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THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY
RECORDS

STATE OF OREGON

In the Matter of Amending)
 Comprehensive Plan to)
 Include Goal 14 Exception) ORDINANCE NO. 2005-05
 for Industrial Lands in)
 North Highway 395 Area)

WHEREAS the Board of Commissioners has adopted a Comprehensive Plan for Umatilla County and has ordained Ordinance No. 83-04, adopting the County Land Development Ordinance;

WHEREAS the Land Conservation and Development Commission as part of Periodic Review has issued Order #001352, requiring the county to justify uses currently allowed in commercial and industrial zones, as uses either appropriate in rural areas or to delete such uses from these zones, to be in compliance with Statewide Planning Goal 14 (Subtask E);

WHEREAS the county, the City of Hermiston, and property owners, chose to pursue amend the Umatilla County Comprehensive Plan to include an exception to Goal 14 for certain areas along the Highway 395 corridor between the Urban Growth Boundaries of the City of Hermiston and the City of Umatilla, specifically the areas zoned Light Industrial (LI);

WHEREAS on September 22, 2004, the Board of Commissioners adopted Ordinance No. 2004-01, which amended the Comprehensive Plan to include an exception to Statewide Planning Goal 14 for Highway 395 Corridor zoned for Retail Service Commercial and Light Industrial, based on physically developed with and irrevocably committed to urban uses;

WHEREAS on December 1, 2004, the Department of Land Conservation issued its Remand Opinion approving the exception for the commercially designated property, but remanding the industrial plan designated area for further consideration to either justify the standards for an exception to Goal 14 or amend the zone to ensure only rural uses are allowed;

WHEREAS the county on remand pursued further amendments to the Comprehensive Plan to justify an exception to Goal 14 for the industrial zoned properties;

WHEREAS the Umatilla County Planning Commission held a public hearing on May 12, 2005, to review the application and proposed amendments and recommended that the Board of Commissioners adopt the amendments;

WHEREAS the Board of Commissioners held a public hearing on May 31, 2005, to consider the proposed amendments, and voted for the approval of the amendments.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Umatilla County Comprehensive Plan, adopted May 9, 1983, be further amended to include the following:

To be added to the section entitled Highway 395 (Area #2) on Page XVIII-445:

These are the findings of fact and reasons to support an exception to Statewide Planning Goal 14 (Urbanization) for 567 acres of light industrial land that is extensively developed and located along and adjacent to an existing two-mile commercial corridor of State Highway 395, north of the City of Hermiston and south of the City of Umatilla. The exception set out in this document is a combination of (1) a developed and committed exception, and (2) a reasons exception.

This light industrial exception land is located along a two-mile stretch between and abutting the City of Umatilla and the City of Hermiston Urban Growth Boundaries. Most of the industrial property does not abut the state highway, but adjoins the existing commercially zoned exception land that fronts State Highway 395. A Goal 14 exception has been approved for the commercial property along this corridor.

This exception is necessary for the following reasons:

- * To provide consistent plan and zone designation for the parcels with split commercial and industrial zoning both have a goal 14 exception.
- * To demonstrate that many existing uses are unique, both urban and rural, in character
- * To provide predictability for future economic development in the area
- * To allow historical pattern and practice to continue for lands which have been planned, zoned, and developed for industrial development for more than 30 years.
- * To enable the west county to compete, without the disadvantage of building-size limitations, with economic

- development in the Tri-Cities area of Washington.
- * To encourage the continuation of new and expanding small businesses.
 - * To maximize public and private investment of existing infrastructure such as Highway 395, natural gas lines, electric utility lines, electric substation capacity, and community water system.
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- * To show that the existing businesses function as part of the regional economy, engaging in commerce with businesses in both urban and rural industrial areas in West Umatilla County, Morrow County and southeast Washington.
 - * To show that the presence of these urban and rural uses has committed much of the remaining vacant LI-zoned land to urban scale industrial development, and to establish land use regulations that encourage rather than restrict future development within this area.
 - * To explain why the remaining undeveloped and uncommitted acres of light industrial land should be allowed to develop with uses that are urban or rural in character.
 - * To preserve the existing connectivity within the Highway 395 commercial and industrial corridor with both the adjoining commercial and industrial zoned and developed lands in this exception area and similarly zoned land within the Umatilla and Hermiston Urban Growth Boundaries.
 - * To allow structures within the LI zone to be constructed without building size limitations.
 - * To demonstrate how "rural" and "urban" land uses in this region do not measure up to prescriptive categories applied elsewhere in the state, and further, why and how both "rural" and "urban" industrial development co-locate along the Highway 395 corridor in a unique manner.

A. Background.

The Umatilla County Comprehensive Plan was acknowledged by the Land Conservation and Development Commission in 1983. As part of that plan, the subject industrial area was acknowledged with a Goal 3 exception. The exception was based on the fact that the industrial properties were either physically developed for or irrevocably committed to non-resource uses. The Comprehensive Plan points out that undeveloped industrial parcels along the Highway 395 North area are "severely impacted by surrounding non-resource uses." The Plan describes the extensive public road and electricity infrastructure in place at the time (1983). The Plan also notes the subject industrial parcels do not have irrigation

water rights; but that many parcels are serviced by a community water system. (Comprehensive Plan Page XVIII-445)

When the Umatilla County Comprehensive Plan was acknowledged, it was the entire community's understanding that the subject lands would develop with a variety of industrial businesses, subject to local design review, but without additional restriction. When the Oregon Supreme Court decided *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986), counties were told that rural lands would be subject to Goal 14. To comply, a county either needed to amend its urban growth boundary to include the rural lands, or take an exception to Goal 14. The court ruled that previously acknowledged exceptions to Statewide Planning Goals 3 (Agricultural Lands) or 4 (Forest Lands) were not adequate in and of themselves to permit urban scale development on rural exception lands. Umatilla County, like many counties, waited until Periodic Review to show compliance with the Curry County decision.

The Department of Land Conservation and Development (DLCD) has directed counties to take one of the following three steps to comply with the Curry County decision: (1) demonstrate that the existing zoning of exception lands allows only uses that are rural in their nature or intensity; (2) amend the zoning ordinances to limit uses in exception areas to uses that are rural in their nature or intensity; or (3) justify exceptions to Goal 14 to permit urban scale uses in exception areas. As part of its periodic review, Umatilla County has been responding to this directive from DLCD. This document addresses this directive for Highway 395 north industrial properties.

Umatilla County has been engaged in Periodic Review since 1994. The County began work in earnest, on subtask 1E, Goal 14 compliance for commercial and industrial lands, in 2000. The most recent proposal was submitted in September 2004. That work product was approved by the Department's Director, except for the subject industrial lands, which were remanded. The Department's decision included approval of the commercial lands along Highway 395. Those lands abut and surround the subject industrial lands. In summary, the remand concluded, "the reasoning expressed in the findings documents fails to demonstrate why the intensity and pattern of development in the industrial lands justify a Goal 14 exception." And further that the exception had "insufficient documentation." (12/01/04 DLCD Order 001643)

This revised exception responds to the purported shortcomings in two ways. First, it demonstrates the intensity and pattern is unique and suitable for both "rural" and "urban" scale development

and it provides additional supporting documentation. Second, this exception includes a "reasons" exception in addition to the "developed and committed" exception.

B. Subject exception in context of Curry County decision

The Highway 395 industrial exception is consistent with the direction set forth by the Oregon Supreme Court in the *Curry County* decision. About the question of what a county must do to allow "urban uses" of land located outside urban growth boundaries, the Supreme Court admitted, "some Oregonians perceive [the process to be] bewilderingly complex and beneficial only to a few experts and special interest groups." (301 Or at 449). That statement was true in 1986 and today; it accurately characterizes the perception of landowners in the Highway 395 corridor. Several other findings in the *Curry County* decision are relevant to the proposed exception and support affirmation of the county's request for a Goal 14 Exception.

The *Curry County* decision requires counties to show that "rural land" converted to "urban use" complies with Statewide Planning Goal 14. To make findings, the Supreme Court notes the "necessity of having a working definition of "urban uses" before resolving the questions". To date, LCDC has not adopted a definition of urban industrial use. The LCDC has adopted a definition of "rural" for residential development. That clear and objective definition is referenced in Oregon Administrative Rule (OAR 660 division 4). There, however, is no formal definition of "rural industrial" or "urban industrial." Given that, the LCDC could appropriately defer to the local government definition. Effectively, this has been done by approving Periodic Review Work Programs that have adopted a variety of definitions and approaches to Goal 14. The rural zones adopted by counties and approved by LCDC are vastly different, allow a variety of uses and make different findings about what is "rural" and what is "urban" in the respective county. That is not an inconsistency in DLCD's approach, rather, it appropriately defers to each local government definition.

LCDC has contemplated the matter of adopting a definition of "urban industrial" on a number of occasions. Recently, the Commission appointed a "Policy Work Group on Commercial and Industrial Development Outside of Urban Growth Boundaries and Unincorporated Communities, " to evaluate state land use policies regarding the intensity of commercial and industrial development outside urban growth boundaries and unincorporated communities. Part of the mission of the Work Group is to decide whether the ad

hoc working definition is sufficient or whether a formal definition should be adopted. The working definition in summary defines "rural" use as any use that is "less intensive" than a use(s) allowed in an unincorporated community and where there is no sewer service. In unincorporated communities, uses are considered "rural" if buildings are smaller than 40,000 square feet in size. Thus, "rural industrial", for purposes of complying with Goal 14 outside of an urban or unincorporated area, includes structures smaller than 40,000 square feet, or 35,000 square feet.

It is not known whether or not LCDC will adopt a formal definition of "rural". Further, if a definition is proposed, it may or may not be tied to building size. Although building size is a clear and objective standard, it is an inaccurate indication of scale and impact of the business. Businesses with small buildings may generate more traffic than businesses with larger buildings for example. Heavier traffic volume is a clearer indicator or scale, and a better way to decide whether the use is "rural" or "urban." This exception for the Highway 395 industrial area includes examples of uses that are "urban" by many measures, but were deemed to be "rural" since the structures on the parcels were smaller than 40,000 square feet.

An additional point warrants clarification to demonstrate the importance of deferring to local government the definition of rural. DLCD staff has reported that if a use is allowed in an Exclusive Farm Use Zone then the use is by definition "rural." The Highway 395 industrial area exemplifies that this is an inaccurate definition. Many uses in the Highway 395 industrial area are allowed in an EFU Zone with a conditional use permit for a "commercial activity in conjunction with farm use." As is noted below, however, most of those uses are best suited in an urban setting, adjacent to major transportation corridors and other, similar businesses. The "commercial use in conjunction with farm use" does not have a building size limitation, which could effectively allow a business to qualify as an "urban" use if the structure was 40,000 square feet or larger. So, in terms of the statewide planning program, it makes better sense to site these businesses on lands that are not productive farm ground.

In the most recent remand, DLCD staff denied the developed and committed exception in part by finding that the majority of existing highway 395 businesses are "rural" since they do not have 35,000 square feet buildings. This is inconsistent with the Curry County case where the Supreme Court defined rural land as "those [lands], which are outside the urban growth boundary and are:

"(a) Non-urban agricultural, forest or open space lands or,

"(b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use." (301 Or at 456). The Highway 395 industrial uses do not meet the Curry County definition of "rural" and therefore the existing uses should be acknowledged as developed and committed "urban" uses.

The Curry County decision also acknowledges that "exceptions are not limited to cases where it is "not possible" to apply a goal; each of the three types of exceptions requires a different kind of analysis." The combined "developed and committed" and "reasons" exception for Highway 395 industrial lands area supports this finding.

The Curry County decision finds that any exception to Goal 14 must contain supporting evidence that "it is impracticable to allow any rural uses in the exceptions area." (*Id.* at 489.) As "rural" is defined above, as quoted from the Curry County decision, rural uses are not at all practical on lands within the Highway 395 industrial area. That is, the Supreme Court concluded that a use is considered "rural" if it meets one of three criteria. The Highway 395 industrial area clearly does not meet one of the criteria since none of the parcels are "suitable for sparse settlement, small farms or acreage homesites."

Similarly, the Supreme Court found that "[t]o take an exception to Goal 3 or 4, a local government need only show that commercial farm or forest use is impracticable, but to take an exception to Goal 14 the local government must show that it is impracticable to allow not only resource use, but also all other rural uses including "sparse settlement, small farms, or acreage homesites. Definition of Rural Land, Planning Goals at 24." (*Id.* at 496). As noted in the acknowledged Comprehensive Plan, the soils are deep, coarse, beach-like sands and irrigation is not available. This has precluded small farms or acreage homesites in this area, both historically and today. Although there are homes in the industrial area, they are not considered farm dwellings and are occupied primarily by owners of the commercial and industrial businesses within the corridor. This Goal 14 exception for the Highway 395 industrial clearly meets the intent of the Supreme Court definition.

In concluding the above analysis of the Curry County decision as it pertains to the Highway 395 industrial lands exception, it is important to note that the focus of the Supreme Court's analysis was on whether or not Curry County complied with standards for a "developed and committed exception." Little if any analysis is

provided on requirements for a "reasons" exception. But the Supreme Court clearly recognized the opportunities for a "reasons" exception. To wit, a "county may choose instead to seek "reasons" exceptions to Goal 14, pursuant to ORS 197.752(1)(c), for any areas in which it concedes its zoning would allow "urban uses," but on which it believes it cannot prove impracticability of rural use." Where the county demonstrates that commercial farming is impracticable, and where a number of businesses are "urban", the proposed combined, developed and committed and reasons exception appears to be consistent with the intent of this finding.

C. Response to DLCD Remand

The Remand Order makes the following Preliminary Conclusions relative to OAR 660-014-0030(3)(a) Size and extent of commercial and industrial uses:

1. The subject area is not heavily developed with industrial uses because 65 of 158 parcels are vacant and many non-industrial buildings exist.
2. Existing industrial activity is not being conducted at an urban level because the average industrial building size is only 5,162 square feet, which is very far below the 35,000 sq. ft. measurement commonly used by the department to determine if a use has exceeded the rural threshold. The largest building is a potato storage facility that could be permitted in an exclusive farm use zone and 60 percent of the existing non-personal industrial buildings are smaller than 5,000 square feet.
3. The existing development pattern does not commit the area to urban uses because all or nearly all of the current uses could be located in a rural zone.

Umatilla County response to the remand findings is as follows: The remand findings are based on the standards for a "developed and committed" exception. This exception is a combined developed and committed and reasons exception. Building size is but one indicator to define "urban." In this area, building size is not an accurate measure of "urban" since many of the industrial uses are contained within buildings smaller than 35,000 square feet but are nonetheless not strictly rural. The type of externalities generated by many of these businesses, such as noise, traffic, and less desirable aesthetic appearances are typically found in "urban" areas. Umatilla County is aware that these industries and businesses are appropriately situated, and best suited at their present site rather than inside city limits, and should be allowed to expand at their present location. The alternative would be to

site heavy equipment repair, metal fabrication, industrial welding, truck fueling, truck container switching, industrial machine renovation, general machining and well-drilling equipment, adjacent to residential neighborhoods, which would be contrary to statewide planning goals and would not be good land use planning.

Umatilla County further finds that the conclusions set forth in the remand are subjective in concluding that the area is not predominantly industrial. While the community has permitted numerous alternative uses, such as dwellings, that itself is not adequate grounds to find the area is not predominantly industrial. It is, however, the pattern of industrial development in this area. For example, most of the dwellings were permitted in conjunction with existing businesses, as "night watchman/caretaker" dwellings. This is a practice that enables landowners and business owners to protect their property and businesses on a 24-hour basis. Many of the industrial businesses operate at all or uneven hours because of area heavy industries such as 24 hour farming, railroad, food processing, and power plants.

The "developed and committed" standards for a Goal 14 exception discriminates against more rural areas in that it requires proof of a historical pattern of intense development in order to allow future intense or "urban" scale development. The Highway 395 industrial area has developed as anticipated and at a pace equal to areas near major metropolitan areas. This is occurring after implementation of the statewide planning program. The area is vital to the future development of the Greater Hermiston and Umatilla area, and the area should not be restricted from becoming a high intensity or "urban" area where jobs and industry flourish.

The Remand Order makes the following Preliminary Conclusions relative to OAR 660-014-0030(3)(b) Location, number and density of residential dwellings:

1. Residential development in the subject area is nearly as common as industrial development in the subject area because there are 38 dwellings and only 52 non-personal industrial buildings.
2. Residential development is mostly clustered, but is not of an urban intensity even in the areas of greatest density.
3. Residential development in the subject area appears to be mostly unrelated to industrial activities the department can find only seven dwellings that appear to be associated with existing businesses.

4. Residential development within an industrial district can inhibit industrial activities because of complaints about impacts commonly associated with industrial activities.

Umatilla County response to the remand is as follows: As noted above, the reasons for the number of dwellings is that many were permitted primarily as "night watchman/caretaker" dwellings and others are dwellings established by the original business/landowner. Several other dwellings have existed many years prior to the state land use planning program. Further, the county and landowners have envisioned that many of the older dwellings would be replaced at the time a suitable industrial development was ready to locate on site. It is important to note that several of the internally located dwellings within the light industrial zone are owned or occupied by the owner, family member or employee of nearby light industrial property.

The Remand Order makes the following Preliminary Conclusions relative to OAR 660-014-0030(3)© - Location of urban levels of facilities and services; including at least public water and sewer facilities. "The county's decision does not make it clear if urban facilities are available in the industrial area."

Umatilla County response to the remand is as follows: Although urban or municipal sewer and water are not immediately available to the area, the area is well served by a community water system, a regional industrial water supply system, natural gas and electricity, all of which have built-in expansion capacity for this area.

The Remand Order makes the following Preliminary Conclusions relative to OAR 660-014-0030(3)(d) - Parcel sizes and ownership patterns:

1. The average parcel size in the Highway 395 industrial area is 3.26 acres. These small parcels are not generally suitable for urban-scale industrial use.
2. The largest private parcels are not intensively developed because the three largest private parcels include only a 7,000 square feet retail and service business and an aggregate quarry operation.
3. Parties owning the highest number of parcels in the area have not heavily developed their properties because the largest number of parcels owned by one party is 11, most of these parcels are not contiguous and only three businesses are located on the entire 11-parcel ownership.
4. The largest private contiguous ownerships are not heavily

developed because the four contiguous ownerships larger than 20-acres include the area's three largest parcel that are developed with 7,000 sq. ft. retail and service business, an aggregate quarry operation and the only other developed on these ownerships are an auto salvage business and two residences.

Umatilla County response to the remand is as follows: The remand finding that 3.26 acres is not suitable for urban scale industrial use is not supported by any documentation or standard. Parcel size is but one way to evaluate the area's suitability for future development. Economic development entities continuously request a variety of parcel sizes for economic development. This variety of parcel sizes is part of the appeal and potential for economic development offered in the subject highway 395 industrial area.

The remand finding that the private parcels are not intensively developed due to smaller building sizes is inconclusive and, it is not an indicator of whether a use is urban or rural. For example, the Lift Company, a business that remanufactures hydraulic equipment, primarily forklifts, has medium-size structures on several small parcels under common ownership. The site is filled with hundreds of forklifts. Those forklifts are shipped all across the United States and Canada. The owner re-located to Hermiston area from the Portland area because of the dry climate and easy access to highways for shipping. By most measures, this is an urban use, in spite of the fact that the building is smaller than 35,000 square feet. Reddaway Trucking is another example of an urban industrial use whose business operation does not warrant a large building. Sanitary Disposal, Inc. the county's largest garbage and waste disposal company operates at an urban level all hours and must have expansion capacity.

Common ownership enables greater potential for industrial site selection because pooling and assembly at the industrial sites is critical. Many of the active business sites make up multiple parcels and several contain both Commercial and Light Industrial zoning designations.

For the reasons noted above, Umatilla County believes the DLCD remand is incomplete and, together with the "developed and committed" and "reasons" exception findings below, the area should qualify for an exception to Goal 14. Umatilla County incorporates the analysis contained above, together with the response and analysis below, to demonstrate why the area should be allowed to develop at an urban level.

D. LCDC Recommendation

At the July 15, 2004 LCDC meeting in La Grande, several members of the public, business, and private community made a presentation to the Land Conservation and Development Commission. The advice given by the Commission to DLCD staff was to "do no harm" to property owners along the Highway 395 corridor. Commission member Hanley Jenkins encouraged Hermiston community members to consider a reasons exception for the area. In response to Commissioner Jenkins' recommendation, this exception document includes both a developed and committed and a reasons exception.

E. Legal Standards.

Under ORS 197.732(1), a local government may adopt an exception to a goal if:

- (1) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;
- (2) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
- (3) Reasons justify why the state policy embodied in the applicable goals should not apply.

There are facts and reasons to support all three kinds of goal exceptions.

As relevant to Goal 14 exceptions, the rules implementing ORS 197.732 are set out at OAR 660-014-0030 and 660-014-0040.

1. Physically Developed Exceptions.

By most standards, the subject area is committed to development. The controversy between the state and county is not whether or not the area should be zoned and developed as industrial, but to what intensity the land can develop. To qualify for a developed exception to Goal 14 the county must show the land is committed to an urban scale and that the pattern and practice of development is at an urban scale. To do this, an area must have in place the types of "urban" development that are typical in other parts of the state. This is typically defined as buildings 35,000 square feet or more.

This is an extreme disadvantage to rural counties, many of which embodied 'frontier' characteristics in the late 1970's when land use plans were adopted. Today, many rural counties and cities would like to promote higher intensity and a greater diversity of development but are constrained by Goal 14 from doing so. In order to accommodate regional differences in the state, Umatilla County requests the LCDC allow some flexibility in this instance and recognize that some of the Highway 395 area is developed to "urban" scale.

LCDC's ad hoc "safe harbor" rule recognizes "urban" uses as uses that are within buildings that are 35,000 square foot or larger. The safe harbor does not fairly recognize that many "urban" uses occur within buildings smaller than 35,000 square feet. That is arguably the situation in the Highway 395 industrial corridor, wherein most buildings are smaller than 35,000 square feet, but for other reasons should be considered "urban". Examples include number of employees, residences of employees, area of service, local and regional availability of infrastructure, etc. Aside from the fact that many of the existing businesses do not have buildings larger than 35,000 square feet in size, several businesses appear more "urban" than "rural."

Examples:

- Truck staging - Reddaway Trucking, FedEx, Ramirez Trucking, have facilities that serve as a regional or international hub for shipping and trucking operations.
- The Lift Company is a company situated on four acres, with hundreds of small, medium and large remanufactured forklifts shipped and sold all over the U.S.
- Sanitary Disposal Inc.
- Metal fabrication - Machinery - Yards for storage must be ample in size
- Cement/gravel/sand extraction and processing
- Auto salvage, crushing and recycling such as Bert's, J & J, Hermiston Auto Recycling and Buwalda Scrap Metal

2. Irrevocably Committed Exceptions.

OAR 660-014-0030(2) provides: "A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to

an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact."

OAR 660-014-0030(3) requires that a decision that land is committed to urban levels of development be based on findings of fact supported by substantial evidence in the record. The findings must address: (a) the size and extent of commercial and industrial uses; (b) location, number and density of residential dwellings; (3) local of urban levels of facilities and services, including at least public water and sewer facilities; and (d) parcel sizes and ownership patterns. Under OAR 660-014-0030(5), more detailed findings and reasons must be provided to demonstrate commitment to urban uses than are otherwise required to show that is currently developed at urban densities.

3. Reasons Exceptions.

OAR 660-014-0040 governs reasons exceptions. Under this rule, a county may provide facts and reasons to justify an exception to Goal 14 to allow urban uses on undeveloped rural lands. Those reasons may include, but are not limited to, findings that an urban population and urban levels of facilities and services are needed to support an economic activity that is dependent upon an adjacent or nearby natural resource.

Also under this standard, a county must demonstrate that the proposed urban development cannot reasonably be accommodated in or through expansion of existing urban growth boundaries. Further, it must show that the long term economic, social, environmental and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would result from the same proposal being located on other undeveloped rural lands; that the proposed urban uses would be compatible with adjacent uses; and that the uses can likely be timely and efficiently served with appropriate levels of public facilities and services.

F. Physically Developed/Irrevocably Committed Exception.

The 1983 exception in the County's comprehensive Plan described most of the Highway 395 industrial lands as physically developed and three parcels that were "not physically developed within this industrial area" but that qualified as "irrevocably committed even though they approach manageable sizes for resource use." (Plan Page XVIII-445). Since 1983, there has been significant new development. The three less developed areas now contain some level of industrial development. The state agreed

with the finding and approved the exception to Goal 3.

In the 20 years since the Plan was acknowledged by the State, there has been significant development within the Highway 395 corridor. The subject Goal 14 exception is also based, in part, on finding that the industrial area is developed and committed, to higher intensity or "urban" uses. The subject Goal 14 exception area is smaller than the Goal 3 exception area; it excludes the 157 acres owned by the U.S. Bureau of Land Management.

The nature and extent of physical development is shown on the aerial map of the Highway 395 area. That map depicts buildings of many shapes and sizes, including some buildings that are extremely large.

Of the 156 tax lots, owners of 53 industrial lots also own individually or by entirety, lots within the adjacent area zoned Retail, Service, Commercial (RSC). Thus 34% share common ownership. Those RSC lots were recognized to be predominantly developed and committed and were approved as a Goal 14 exception area. Of the 113 total RSC lots, owners of 62 lots also own individually or by entirety, parcels zoned Light Industrial. Approximately 55% are in common ownership. This common ownership supports the conclusion that the light industrial area is developed and committed and should also be approved as a Goal 14 exception area. Such a significant amount of common ownerships is unique in Umatilla County and is likely statistically unique in Oregon, further supporting justification to allow the industrial, as well as the commercial parcels to be developed without building size limitation. Cumulatively, these existing developments commit several undeveloped properties to urban scale industrial uses.

All of the above-noted areas are served with electricity, gas and telephone service. Many of the areas are also served by a long standing community water system designed to service the light industrial sites. Water is also provided through individual wells. Since much of the area is within a Critical Ground Water Area, industrial uses will be limited to uses that are (1) not heavily water dependent and (2) are adequately served by an exempt well. Sewer facilities are provided through on-site subsurface facilities. The primary access to the area is State Highway 395.

As documented, parcels in the area vary significantly in size, with many parcels under 10 acres, a number of parcels between 10 and 50 acres, and two parcels between 50 and 100 acres. By their size, these parcels are capable of supporting urban-scale industrial development. According to economic development agencies

and professionals, new industries seek a range of parcel sizes. The variety of parcel sizes in this Highway 395 industrial area are ideally suited for marketing to new industries. These new industries would complement existing industries and businesses located within city limits and at the Port of Umatilla, where larger parcels are available for industrial development.

Many of the parcels are in common ownership with lands zoned commercial. The commercial properties are planned and zoned for urban scale development; a Goal 14 exception was approved for these lands. As such, many "vacant" tax lots are, in fact, used in conjunction with development on contiguous, commonly owned, urban parcels.

In summary, the scale and intensity of the uses in this area represents a unique pattern of industrial development; higher intensity/"urban" uses better suited outside city limits.

G. Reasons Exception.

There are numerous reasons to justify a reasons exception to Goal 14 for the highway 395 industrial area:

- * To provide consistent plan and zone designation for the parcels with split commercial and industrial zoning so both have a goal 14 exception.
- * To demonstrate that many existing uses are unique, with both urban and rural characteristics.
- * To provide predictability and security for future economic development in the area
- * To allow historical pattern and practice to continue for lands which have been planned and zoned for industrial development for more than 30 years.
- * To enable the west county to compete without a disadvantage due to building-size limitations, with economic development in the Tri-Cities of Washington.
- * To encourage the continuation of new and expanding small businesses.
- * Many of the businesses support economic activity on local farming operations. This is important to overall economic and regional well being. Examples of existing businesses that trade or conduct activity on regional scale: trucking, pump repair, machining, welding, and wood fabrication, gravel extraction and the design, construction and installation of assembly lines in industrial plants, tractor repair, and hydraulic services.

- * The development is better suited along Highway 395 than in the UGB due to noise, aesthetics, safety, smell, light, work hours, etc.
- * To maximize public and private investment of existing infrastructure such as Highway 395, natural gas lines, electric utility lines, community water system and their built in expansion capacity.

- * The existing businesses function as part of the regional economy, engaging in commerce with businesses in both urban and rural areas in West Umatilla County, Morrow County and southeast Washington and beyond.
- * The presence of these urban and rural uses has committed much of the remaining vacant LI-zoned land to urban scale industrial development.
- * To establish land use regulations that encourages rather than restrict future development.
- * The remaining undeveloped and uncommitted acres of light industrial land should be allowed to develop with uses that are urban or rural in character
- * To allow structures within the LI zone to be constructed without building size limitations
- * To demonstrate how "rural" and "urban" land uses in this region do not measure up to prescriptive categories applied elsewhere in the state, and further, why and how both "rural" and "urban" industrial development co-locate along the Highway 395 corridor in a unique manner.

On December 15, 2003, Governor Kulongoski's Industrial Lands Advisory Committee issued a report addressing what Oregon must do "to be competitive in the global marketplace." The report identified 25 industrial sites "of statewide significance for job creation" throughout Oregon. In so doing, the report emphasized that this designation of "shovel-ready" sites was "but one piece of a much larger process to increase Oregon's supply of 'project-ready' industrial lands."

The Executive Summary to the report sets out findings explaining why the 25 selected sites are of statewide significance for job creation. Like a broken record, those findings repeat, again and again, the critically important role easily accessible freeway access plays in determining prime sites for light manufacturing and/or warehousing and distribution. For example, all five of the recommended sites in Northwest Oregon were noted for their excellent access to the freeway system, with at least three sites being within "minutes" of a freeway interchange. Similarly, the report stressed freeway accessibility as a principal reason for designating most of the sites recommended in Western and

Southwest Oregon and in Eastern Oregon as shovel-ready sites of statewide significance for job creation. Representative samples of the findings include:

- Hillsboro-Shute Road: "This highly desirable site in Oregon's high tech corridor is about 350 feet from a major freeway Interchange."
- Albany-Kempf: "This site is highly marketable because it is adjacent to I-5 and located mid-way between CA and WA with easy access to Oregon's metro areas."
- Central Point-Airport/Orchard/Hamrick Rd: "Conveniently located between to I-5 interchanges and the Jackson County commercial airport, this level, roughly rectangular site is expandable to an estimated 70 acres."
- Medford-NE Airport: "Located in the city limits of Medford, this large site is close to I-5, Highway 62 and the Medford Airport."
- Baker City-Elkhorn Industrial Park: "Baker City is located on I-84 and is well positioned to attract industry from the Boise metro area."
- Hermiston-Hermiston Industrial Park: "The market potential of this site is its access to rail (Union Pacific), water (Columbia River) and road (I-82 and I-84)."

Overall, for most of the 25 sites, proximity to freeway or highway access was a primary consideration in determining that they were of "statewide significance for job creation". Consistent with these findings, the Highway 395 industrial area would also appear to be of statewide significance for job creation. Like these other industrial areas, the Highway 395 light industrial area shares the benefit of highly convenient highway access.

The locational advantages of the Highway 395 area are numerous. Like the "shovel ready" Hermiston Industrial Park, the Highway 395 industrial area is an ideal location for manufacturing and other industrial uses that complement the Hermiston Industrial Park, the Hinkle/Simplot Industrial area and the multi-modal-dependent development at the Port of Umatilla. The locational advantages of this site warrant approval of a Goal 14 reasons exception allowing such uses to locate on the small amount of remaining undeveloped/uncommitted industrial lands within this area.

The fact that the Industrial Lands Advisory Committee Report identifies the 306-acre Hermiston industrial park as a prime site for the warehouse and distribution industry compliments the

importance and value of the highway 395 industrial area. Indeed, the industrial lands report states that the initial designation of shovel ready sites is just a first step in a "much larger process" to increase the state's supply of project-ready sites. That language suggests a statewide need for more than just one prime site serving warehouse and distribution industries in the Hermiston area. The locational, historical and commercial advantages of the Highway 395 light industrial area warrant the availability of all lands, particularly since many of the Highway 395 businesses provide services such as machining and manufacturing that support the other industrial areas in west county.

In Executive Order No. 04-04 Governor Kulongoski created the Office of Rural Policy. The purpose is to foster development in rural areas. This attention to rural needs is significant and important. The subject highway 395 area does not meet the definitions provided in the list. The area is unique, not entirely "urban" and certainly not "rural" by definition provided in the Executive Order. Development and urbanization of the highway 395 area is important to protect in order to carry out the intent of the Executive Order, which is to "maximize economic development opportunities."

In the February 2004 "City of Hermiston Residential Buildable Land Inventory", the author, Hobson Ferrarini Associates, concluded that a "distinguishing characteristic of the local economy is its stability. Over the last 12 years there have been no net jobs losses, despite the current recession. The stability of the local economy is owed in large part to the character and diversity of its economic base. No single industry accounts for more than 30% of total employment. In addition, the three largest employment sectors are in relatively stable industries: services (29.6%), government (23.2%) and manufacturing (13.7%). Although manufacturing is a volatile sector nationally, local manufacturing is more stable because it is based primarily on food processing, which is less impacted by the business cycle." This conclusion speaks directly to the types of businesses located in the Highway 395 industrial area. The industrial businesses are vital to the overall success of the diverse and stable economy. A goal 14 exception would allow those businesses to continue to expand and grow.

In a more recent publication, Lane Shetterly, Director, DLCD released a paper on July 14, 2004 about the regional differences in Oregon's Land Use Program. The report is insightful and shows many examples of how "Oregon's land use planning laws recognize many of the ways in which different parts of the state have different needs

and interests. One size does not fit all." The subject industrial area is an example of unique development that is both urban and rural in scale and scope. The study would also seem to support justification to approve a Goal 14 exception for the area, to recognize the regional differences and allow the area to continue to grow.

The long term economic, social, environmental, and energy consequences of allowing urban scale development on the remaining undeveloped/uncommitted portions of the Highway 395 area are all positive. Economically, this is an ideal location for urban scale. Given its locational advantages and proximity to Tri-Cities, Washington, this site has tremendous potential to have statewide significance for job creation. Trade of services, products and purchases between the 395 area and Tri-Cities are significant dollar and volume wise. With a less than 45-minute commute by I-84 this trend will continue. Socially, new industries in the area would improve the local economy and thereby benefit the local population. West Umatilla County is experiencing strong and stable growth in large part because of its commercial and industrial land inventory. Moreover, the location of these uses in very close proximity to Highway 395 (and SE Washington and the Port of Umatilla) means that the associated truck traffic can avoid residential areas where it could create conflicts. There are no significant environmental resources in this area that would be affected by such uses. There are significant energy advantages of siting urban scale manufacturing and service industries within one-half mile from Highway 395 and adjacent to existing electric facilities.

Allowing urban scale light manufacturing uses on those remaining portions of the Highway 395 light industrial area that are not already physically developed with or committed to urban industrial uses also should not pose any compatibility problems with adjoining properties, for several reasons. First, light industrial uses typically are compatible with agricultural practices. Second, current zoning already permits a wide range of light industrial uses to locate on these lands, and as noted, many of the existing uses are not strictly urban or rural in their nature or scale. The existing uses have not proven to be incompatible with nearby farming operations or farm practices. Accordingly, allowing urban scale/high intensity, light industrial development on the undeveloped/uncommitted lands in this area should have no significant adverse impact in terms of use compatibility.

It is important to note the West County conversion from small family farms (20 to 160 acres) to the current industrially operated farms of several thousand acres per farm operation. These farming operations use very large, powerful and expensive equipment, machinery, processing and storage facilities. The 395 industrial trades have for over 20 years kept these farm operations running, as well as the major processing plants, on a 24 hour per day, 7 day a week schedule when necessary. The area's industrial needs, light and heavy, must remain adaptable to the changing needs of our agricultural industry, be it "urban" or "rural."

Approval of this Goal 14 reasons exception should have no adverse impact on the ability of existing cities and service districts to provide services. This is documented by the letters of support from City of Umatilla, City of Hermiston, and Port of Umatilla. This has not been an issue for the many existing urban-scale industrial uses in the area, and there is no good reason to believe it would be an issue for new uses. As light industrial uses and farming are generally compatible, approval of the Goal 14 reasons exception also should have no adverse effect on the existing land use pattern. Given the nature of the kinds of light industrial development that would be permitted in this area, an appropriate level of public facilities and services can be provided in a timely and efficient manner. Those public facilities will be limited to a community water system and electrical power. Wastewater would continue to be on-site septic. It is noted that much of the Highway 395 area is a designated Critical Groundwater Area. Consistent with that designation, unless or until this area was included inside an urban growth boundary, urban industrial uses in the area would be limited to those that are (1) not heavily water dependent, or (2) rely on an existing water supply or existing water rights.

H. Conclusion

Based on these findings, Umatilla County, the landowners, Cities and Port District support approval of a Goal 14 exception for the Highway 395 light industrial area, excluding the 154.7 acres owned by the Bureau of Land Management.

FURTHER, this ordinance supplements and amends that portion of Ordinance No. 2004-01 pertaining to light industrial designated properties.

DATED this 31st day of May, 2005.

UMATILLA COUNTY BOARD OF COMMISSIONERS

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Emile M. Holeman, Chair

William S. Hansell
William S. Hansell, Commissioner

Dennis D. Doherty
Dennis D. Doherty, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Jean Hemphill
Records Officer

