Trust application is signed by Larry Long but no capacity, such as trustee or personal representative is shown. Although the BOC may accept the signature as true under MCC 17.119.025(B), MCC 17.119.025(B) also allows the BOC to require proof that the signer is the owner, officer attorney in fact or agent. **Given the complexity of the matter, the hearings officer believes it would be appropriate to require proof clarifying the Long Trust signer's capacity to sign the application to avoid any complications in future.**
19. Under MCC 17.119.070, before granting a conditional use, the director, planning commission, or hearings officer shall determine:

- A. That it has the power to grant the conditional use;
 - B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
 - C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.
20. Under MCC 17.119.030, BOC on its own motion, may hear and decide only those applications for conditional uses listed in MCC title 17. The proposed use, an expansion of a lawfully established solid waste disposal site together with facilities and buildings for its operation, is listed in the EFU zone as a conditional use under MCC 17.136.050(I). The BOC is not calling up the conditional use application. The application is part of a package of applications, including a comprehensive plan amendment where the decision can only be made, and a zone change that can only be approved, by BOC action. Rather than bifurcate the process, it is Marion County practice to have all applications together before the BOC for initial decision. The BOC may hear and decide this matter. MCC 17.119.070(A) is met.
21. The purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. It is intended to be applied in those areas composed of tracts that are predominantly high-value farm soils as defined in OAR 660-033-0020(8). These areas are generally well-suited for large-scale farming. It is also applied to small inclusions of tracts composed predominantly of non-high-value farm soils to avoid potential conflicts between commercial farming activities and the wider range of non-farm uses otherwise allowed on non-high-value farmland. Moreover, to provide the needed protection within cohesive areas it is sometimes necessary to include incidental land unsuitable for farming and some pre-existing residential acreage.

To encourage large-scale farm operations the EFU zone consolidates contiguous lands in the same ownership when required by a land use decision. It is not the intent in the EFU zone to create, through land divisions, small-scale farms. There are sufficient small parcels in the zone to accommodate those small-scale farm operations that require high-value farm soils. Subdivisions and planned developments are not consistent with the purpose of this zone and are prohibited.

To minimize impacts from potentially conflicting uses it is necessary to apply to non-farm uses the criteria and standards in OAR 660-033-0130 and in some cases more restrictive criteria are applied to ensure that adverse impacts are not created.

The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

Non-farm dwellings generally create conflicts with accepted agricultural practices. Therefore, the EFU zone does not include the lot of record non-farm dwelling provisions in OAR 660-

033-0130(3). The provisions limiting non-farm dwellings to existing parcels composed on Class IV – VIII soils [OAR 660-033-0130(4)] are included because the criteria adequately limit applications to a very few parcels and allow case-by-case review to determine whether the proposed dwelling will have adverse impacts. The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283.

The conditional use is examined under applicable MCC 17.136 criteria. If these criteria are met, MCC 17.119.070(B) will be met.

22. The planning director and hearing officer propose conditions of approval. The BOC will determine what conditions are needed to ensure the proposed use will not impact the health, safety or welfare of persons residing in the area or present a need for further protection for other properties in the neighborhood, and MCC 17.119.070(C) will be met.

MCC 17.136

23. **MCC 17.136.050.** Under MCC 17.136.050 listed uses may be permitted in the EFU zone, subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:

- (I) Expansion of a lawfully established solid waste disposal site together with facilities and buildings for its operation.

OAR 660-033-0120, table 1, on which MCC 17.136.050(I) was based, includes a site for disposal of solid waste approved by a governing body of a county and for which a permit has been granted under ORS 459.245 by DEQ, together with equipment, facilities or buildings necessary for its operation. The MRRF was established under CU 87-92 and expanded under AR 08-024. The DEQ permit number is 400.

24. **MCC 17.136.060(A).** Under MCC 17.136.060(A), the following criteria apply to all conditional uses in the EFU zone:
 1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.
 2. Adequate fire protection and other rural services are or will be available when the use is established.
 3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
 5. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.
25. *Farm practices.* MCC 17.136.060(A)(1) incorporates OAR 660-033-0130(5) and ORS 215.196(1) requirements. ORS 215.196(1) as interpreted in *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), requires a three-part analysis to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the county must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require the county to consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

No forest practices are alleged or obvious on surrounding properties. Brooks-Hopmere UUC exception properties are not considered, nor would zoned TL 900 be considered because even with its EFU zoning, it is fully developed with the non-farm use to be expanded. Applicant has not specifically identified farm uses on EFU zoned properties to the north of Brooklake Road but it appears from photos in the record that the property may contain a plant nursery. This property is already exposed to the affects of the MRRF, but the use will be intensified and expanded onto additional property. Applicant needs to provide additional information on farm use, farm practices, and possible impacts on the property north of Brooklake Road.

According to applicants, the expansion site is in Christmas trees and grass seed, and the land south and east of the expansion area is in grass seed. Property to the east would be the remaining Hollin Trusts TL 1800 property after partitioning. The notification map and accompanying list of notified property owners show that Hollin Trusts also own the property south of the expansion area. Even so, applicant still needs to provide additional information about farm practices and possible impacts on the properties. A 30'-wide berm is proposed for the east and south sides of the expansion area, but applicant will need to show why this would be enough to mitigate impacts to neighboring farm properties. The proposed use may be an expansion of an existing use, but the expansion area is three times the size of the current MRRF site, and will include a 70,000 square foot building in the first phase (and other buildings in the next phase), truck parking and so on. Applicant needs to make sure impacts from all parts and phases of development are set out for BOC consideration.

Applicant needs to provide the BOC with additional information on farm practices, and possible impacts and impact mitigation for surrounding property in farm use to allow proper evaluation of whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use under MCC 17.136.060(A)(1).

26. *Adequate services.* Utility lines are available on abutting TL 900. The expansion area at 16 to 17 acres is likely large enough to accommodate septic disposal on the property, and applicants' site plan shows an area for a potential septic leach field. Septic permitting will ensure the wastewater disposal facility will serve on-site needs. No new well is shown on the site plan. It is unclear how water is supplied to the current MRRF site. If that site is on a well, that water might be used for the expansion site, or a new well might be required. If a new well on the subject property is required, it will be up to the Oregon Department of Water Resources to determine whether the well would be allowed or whether permitting would be required. A condition of approval can require proof from OWRD that any new well is allowed, or if permitting is required, to show a permit has been applied for or has been approved. Applicant has accepted MCPW conditions to address impacts on transportation facilities. MCPW will require grading and stormwater management plans and permitting that can be made conditions of approval. Driveway permitting by MCPW can also be required upon development of the use. MCFD1 was notified of the subject proposal and provided comments on fire district requirements. Applicants note a potential fire tank location on the site plan. A condition can be included in any approval requiring MCFD1 sign off on fire site access, site identification, water storage and other fire-related plans for the site prior to issuance of building permits. With conditions, adequate services are or will be available upon development. MCC 17.136.060(A)(2) is satisfied.
27. *Significant adverse impact.* The subject property is not within a sensitive groundwater, floodplain, or geologically hazardous area overlay zone. Little on-site water use is anticipated. The site is not within or near an MCCC identified major or peripheral big game habitat area or near MCCC identified sensitive rivers, streams or headwaters. No MCCC identified watershed areas are on the subject property. No MCCC identified wetlands are on or near the site. The grinding operation that will move onto the expansion site results in particulate emissions and is currently operating under a DEQ permit. A September 2017 DEQ inspection report shows the operation conforming to all permit requirements. Continued DEQ permitting can be made a condition of any approval. Septic review and permitting, and other water-related permitting will address groundwater issues. The site is fairly flat, and PW will require grading and stormwater management plans and permitting to address erosion control can be made conditions of approval. With conditions, there will be no significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality. MCC 136.060(A)(3) is met.
28. *Noise.* Applicant states that truck and vehicle movement, or machinery such as conveyors, grinders and loaders are the types of noise that might be associated with the proposed expansion use. But notes the site will abut industrial areas of the Brooks-Hopmere UUC north that will not be disturbed by noise that has already been present on the current MRRF site. To the west are the Burlington Northern Railroad tracks in a 50' right-of-way, about a 100' strip of EFU zoned property, the 60' River Road right-of-way, and then a large farm field with no apparent development near River Road. As noted above, the farm property to the east and south is currently owned by applicants Hollin Trusts, who raise no concern about noise associated with the use. No nearby noise-sensitive receivers are apparent. And, applicant proposes a 30'-wide berm to the east and south to help attenuate sound. The site plan says the grinder operation will be in a 75' by 100' canopy area. Applicant should explain whether the canopy area will have any sound shielding. **With information on the**

grinding operation, and a condition requiring a berm in conformance with the site plan, noise associated with the use would likely have no significant adverse impact on nearby land uses, and MCC 17.136.060(A)(4) could be satisfied.

29. *Water impounds/mineral and aggregate sites.* No MCCP identified mineral and aggregate sites or potential water impounds are on or near the subject property. MCC 17.136.060(A)(5) is satisfied.
30. With additional information from applicant, MCC 17.136.060(A) criteria may be met.

PARTITION

31. Applicant proposes dividing 17.03-acre TL 1800 into three parcels of 14.0 acres, 2.0 acres, and 0.71 acres, which adds up to only 16.71 acres rather than 17.03. A proposed partition map in the record contains slightly different parcel sizes. Applicant should clarify what numbers apply so the BOC decision can accurately reflect the proposal. The parcel size numbers from the application form are used in this evaluation. Approximately 0.71 acre proposed parcel 2 will be made up of the current north-south IUC zoned portion of TL 1800. Approximately 2.0-acre proposed parcel 3 would consist of the east-west running wing of TL 1800 with a small portion of it coming down from the east line of proposed parcel 2. The remainder of TL 1800 makes up proposed parcel 1.

MCC 17.136

32. Under MCC 17.136.090, the following regulations apply when partitioning land within an EFU zone subject to the provisions of MCC 17.172:
 - A. Minimum Parcel Size for Newly Created Parcels.
 1. Farm Parcels. The minimal parcel size for new farm parcels shall be calculated as follows:
 - a. All parcels wholly or in part within 500 feet of the subject parcel shall be identified.
 - b. The average (mean) size of all parcels larger than 40 acres identified in subsection (A)(1)(a) of this section shall be determined.
 - c. The acreage size calculated in subsection (A)(1)(b) of this section, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.

The 14-acre remainder parcel (proposed parcel 1) would be a newly created farm parcel. Applicant says the only parcel larger than 40 acres within 500' of parcel 1800 is TL 1900, which is 77.46 acres, and that the minimum parcel size for farm parcels is 80 acres. Applicant does not explain how creating a 14-acre farm parcel would meet MCC 17.136.090(A)(1) requirements. **Applicant must further address this provision.**

33. (A)(2) - Non-Farm Parcels. A new non-farm parcel created pursuant to subsection (B) of this section shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses.

East-west oriented, EFU zoned proposed parcel 3 will be included in the MRRF non-farm expansion. Applicant included a site plan showing the existing MRRF site and proposed development on proposed parcel 2. The new parcel would, with other expansion site land, contain portions of the proposed fire water storage tank, truck cab, truck trailer and car parking, truck scales and scale house, along with traffic circulation areas. The area will be fully utilized and is the minimum size necessary to accommodate the proposed use on this portion of the facility. MCC 17.136.090(A)(2) is satisfied.

34. (B) Requirements for Creation of New Non-Farm Parcels.

1. A new non-farm parcel may be created for uses listed in MCC 17.136.040(C) and (K) and MCC 17.136.050, except the residential uses in MCC 17.136.050(A) and (B).

The proposed use is found in MCC 17.136.050(I). MCC 17.136.090(B)(1) is met.

2. The criteria in MCC 17.136.060 applicable to the use shall apply to the parcel.

MCC 17.136.060 criteria are discussed above and with additional information and conditions of approval, the conditional use criteria could be met.

3. A non-farm parcel shall not be approved before the non-farm use is approved.

If the conditional use is approved, the non-farm use of the subject property would be approved and this provision could be met.

4. A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.

This provision can be included as a condition of any approval. As conditioned, MCC 17.136.090(B)(4) would be met.

5. If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following criteria:

This partition is not proposed for these uses. MCC 17.136.090(B)(5) is not applicable.

6. A division of land smaller than the minimum lot or parcel size described in subsections (A) and (B) of this section may be approved to establish a religious organization including cemeteries in conjunction with the religious organization if they meet the following requirements:

This partition is not proposed for this use. MCC 17.136.090(B)(6) is not applicable.

7. A portion of a lot or parcel that has been included within an urban growth boundary and re-designated for urban uses under the applicable acknowledged comprehensive plan may be divided off from the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:

Proposed parcel 3 does not abut property within a UGB. This provision is not applicable.

35. MCC 17.136.100 Development Requirements. MCC 17.136.100(A) and (B) apply mandatory building height and setback provisions. MCC 17.136.100(C), Declaratory Statement, is optional here: For all dwellings, *and other uses deemed appropriate*, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title of the lot(s) or parcel(s):

The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, [and] grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

Proposed parcel 3 is sandwiched between the Brooks-Hopmere UUC boundary and additional properties that will become part of the MRRF expansion area, except for the far easterly portion of the proposed parcel, which will abut proposed parcel 1, the EFU zoned portion of TL900 that is not a part of the expansion area. BOC could impose the subject declaratory statement for protection of proposed parcel 1.

MCC 17.164

36. Under 17.164.060(C)(2), urban communities, the minimum size of any new lot or parcel shall be 1.25 acres.

Applicant does not explain how partitioning the IUC portion of TL 1800 is allowed under IUC zone requirements. **This provision is not met.** Applicant might consider re-designating and rezoning this property consistent with the other tax lots, and then partitioning this portion under EFU zone requirements.

MCC 17.172

37. Under MCC 17.172.200, the property line radius at street intersections shall be to Marion County Public Works department standards.

The subject property does not border an intersection. MCC 17.172.200 is not applicable.

38. Under MCC 17.172.220, no street grade shall be in excess of 12 percent unless the commission or hearings officer finds that, because of topographic conditions, a steeper grade is necessary. The commission or hearings officer shall require a written statement from the Director of Public Works indicating approval of any street grade that exceeds 12 percent.

The subject property is flat. No grade steeper than 12% is implicated. MCC 17.172.220 is met.

39. Under MCC 17.172.240, if land to be partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the zoning ordinance, standard right-of-way widths are subject to Marion County Department of Public Works standards.

Proposed parcels 1 and 3 do not border a road way and will not cause the termination of a roadway. Proposed parcel 2 has roadway frontage, and frontage dedication was accepted as a condition of approval by applicant. As conditioned, MCC 17.172.240 will be met.

40. Under MCC 17.172.260, where topographical requirements necessitate either cuts or fills for the proper grading of streets, additional right-of-way may be required to be dedicated to allow all cut and fill slopes to be within the right-of-way.

The subject properties are flat. Marion County LDEP did not suggest a need for additional right-of-way half-width dedication. MCC 17.172.260 does not apply.

41. Under MCC 17.172.320, all street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the Director of Public Works. Subdivision plats shall not have final approval until such time as the director of public works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County Department of Public Works.

No building permits within a subdivision or partition shall be issued until the director of public works, or his/her designee, approves that the improvements have been completed or sufficient improvement agreements and financial guarantees have been recorded.

The portion of this provision relating solely to subdivision plats is not applicable. The Planning Director is not requesting immediate roadway frontage improvements. In requested condition B, PW stated:

Condition B - Prior to building permit issuance, record a Non-Remonstrance Agreement for financial participation at the time of project inception, toward future public improvements to Brooklake Road NE in order to meet the Rural Arterial standard that would include the subject property frontage.

PW explained that the improvement would add a continuous center turn lane. Improvements are anticipated to include pavement widening, striping, and closed system drainage system improvements, as appropriate.

Applicant accepted this condition of approval. MCC 17.172.320 is met.

42. Under MCC 17.172.400, all lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet DEQ and Marion County Building Inspection Division requirements. Those subsurface sewage systems used by a community, sanitary district, industry, or incorporated area must be authorized by DEQ via the Marion County Building Inspection Division. Installation and maintenance shall be in accordance with DEQ regulations and requirements. The hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the hearings officer deems it necessary and provided the connection is available.

Proposed parcels have no access to community sewer systems and will rely on subsurface sewage disposal. The EFU zoned parcels involved in this application will be consolidated into one parcel. (See V(56) below.) DEQ sewage disposal requirements are overseen by Marion County PW. The consolidated parcel will be over 16 acres, large enough to feasibly accommodate subsurface sewage disposal. PW subsurface sewage disposal permits will be made a condition of any approval. Proposed parcel 2 will be in the IUC zone and used in conjunction TL 900, an abutting IUC zoned parcel that contains a septic system. Proposed parcel 2 will be used solely as an accessway to the MRRF facility that is on TL 900 and which will be expanded onto the 16+ acre EFU zoned property. If needed, a septic use agreement could be required between properties to provide proposed parcel 2 with authorized sewage disposal service. MCC 17.172.400 can likely be met.

43. Under MCC 17.172.420, all lots or parcels shall be served by an authorized public or private water supply system or by individual private wells.

(a) Public or Private Systems: Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the Marion County Department of Public Works.

(b) Individual Private Wells: Individual private wells must meet the construction requirements of the Oregon State Water Resources Department and be located in accordance with requirements of the State Health Division in relation to public or private sewage disposal systems. The bacteriological quality of this water may be determined through the Marion County Health Department. Upon receiving the recommendations from the State Health Division or Marion County Health Department, the Hearings Officer or Commission may require the use of an engineered public or private water system in any proposed subdivision. Other criteria to be considered in making this determination are the recommendations contained in the Marion County Water Quality Management Plan, Marion County Comprehensive Plan, and Chapter 181 of the Marion County Rural Zoning Ordinance.

It is not clear whether the IUC zoned parcel is within the BCSD boundary. If it is, (a) could apply, or (b) could apply if the neighboring IUC zoned TL 900 is on a well. Applicant must address how parcels will be served with water. The new EFU zoned parcel is subject to (b) and will be consolidated with the other EFU zoned expansion land for water service. Applicant needs to provide proof that adequate water supply will be available to the expansion site. **Applicant has not yet shown how MCC 17.172.420 can be satisfied.**

44. Under MCC 17.172.430, the impact of proposed subdivisions and partitions on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with Department of Public Works engineering standards.

PW LDEP commented that the county requires any development with 0.5-acre or more impervious surface to provide storm water detention, and that an acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. The system must be constructed and approved by Public Works prior to final building inspection. Applicant's site plan provides for a stormwater basin. With requirements, administered by MCPW, stormwater issues will be addressed during the county permitting process. MCC 17.172.430 could be satisfied.

45. Under MCC 17.172.540, unless a variance is granted, partitions shall conform to applicable regulations in MCC 17.172.460 through 17.172.660. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.

MCC 17.172.460 through 17.172.660 and other provisions of 17.172 specifically referring to partitioning requirements are examined in this recommendation.

46. MCC 17.172.460 deals with pre-application conferences, and contains no substantive criteria.

47. MCC 17.172.480 deals with partitioning procedure and requires a partitioning application. An application was filed. MCC 17.172.480 is met.
48. MCC 17.172.500 deals with application form requirements and contains no substantive criteria.
49. MCC 17.172.510 and 17.172.520 contain filing and signature requirements addressed in the conditional use section.
50. MCC 17.172.530 deals with governmental agency coordination. Requests for comment were sent to affected governmental agencies. MCC 17.172.520 procedures were followed.
51. MCC 17.172.540 deals with regulation conformance. This application is being examined against applicable regulations.
52. Under MCC 17.172.560, all lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.
 - A. Have a minimum easement width of 20 feet;
 - B. Have a maximum grade of 12%;
 - C. Be improved with an all-weather surface with a minimum width of 12 feet;
 - D. Provide adequate sight-distance at intersections with public roadways;
 - E. Be provided with a road name sign at the public road as identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.

Proposed parcel 2 has more than 20' of roadway frontage. Proposed parcel 3 would be access via proposed parcel 2. All parcels will be under the same ownership and will be part of a single operation. No easement will be required. MCC 17.172.560 is met.

53. MCC 17.172.580 through 17.172.640 deal with notification, appeal of the Planning Director's and hearings officer's decisions, hearing requirements, contain no substantive criteria and are not applicable.
54. Applicant is advised that under MCC 17.172.660, within two years of approval of the partitioning application, the applicant shall submit for approval by the Director, a partitioning plat in the appropriate form that shall reflect the final decision. When approved, the plat shall be recorded with the Marion County Clerk. Until the plat is approved and recorded, no building permits for any of the divided parcels shall issue. If applicants do not record a partitioning plat within two years, approval will be deemed null and void. One extension

may be approved by the Planning Director on submission of written justification prior to the expiration of the two-year time limit.

55. If partitioning is not an option in the EFU or IUC zones, applicant may consider a property line adjustment under MCC 17.172.120.

MISCELLANEOUS

56. MCC 17.136.110 Contiguous ownership.

- A. After June 29, 1994, it shall be a condition of approval that a new deed be recorded consolidating all contiguous lands in the same ownership when such contiguous lots or parcels are included in the application and must be considered in order for the application to meet the applicable criteria and standards. Consolidation shall be accomplished prior to exercising the rights granted in the land use decision and obtaining building permits, or concurrent with filing of a partitioning plat or property line adjustment survey.

The application for EFU zone expansion of the MRRF includes TLs 1400,1500,1600,1700 and proposed parcel 3 from TL 1800. As a condition of any approval, these parcels shall be consolidated into a single deed recorded in the Marion County deed record prior to exercising the rights granted in the land use decision and obtaining building permits, or concurrent with filing of a partitioning plat or property line adjustment survey.

57. MCC 17.136.120 Permit expiration dates.

- A. Notwithstanding other provisions of this title, a discretionary decision, except for a land division, approving a proposed development in the EFU zone expires two years from the date of the final decision if the development action is not initiated and all required conditions are met in that period. The director may grant an extension period of up to 12 months if:
1. An applicant makes a written request for an extension of the development approval period.
 2. The request is submitted to the county prior to expiration of the approval period.
 3. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.
 4. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- B. Approval of an extension granted under this section is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

- C. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.
- D. If a permit is approved for a proposed residential development in the EFU zone, the permit shall be valid for four years. For the purposes of this subsection, "residential development" only includes the dwellings provided for under MCC 17.136.020(D), 17.136.030(D) and 17.136.050(A).
- E. An extension of a permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for two years.

Applicant is advised that this provision applies to the EFU zoned expansion area conditional use application, but not the partition application.

- 58. Under MCC 112.020, a 50' special setback is required for an arterial roadway.
- 59. CU 87-92, the original approval permitting the recycling facility, applied MCC 17.120.325 minimum standards for operation of a solid waste disposal:

The following minimum standards shall apply to the establishment, maintenance, and operation of solid waste disposal sites within Marion County. The particular concerns of these provisions are providing for an adequate number of solid waste disposal sites to meet the needs of Marion County and the proper location of solid waste disposal sites including access to and from the sites, the appearance of such sites as they relate to the surrounding area and for the ultimate reuse of such sites.

- A. Screening. The site shall be reasonably screened from adjoining developed properties and public streets or highways by the placement of landscaped yards and areas adjacent to every property line, within which yard or area will be placed an ornamental fence, wall or hedge or landscape berm. This shall be in addition to such desirable vegetation as may exist within the landscaped area. Where the landowner or the holder of a franchise for the site has obtained an interest in adjacent property for the purpose of providing adequate screening or where an appropriate governmental agency provides for such screening, the commission or hearings officer may accept such screening in lieu of that otherwise required by this subsection. This screening, whether on the same or other property, shall continuously obscure the view of the site and the landowner or franchise holder shall be responsible for maintenance of such screening.
- B. Access Roads. All access to the site shall be by a route or routes approved by the county engineer, hearings officer and the commission.
- C. Control of Operation Time. Except for such activities as office machinery repair and the equivalent, in residential, farm or commercial districts, a limit shall be placed on the operating time from 4:30 a.m. to 9:30 p.m. This limitation on operating time may be waived by the county engineer in times of public or private emergency for

the duration of such emergency. Other activities may be conducted outside the allowable time limit if they fall within standards established for industrial uses as set forth in MCC 17.150.140.

Planning recommends applying the screening requirement to the expansion site, keeping site access to the newly expanded site via Brooklake Road, operating the facility from 4:30 a.m. to 9:30 p.m. as conditions of approval. Applicant asks to alter the hours of operation to continue to 11:00 p.m. to allow a second shift when needed.

The Solid Waste Management Plan (SWMP) mentions a possible second shift operating at the site, but it is not clear how a second shift with the expansion of the use would affect surrounding uses. **Without additional information on what operations would take place during the second shift, or some professional evaluation of sound impact during the extended hours, the hearings officer recommends retaining the current hours.**

VI. Recommendation

The hearings officer finds not all applicable provisions have been fully addressed, but believes applicants may, by furnishing additional information, argument and evidence, or by modifying the application, prove all applicable criteria will be met. On this record, at this point the hearings officer **RECOMMENDS THE BOC DENY** the subject applications. If the applications are granted, the Planning Division and hearing officer offer, for BOC consideration, various conditions of approval for the public health, safety and welfare:

- A. Prior to building permit issuance, record dedication of right-of-way along the subject property Brooklake Road NE frontage to achieve a 33-foot wide public right-of-way halfwidth per the Marion County Rural Arterial standard.
- B. Prior to building permit issuance, record a Non-Remonstrance Agreement for financial participation at the time of project inception, toward future public improvements to Brooklake Road NE in order to meet the Rural Arterial standard that would include the subject property frontage.
- C. Prior to building permit issuance, contribute a proportional share financial contribution toward the identified Brooklake Road/Huff Avenue intersection signalization and ramp improvements at the Brooklake Road/I-5 Interchange.
- D. Parcels ten acres and less must be surveyed. Applicant shall have the resulting parcels platted per ORS 92.050. The plat shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Zone Change Case 18-006.
- E. A Partition Plant Service Report, from a title company, is required upon submission of the final mylar to the County Surveyor.
- F. Prior to submitting the final partition plat, applicant shall obtain required septic review and permits required by Marion County Building Inspection Division.

- G. Resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
- H. After the partition has been completed, no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.
- I. Prior to recording the plat, all taxes due must be paid to the Marion County Tax Department.
- J. Property development shall significantly conform to the site plan submitted with the proposal, including 30'-wide berm. Minor variations are permitted upon review and approval of the Planning Director.
- K. Applicants shall provide the Planning Division with proof that Marion County Fire District 1's Recommended Building Access and Premise Identification regulations, the Marion County Fire Code Applications Guide and other requirements are met.
- L. The facility shall be screened consistent with MCC 17.120.325 (A).
- M. The facility shall continue to use access off Brooklake Road unless alternate access is approved by a conditional use land use approval.
- N. The facility shall operate from 4:30 a.m. to 9:30 p.m. except in emergency situations as provided for in MCC 17.120.325 (C).
- O. Prior to building occupancy, applicant shall obtain applicable Department of Environmental Quality permits or provide proof from the department that permitting is not required.
- P. EFU zoned parcels shall be consolidated into a single deed recorded in the Marion County deed record prior to exercising the rights granted in the land use decision and obtaining building permits, or concurrent with filing of a partitioning plat or property line adjustment survey.

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 5th day of July 2019.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Marion Investment Group LLC P.O. Box 9130 Salem, OR 97305	<u>Agencies Notified</u> Planning Division <i>(via email: gfennimore@co.marion.or.us)</i> <i>(via email: breich@co.marion.or.us)</i> <i>(via email: lmilliman@co.marion.or.us)</i>
Hollin Living Trust Ellen J. Hollin 7866 72 nd Avenue NE Salem, OR 97305	Code Enforcement Building Inspection <i>(via email: bdickson@co.marion.or.us)</i> <i>(via email: twheeler@co.marion.or.us)</i> <i>(via email: deubanks@co.marion.or.us)</i> Assessor PW Engineering <i>(via email: assessor@co.marion.or.us)</i> <i>(via email: jrassmussen@co.marion.or.us)</i> <i>(via email: mhhepburn@co.marion.or.us)</i> <i>(via email: mpuntney@co.marion.or.us)</i> <i>(via email: mknudsen@co.marion.or.us)</i> <i>(via email: rfleming@comarion.or.us)</i>
Donald Clark Long Decedents Family Trust 881 Fairwood Crescent Woodburn, OR 97071	Survey MCFD No. 1 DLCD <i>(via email: kinman@co.marion.or.us)</i> <i>(via email: paulas@mefd1.com)</i> <i>(via email: timothy.murphy@state.or.us)</i> <i>(via email: angela.camahan@state.or.us)</i>
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Tricia Olson 117 Commercial St. NE, 4 th Floor Salem, OR 97301	AJ Nash 2195 Hyacinth Street NE, Suite 111B Salem, OR 97301
Ellen Hollin 1125 McGee Court SE #173 Keizer, OR 97303	Roger Kaye Friends of Marion County P.O. Box 3274 Salem, OR 97302
Kevin Hines 3680 Brooklake Road NE Salem, OR 97303	Mary Kyle McCurdy 1000 Friends of Oregon 133 SW 2 nd Avenue, Suite 201 Portland, OR 97204

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 5th day of July 2019, and that the postage thereon was prepaid.



Susan Hogg
Secretary to Hearings Officer