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503-588-6173*

DECISION OF THE PLANNING COMMISSION

COMPREHENSIVE PLAN MAP CHANGE / NEIGHBORHOOD PLAN MAP CHANGE / ZONE CHANGE CASE NO.: CPC-NPC-ZC19-09

APPLICATION NO. : 19-111617-ZO / 19-111618-ZO / 19-115341-ZO

NOTICE OF DECISION DATE: AUGUST 21, 2019

SUMMARY: A Minor Comprehensive Plan Map Amendment, Neighborhood Plan Map Amendment, and Zone Change from RA (Residential Agriculture) to IC (Industrial Commercial).

REQUEST: A consolidated Minor Comprehensive Plan Map Amendment from "Single Family Residential" to "Industrial Commercial," Minor Neighborhood Plan Map Amendment from "Single Family" to "Industrial Commercial," and Zone Change from RA (Residential Agriculture) to IC (Industrial Commercial) for property approximately 3.25 acres in size and located at 1443 45th Avenue NE (Marion County Assessor Map and Tax Lot Number: 072W19DB00100).

APPLICANT: Nature's Kick Corporation (Glenn Peters, Kim Peters)

LOCATION: 1443 45th Ave NE / 97301

CRITERIA: Salem Revised Code (SRC) Chapters 64.025(e)(2) and 265.005(e)

FINDINGS: The facts and findings are in the attached document dated August 21, 2019.

DECISION: The Planning Commission **APPROVED** Minor Comprehensive Plan Map Amendment, Neighborhood Plan Map Amendment, and Zone Change CPC-NPC-ZC19-09 subject to the following conditions of approval:

Condition 1: The following uses/activities allowed within the IC (Industrial Commercial) zone shall be the only uses/activities allowed on the subject property:

Use	Limitations & Qualifications
General Manufacturing	Limited to the manufacturing of honey sticks. Upon conversion of the property to a use other than the manufacturing of honey sticks, the manufacturing use shall no longer be allowed on the subject property.
Single Family	As allowed under the IC zone.
Multiple Family	As allowed under the IC zone.

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



Condition 2: The following additional requirements shall apply to the General Manufacturing use of the property:

- a) Outdoor storage of materials or equipment shall not be allowed within required setbacks;
- b) The approximate 224 ft. x 80 ft. "flag pole" portion of the property abutting 45th Avenue NE shall not be used for structure placement or additional parking;
- c) On-site retail sales of products is not allowed; and
- d) Signage shall be limited to that allowed under the RA zone.

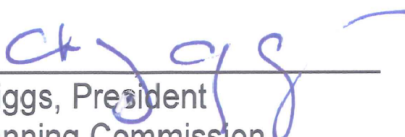
Condition 3: The transportation impacts from the 3.25 acre site shall be limited to a maximum cumulative total of 264 average daily vehicle trips.

VOTE:

Yes 7

No 0

Absent 2 (Wright, McKinley)



Chane Griggs, President
Salem Planning Commission

Application Deemed Complete:	<u>June 18, 2019</u>
Public Hearing Date:	<u>August 20, 2019</u>
Notice of Decision Mailing Date:	<u>August 21, 2019</u>
Decision Effective Date:	<u>September 6, 2019</u>

Case Manager: Bryce Bishop, bbishop@cityofsalem.net, 503-540-2399

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, **no later than 5:00 p.m., Thursday, September 5, 2019**. Any person who presented evidence or testimony prior to the close of the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 64 and 265. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

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FACTS & FINDINGS

COMPREHENSIVE PLAN CHANGE / NEIGHBORHOOD PLAN CHANGE / ZONE CHANGE CASE NO. CPC-NPC-ZC19-09

AUGUST 21, 2019

PROCEDURAL FINDINGS

1. On May 16, 2019, an application was filed for a consolidated Minor Comprehensive Plan Map Amendment and Quasi-Judicial Zone Change by Nathan Riemersma of Saalfeld Griggs, PC, on behalf of the applicant, Nature's Kick Corporation, and owner, Peters Trust. Because the subject property is located with the East Lancaster Neighborhood Association, which includes an adopted Neighborhood Plan, a corresponding Minor Neighborhood Plan Map Amendment is also required in conjunction with the applicant's request.
2. The consolidated application was deemed complete for processing on June 18, 2019, and a public hearing to consider the application is scheduled for August 20, 2019.
3. Notice of the consolidated application was provided pursuant to SRC requirements on July 31, 2019. The property was posted by the applicant's representative with required public hearing notice in accordance with the provisions outlined in SRC 300.620 on August 9, 2019.
4. DLCD Notice. State law (ORS 197.610) and SRC 300.620(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of the proposed Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change application to DLCD on July 8, 2019.
5. On August 20, 2019, a public hearing was held before the Planning Commission to receive evidence and testimony on the proposal. Subsequent to receiving evidence and testimony the Planning Commission closed the public hearing and proceeded to deliberate on the proposal.
6. 120-Day Rule. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. In addition, the requested Quasi-Judicial Zone Change included with the application is similarly not subject to the 120-day rule because, pursuant to ORS 227.178(10), the zone change has been filed concurrently, and is being considered jointly, with the proposed comprehensive plan amendment.

BACKGROUND / PROPOSAL

The applicant is proposing to rezone the subject property (**Attachment A**) from RA (Residential Agriculture) to IC (Industrial Commercial), together with a corresponding change to the Comprehensive Plan Map and the East Lancaster Neighborhood Association neighborhood plan map, in order to establish the existing Nature's Kick Honeystix manufacturing facility as an allowed use on the subject property.

As indicated in the written statement provided by the applicant (**Attachment B**), the production of Honeystix on the subject property began in 1987 when the property was purchased by the applicant for the purpose of producing the Honeystix product. Prior to the purchase of the property the applicant inquired with the City regarding whether the proposed use would conform to the requirements of the zoning code and a letter was subsequently received from a City official at the time (**Attachment C**) indicating that the proposed activity would be in conformance with the City's zoning requirements for a Residential Agriculture zone and, therefore, the City would have no objection to the proposed use.

From the letter it's unclear of the scope of the production facility originally proposed, but since the time of the original purchase of the property, the scale of the Honeystix production operation has increased through the years evolving from what staff views was originally conducted as a home occupation where the owners lived on the property and made their product to one that is now a stand-alone manufacturing/production facility where the owners no longer live there.

Under the City's Use Classification Chapter (SRC 300), the current Honeystix production facility is considered a General Manufacturing use and, based on the property's current "Single Family" comprehensive plan designation and RA (Residential Agriculture) zoning, not allowed. As such, the applicant has proposed the requested changes to the comprehensive plan, neighborhood plan, and zoning designations for the property.

The proposal requires the following land use approvals:

- 1) A Minor Comprehensive Plan Map Amendment to change the Comprehensive Plan Map designation of the subject property from "Single Family Residential" to "Industrial Commercial."
- 2) A Minor Neighborhood Plan Map Amendment to change the East Lancaster Neighborhood Association (ELNA) neighborhood plan map from "Single Family" to "Industrial Commercial."
- 3) A Quasi-Judicial Zone Change to change the zoning of the subject property from RA (Residential Agriculture) to IC (Industrial Commercial).

In order to limit the potential impacts of the proposed comprehensive plan change and zone change on abutting properties and the surrounding area, the applicant has also proposed further limiting the uses allowed on the property to the following:

- 1) The Honeystix operation;
- 2) Single family residential uses; and
- 3) Multiple-family residential uses.

APPLICANT'S PLANS AND STATEMENT

Land use applications must include a statement addressing the applicable approval criteria and be supported by proof they conform to all applicable standards and criteria of the Salem Revised Code. The written statement provided by the applicant summarizing the request and

addressing compliance with the applicable approval criteria, as well as the existing conditions plan illustrating the existing development on the property, are attached to this report as follows:

- Applicant's Written Statement: **Attachment B**
- Existing Conditions Plan: **Attachment D**

Staff utilized the information included in the applicant's statement to evaluate the proposal and to establish the facts and findings within this staff report.

SUMMARY OF RECORD

The following items are submitted to the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City departments, neighborhood associations, and the public; and all documents referenced in this report.

FACTS AND FINDINGS

1. Salem Area Comprehensive Plan (SACP)

Comprehensive Plan Map: The Salem Area Comprehensive Plan designates the subject property as "Single Family Residential."

The Comprehensive Plan designations of surrounding properties include:

Comprehensive Plan Designation of Surrounding Properties	
North	Multiple Family Residential
	Single Family Residential
South	Single Family Residential
East	Single Family Residential
	Across 45 th Avenue NE, Single Family Residential
West	Single Family Residential

Relationship to Urban Service Area: The subject property lies within the City's Urban Service Area. The Urban Service Area is that territory within City where all required public facilities (streets, water, sewer, storm water, and parks) necessary to serve development are already in place or fully committed to be extended. Because the subject property is located inside the City's Urban Service Area, an Urban Growth Preliminary Declaration is not required for any development of the subject property.

2. Zoning

The subject property is zoned RA (Residential Agriculture). The zoning of surrounding properties is as follows:

Zoning & Use of Surrounding Properties	
North	RM-II (Multiple Family Residential)
	RA (Residential Agriculture)
South	RS (Single Family Residential)
East	RA (Residential Agriculture)
	Across 45 th Avenue NE, RS (Single Family Residential) & RA (Residential Agriculture)
West	RS (Single Family Residential)

3. Existing Conditions

The subject property is flag shaped property approximately 3.25 acres in size and located at 1443 45th Avenue NE (**Attachment A**). The majority of the property is setback from the street and located behind abutting lots to the east which front on 45th Avenue. The site is improved with existing structures and paved area which are setback with limited visibility from the street.

In regards to natural features of the site, the topography of the property is flat, there are existing trees present throughout the site, the West Fork of the Little Pudding River runs along the western and a portion of the northern boundary of the property, and the southern half of the property is occupied by a mapped wetland area (**Attachment E**).

Vehicular access to the site is provided by a single driveway onto 45th Avenue NE, which is designated as a collector street under the City's Transportation System Plan (TSP).

4. City Department Comments

- A. The Building and Safety Division reviewed the proposal and indicated they have no comments. It should be noted that building permits and additional improvements may be required for buildings that were approved as residential accessory structures but are now being used for manufacturing and for the conversion of the dwelling to an office.
- B. The Salem Fire Department reviewed the proposal and indicated that they have no concerns with the proposed comprehensive plan change and zone change. The Fire Department indicates that they will have additional comments concerning Fire Department access and water supply at the time of building permit plan review for any future proposed development on the property. It should be noted that building permits and additional improvements, including fire access and water supply, may be required for buildings that were approved as residential accessory structures but are now being used for manufacturing and for the conversion of the dwelling to an office.
- C. The Public Works Department reviewed the proposal and provided comments regarding existing street and City utility improvements in the area to serve the development and recommended conditions of approval to ensure conformance with the applicable requirements of the SRC. Comments from the Public Works

Department are included as **Attachment F**.

5. Public Agency & Private Service Provider Comments

Notice of the proposal was provided to public agencies and to public & private service providers. As of the date of completion of this staff report one comment was received from Portland General Electric (PGE). PGE indicates that any future development of the subject property will be subject to current tariff and service requirements.

6. Neighborhood Association Comments

The subject property is located within the East Lancaster Neighborhood Association. At the public hearing written comments were received from the neighborhood association (**Attachment G**) indicating support for the proposal. The neighborhood association explains, in summary, that they support the current use, but have concerns about the potential for a different, more intense, use of the property in the future. The neighborhood association indicates that these concerns, however, appear to be addressed with staff's recommended condition limiting the use of the property to the manufacturing of honey sticks, and any future use of the property to Single Family or Multiple Family uses.

7. Public Comments

Notice of the proposal was mailed to property owners and tenants within 250 feet of the subject property on July 31, 2019. Prior to the public hearing written comments were received from an abutting property owner to the north of the subject property (**Attachment H**) indicating, in summary, support for the proposal with limitations recommended by staff.

FINDINGS ADDRESSING APPLICABLE SALEM REVISED CODE APPROVAL CRITERIA FOR COMPREHENSIVE PLAN MAP AMENDMENT AND NEIGHBORHOOD PLAN MAP AMENDMENT

8. MINOR COMPREHENSIVE PLAN MAP AMENDMENT & NEIGHBORHOOD PLAN MAP AMENDMENT APPROVAL CRITERIA

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Minor Comprehensive Plan Map amendments and neighborhood plan map amendments. In order to approve a minor comprehensive plan map amendment and neighborhood plan map amendment, the Review Authority shall make findings of fact based on evidence provided by the applicant that demonstrates satisfaction of all of the applicable criteria. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposal's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the comprehensive plan map amendment and neighborhood plan map amendment.

SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:

- (i) ***Alteration in Circumstances. Social, economic, or demographic patterns***

of the nearby vicinity have so altered that the current designations are no longer appropriate.

- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
 - (aa) ***Whether there was a mistake in the application of a land use designation to the property;***
 - (bb) ***Whether the physical characteristics of the property are better suited to the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;***
 - (cc) ***Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and***
 - (dd) ***Whether the Comprehensive Plan Map designation is compatible with the surrounding Comprehensive Plan Map designations.***

Finding: The written statement provided by the applicant (**Attachment B**) indicates, in summary, that the proposal is justified based on (i) and (ii). It is explained that the owner purchased the subject property in 1987 with the purpose of siting the applicant's operation on the subject property. The applicant wanted to ensure that its use was allowed on the subject property and obtained a letter from John Elegant, the Building and Safety Administrator for the City of Salem at the time, which stated that:

"The City has evaluated the activities of Mr. Peters business, Nature's Kik. We found that the proposed activity is in conformance with the City's zoning requirements for a residential agricultural zone, and therefore have no objection to the proposed use."

The applicant explains that the City also allowed a number of expansions to the business adding production and storage space though it appears to staff that those expansions were considered accessories to the single family dwelling and were not considered as allowable expansions for the business. In 2018, an alteration in circumstances occurred, when the applicant requested a building permit to build steel structure to enclose the loading bays and protect existing structures. After exchanging correspondence and multiple meetings with City staff, staff informed the applicant that the use had grown and was no longer appropriate on the subject property based on the Comprehensive Plan

designation and zoning designation, and that a change in the comprehensive plan designation and zoning would be needed on the subject property in order to continue the use.

The applicant indicates that the subject property will be equally or better suited with an Industrial Commercial designation than the existing Single Family Residential designation. It is explained that the applicant has operated the Honeystix Business on the subject property under the existing Single Family Residential designation since 1987. The applicant has maintained good relationships with neighbors, provided employment for many surrounding residents, and avoided creating any impacts to surrounding neighbors, or infrastructure problems. It is indicated, however, that now staff has determined that the applicant's use is no longer proper in the Single Family Residential designation and in order to continue the operation on the subject property, a change to the comprehensive plan and zoning designations are required. The applicant is proposing a limited use overlay on the subject property in order to ensure the comprehensive plan change does not alter the fabric of the neighborhood after the operation ceases. The applicant proposes limiting the uses allowed at the property to the Honeystix operation, single family residential uses, and multi-family residential uses. Accordingly, the comprehensive plan change will allow the applicant to continue to operate its business, which is a benefit to the community, while ensuring that the nature of the surrounding area is unaffected. It is explained that therefore, the proposed designation is equally or better suited for the subject property than the existing designation.

Staff concurs with the findings included in the applicant's written statement. The proposed minor comprehensive plan map amendment and neighborhood plan map amendment are justified based upon SRC 64.025(e)(2)(A)(ii). The existing "Single Family Residential" comprehensive plan map designation and "Single Family" neighborhood plan map designation are not appropriate for the food products manufacturing use that is currently being operated on the property, and which has operated on the property in some form since 1987.

The proposed "Industrial Commercial" comprehensive plan map and neighborhood plan map designations allow for the application of a zone district to the subject property that allows both the existing use of the property to be established as a lawful use as well as future single family or multiple family uses consistent with the development pattern of the surrounding area at the point in time when the manufacturing use of the property is ceased.

The proposed comprehensive plan and neighborhood plan map designation is therefore better suited than the existing designation. This approval criterion is met.

SRC 64.025(e)(2)(B): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation.

Finding: The written statement provided by the applicant (**Attachment B**) indicates, in summary, that the subject property is currently served with public facilities and services necessary to support the uses allowed by the proposed comprehensive plan map

designation. The subject property is served by city water, city sewer services, city wastewater services, and city road facilities.

Staff concurs with the findings included in the applicant's written statement. As indicated in the comments from the Public Works Department (**Attachment F**), water, sewer, and storm infrastructure are available within the surrounding streets/areas and appear to be adequate to serve the proposed development. Site-specific infrastructure requirements will be addressed at the time of Site Plan Review for any future development on the subject property. This approval criterion is met.

SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land.

Finding: The written statement provided by the applicant (**Attachment B**) indicates, in summary, that the proposed "Industrial Commercial" designation is a logical extension of nearby development patterns. The surrounding area is developed with a mix of residential, educational, and commercial uses. The property is near Blanchet Catholic School, Swegle Elementary School, and Salem Academy. Also nearby are senior living and assisted living communities, Tierra Rose, the Woods at Willowcreek, and Lancaster Village. The applicant explains that the subject property is located approximately 0.4 miles from Lancaster Dr. NE which is a major commercial corridor. That applicant indicates that, as previously stated, the proposed change from "Single Family Residential" to "Industrial Commercial" will allow the Nature's Kick Operation to continue operating, as it has for over thirty years. At such time in the future that the Nature's Kick Operation ceases to take place on the subject property, the limited single family and multi-family residential uses proposed to be allowed on the property will ensure future development consistent

The applicant explains that while it is true the proposed plan amendment will leave the subject property as an "island" of industrial commercial property, the proposed limitation on the uses of the subject property will allow the historical uses on the land to continue, and allow for residential uses in the future that are consistent with surrounding uses. Staff concurs with the findings included in the applicant's written statement. The proposed comprehensive plan map and neighborhood plan map amendment is intended to allow for a zoning district to be applied to the property that will allow the existing Nature's Kick facility to be established as an existing lawful use. The proposed designation, together with the proposed limits on the future use of the property to single family or multiple family residential uses once the manufacturing use of the property has ceased, ensures that the existing use of the property can continue while at the same time ensuring that any future use of the property after the manufacturing use has ceased will be consistent with the uses and development pattern of the surrounding area; thereby providing for the logical urbanization of the land and helping to contribute to both the economic and housing needs of the community. This approval criterion is met.

SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable Statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development.

Finding: The written statement provided by the applicant (**Attachment B**) indicates, in summary that the applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

▪ **Residential Development Policy E.8-Protection of Residential Areas (Page 32 of Salem Comprehensive Policies Plan):**

Residential areas shall be protected from more intensive land use activity in the abutting zones.

The applicant indicates that a restriction on the uses allowed on the subject property is proposed in conjunction with the proposal to ensure that the residential areas surrounding the subject property are protected from more intensive land use activity. The proposed limit on uses would ensure that the only uses taking place on the subject property would be residential in nature, or the same or substantially similar to applicant's historical business that has been operating on the subject property for decades without disturbing its surrounding residential neighbors. The applicant indicates that they are willing to comply with any required setbacks to act as a buffer between the operation and any surrounding residences.

Staff concurs with the findings included in the applicant's written statement. The proposal, together with the limit on uses allowed, the development standards of the IC zone, and the recommended conditions of the zone change approval, ensure that residential uses are protected from more intensive land use activity in abutting zones. The proposal is consistent with the comprehensive plan policy.

▪ **Economic Development Goals & Policy H.1-Economic Diversification (Page 36 of Salem Comprehensive Policies Plan):**

Goal: Strengthen the economic base of the Salem area to sustain the economic growth necessary to provide adequate employment opportunities and maintain community livability.

Goal: Grow and attract traded-sector businesses especially businesses with above average wages.

1. *Diversify the basic economic sector of the Salem urban area through:*
 - a. *Expansion of existing industrial enterprises and location of new, clean industries.*
 - b. *Expansion of the light manufacturing.*
 - c. *Expansion of businesses with an existing presence in Salem or businesses that provide goods and services to existing businesses in Salem.*
 - d. *Expansion of businesses who want to locate in Salem because of Salem's competitive advantages and characteristics.*

The applicant indicates that the Nature's Kick operation is an existing industrial enterprise that is also a clean industry. The product is a natural honey product packaged in an environmentally safe wax packaging. The packaging process consists

of warming the product and operating custom machines to fill the packaging. The site doesn't create noise issues, pollution, or excess traffic. The use could be described as a light manufacturing of food products. The business has an existing presence in the City and has been providing a healthy product and employment opportunities to Salem residents for nearly two decades. It is explained that the Business wants to maintain its location in the City limits because of its advantages and characteristics. The business is also ideally located within the City of Salem, as it has easy access to I-5 and Highway 22, and is located near the eastern border of the City, near EFU land in the East Marion County area proximate to potential suppliers of the natural honey product.

Staff concurs with the findings included in the applicant's written statement. The proposal to change the comprehensive plan map and neighborhood plan map designations for the property in order to allow for a zone district to be applied to it that will allow the existing Nature's Kick manufacturing use to be established as a lawful use on the property will help to allow the existing business to remain in its current location rather than needing to relocate to another location. The proposal will help strengthen the economic base of the City and help to maintain employment opportunities. The proposal is consistent with these comprehensive plan goals and policies.

▪ **Industrial Development Policy I.1-Industrial Land Inventory (Page 37 of Salem Comprehensive Policies Plan):**

Maintain a long-term (20 year) industrial land inventory which provides a full range of small, medium, and large parcel sizes and locations to sustain a competitive market for industrial sites. Maintaining a long-term supply of industrial land will require identifying and preserving key high value industrial land, especially where the City has made substantial investments in infrastructure. High value industrial land has the following characteristics: it is designated for industrial uses, in flat parcels, most frequently in large parcels at least 10 acres in size, located within an industrial district, has direct access to a state highway or I-5, and is serviced or planned to be serviced with water and wastewater infrastructure.

The applicant indicates that based on the criteria in Policy I.1, the subject property has few characteristics of high value industrial land; while it is under the 10-acre minimum described in the policy, it is a relatively flat parcel. The parcel has access to I-5 via Market Street NE and access to Highway 22 by way of Lancaster Drive NE. The subject property is currently serviced by water and wastewater infrastructure.

Amending the Comprehensive Plan Map to designate the subject property "Industrial Commercial" would increase the overall acreage available within the UGB for industrial uses and commercial uses.

Staff concurs with the findings included in the applicant's written statement. While not a highly suited/high value parcel in terms of location, size, configuration for dedication to the City's long-term industrial land supply, the proposed comprehensive plan and neighborhood plan map amendment to apply an "Industrial Commercial" designation to the property still allows for an existing manufacturing use that has operated on the subject property for many years to be established as a lawful use which helps support the economy of the City and the associated jobs it provides. In recognition of the

property's location and existing surrounding non-industrial land uses, a condition of approval is recommended as part of the zone change to only allow single family and multiple family residential uses once on the property once the manufacturing use has ceased. As such, the proposal supports an existing business while also allowing future residential uses consistent with the development patterning of surrounding area. The proposal is consistent with this comprehensive plan policy.

▪ **Industrial Development Policy I.7-Interface with Other Uses (Page 38 of Salem Comprehensive Policies Plan):**

Industrial land shall be subject to industrial development standards which ensure that development and operation is compatible with surrounding land uses.

The applicant indicates that industrial or commercial development of the subject property will be subject to development standards set forth in SRC Chapter 551 (Industrial Commercial zone), including perimeter setbacks, landscaping, screening, and industrial performance standards. These standards are established to ensure compatibility with surrounding uses, consistent with this policy.

Staff concurs with the findings included in the applicant's written statement. The development standards of the IC zone, together with the recommended conditions of the zone change approval, ensure that the proposed use and development of the subject property will be compatible with surrounding land uses. The proposal is consistent with this comprehensive plan policy.

▪ **Industrial Development Policy I.10-Traffic (Page 38 of Salem Comprehensive Policies Plan):**

Traffic generated by industrial uses should be diverted away from residential areas when feasible and should have convenient access to arterial or collector streets.

The applicant indicates that the subject property is located on 45th Avenue NE, which is classified as a collector street on the City's Functional Street Classification Map. Additionally, the subject property is located near Market Street NE which is classified as a Minor Arterial, and Lancaster Drive NE, which is a Major Arterial. Traffic would have convenient access to collector and arterial streets and is able to be diverted away from residential areas.

Staff concurs with the findings included in the applicant's written statement. Though the subject property is surrounded by residential uses, the subject property is located within relative close proximity to more intensive non-residential uses on Market Street and Lancaster Drive. As the applicant indicates, the subject property is located on 45th Avenue NE, which is classified as a collector Street under the City's Transportation System Plan. 45th Avenue provides direct and convenient access to Market Street and Market Street correspondingly provides direct and convenient access to Lancaster Drive NE and I-5. The proposal is consistent with this comprehensive plan policy.

The written statement provided by the applicant (**Attachment B**) indicates, in summary that the applicable Statewide Planning Goals are addressed as follows:

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

The applicant indicates that a public hearing notice will be mailed to affected property owners, all property owners within 250 feet of the Subject Property, and to the East Lancaster Neighborhood Association (ELNA). This satisfies Citizen Involvement described in Goal 1.

Staff concurs with the findings included in the applicant's written statement. Notice of the proposal was provided to the East Lancaster Neighborhood Association (ELNA), to surrounding property owners and tenants within the notice area, and posted on the property prior to the hearing. The Planning Commission will hold a public hearing to consider the request. Through the notice and public hearing process all interested parties are afforded the opportunity to review the application, comment on the proposal, and participate in the decision. These procedures meet the requirements of this Goal for citizen involvement in the land use planning process.

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

The applicant indicates that the City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission has acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.

Staff concurs with the findings included in the applicant's written statement. The proposal conforms to this statewide planning goal.

- **Statewide Planning Goal 3 – Agriculture Lands; Goal 4 – Forest Lands**

The subject property is not identified as agricultural land or forest land, these Statewide Planning Goals are not applicable to this application.

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

The applicant indicates that there are no known scenic, historical, natural, or cultural resources on the affected parcel. The application will be reviewed for compliance with the City's tree preservation ordinance, historic preservation ordinance, and any applicable wetland standards at the time of any proposed expansion or additional development.

Notwithstanding the applicant's written statement, there is a mapped waterway (*the*

West Fork of the Little Pudding River) which runs along the western and a portion of the northern property line of the subject property. There is also a mapped wetland area located on the southern half of the site as well as trees located throughout the property (**Attachment E**).

The portion of the subject property utilized by the Nature's Kick Corporation for their manufacturing use is already developed. Any future development of the subject property will be required to comply with SRC Chapter 808 (Preservation of Trees & Vegetation), SRC Chapter 809 (Wetlands), and SRC Chapter 230 (Historic Preservation). Compliance with the standards in these chapters ensures conformance with this statewide planning goal.

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

The applicant indicates that the City's adopted facility plans implement Goal 6. Development is required to meet applicable State and Federal requirements for air and water quality and applicable city water, sewer and storm drainage system master plan requirements. The City is responsible for assuring that wastewater discharges are treated to meet the applicable standards for environmental quality. The applicant indicates that the existing business operations have no significant impacts to the quality of the air, water, or land.

Staff concurs with the findings included in the applicant's written statement. Land located within the Urban Growth Boundary is considered urbanizable and is intended to be developed to meet the needs of the City, and the effects of urban development on air, water and land resources are anticipated. Future development of the property is subject to tree preservation, stormwater, and waste water requirements of the Unified Development Code (UDC) which are intended to minimize the impact of development on the state's natural resources. The proposal is consistent with this statewide planning goal.

- ***Statewide Planning Goal 7 – Areas Subject to Natural Hazards:*** *To protect people and property from natural hazards.*

The applicant indicates that there are no landslide hazards existing on the subject property. The City's tree protection, landslide, and floodplain development standards will be applied at the time of any proposed future development. This proposal is consistent with Goal 7.

Staff concurs with the findings included in the applicant's written statement. The topography of the subject property is flat and though the property is located adjacent to the West Fork of the Little Pudding River, the site is not located within a mapped floodplain or floodway. The proposal is consistent with this statewide planning goal.

- ***Statewide Planning 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.*

The subject property is not located within an identified open space, natural, or recreation area, and no destination resort is planned for this property. Goal 8 is therefore not applicable to the proposal.

- **Statewide Planning 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.*

The applicant indicates that the proposal will change the site from the existing “Single Family Residential” designation to “Industrial Commercial.” The existing designation provides mainly for residential uses, and very few other activities. The proposed “Industrial Commercial” designation provides for the IC zone, which allows a wide range of commercial and industrial uses, which are proposed to be limited, while allowing for the continuation of the economic activities currently taking place on the subject property. The existing economic activities on the property provide employment opportunities and economic development to the City and the surrounding neighbors.

Staff concurs with the findings included in the applicant’s written statement. The proposal allows for the continuation of the economic activity currently taking place on the property while allowing for the use of the property to be changed to more compatible single family residential or multiple family residential in the future when the property is no longer being used for the current non-residential use. The proposal is consistent with this statewide planning goal.

- **Statewide Planning Goal 10 – Housing:** *To provide for the housing needs of citizens of the state.*

The applicant indicates that the proposed designation of “Industrial-Commercial” and Industrial Commercial zoning would allow for develop of single family housing and multi-family housing as a conditional use. The proposal is consistent with Goal 10.

Staff concurs with the findings included in the applicant’s written statement. The proposal allows for the comprehensive plan and zoning designations of the property to be changed to ones that allow for both the existing manufacturing use to continue on the property but also for the conversion to single family residential or multiple family residential at the point in time in the future when the manufacturing use of the property is ceased. The proposal is consistent with this statewide planning goal.

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

The applicant indicates that the City’s adopted Comprehensive Plan, Growth Management, Commercial, Industrial, and Transportation Goals and Policies, and adopted Stormwater and Water Master Plans implement the Statewide Public Facilities and Services Goal by requiring development to be served by public services. The City’s capital improvement program and its minimum code standards for public

facilities provide a means for improving and updating public facilities systems (water and sewer). The applicant indicates that all necessary and appropriate public services and facilities essential for development will be provided to the subject property at levels that are adequate to serve the proposed use.

Staff concurs with the findings included in the applicant's written statement. As indicated in the comments provided by the Public Works Department (**Attachment F**), Water, sewer, and storm infrastructure is currently available within the surrounding streets/areas and appear to be adequate to serve the proposed development. Site specific infrastructure requirements will be addressed for any future development of the property at the time of Site Plan Review under SRC Chapter 220. The proposal is consistent with this statewide planning goal.

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

The applicant indicates that Goal 12 is implemented by the Transportation Planning Rule (TPR). In summary, the TPR requires local governments to adopt Transportation System Plans (TSPs) and requires local governments to consider transportation impacts resulting from land use decisions and development. The key provision of the TPR related to local land use decisions is Oregon Administrative Rule 660-012-060. This provision is triggered by amendments to comprehensive plans and land use regulations that “significantly affect” a surrounding transportation facility (road, intersection, etc.) Where there is a “significant effect” on a facility, the local government must ensure that any new allowed land uses are consistent with the capacity of the facility. In the context of a site-specific comprehensive plan change request, such as this proposal, a “significant effect” is defined under Oregon Administrative Rule (OAR) 660-012-0060(1) as either an amendment that “allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility,” or an amendment that would reduce the performance standards of an existing or planned facility below the minimum acceptable level identified in the TSP.” Comprehensive plan change applicants are required to submit a TPR analysis to demonstrate that their request will not have a “significant effect” on the surrounding transportation system, as defined above.

The Applicant submitted an analysis in consideration of the requirements of the TPR (**Attachment I**). The applicant explains that the TPR analysis demonstrates that while the proposed zone change may ordinarily have a significant effect on the surrounding transportation facilities, the proposed limits on use of the property together with the proposed trip cap effectively serve to manage the amount of traffic generated such that the current and proposed use of the Honeystix operation on the subject property will not have a significant effect on the surrounding transportation system.

Staff concurs with the findings included in the applicant's written statement. As indicated by the applicant, a TPR analysis was required in conjunction with the proposal to address the Transportation Planning Rule (OAR 660-012-0060). The TPR analysis submitted by the applicant demonstrates that the proposal will have a

significant impact on the transportation system and, as such, must mitigate the impacts to avoid further degradation of the performance of the City's transportation facilities. As provided in the comments from the Public Works Department **(Attachment F)**, the City's Assistant Traffic Engineer has reviewed the applicant's TPR analysis and concurs with its findings. In order to mitigate the impacts of the proposal on the City's transportation system, a condition of approval is therefore recommended to be placed on the zone change approval limiting development on the 3.25-acre property to a maximum of 264 average daily vehicle trips. As recommended to be conditioned, the proposal is consistent with the statewide planning goal.

- ***Statewide Planning Goal 13 – Energy Conservation: To conserve energy.***

The proposal will allow the existing manufacturing use on the property to be established as a lawful use and allow for single family or multiple family residential uses on the property at a point in the future when the property is no longer being utilized for the existing use. Any future development of the property will be built to comply with current energy standards. The proposal is consistent with this statewide planning goal.

- ***Statewide Planning 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 applicant indicates that the subject property was annexed into the City of Salem in 1979 and is located within the Urban Growth Boundary and Urban Service Area. The transportation and utility infrastructure is sufficient in the area to continue serving the site. The proposed Comprehensive Plan and Zone Change are consistent with the mix of uses in the vicinity.

Staff concurs with the findings included in the applicant's written statement. The proposal is intended to allow for a comprehensive plan, neighborhood plan, and zoning district to be applied to the property that will allow the existing Nature's Kick facility to be established as an existing lawful use. The proposed designation, together with the proposed limits on the future use of the property to single family or multiple family residential uses once the manufacturing use of the property has ceased, ensures that the existing use of the property can continue while at the same time ensuring that any future use of the property after the manufacturing use has ceased will be consistent with the uses and development pattern of the surrounding area; thereby providing for the logical urbanization of the land and helping to contribute to both the economic and housing needs of the community. The proposal is consistent with this statewide planning goal.

- ***Statewide Planning Goal 15 – Willamette Greenway; Goal 16 – Estuarine Resources; Goal 17 – Coastal Shorelands; Goal 18 – Beaches and Dunes; and Goal 19 – Ocean Resources***

Staff Response: The subject property is not located within the Willamette River Greenway or an estuarine or coastal area. These statewide planning goals are therefore not applicable to the proposal.

SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.

Finding: The written statement provided by the applicant (**Attachment B**) indicates, in summary, that the proposed comprehensive plan amendment allows an established, successful business to remain in the City at its current site (*where it has been thriving*) and provide employment opportunities to neighbors for decades to come. The applicant explains that it also encourages and promotes the production of a healthy, natural product that can be manufactured without pollution, excessive noise, or traffic.

Staff concurs with the findings included in the applicant's written statement. The proposal allows for the existing manufacturing use to continue on the property and, as recommended to be conditioned, ensures that future development of the property at the point in time when the manufacturing use has ceased will be compatible with development pattern of the surrounding area. This approval criterion is met.

FINDINGS ADDRESSING APPLICABLE SALEM REVISED CODE APPROVAL CRITERIA FOR QUASI-JUDICIAL ZONE CHANGE

9. QUASI-JUDICIAL ZONE CHANGE APPROVAL CRITERIA

SRC Chapter 265.005(e) provides the approval criteria for Quasi-Judicial Zone Changes. In order to approve a quasi-judicial zone change, the Review Authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following applicable criteria are met. The extent of the consideration given to the various criteria set forth below depends on the degree of impact of the proposed change. The greater the impact of a proposal on the area, the greater the burden on the applicant to demonstrate the zone change is appropriate. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposal's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the zone change, or for the issuance of certain conditions to ensure the criteria are met.

SRC 265.005(e)(1)(A): The zone change is justified based on one or more of the following:

- (i) A mistake in the application of a land use designation to the property;***
- (ii) A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern; or***
- (iii) A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the***

property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.

Finding: The written statement provided by the applicant (**Attachment B**) indicates, in summary, that the proposal satisfies (i), (ii), and (iii).

In regards to (i), the applicant asserts that, as previously described, a mistake has been made in the application of the land use designation to the subject property. The applicant purchased the subject property in 1987 with the express purpose of locating the business operation on the subject property. The applicant received a letter from the Building and Safety Administrator at the time indicating that the applicant's use was consistent with the Residential Agricultural (RA) zone. The applicant asserts that the City approved several business expansions over the years. However, as previously stated, staff believes all expansions were reviewed and approved as accessory structures for a single family dwelling, not for the manufacturing business. Therefore, the applicant asserts a mistake was made in allowing the applicant's use on the subject property and allowing expansion of the use in subsequent building applications. Staff does not concur that there is a mistake in the zoning of the property but the applicant has demonstrated compliance with criterion (iii) as listed below.

In regards to (ii), the applicant indicates that the proposed zone change will be compatible with the vicinity's development pattern as the IC zone (as proposed to be restricted by the applicant) would allow the applicant's current operation, single family housing, and multi-family residential, all of which are consistent with the surrounding uses. The subject property is surrounded by residential uses, multi-family residential uses (in the form of assisted living facilities), and commercial uses along Lancaster Road NE.

In regards to (iii), the applicant indicates the proposed zone change is equally or better suited for both the subject property and the existing business than the existing zone. The physical characteristics of the site itself are suited for the business that currently operates on the subject property and better suited to the IC zone than the RA zone. The physical characteristics of the subject property as built and proposed, offers ideal space for the business operation. It is explained that the applicant owns ample land to create what little expansion is needed in the future, without significant disturbance and without disturbing surrounding properties, resources, or infrastructure. Further, the applicant indicates that the operation currently and proposed is logical and harmonious with the surrounding land uses as it has co-existed with the surrounding land uses for decades. The applicant explains that the business maintains a positive relationship with its neighbors, and provides employment to several people who live nearby. Access to transportation facilities are as suited to industrial or commercial development, single family residential, or multi-family residential as they would be for the uses allowed in the current RA zone.

Notwithstanding the findings included in the applicant's written statement, there has not been a mistake in the application of either the "Single Family Residential" comprehensive plan designation or the RA zone district to the property, and there has likewise not been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern. The proposed zone is, however, better suited for the for the property than the existing zone

and therefore satisfies SRC 265.005(e)(1)(A)(iii).

The proposed zone IC zone is better suited for the property than the existing RA zone because the existing long-standing Honeystix manufacturing use on the property is not currently allowed in the RA zone. This use is, however, permitted in the IC zone as “general food manufacturing” under the General Manufacturing use category.

In addition to allowing for the existing use to become a lawful use on the property, the applicant has also recommended that the future use of the property be further restricted to single family residential or multiple family residential in order to ensure that upon the cease of the manufacturing use on the site, the property will be used for residential uses consistent with the development pattern of the surrounding area. Within the IC zone, both Single Family

The proposed zone change will allow the existing manufacturing use to become a lawful use on the property and the future use restrictions recommended by the applicant to limit the future use of the property to single family or multiple family residential uses once the manufacturing use of the property has ceased ensures a future development pattern consistent with that of the surrounding area. Within the IC zone both Single Family and Multiple Family residential uses are currently allowed and conditional uses.

In order to ensure the proposed zone is better suited for the property than the existing zone, and the potential impacts of the proposed zone and any development of the property on the immediate neighborhood are minimized, the following conditions of approval shall apply:

Condition 1: The following uses/activities allowed within the IC (Industrial Commercial) zone shall be the only uses/activities allowed on the subject property:

Use	Limitations & Qualifications
General Manufacturing	Limited to the manufacturing of honey sticks. Upon conversion of the property to a use other than the manufacturing of honey sticks, the manufacturing use shall no longer be allowed on the subject property.
Single Family	As allowed under the IC zone.
Multiple Family	As allowed under the IC zone.

Condition 2: The following additional requirements shall apply to the General Manufacturing use of the property:

- a) Outdoor storage of materials or equipment shall not be allowed within required setbacks;

- b) The approximate 224 ft. x 80 ft. “flag pole” portion of the property abutting 45th Avenue NE shall not be used for structure placement or additional parking;
- c) On-site retail sales of products is not allowed; and
- d) Signage shall be limited to that allowed under the RA zone.

SRC 265.005(e)(1)(B): If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

Finding: The written statement provided by the applicant (**Attachment B**), indicates that the proposed zone change is not a City-initiated zone change; therefore this criterion is not applicable.

Staff concurs with the findings included in the applicant’s written statement. The proposal is an applicant initiated zone change request rather than a City-initiated request. This approval criterion is therefore not applicable to the proposal.

SRC 265.005(e)(1)(C): The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

Finding: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), included under Section 8 of this report, address the conformance of the proposal with the applicable provisions of the Salem Area Comprehensive Plan for this consolidated application. As provided in the findings included under Section 8 of this report, the proposal, as recommended to be conditioned, complies with the applicable provisions of the Salem Area Comprehensive Plan. This approval criterion is met.

SRC 265.005(e)(1)(D): The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

Finding: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), included under Section 8 of this report, address the conformance of the proposal with the applicable provisions of the Statewide Planning Goals for this consolidated application. As provided in the findings included under Section 8 of this report, the proposal, as recommended to be conditioned, complies with the applicable statewide planning goals. This approval criterion is met.

SRC 265.005(e)(1)(E): If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to

the Comprehensive Plan.

Finding: The written statement provided by the applicant (**Attachment B**) indicates that the subject property is not currently designated for industrial, commercial, or employment use; therefore this criterion does not apply to the proposal.

Staff concurs with the findings included in the applicant's written statement. The subject property is currently designated "Single Family Residential" on the Salem Area Comprehensive Plan Map. The proposal involves a change in the comprehensive plan designation of the property from "Single Family Residential" to "Industrial Commercial" and a corresponding zone change from RA (Residential Agriculture) to IC (Industrial Commercial). Because the proposed zone change does not require a comprehensive plan change from an industrial, commercial, or employment designation to a non-industrial, commercial, or employment designation, this approval criterion is not applicable to the proposal.

SRC 265.005(e)(1)(F): The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Finding: The written statement provided by the applicant indicates that the subject property has access to the public street network via frontage on 45th Avenue NE, designated as a collector street in the Salem Transportation System Plan. The applicant has submitted a TPR analysis that is required to address the Transportation Planning Rule (OAR 660-012-0060). The applicant indicates that the TPR analysis demonstrates that the proposed Comprehensive Plan Change and Zone Change will not have a significant impact on the transportation system, as defined by OAR 660-012-0060, if a trip cap is established to limit the total number of trips to the reasonable worst case of 264 daily trips which result under the property's original "Single Family Residential" comprehensive plan designation.

Staff concurs with the findings included in the applicant's written statement. As indicated by the applicant, a TPR analysis was required in conjunction with the proposal to address the Transportation Planning Rule (OAR 660-012-0060). The TPR analysis submitted by the applicant demonstrates that the proposal will have a significant impact on the transportation system and, as such, must mitigate the impacts to avoid further degradation of the performance of the City's transportation facilities. As provided in the comments from the Public Works Department (**Attachment F**), the City's Assistant Traffic Engineer has reviewed the applicant's TPR analysis and concurs with its findings. In order to mitigate the impacts of the proposal on the City's transportation system as required by this approval criterion, the following condition of approval shall apply:

Condition 3: The transportation impacts from the 3.25 acre site shall be limited to a maximum cumulative total of 264 average daily vehicle trips.

The proposal, as recommended to be conditioned, satisfies this approval criterion.

SRC 265.005(e)(1)(G): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by

the proposed zone.

Finding: As indicated in the comments from the Public Works Department (**Attachment F**), water, sewer, and storm infrastructure are available within the surrounding streets/areas and appear to be adequate to serve the proposed development. Site-specific infrastructure requirements will be addressed at the time of Site Plan Review for any future development on the subject property. This approval criterion is met.

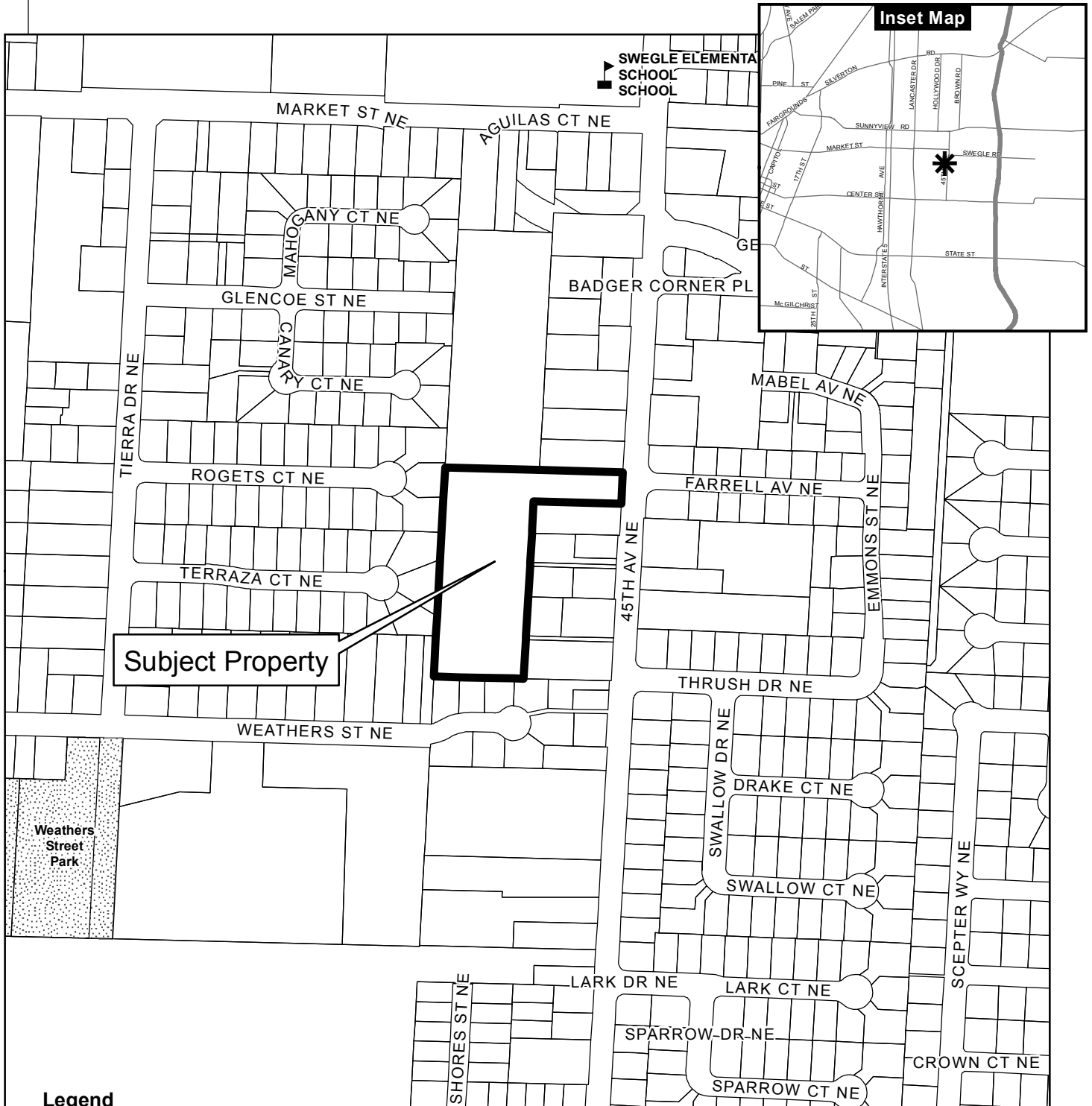
CONCLUSION

Based on the facts and findings presented herein, the proposed Minor Comprehensive Plan Map Amendment, Neighborhood Plan Map Amendment, and Quasi-Judicial Zone Change, as conditioned, satisfy the applicable criteria contained under SRC 64.025(e)(2) and 265.005(e)(1) for approval.

Attachments: A. Vicinity Map
B. Applicant's Written Statement
C. 1987 Letter from Building & Safety Administrator
D. Existing Conditions Plan
E. Natural Features Map
F. Public Works Department Comments
G. Neighborhood Association Comments
H. Public Comments
I. Applicant's TPR Analysis

Prepared by Bryce Bishop, Planner II

Vicinity Map 1443 45th Avenue NE



Legend

- | | | |
|-----------------------|---------------------------|-------|
| Taxlots | Outside Salem City Limits | Parks |
| Urban Growth Boundary | Historic District | |
| City Limits | Schools | |

0 100 200 400 Feet



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COMPREHENSIVE PLAN AND ZONING MAP AMENDMENT CONSOLIDATED WRITTEN STATEMENT

I. BACKGROUND INFORMATION

APPLICANT: Nature's Kick Corporation
1443 45th Avenue NE
Salem, OR 97301

OWNER: Peters Trust, a revocable trust
dated June 16, 1989
1443 45th Avenue NE
Salem, OR 97301

APPLICANT'S REPRESENTATIVE: Mark D. Shipman, Attorney
Nathan K. Riemersma, Attorney
Saalfeld Griggs PC
250 Church Street SE, Suite 200
Salem, OR 97301

TYPE OF APPLICATION: The Applicant is requesting amendments to the Comprehensive Plan and Zoning Map designations for the Subject Property.

PROPERTY LOCATION: The Subject Property is a 3.25 +/-acre parcel located at 1443 45th Ave NE Salem, Oregon (Marion County Assessor's Map No. 07S-2W-19DB, Tax Lot 100).

APPLICABLE REVIEW & DECISION CRITERIA: Salem Revised Code (SRC) Sections 265.005 and 64.025



II. PROJECT AND PROPERTY DESCRIPTION

(A) SUBJECT PROPERTY INFORMATION:

The property subject to this application is located at 1443 45th Ave NE, Salem, Oregon, and consists of Tax Lot 100 located in Township 7 South, Range 2 West, Section 19, in Marion County, Oregon (the "**Subject Property**"). The Subject Property is owned by the Peters Trust, a revocable trust dated June 16, 1989, (the "**Owner**") and is the principal place of business for Natures Kick Corporation, an Oregon corporation (collectively the "**Applicant**" or "**Nature's Kick**"). Since 1987, the Subject Property has been the sole production site for Original Honeystix, a single serve honey product that utilizes honey from local and regional beekeepers ("**Honeystix**") (collectively the "**Business**" or the "**Operation**").

(B) BACKGROUND INFORMATION:

The Subject Property is approximately 3.25 acres in size, is designated Single Family Residential (SFR) in the Salem Comprehensive Plan and is correspondingly zoned Residential Agriculture (RA). The parcel was annexed into the City of Salem's (the "**City**") City Limits in December of 1979 and assigned a zoning designation of RA. In 1987, Applicant purchased the Subject Property for the purpose of producing Honeystix. See **Exhibit "A,"** the vesting deed. Prior to purchasing the Subject Property, Applicant wanted to ensure its anticipated use would be in conformance with the zoning code. The City evaluated the proposed use on the Subject Property and found that it was "in conformance with the City's zoning requirements for a residential agricultural zone" and had "no objection to its proposed use." See **Exhibit "B,"** (the "**Elegant Letter**"). The Elegant Letter does not specify whether the City viewed the proposed use as a home occupation as defined in SRC 700.020, but Applicant has learned from subsequent communications with City Planning Staff that the City has viewed and treated the operation as a home occupation. The City issued a building permit to build a 24' by 36' pole barn to act as the production facility. The City also approved the temporary use of a mobile home as a residence on the property for a period of nine months in order to construct Owner's permanent residence.

While communications from City Staff indicate that the City viewed the use on the Subject Property as a home occupation, it is unclear whether the use was ever compliant with a home occupation use. The residence appears to be approximately 1200 square feet and the initial production area was approximately 600 square feet, which exceeded the allowable 25 percent of the dwelling. Additionally, at the time the use was established, the business employed six people, three residents and three non-residents. It seems from the establishment of the use, the Business never fit the mold of a home occupation.

Nevertheless, the Business was allowed to expand multiple times. In approximately 1989, the City approved an approximate 850 square foot pole barn to expand the production area.

In 2013, another expansion occurred. Applicant applied for permission to build an additional 60' x 60' accessory structure for storage. At this point in time, City Staff noticed a discrepancy in the zoning for the Subject Property, in which the zoning was inadvertently changed to RM2; once recognized, Marion County allowed Applicant to choose which zone it would prefer for the Subject Property and Applicant decided to maintain RA zoning. Applicant was allowed to build the second expansion without a conditional use permit.

In 2018, Applicant was issued a building permit for a steel structure designed to protect existing structure and enclose two loading bays. At this point, the City and Applicant realized that the current zoning is not compatible with the historical use on the Subject Property.

The Subject Property contains approximately 10,000 square feet of building space which includes a residence (now used as office space), and the production space for the Operation. See **Exhibit "C,"** the existing conditions plan.

Accordingly, the Owner and Nature's Kick have been evaluating the highest and best use of the building and the Subject Property. The size and uses of the building are more consistent with the Industrial Commercial (IC) Comprehensive Plan designation and zoning district. Applicant would like

this request to go through the Collective (a.k.a. Consolidated) Process before the Planning Commission and City Council.

III. COMPREHENSIVE PLAN CHANGE:

The Salem Revised Code ("**SRC**") establishes procedures to be used when considering plan amendments. The SRC identifies two types of comprehensive plan amendments: (1) Major plan map amendments, which includes any amendment to the urban growth boundary, or an amendment to the comprehensive plan map or a general land use map in a neighborhood plan, where the amendment involves the creation, revision, or implementation of broad public policy generally affecting more than one property owner or a large number of individual properties; and (2) Minor plan map amendments, which includes amendments to either the comprehensive plan map or a general land use map in a neighborhood plan, where the amendment affects only a small number of properties or a closely circumscribed set of factual circumstances. Applicant is requesting a minor plan map amendment, which may be initiated by Subject Property owners with an application form that complies with SRC 64.025(d)(2).

SRC 64.025(e)(2) *Minor plan map amendment.* The greater the impact of the proposed minor plan map amendment, the greater the burden on an applicant to demonstrate that the criteria are satisfied. A minor plan map amendment may be made if it complies with the following:

- A. The minor plan map amendment is justified based on the existence of one of the following:
 - i. ***Alteration in circumstances.*** Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.
 - ii. ***Equally or better suited designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
 - iii. ***Conflict between comprehensive plan map designation and zone designation.*** A minor plan map amendment may be granted where there is a conflict between the comprehensive plan map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the comprehensive plan map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
 - aa. Whether there was a mistake in the application of a land use designation to the property;
 - bb. Whether the physical characteristics of the property are better suited to the uses in zone as opposed to the uses permitted by the comprehensive plan map designation;

- cc. Whether the property has been developed for uses that are incompatible with the comprehensive plan map designation; and
- dd. Whether the comprehensive plan map designation is compatible with the surrounding comprehensive plan map designations;

Proposed Finding: The proposal is justified based on (i) and (ii). The Owner purchased the Subject Property in 1987 with the purpose of siting the Applicant's Operation on the Subject Property. Applicant wanted to ensure that its use was allowed on the Subject Property, and obtained the Elegant Letter from John Elegant, Building and Safety Administrator for the City of Salem, which stated that "[t]he City has evaluated the activities of Mr. Peters business, Nature's Kik. [Sic] We found that the proposed activity is in conformance with the City's zoning requirements for a residential agricultural zone, and therefore have no objection to the proposed use." See Exhibit B. The City also allowed a number of expansions to the Business adding production and storage space. In 2018, an alteration in circumstances occurred, when Applicant requested a building permit to build steel structure to enclose the loading bays and protect existing structures. After exchanging correspondence and multiple meetings with City staff, staff informed Applicant that the use was no longer appropriate on the Subject Property based on the Comprehensive Plan Designation and Zoning Designation, and that based on historical oversights by both Applicant and the City, a change in the comprehensive plan designation and zoning would be needed on the Subject Property in order to continue the use.

The Subject Property will be equally or better suited with an Industrial Commercial designation than the existing Single Family Residential designation. Applicant has operated the Honeystix Business on the Subject Property under the existing Single Family Residential designation since 1987. Applicant has maintained good relationships with neighbors, provided employment for many surrounding residents, and avoided creating any impacts to surrounding neighbors, or infrastructure problems. However, now the City Planning Staff has determined that the Applicant's use is no longer proper in the Single Family Residential designation. In order to continue the Operation on the Subject Property, a change to the Industrial Commercial designation is required. Applicant is proposing a limited use overlay on the Subject Property in order to ensure the comprehensive plan change does not alter the fabric of the neighborhood after the Operation ceases. Applicant proposes limiting the uses allowed at the property to the Honeystix Operation, single family residential uses, and multi family residential uses. Accordingly, the comprehensive plan change will allow Applicant to continue to operate its Business, which is a benefit to the community, while ensuring that the nature of the surrounding area is unaffected. Therefore, the proposed designation is equally or better suited for the Subject Property than the existing designation.

This criterion is satisfied.

- B. The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation;**

Proposed Finding: The Subject Property is currently served with public facilities and services necessary to support the uses allowed by the proposed comprehensive plan map designation. The Subject Property is served by city water, city sewer services, city wastewater services, and city road facilities. Applicant is proposing to add a limited use overlay to the Subject Property, in order limit the uses allowed on the

Subject Property and minimize the impact on the public facilities, which are sufficient to serve the Applicant's Honeystix Operation, single family residential, and multifamily residential uses.

This criterion is satisfied.

C. The proposed plan map designation provides for the logical urbanization of land;

Proposed Finding: The proposed "Industrial Commercial" designation is a logical extension of nearby development patterns. The surrounding area is developed with a mix of residential, educational, and commercial uses. The property is near Blanchet Catholic School, Swegle Elementary School, and Salem Academy. Also nearby is are senior living and assisted living communities, Tierra Rose, the Woods at Willowcreek, and Lancaster Village. The Subject Property is located approximately .4 miles from Lancaster Dr. NE which is a major commercial corridor. Applicant is proposing to re-designate the Subject Property from Single Family Residential to Industrial Commercial. As previously stated, the proposed change would allow the Nature's Kick Operation to continue operating, as it has for over thirty years. At such time in the future, that the Nature's Kick Operation ceases to take place on the subject property, the limited use overlay will limit the uses on the property to single family residential uses and multi-family residential uses, which are consistent with the surrounding uses in the area. It is true that the proposed plan amendment will leave the Subject Property as an "island" of industrial commercial property, however the limitation on the uses of the Subject Property will allow the historical uses on the land to continue, and allow for residential uses in the future that are consistent with surrounding uses.

This criterion is satisfied.

D. The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development; and

Proposed Finding: The applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

Salem Urban Area Goals and Policies, Residential Development Goal (Page 30, Salem Comprehensive Policies Plan):

Policy E. 8. Residential areas shall be protected from more intensive land use activity in the abutting zones.

Proposed Finding: Applicant has proposed a limited use overlay on the Subject Property to ensure that the residential areas surrounding the Subject Property is protected from more intensive land use activity. This overlay would ensure that the only uses taking place on the Subject Property would be residential in nature, or the same or substantially similar to Applicant's historical Business that has been operating on the Subject Property for decades without disturbing its surrounding residential neighbors. Applicant is willing to comply with any required setbacks to act as a buffer between the Operation and any surrounding residences.

The proposal is consistent with this policy.

H. Economic Development

GOAL: Strengthen the economic base of the Salem area to sustain the economic growth necessary to provide adequate employment opportunities and maintain community livability.

Goal: Grow and attract traded-sector businesses especially businesses with above average wages.

1. *Diversify the basic economic sector of the Salem urban area through:*
 - a. *Expansion of existing industrial enterprises and location of new, clean industries.*
 - b. *Expansion of the light manufacturing.*
 - c. *Expansion of businesses with an existing presence in Salem or businesses that provide goods and services to existing businesses in Salem*
 - d. *Expansion of businesses who want to locate in Salem because of Salem's competitive advantages and characteristics.*

Proposed Finding: The Nature's Kick Operation is an existing industrial enterprise that is also a clean industry. The product is a natural honey product packaged in an environmentally safe wax packaging. The packaging process consists of warming the product and operating custom machines to fill the packaging. The site doesn't create noise issues, pollution, or excess traffic. The use could be described as a light manufacturing of food products. The business has an existing presence in the City and has been providing a healthy product and employment opportunities to Salem residents for nearly two decades. The Business wants to maintain its location in the City limits because of its advantages and characteristics. The Business is also ideally located within the City of Salem, as it has easy access to I-5 and Highway 22, and is located near the eastern border of the City, near EFU land in the East Marion County area proximate to potential suppliers of the natural honey product.

I. Industrial Development

Policy I.1. Maintain a long-term (20 year) industrial land inventory which provides a full range of small, medium, and large parcel sizes and locations to sustain a competitive market for industrial sites. Maintaining a long-term supply of industrial land will require identifying and preserving key high value industrial land, especially where the City has made substantial investments in infrastructure. High value industrial land has the following characteristics: it is designated for industrial uses, in flat parcels, most frequently in large parcels at least 10 acres in size, located within an industrial district, has direct access to a state highway or I-5, and is serviced of planned to be serviced with water and wastewater infrastructure.

Proposed Finding: Based on the criteria in Policy I.1, the Subject Property has few characteristics of high value industrial land; while it is under the 10-acre minimum described in the policy, it is a relatively flat parcel. The parcel has access to I-5 via Market Street NE and access to Highway 22 by way of Lancaster Drive NE. The Subject Property is currently serviced by water and wastewater infrastructure.

Amending the Comprehensive Plan Map to designate the Subject Property Industrial Commercial would increase the overall acreage available within the UGB for industrial uses and commercial uses.

Policy I.7. *Industrial land shall be subject to industrial development standards which ensure that development and operation is compatible with surrounding land uses.*

Proposed Finding: Industrial or commercial development of the Subject Property would be subject to development standards set forth in SRC Chapter 551 (Industrial Commercial zone), including perimeter setbacks, landscaping, screening, and industrial performance standards. These standards are established to ensure compatibility with surrounding uses, consistent with this policy.

Policy I.10. *Traffic generated by industrial uses should be diverted away from residential areas when feasible and should have convenient access to arterial or collector streets.*

Proposed Finding: The Subject Property is located on 45th Avenue NE, which is classified as a collector street on the City's Functional Street Classification Map. Additionally, the Subject Property is located near Market Street NE which is classified as a Minor Arterial, and Lancaster Drive NE, which is a Major Arterial. Traffic would have convenient access to collector and arterial streets and is able to be diverted away from residential areas.

THE APPLICABLE STATEWIDE PLANNING GOALS ARE ADDRESSED AS FOLLOWS:

Statewide Planning 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.*

Proposed Finding: A public hearing notice will be mailed to affected property owners, all property owners within 250 feet of the Subject Property and to the East Lancaster Neighborhood Association (ELNA). This satisfies Citizen Involvement described in Goal 1.

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

Proposed Finding: The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission has acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.

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

Proposed Finding: There are no known scenic, historical, natural, or cultural resources on the affected parcel. The application will be reviewed for compliance with the City's tree preservation ordinance, historic preservation ordinance, and any applicable wetland standards at the time of any proposed expansion or additional development.

Statewide Planning Goal 6 – Air, Water, and Land Resource Quality: *To maintain and improve the quality of the air, water, and land resources of the state.*

Proposed Finding: The City’s adopted facility plans implement Goal 6. Development is required to meet applicable State and Federal requirements for air and water quality and applicable city water, sewer and storm drainage system master plan requirements. The City is responsible for assuring that wastewater discharges are treated to meet the applicable standards for environmental quality.

There are no identified significant natural resources on the Subject Property. The Business operations have no significant impacts to the quality of the air, water, or land. The Application is consistent with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Hazards: *To protect people and property from natural hazards.*

Proposed Finding: There are no landslide hazards existing on the Subject Property. The City’s tree protection, landslide, and floodplain development standards will be applied at the time of any proposed future development. This proposal is consistent with Goal 7.

Statewide Planning 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.*

Proposed Finding: The proposal will change the site from the existing “Single Family Residential” designation to “Industrial Commercial.” The existing designation provides mainly for residential uses, and very few other activities. The “Industrial Commercial” designation provides for the IC zone, which allows a wide range of commercial and industrial uses. While these uses will be limited by an overlay, the “Industrial Commercial” designation allows for the continuation of the economic activities taking place on the Subject Property, which provide employment opportunities and economic development to the City and the surrounding neighbors. The proposal is consistent with this Goal.

Statewide Planning Goal 10 – Housing: *To provide for the housing needs of the citizens of the state.*

Proposed Finding: The proposed designation of “Industrial-Commercial” and Industrial Commercial zoning would allow for develop of Single Family housing and multi-family housing as a conditional use. The proposal is consistent with Goal 10.

Statewide Planning 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.*

Proposed Finding: The City’s adopted Comprehensive Plan Growth Management, Commercial, Industrial, and Transportation Goal and Policies and adopted Stormwater and Water Master Plans implement the Statewide Public Facilities and Services Goal by requiring development to be served by public services. The City’s capital improvement program and its minimum codes standards for public facilities provide a means for improving and updating public facilities systems (water and sewer). All necessary and

appropriate public services and abilities essential for development will be provided to the Subject Property at levels that are adequate to serve the proposed use. The proposal is consistent with Goal 11.

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

Proposed Finding: Goal 12 is implemented by the Transportation Planning Rule (TPR). In summary, the TPR requires local governments to adopt Transportation System Plans (TSPs) and requires local governments to consider transportation impacts resulting from land use decisions and development. The key provision of the TPR related to local land use decisions is Oregon Administrative Rule 660-012-060. This provision is triggered by amendments to comprehensive plans and land use regulations that “significantly affect” a surrounding transportation facility (road, intersection, etc.) Where there is a “significant effect” on a facility, the local government must ensure that any new allowed land uses are consistent with the capacity of the facility. In the context of a site-specific comprehensive plan change request, such as this proposal, a “significant effect” is defined under Oregon Administrative Rule (OAR) 660-012-0060(1) as either an amendment that “allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility,” or an amendment that would reduce the performance standards of an existing or planned facility below the minimum acceptable level identified in the TSP.”

Comprehensive plan change applicants are required to submit a TPR analysis to demonstrate that their request will not have a “significant effect” on the surrounding transportation system, as defined above.

The Applicant submitted an analysis in consideration of the requirements of the TPR. See **Exhibit “D,”** TPR analysis. The TPR analysis demonstrates while the proposed zone change may ordinarily have a significant effect on the surrounding transportation facilities, the limited use overlay combined with the proposed trip cap, effectively serve to manage the amount of traffic generated such that the current and proposed use of the Honeystix Operation on the Subject Property will not have a significant effect on the surrounding transportation system. The proposed Comprehensive Plan Change and Zone Change, as conditioned, will not satisfy the TPR as allowed by OAR 660-012-0060(2)(d) by limiting the total number of vehicle trips to 264 average daily trips.

Statewide Planning 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.*

Proposed Finding: The Subject Property was annexed into the City of Salem in 1979 and is located within the Urban Growth Boundary and Urban Service Area. The transportation and utility infrastructure is sufficient in the area to continue serving the site. The Proposed Comprehensive Plan and Zone Change are consistent with the mix of uses in the vicinity. The proposal complies with Goal 14.

E. The amendment is in the public interest and would be of general benefit.

Proposed Finding: This comprehensive plan amendment would allow an established, successful business to remain in the City at its current site (where it has been thriving) and provide employment opportunities to neighbors for decades to come. It would also encourage and promote the production of a healthy, natural product that can be manufactured without pollution, excessive noise, or traffic.

This criterion is satisfied.

IV. ZONING MAP AMENDMENT

The SRC allows for amendments to the Zoning Map, which may be initiated by the owner of the property subject to the zone change, the owner's agent, the City Council or the Planning Commission (SRC 265.005(b)). Applicant is requesting an amendment to the Zoning Map in conjunction with its requested Comprehensive Plan designation change to General Commercial in order to allow the building on the Subject Property to resume operation as a viable and productive business in the City.

SRC 265.005(e)(1) A quasi-judicial zone change shall be granted if all of the following criteria are met:

A. The zone change is justified based on the existence of one or more of the following:

- i. A mistake in the application of a land use designation to the property;**
- ii. A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern; or**
- iii. A demonstration that the proposed zone is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

Proposed Finding: This request satisfies (i), (ii), and (iii).

(i): As previously described, a mistake has been made in the application of the land use designation to the Subject Property. Applicant purchased the Subject Property in 1987 with the express purpose of locating the Business Operation on the Subject Property. Applicant received the Elegant Letter (Exhibit B) stating that Applicant's use was consistent with the Residential Agricultural (RA) zone. Throughout the years, the City approved several Business expansions. After a building permit stalled, the Applicant and the City took a closer look at Applicant's use in relation to the RA zone and determined it likely never fit into the allowed uses in the RA zone. Therefore, a mistake was made in allowing the Applicant's use on the Subject Property and allowing expansion of the use in subsequent building applications.

(ii): The proposed zone change would be compatible with the vicinity's development pattern as the IC zone (as restricted by Applicants proposed limited use overlay) would allow Applicant's current Operation, single family housing, and multi-family residential, all of which are consistent with the surrounding uses. The Subject Property is surrounded by residential uses, multi-family residential uses in the form of assisted living facilities, and commercial uses along Lancaster Road NE.

(iii): The proposed zone change is equally or better suited for the Subject Property and the existing Business than the existing zone. The physical characteristics of the site itself are suited for the Business that currently operates on the Subject Property and better suited to the IC zone as the RA zone. The physical characteristics of the Subject Property as built and

proposed, offers ideal space for the Business Operation. Applicant owns ample land to create what little expansion is needed in the future, without significant disturbance and without disturbing surrounding properties, resources, or infrastructure. Further, the Operation current and proposed is logical and harmonious with the surrounding land uses as it has been coexisting with the surrounding land uses for decades. As noted earlier, the Business maintains a positive relationship with its neighbors, and provides employment to several people who live nearby. Access to transportation facilities are as suited to industrial or commercial development, single family residential, or multi-family residential as they would be for the uses allowed in the current RA zone.

This criterion is satisfied.

B. If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

Proposed Finding: This proposed zone change is not a City-initiated zone change. Therefore, this criterion is not applicable.

C. The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

Proposed Finding: Findings addressing the Comprehensive Plan Change Criterion SRC 64.025(e)(2)(D), included earlier in this document, address the applicable provisions of the Salem Area Comprehensive Plan for this consolidated comprehensive plan change and zone change request. The proposal satisfies this criterion.

D. The zone change complies with applicable statewide planning goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

Proposed Finding: Findings addressing the Comprehensive Plan Change Criterion SRC 64.025(e)(2)(D), included earlier in this document, address the applicable Statewide Planning Goals and Oregon Administrative Rules for this consolidated comprehensive plan change and zone change request. The proposal satisfies this criterion.

E. If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or a comprehensive plan change from a commercial or employment designation to any other designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the comprehensive plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the comprehensive plan to address the proposed zone change; or include both the demonstration and an amendment to the comprehensive plan.

Proposed Finding: The Subject Property is not currently designated for industrial, commercial, or employment use. Therefore, this criterion does not apply to the proposal.

- F. The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.**

Proposed Finding: The Subject Property has access to the public street network via frontage on 45th Avenue NE, designated as a collector street in the Salem Transportation System Plan. The Applicant has submitted a TPR analysis that is required to address the Transportation Planning Rule (OAR 660-012-0060). The TPR analysis demonstrates that the proposed Comprehensive Plan Change and Zone Change, as conditioned, will not have a significant impact on the transportation system as defined by OAR 660-012-0060 by limiting the total number of trips to the reasonable worst case of 264 daily trips in the original comprehensive plan designation.

- G. The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.**

Proposed Finding: Findings addressing the Comprehensive Plan Change Criterion SRC 64.025(e)(2)(B), included earlier in this document, address the public facilities and services available to support uses that would be allowed on the Subject Property. The Subject Property is currently served by City infrastructure. The proposal satisfies this criterion.

CONCLUSION:

Applicant requests approval of the requested combined Comprehensive Plan and Zone Change with the requested limited use overlay. This change would allow Applicant to continue operating a business that is beneficial to the surrounding neighbors and the community as a whole. Applicant offers a natural, healthy product, that is manufactured without pollution, noise, or excessive traffic. Applicant also employs several neighbors and has maintained good relationships with surrounding property owners throughout the years. Additionally, Applicant's location offers easy access to I-5 and Highway 22. The proposed Comprehensive Plan Amendment and Zoning Change are consistent with the Salem Area Comprehensive Plan, the Statewide Planning Goals, and the review criteria in the SRC. Therefore, the requested changes to the Comprehensive Plan and Zoning Map should be approved.



CITY
OF SALEM,
OREGON

City Hall/555 Liberty St. SE
Room 320 / Zip Code 97301

BUILDING & SAFETY DIVISION 588-6242

PERMIT APPLICATION CENTER 588-6278

AIRPORT DIVISION 588-6314/588-6242

June 17, 1987

Cindy Johnson, Branch Manager
Family Federal Savings & Loan Association
1677 Hawthorne Avenue, N.E.
Salem, Oregon 97301

Dear Ms. Johnson:

The City has evaluated the activities of Mr. Peters business, Nature's Kik. We found that the proposed activity is in conformance with the City's zoning requirements for a residential agricultural zone and, therefore, have no objection to its proposed use.

It also should be noted that City Council, at its June 15, 1987 meeting, approved the temporary use of a mobile home as a residence on the property for a period of nine months to allow the Peters family time to construct their single family residence on the property.

Please advise me if you would like further information.

Sincerely,

John I. Elegant
Building & Safety Administrator

/ls

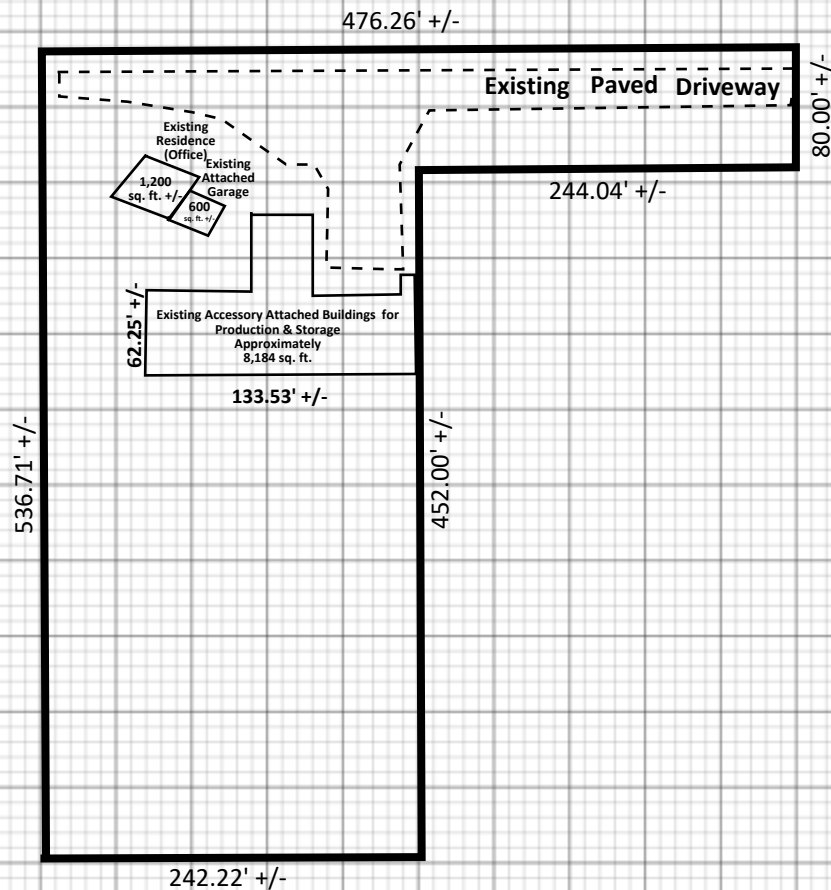


EXISTING CONDITIONS PLAN

May 16, 2019

Attachment D

- Consolidated Comprehensive Plan Amendment & Zone Change Request
- Applicant: Nature's Kick Corporation
- Owner: Peters Trust, a revocable trust dated June 16, 1989
- Location: 1443 45th Ave. N, Salem
- Scale: 1 cm. = 10'
- Property below is orientated to the North
- Total Site Area: 3.25 ac. +/- or approximately 141,570 sq. ft.



Note: For stormwater drainage information, please see Stormwater Map 57-476

EXHIBIT C







MEMO

TO: Bryce Bishop, Planner II
Community Development Department

FROM: Glenn J. Davis, PE, CFM, Chief Development Engineer
Public Works Department

DATE: July 1, 2019

SUBJECT: PUBLIC WORKS RECOMMENDATIONS
CPC-NPC-ZC19-09 (19-111617-ZO)
1443 45TH AVENUE NE
NATURE'S KICK

PROPOSAL

An application for a comprehensive plan map designation and zone change from single-family residential to industrial commercial and zoning change from RA to IC within the limited use overlay at 1443 45th Avenue NE (Marion County Assessor's Map and Tax Lot Number: 072W19DB 00100).

RECOMMENDED CONDITIONS OF APPROVAL

The transportation impacts from the 3.25-acre site shall be limited to a maximum cumulative total of 264 average daily vehicle trips.

FACTS

Public Infrastructure Plan—The *Water System Master Plan*, *Wastewater Management Master Plan*, and *Stormwater Master Plan* provide the outline for facilities adequate to serve the proposed zone.

Transportation Planning Rule—The applicant submitted a Transportation Planning Rule (TPR) Analysis in consideration of the requirements of the TPR (OAR 660-012-0060). The TPR analysis is required to demonstrate that the proposed CPC/ZC will not have a significant effect on the transportation system as defined by OAR 660-012-0060.

Streets

1. 45th Avenue NE

- a. Standard—This street is designated as a Collector street in the Salem TSP. The standard for this street classification is a 34-foot-wide improvement within a 60-foot-wide right-of-way.
- b. Existing Condition—This street has an approximate 34-foot improvement within a 64-foot-wide right-of-way abutting the subject property.

Storm Drainage

1. Existing Condition

- a. A 30-inch storm main is located in 45th Avenue NE.

Water

1. Existing Conditions

- a. The subject property is located in the G-0 water service level.
- b. A 12-inch water main is located in 45th Avenue NE. Mains of this size generally convey flows of 2,100 to 4,900 gallons per minute.

Sanitary Sewer

1. Existing Condition

- a. An 8-inch sewer main is located in 45th Avenue NE.

CRITERIA AND FINDINGS

Criteria: SRC 265.005(e)(1)(F) The zone change does not significantly effect a transportation facility, or, if the zone change would significantly effect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Finding—The applicant has submitted a TPR analysis, which is required to address the Transportation Planning Rule (OAR 660-012-0060). The TPR analysis demonstrates that the proposed CPC/ZC will have a significant impact on the transportation system as defined by OAR 660-012-0060 and, as such, must mitigate the impacts of the amendment to avoid further degradation to the performance of the facility as specified in the conditions of approval. The Assistant City Traffic Engineer concurs with the TPR

Bryce Bishop, Planner II
July 1, 2019
Page 3

MEMO

analysis findings and recommends a condition to limit the development on the 3.25-acre site to 264 average daily vehicle trips.

Criteria: SRC 265.005(e)(1)(G) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

Finding: The water, sewer, and storm infrastructures are available within surrounding streets/areas and appear to be adequate to serve the proposed development. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220.

Prepared by: Jennifer Scott, Program Manager
cc: File



EAST LANCASTER NEIGHBORHOOD ASSOCIATION (ELNA)

CITY OF SALEM	
HEARINGS OFFICER	_____
PLANNING COMMISSION	<u>X</u>
OTHER:	_____
EXHIBIT:	<u>A</u>
CASE NO:	<u>CPC-NPC-ZC19-09</u>
DATE:	<u>8/20/2019</u>

August 20, 2019

To: Lisa Anderson and Salem Planning Commission
From: Susann Kaltwasser, East Lancaster Neighborhood Association, co-president
RE: COMPREHENSIVE PLAN CHANGE, NEIGHBORHOOD PLAN CHANGE, ZONE
CHANGE CASE NO. CPC-NPC-ZC19-09; FOR PROPERTY LOCATED AT 1443 45TH
AVENUE NE

On August 1, 2019 the board of the East Lancaster Neighborhood Association discussed this application by Glenn Peters for a zone change for his business located at 1443 45th Ave NE.

After much discussion the board voted to support the application.

The concerns expressed by those in attendance were about the potential uses of the property if the business were to be sold. We support the current use, and we understand that Mr. Peters has no intention to sell the property in the near future. However, zone changes last longer sometimes than the property ownership. We do not want to see this property to be used for a different, perhaps more intense business.

After some discussion about this concern we gained a personal agreement that they would work with City staff to find a way that the zone change would not continue with the sale of the property, if that should happen.

The second concern was that the property could be developed as multifamily if the property was sold or the business vacated. However, we believe that the buildable envelop of this property due to wetlands and other constraint would not allow for a large multifamily development. Also, setback and buffer requirements would be put in place to protect adjacent homes. Therefore, we reluctantly accept this as a future potential use with this zone change.

While we did not have the advantage of seeing the staff report prior to our discussion and vote, it appears that the staff has made a recommendation that seems to address neighbors concerns.

Condition 1: The following uses/activities allowed within the IC (Industrial Commercial) zone shall be the only uses/activities allowed on the subject property:

General Manufacturing

Limited to the manufacturing of honey sticks.
Upon conversion of the property to a use other than the
manufacturing of honey sticks, the manufacturing use shall no

longer be allowed on the subject property.

Single Family

As allowed under the IC zone.

Multiple Family

As allowed under the IC zone.

Therefore, ELNA supports this zone change request.



The Springs Living®

RECEIVED

AUG 19 2019

COMMUNITY DEVELOPMENT

August 7, 2019

Salem Planning Division
555 Liberty Street SE, Room 305
Salem, OR 97301

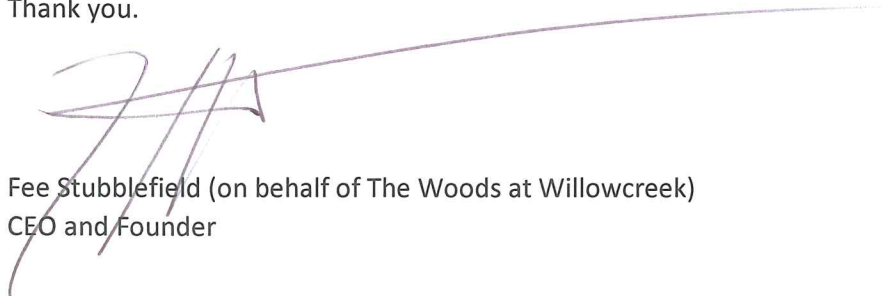
RE: Land Use Request Case Number CPC-NPC-ZC 19-09
Application No. 19-111617-ZO, 19-115341-ZO; 19-111618-ZO for property at
1443 45th Ave. NE, Salem, OR 97301

We are in receipt of the Hearing Notice for this case; our property known as The Woods at Willowcreek is adjacent to this property at 4398 Glencoe Street NE.

We agree with the staff that the zone change should be allowed with limitations.

If you need any other supporting information, please contact me at 503-435-2323.

Thank you.



Fee Stubblefield (on behalf of The Woods at Willowcreek)
CEO and Founder



The Springs Living®

401 NE Evans Street
McMinnville, OR 97128



21370 SW Langer Farms Pkwy
Suite 142, Sherwood, OR 97140



EXPIRES: 12/31/19

Technical Memorandum

To: Nathan Riemersma

From: Michael Ard, PE

Date: April 3, 2019

Re: 1443 45th Avenue NE – Nature’s Kick Zone Change - Salem, OR

This memorandum is written to provide information related to a proposed comprehensive plan amendment and zone change for a 3.25-acre property located at 1443 45th Avenue NE in Salem, Oregon. The subject property is currently zoned Residential Agriculture (RA) with a comprehensive plan designation of Single-Family Residential. It is proposed to be rezoned to Industrial Commercial (IC) zoning. The following analysis addresses the potential transportation impacts that can be anticipated following the proposed zone change as well as the requirements of Oregon’s Transportation Planning Rule.

TRIP GENERATION

In order to quantify the potential change in site traffic volumes associated with the proposed comprehensive plan amendment and zone change, an estimate of trip generation for the “reasonable worst case” development scenario was developed for both the existing RA zoning and the proposed IC zoning. The comparison between these two development scenarios shows the net change in traffic that could result from the proposed plan amendment and zone change.

Under existing conditions, the City of Salem RA zoning allows for residential development of the site with a minimum lot size of 4,000 square feet. Since the property has a total area of 3.25 acres, of which approximately 80 percent would be usable as residential lots following subdivision of the property, it was estimated that the maximum development density under the existing zoning would consist of 28 homes.

Under the proposed IC zoning, a variety of commercial and industrial uses are permitted. These include residential uses, retail sales, eating and drinking establishments, offices (including medical offices), day care facilities, and manufacturing among others. It should be noted that the zone change is being proposed in conjunction with a limited-use overlay; however, for a conservative analysis all uses permitted within the IC zone were considered. For retail and commercial use types, the maximum reasonable building footprint is approximately 25 percent of the gross site area. Accordingly, the evaluation was made based on a potential building size of 35,400 square feet.

Based on examination of the allowed uses on the site, the “reasonable worst case” development scenario was determined to consist of a 6,000 square foot fast food restaurant, a 9,000 square foot day care facility, and a 20,400 square foot medical office building.



The trip generation estimates for the existing and proposed zoning were prepared using data from the *Trip Generation Manual, 10th Edition*, published by the Institute of Transportation Engineers. Trip generation was calculated using the published trip rates for ITE land use codes 210, *Single-Family Detached Housing*, 565, *Day Care Center*, 720, *Medical-Dental Office Building*, and 934, *Fast-Food Restaurant with Drive-Through*. The calculations are based on the number of dwelling units for residential uses and the gross floor area for all other uses.

Based on the analysis, the proposed plan amendment and zone change could result in a net increase of 258 trips during the morning peak hour, 241 trips during the evening peak hour, and 2,286 daily trips as compared to maximum development potential under the existing zoning. A summary of the trip generation is provided in the table below. Detailed trip generation calculation worksheets are also included in the attached technical appendix.

Nature's Kick Zone Change - Trip Generation Summary							
	Morning Peak Hour			Evening Peak Hour			Daily Total
	In	Out	Total	In	Out	Total	
9,000 sf Day Care Center	53	46	99	49	51	100	428
20,400 sf Medical-Dental Office Building	44	13	57	20	51	71	710
6,000 sf Fast-Food Restaurant with Drive-Through	123	118	241	102	94	196	2826
-49% AM, -50% PM Pass-by Trips	-59	-59	-118	-49	-49	-98	-1414
Total Site Trips for Proposed IC Zoning	161	118	279	122	147	269	2550
-Existing RA Zoning (28 single-family homes)	-5	-16	-21	-18	-10	-28	-264
Net Change in Site Trips	156	102	258	104	137	241	2286

It should be noted that the above analysis is based on land uses which would not be permitted under the proposed limited-use overlay. Consequently, the analysis over-states the trip generation of the site following the proposed zone change. However, it is also clear that the proposed zone change will require some limitation on trip generation for the site in order to ensure that the transportation infrastructure in the site vicinity is not negatively impacted by the proposed comprehensive plan amendment and zone change. Consequently, a trip cap will be proposed for the subject property. The proposed trip cap is described in more detail in the following section of this memorandum.

TRANSPORTATION PLANNING RULE ANALYSIS

In order to allow the proposed annexation and zone change, the City of Salem must find that the requirements of Oregon's Transportation Planning Rule (OAR 660-012-0060) are met. This rule provides



guidance regarding whether and how the potential transportation impacts of a plan amendment must be mitigated. The relevant portions of the Transportation Planning Rule are quoted below, along with responses specific to the proposed annexation and zone change.

660-012-0060

Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this 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);

No changes are proposed to the functional classification of existing or planned transportation facilities.

(b) Change standards implementing a functional classification system; or

No changes are proposed to the standards implementing the functional classification system.

(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. 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.

Since the proposed plan amendment and zone change could result in a significant increase in traffic volumes as compared to allowed development under the existing RA zoning, the plan amendment and zone change could degrade the performance of an existing or planned transportation facility such that it



would not meet the relevant performance standards. Accordingly, the proposed amendment would significantly affect an existing or planned transportation facility and the local government must put in place one of the remedies described in Section 2 as follows:

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:

(A) The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;

(B) The providers of facilities being improved at other locations provide written statements of approval; and



(C) The local jurisdictions where facilities are being improved provide written statements of approval.

In this instance, a trip cap is proposed in compliance with the requirements of sub-section (2)(d). The trip cap would serve as a transportation system management measure that limits the amount of traffic generated within the site to a level not exceeding that permitted under the RA zoning, thereby eliminating any potential increase in site traffic associated with the proposed zone change and ensuring that the amendment would not result in degradation of any existing or planned transportation facilities. The proposed trip cap would allow no more than 264 average daily trips for any future combination of uses within the subject property.

CONCLUSIONS

Based on the analysis, the proposed comprehensive plan amendment and zone change from City of Salem “RA” to “IC” (Industrial Commercial) zoning on the 3.25-acre property at 1443 45th Avenue NE could result in a significant effect as defined under Oregon’s Transportation Planning Rule. Implementation of a trip cap allowing no more than 264 average daily trips for any future combination of land uses within the subject property will ensure that no existing or planned transportation facilities will experience degradation as a result of the proposed comprehensive plan amendment and zone change, thereby complying with the requirements of Oregon’s Transportation Planning Rule. No other mitigations are necessary or recommended.

If you have any questions regarding this analysis, please feel free to contact me via email at mike.ard@gmail.com or via phone at 503-537-8511.