

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE #411

4 _____
5
6 **Amending the Urban Growth Boundary for the City of Toledo to include approximately**
7 **7.29 acres of land identified as Tax Lot 500, Lincoln County Assessor's Map 11-10-18C,**
8 **and declaring an emergency.**
9 _____

10 WHEREAS the City of Toledo, as part of its periodic review Work Task #8
11 (adoption of Amendments to the urban growth boundary where appropriate) has requested
12 an amendment of its Urban Growth Boundary to include approximately 7.29 acres of land
13 located by the intersection of the Bay Road, Criteser Loop and Hidden Valley Drive adjacent
14 to the Yaquina River, further identified on Lincoln County Assessor's Map 11-10-18C as
15 Tax Lot 500, File No. 2-LUPC-PC-01; and

16 WHEREAS the Lincoln County Planning Commission, after published and mailed
17 notice in accordance with the Lincoln County Code, held a hearing on the request and voted
18 unanimously on July 9, 2001, to recommend approval; and

19 WHEREAS the Lincoln County Planning Commission adopted findings, conclusions
20 and final order on July 23, 2001, recommending approval of the request for an Urban
21 Growth Boundary amendment for the City of Toledo; and

22 WHEREAS after published and mailed notice in accordance with the Lincoln County
23 Code, the Lincoln County Board of Commissioners held a public hearing on September 5,
24 2001, to consider the request; and

1 WHEREAS at the conclusion of that hearing, the Board voted to approve the request
2 as submitted;

3 NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

4 **SECTION 1.**

5 The Planning Commission's recommendation is adopted, and the City of Toledo's
6 Urban Growth Boundary is amended to include property identified as approximately 7.29
7 acres of land located by the intersection of the Bay Road, Criteser Loop and Hidden Valley
8 Drive adjacent to the Yaquina River, Tax Lot 500, Lincoln County Assessor's Map 11-10-
9 18C, further identified on Exhibit 1, attached hereto.

10 **SECTION 2.**

11 The findings and conclusions supporting these actions are adopted as set forth in
12 Exhibit 2, attached hereto and incorporated herein.

13 **SECTION 3.**

14 The Department of Planning and Development is directed to amend the official maps
15 in the Lincoln County Clerk's Office and shall forward a copy of this ordinance to the
16 Department of Land Conservation and Development.

17 **SECTION 4.**

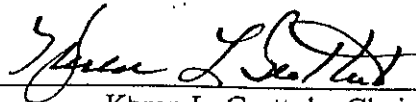
18 Copies of this Ordinance shall be forwarded to the City of Toledo Planning
19 Department, PO Box 220, Toledo, OR 97391; Fred Wahl Marine Construction, Inc., 100
20 Port Dock Road, Reedsport, OR 97467; Kurt Carstens, Attorney at Law, PO Box 1730,
21 Newport, Oregon, 97365; County Surveyor; County Assessor; County Counsel; and Lincoln
22 County Department of Planning and Development.

1 **SECTION 5.**

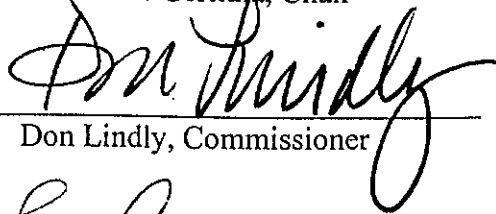
2 This Ordinance being necessary for the immediate preservation of the public peace,
3 health and safety, an emergency is declared to exist and this Ordinance shall take effect upon
4 its passage.

DATED this 12th day of September, 2001.

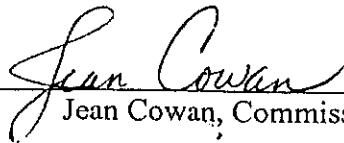
LINCOLN COUNTY BOARD OF COMMISSIONERS



Karen L. Gerttula, Chair



Don Lindly, Commissioner

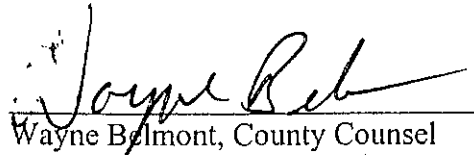


Jean Cowan, Commissioner

ATTESTED TO:


Susan Kays, Recorder

APPROVED AS TO FORM:


Wayne Belmont, County Counsel

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BEFORE THE PLANNING COMMISSION

OF

LINCOLN COUNTY, OREGON

Urban Growth Boundary Map) Case File #2-LUPC-PC-01
Amendment; Applicant: City of Toledo) Findings, Conclusions and
(property owner; Fred Wahl Marine) Final Order

Nature of the Application

As a part of the City of Toledo's periodic review Work Task #8 (adoption of amendments to the urban growth boundary where appropriate), the City requests an amendment to the county's urban growth boundary (UGB) to include approximately 7.29 acres. This proposal is for an amendment to the boundary only. Zoning of the subject property will not change unless or until the property is annexed into the City.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision.

1. The subject property is 7.29 acres in size.
2. The subject property is located by the intersection of the Bay Rd., Criteser Loop and Hidden Valley Drive, east of the Bay Rd. (County Rd. #515), adjacent to the Yaquina River and is further identified on Lincoln County Assessor's Map #11-10-18C as tax lot 500.
3. The subject property is zoned RR-5 (Rural Residential).
4. The subject property carries a plan designation of Dispersed Residential.
5. Adjacent to the subject property is an existing marine-related use, a residential parcel with an existing parking and storage area used in conjunction with a garbage business, and the Yaquina River.

6. The subject property contains varying topography ranging from a steep, forested hillside to level, waterfront area.
7. The subject property is vacant.
8. Urban services would be extended to the property.
9. The Lincoln County Comprehensive Plan identifies inventoried "riparian vegetation" for areas of the property adjacent to the Yaquina River. Thus, development of the property, including in-water work, would be subject to applicable provisions of Goal 17 (Coastal Shorelands). Portions of the subject property also lie within the 100-year regulatory flood zone.
10. As ordered by the Land Conservation and Development Commission, the City of Toledo has been undergoing periodic review of their comprehensive plan. The periodic review work program includes Task #8 (adoption of amendments to the urban growth boundary where appropriate). To that end, the City considered the subject property as one, which should be included in the urban growth boundary. The City provided extensive notice of the proposed urban growth boundary amendment to affected agencies, and the public in accordance with proceedings of periodic review. For purposes of completing this work task, the City is required to coordinate the boundary revision with Lincoln County, as the UGB is a common boundary between the city and county. Consequently, the request before the County is for an amendment to the boundary only. Zoning of the subject property would not change unless or until the property is annexed into the City.
11. A public hearing was held on July 9, 2001 before the Lincoln County Planning Commission in consideration of the requested amendment. All interested parties were given an opportunity to testify.
12. The property owner's representative presented testimony on behalf of the request. Mr. Carsten's summarized his perspective on the opponent's position. Additional testimony summarizing the background of the city's hearings, criteria evaluated for purposes of the requested amendment, and written information of record was presented. Mr. Carsten's also explained that the property owner owns adjacent property (Fred Wahl Marine) inside city limits and that the existing urban growth boundary results in splitting jurisdictions between the city and the county. By amending the urban growth boundary, this will simplify future applications in land use proceedings. In addition, the manager of

Fred Wahl Marine, testified, that future expansion plans include increasing their ability to handle the marine services industry and that inclusion of the subject property into the urban growth boundary for eventual annexation is key to such goals being met.

12. The applicant presented testimony on behalf of the request. Mr. Bassenghwaite with the City of Toledo summarized proceedings of the city's periodic review work task (#8). The findings of fact as adopted by the city evaluate relevant criteria and set forth the rationale for the subject property's inclusion in the UGB.
13. Ordinance No. 1285, adopted as Findings of Fact by the City of Toledo, amends the City of Toledo Urban Growth Boundary to include the subject property, and at the same time assigns a comprehensive plan designation of "Water-Dependent". The criteria to be assessed under Goal 14, Urbanization, are presented throughout the narrative of the findings. The findings conclude that inclusion of the subject property into the UGB will help meet the projected demand for water-dependent property. They further find that considering the property is adjacent to the existing UGB (and adjacent to property already used for marine-related, water-dependent use) this is a logical extension and an efficient use of land. The applicant also explains that use of the property for marine-related purposes will help create jobs, stimulate economic growth, and support the marine services industry. Applicant addressed additional factors dealing with availability of public facilities and services, transportation concerns, patterns of urbanization, and environmental, and economic issues. Through this analysis, the applicant has identified a public need for the subject property's inclusion in the UGB for eventual annexation into the city. A copy of the findings is attached.
14. One opponent presented testimony on behalf of his position. The opponent's representative testified that they are not opposed to a portion of the property's inclusion in the UGB; however, believe that the dividing line is one related to topographic and development constraints, and potential impacts to the Yaquina Bay Estuary. They contend that slopes in the area they believe should excluded are too steep to develop. Concern related to protecting the opponent's plans in the area of the subject property, for a future homesite were also expressed. Opponents contend that if the subject property is rezoned to water-dependent use, it will cause greater adverse impact to the neighborhood (additional noise). Opponents also contend that the city failed to adequately address applicable code standards. Additional written testimony was entered into the record.

15. No additional opposition testimony was presented.
16. The City of Toledo presented rebuttal testimony. The City reiterated that after extensive hearings, the City Planning Commission and City Council adopted the legislative findings, which in their opinion adequately address the applicable review standards. Additional points raised include the following: a) the application before the Lincoln County Planning Commission is to consider an amendment to the UGB, not a specific development proposal as argued by the opponents, b) the city's legislative findings speak for themselves, and in fact conclude that there is a specific need for additional water-dependent land, c) City Policy is to bring an entire piece of property into the UGB (city limits) and not cause split zoning, d) there is a shortage of water-dependent land in the city limits and as the property is adjacent to and lends itself to being used for water-dependent activities, this is a logical extension of the UGB, e) finally, the subject property is located in an area predominantly characterized by industrial uses, marine-related uses, and the opponent's own garbage business. Consequently, this minor revision will have virtually no effect on the immediate area above and beyond what exists today.
17. The property owner's representative presented rebuttal testimony. Mr. Carsten's supported the City's rebuttal and referred to their legislative findings justifying the proposed amendment. Mr. Carsten's responded to the statement that the site is un-usable because of steep slopes, as the intent is to develop the site for water-dependent activities, using the water-surface area owned by the applicant. The property owner recognizes that in doing so, all rules and laws applicable to developing the site must be adhered to. Additional points raised include the following: a) topographic features separate the location of the opponent's property from the area of the subject property adjacent to the Yaquina River, b) noise from the Toledo Mill overrides noise from Wahl Marine, c) the whole basin is characterized by heavy industrial use, including the opponent's garbage business, d) questions the opponent's contention that if the site is too steep, is it too steep for their future homesite, e) concluded by saying that the city met the legal burden of proof for purposes of amending the UGB.
15. No comments were received from the Department of Land Conservation and Development.
16. All application materials and staff's report is by reference incorporated

into the record herein.

17. There were no requests for continuances or for the record to be held open.

Relevant Criteria

- a. Lincoln County Development Code, Section 1.1235, Quasi-Judicial Amendments: A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that:
- 1) The change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and
 - 2) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or
 - 3) The zoning previously adopted for the area was in error; or
 - 4) There is a public need for the change being sought.

b. Lincoln County Comprehensive Plan Goals and Policies:

The following Lincoln County Comprehensive Plan Goals and Policies are pertinent to this proposal:

1. Land Use Planning Goals (Section 1.0010)

- (a) To identify activities, issues and problems of land use.
- (b) To ensure that all growth is orderly and efficient
- (c) To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land, and to assure an adequate factual basis for such decisions and actions.

2. Urbanization Policies (Section 1.0030).

These policies state that Lincoln County shall work with citizens and cities of Lincoln County in the establishment, maintenance and amendment of urban growth boundaries. Establishment and change of the boundaries shall be based upon consideration of the following factors:

- (a) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDG goals;
- (b) Need for housing, employment opportunities, and livability;
- (c) Orderly and economic provision for public facilities and services;
- (d) Maximum efficiency of land uses within and on the fringe of the existing urban area;

- (e) Environmental, energy, economic and social consequences;
 - (f) Retention of agricultural land as defined, with Class VI the lowest priority; and
 - (g) Compatibility of the proposed urban uses with nearby agricultural activities.
3. Economic Goals (Section 1.0130)
- (a) To establish an economic planning process in the county.
 - (b) To support and encourage the expansion of existing industrial and commercial activities in appropriate locations.
 - (c) To support and encourage the creation of new industrial and commercial activities in appropriate locations.
 - (d) To recognize the environmental and developmental constraints in expansion of industrial, commercial, and residential activities.
 - (e) To improve the average wage in the county
 - (f) To improve the quality of employment opportunities in Lincoln County.
4. Transportation Goals (Section 1.0140)
- (a) To plan for a safe, convenient and economic transportation system.
 - (b) To provide an efficient and aesthetically pleasing system of public roads.
 - (c) To develop a transportation system which enhances the County's economy.
 - (d) To encourage energy conserving transportation modes.
 - (e) To conserve energy in transportation.

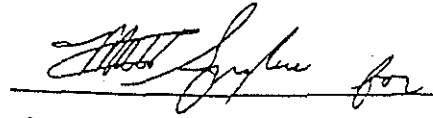
Findings and Conclusions

The Commission finds that the findings and conclusions supporting this action (as presented by the City of Toledo) are adopted as set forth in Exhibit "A" attached hereto and incorporated herein.

Order

It is ORDERED by the Lincoln County Planning Commission that Case File #2-LUPC-PC-01 be APPROVED. This approval serves as a recommendation to the Lincoln County Board of Commissioners.

This ORDER was presented to and approved by the Lincoln County Planning Commission on July 23, 2001.



Sam Galasso, Chair

Lincoln County Planning Commission

ORDINANCE NO. 1285

AN ORDINANCE ADOPTING THE CITY OF TOLEDO COMPREHENSIVE PLAN AND
 ACCOMPANYING DOCUMENTS AND AMENDING ORDINANCE NO. 1146 AS
 AMENDED BY ORDINANCE NO. 1151 (CODIFIED AS TOLEDO MUNICIPAL CODE
 CHAPTER 1.08).

WHEREAS, the Land Conservation and Development Commission of the State of Oregon issued an order to the City of Toledo to conduct periodic review of the existing comprehensive plan adopted in 1982 and acknowledged by the State of Oregon in 1983 and various accompanying documents with a work program approved on September 20, 1995, that included 10 major work tasks: Work Task # 1 – adoption of updated buildable lands inventory; Work Task # 2 – adoption of revised public facilities plan; Work Task # 3 – adoption of new sensitive wildlife habitat inventory; Work Task # 4 – adoption of ordinance provisions to implement geologic hazards policies; Work Task # 5 – adoption of a revised water master plan; Work Task # 6 – adoption of new/amended riparian setbacks in plan and ordinance; Work Task # 7 – adoption of a coordinated watershed management plan with Lincoln County; Work Task # 8 – adoption of amendments to the Urban Growth Boundary where appropriate and an urban growth management agreement with Lincoln County; Work Task # 9 – adoption of updated inventories and policy provisions for the Comprehensive Plan; and, Work Task # 10 – adoption of revisions to the zoning ordinance consistent with the Comprehensive Plan,

WHEREAS, the City of Toledo requested that Work Task # 7 be deleted and the order for periodic review by the State was amended to reflect that deletion on October 8, 1998,

WHEREAS, the City of Toledo completed Work Task # 5 by the adoption of a revised water master plan on May 20, 1998, by Ordinance # 1267, that was acknowledged by the State as completing Work Task # 5 by letter dated December 31, 1998,

WHEREAS, the City of Toledo has worked on completing the requirements of the order for periodic review over the last 5 years with various local, state and federal agencies and with many opportunities for citizen involvement in the process as reflected in the documentation included in the Comprehensive Plan Inventory,

WHEREAS, the Planning Commission (as the City of Toledo's Citizen Involvement Committee) on December 13, 2000, voted 6-0 to forward drafts of the remaining periodic review work tasks to the City Council for public hearings and adoption after holding 51 scheduled public worksessions/meetings since March 12, 1997, to gather information, to evaluate information and policy alternatives, and to draft documents to comply with the order for periodic review,

WHEREAS, the City has encouraged public participation in the periodic review process through the distribution of periodic review public meeting agendas to various governmental agencies, news organizations, and individuals requesting to be kept informed of the process, and through the distribution of the October 2000 City newsletter (Communication Alternative) to all water

- periodic review,
- (d) The 1999 Toledo Buildable Lands Inventory dated April 4, 2001,
 - (e) The 2000 Toledo Capital Facilities Plan dated April 4, 2001.

Section 2. Toledo Municipal Code Section 1.08.020 is deleted.

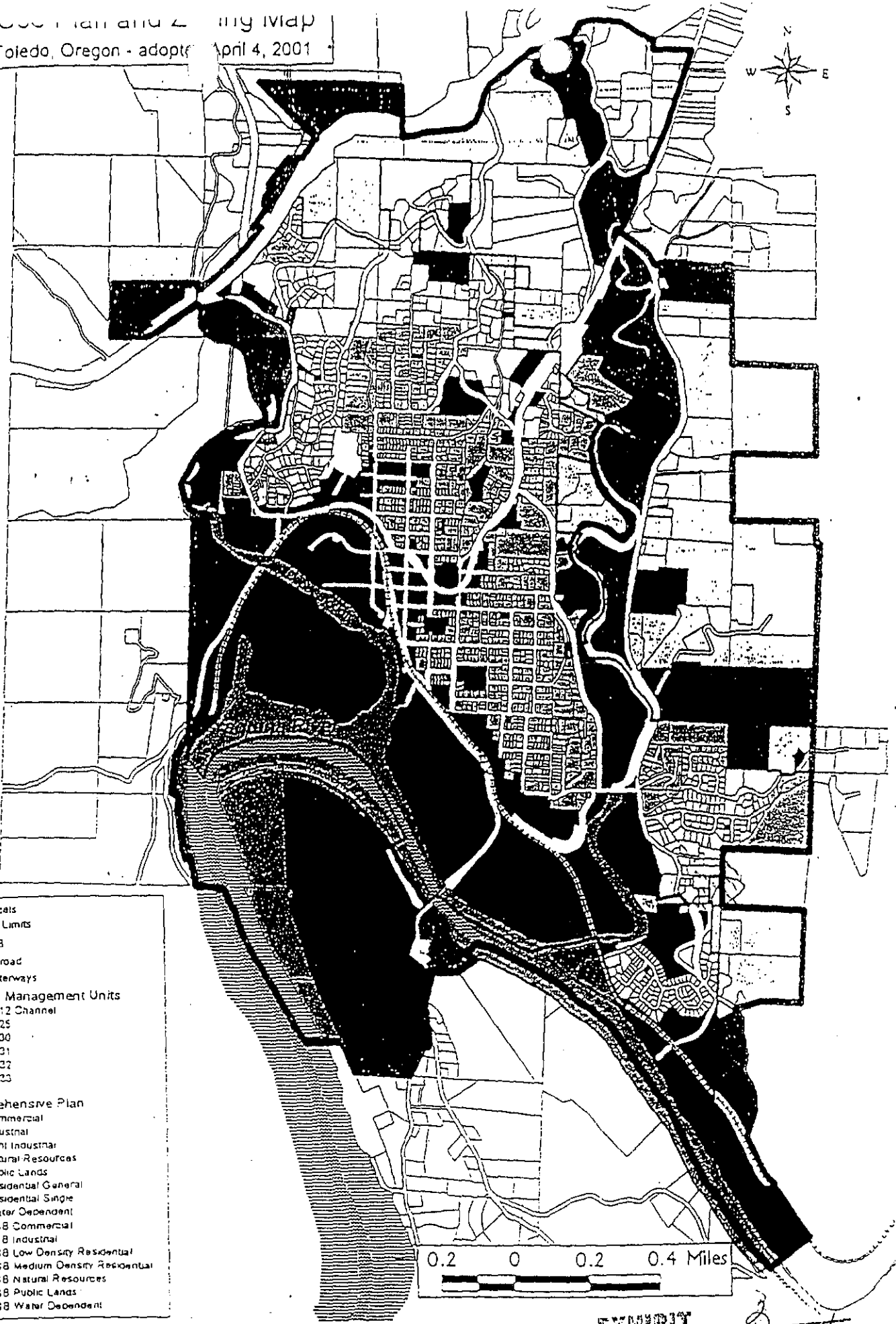
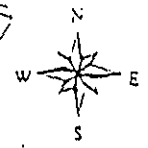
PASSED AND ADOPTED by the City Council of the City of Toledo, Lincoln County, Oregon,
on the 4th day of April, 2001.

ATTEST:

APPROVED:

Renee L. Ballinger
City Recorder

Sharon Brantley
Mayor



Legend

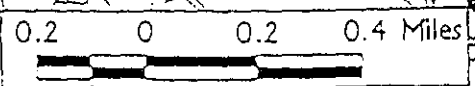
- ▭ Parcels
- ▭ City Limits
- ▭ UGB
- ▭ Railroad
- ▭ Waterways

Estuary Management Units

- ▨ MU12 Channel
- ▨ MU25
- ▨ MU30
- ▨ MU31
- ▨ MU32
- ▨ MU33

Comprehensive Plan

- ▨ Commercial
- ▨ Industrial
- ▨ Light Industrial
- ▨ Natural Resources
- ▨ Public Lands
- ▨ Residential General
- ▨ Residential Single
- ▨ Water Dependent
- ▨ UGB Commercial
- ▨ UGB Industrial
- ▨ UGB Low Density Residential
- ▨ UGB Medium Density Residential
- ▨ UGB Natural Resources
- ▨ UGB Public Lands
- ▨ UGB Water Dependent



BEFORE THE CITY COUNCIL OF THE CITY OF TOLEDO, OREGON

In the matter of the request for an expansion)
of the Toledo Urban Growth Boundary to)
include Lincoln County Assessor's Map)
11-10-18-C Tax Lot 500 as)
part of periodic review work task # 8.)

ORDER OF
LEGISLATIVE
FINDINGS

For the following reasons, the City Council has determined that the proposed urban growth boundary (UGB) expansion complied with the applicable criteria set forth below as explained in the legislative findings and voted unanimously to include the property within the Toledo UGB as a water-dependent property as part of the state mandated periodic review work task # 8 by inclusion on the 2000 Toledo Comprehensive Land Use Plan and Zoning Map adopted as part of Ordinance # 1285:

1. The property known as Lincoln County Assessor's Map 11-10-18-C Tax Lot 500 (herein known as "Tax Lot 500") is approximately 7.29 acres (based on Lincoln County Assessor's Map assigned acreage, and may not reflect actual physical acreage) and is owned by Fred Wahl Marine, Inc (herein referenced as "FWM"). Tax Lot 500 is located within the jurisdiction of Lincoln County and is zoned with a Lincoln County Comprehensive Plan Map designation of Rural Residential-5. FWM requested an expansion of the Toledo Urban Growth Boundary as part of the City of Toledo's required periodic review work task # 8 to review the Urban Growth Boundary. FWM asked to include Tax Lot 500 within the Toledo Urban Growth Boundary as a water-dependent zoned parcel. Tax Lot 500 is adjacent to the existing city limits and urban growth boundary on the north side. The existing urban growth boundary parallels Tax Lot 500 north to south as the boundary is located in the center of the Yaquina River. Tax Lot 500 is adjacent to property owned by FWM that is within the city limits and is currently used for the FWM Sturgeon Bend boat yard facility.
2. The Toledo Planning Commission completed the work on periodic review work task # 8 through an open public meeting process and on December 13, 2000, voted unanimously to recommend sending forward the proposed UGB expansion to the City Council for a public hearing and consideration of inclusion of Tax Lot 500 within the Toledo UGB. As discussed in the Council Action Form dated 1-19-01 and in the Carstens/FWM Letter received 1/31/01 on page 6, public notification exceeded the applicable requirements for periodic review notification as set forth in ORS 227.186 (6) (Measure 56 notification) and OAR 660.24.080 as Fred Wahl Marine, Inc., 1,285 property owners within the City of Toledo and the urban growth boundary and 24 public/service agencies were notified of the public hearing on the urban growth boundary. Notification was also published in the Newport News-Times on January 12, 17, and 24, 2001. No other applicable notification requirement under the ORS, OARs, or Toledo Municipal Code have been identified other than the aforementioned notification requirements. The Newport News-Times also

EXHIBIT 2
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published an article in January prior to the public hearing covering the proposed urban growth boundary expansion. The public hearing record was left open an additional 7 days from the January 25, 2001, public hearing date at the request of both Fred Lindsay and Fred Wahl Marine, Inc., in order for any individual to submit additional written material. No request for an extension or continuation of the public hearing for a greater length of time than the 7 day request was made. Fred and Betty Lindsay (represented by Dennis Bartoldus), Del Curry, Fred Wahl Marine, Inc. (represented by Kurt Carstens), and Tom Capri submitted testimony on the proposed expansion and were given full opportunity to participate in the public hearing. Tom Capri, an adjacent property owner, was the only additional party to submit testimony during the 7 day extension period and submitted testimony in favor of the expansion. Additional opportunities for public participation will be available when Lincoln County conducts its process for consideration of the proposed change in the urban growth boundary.

3. The proposed expansion would comply with the goal of Statewide Planning Goal # 14 for urban growth boundaries to be established to identify and separate urbanizable land from rural land. In considering the factors that are to be addressed for a change of an urban growth boundary identified in Statewide Planning Goal # 14, the inclusion of Tax Lot 500 within the urban growth boundary is a logical extension of the urban growth boundary and of urban services to Tax Lot 500. FWM currently owns the adjacent parcel (Lincoln County Assessor's Map 11-10-18-A TL 1500) that is within the Toledo Urban Growth Boundary and the city limits, is designated as a water-dependent zoned parcel, fronts the 1982 Lincoln County Estuary Management Plan (LCEMP) Management Unit # 31 (a development classification), and is served with city water. FWM currently operates a ship yard repair facility on that property (the Sturgeon Bend Property). According to the property owner, "The Sturgeon Bend property is bisected by the city limits." The existing urban growth boundary parallels Tax Lot 500 to the south but is located in the middle of the Yaquina River.
 - a. Factor # 1 of Statewide Planning Goal 14 is a demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals. The evaluation of water-dependent land inventory is not driven by population change. However, the proposed population projection for Toledo in the draft 1999 Buildable Lands Inventory is for a population growth rate of 2 % per year for a population of 5,550 by the year 2020. The draft 1999 Buildable Lands Inventory Chart I identifies vacant buildable land in the various comprehensive plan categories. After institutional, public agency, public utility and large timber company holdings are removed, the draft 1999 Buildable Lands Inventory concludes that there is zero vacant adjusted water-dependent buildable land available. Even if population growth rate were a determinative factor in the need for water-dependent land, the absence of available vacant water-dependent land and the projected population growth demonstrate the need for additional water-dependent land.

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- b. Factor # 2 of Statewide Planning Goal 14 is an identified need for housing, employment opportunities, and livability. The proposed inclusion of Tax Lot 500 would meet this factor by providing employment opportunities, contributing to the livability of the community through good jobs, and would not impact the supply of land for housing.

Housing

Since the subject property is outside of the urban growth boundary it will not impact Toledo's housing inventory. The land is clearly more physically suited to a water-dependent industrial type use than housing. The 1995 Toledo Wetland Conservation Plan Inventory (TWCPI) evaluated the anticipated development potential for residential use (the county zoning) on Tax Lot 500 and noted that the property owners at that time "understand the property is a 'problem property' due to the steepness of the hillside, erosion problems near the river bank, and problems relating to access to the property (both physical problems of steepness and legal issues relating to easements across other properties)." Tax Lot 500 is accessed via Altree Lane and has no other existing access point. Tax Lot 500 is a physical extension of the existing fill area which was developed for railroad use and is adjacent to the FWM service yard. The existing steep slopes make it unlikely that this property would be developed for residential use.

Employment Opportunities

This urban growth boundary amendment request is consistent with the proposed update of the City of Toledo comprehensive plan in several ways in terms of the need for economic and employment opportunities. The 2020 Vision for Toledo, Oregon, which is the updated 12-6-00 Draft 2000 Toledo Comprehensive Land Use Plan that will be adopted along with the proposed changes in the urban growth boundary as part of the state required periodic review, states under Goal 2: Land Use Planning, Objective 2 (A) that the Toledo Comprehensive Land Use Plan Map and Zoning Map "shall provide for sufficient lands for a 20 year supply of land within the Urban Growth Boundary to meet the projected population growth of 5,550 by the year 2020 as projected in the Toledo Buildable Lands Inventory." The section then continues to include "Water-Dependent" land as a map designation which should be designated because the listed designations "reflect the applicable goals and objectives of the Toledo Comprehensive Land Use Plan." The description of water-dependent land seems especially suited for FWM's Sturgeon Bend property and Tax Lot 500. "This designation provides for uses of property that depend on a location adjacent to a waterway for the viability of that use. Toledo's water surface and its shorelands are a valuable resource and provide considerable potential for future economic growth. The Water-Dependent

plan designation shall be implemented by the zoning map designation of Water-Dependent."

Goal 9: Economic Development of the 12-6-00 draft of the 2020 Vision for Toledo, Oregon lists six goals and 17 objectives which the Comprehensive Plan is seeking to meet. Goal 1 of Goal 9 is to "improve the economic position of all elements of Toledo's economic base by retaining and expanding the current businesses while recruiting new businesses into the community". The proposed expansion of the Sturgeon Bend facility onto Tax Lot 500 is projected to bring an additional 50 FTE (full-time equivalent) jobs to the FWM Sturgeon Bend yard in Toledo. There are currently 21 FTE jobs at Sturgeon Bend today. The inclusion of the subject property within the urban growth boundary is consistent with and will certainly strengthen Toledo's ability to stimulate economic growth for an existing company, as Goal 9 requires.

Goal 2 of Goal 9 of the 12-6-00 draft of the 2020 Vision for Toledo, Oregon recommends that Toledo "ensure an adequate supply of appropriately zoned land to provide for the full range of economic development opportunities in Toledo including ... water-dependent ... development". The expansion of the UGB will help ensure that FWM can provide additional economic development opportunities through expansion of the adjacent Sturgeon Bend boat yard.

Goal 3 of Goal 9 of the 12-6-00 draft of the 2020 Vision for Toledo, Oregon emphasizes diversification of the economic base in Toledo and strengthening Toledo's role as the industrial center for Lincoln County. FWM is a viable, strong company which provides industrial, water-dependent marine repair services. This strengthens the fishing sector of the economy and the marine services sector as well. Both of these sectors are important elements of Toledo's working community and economic base.

Goal 4 of Goal 9 of the 12-6-00 draft of the 2020 Vision for Toledo, Oregon emphasizes providing employment opportunities which will maintain Toledo's "highest per household average income in Lincoln County". Lincoln County's average wage is currently approximately \$9,000 less than the Oregon adjusted average. The jobs offered by FWM are for skilled workers and they are family wage jobs. These are the kind of jobs that Lincoln County's residents need to have available.

Objectives 7 and 9 of Goal 9 of the 12-6-00 draft of the 2020 Vision for Toledo, Oregon are also consistent with this request. This UGB expansion will help strengthen fishing and a resource based industry while diversifying the industrial base within the community. It will also "protect waterfront area use and promote its economic strength." FWM is planning to provide additional jobs in the

EMMETT

PAGE

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marine services industry which will also support the fishing industry. The expanded Sturgeon Bend yard will be building and repairing vessels which are from average to very large size. The new marine rails system will allow very large and tall vessels to be serviced within the river serving their home port. This will certainly help local owners which have vessels that are in urgent need of repair and should not make an ocean voyage to seek a port which can offer that repair service.

Livability

The expansion of the urban growth boundary will not adversely impact livability in the area. Tax Lot 500, with its existing adjacent dock, is currently surrounded by predominately non-residential uses. The existing Sturgeon Bend facility is to the north of the property and additional industrial land is located further north. The Yaquina River along Tax Lot 500 and to the south is designated as Management Unit # 30 which is described by the 1982 Lincoln County Estuary Management Plan Resource Capability assessment for Management Unit # 30 as "an area with a number of alterations, including docks, piers and maintenance dredging at Criteser's Moorage, and several extensive log storage areas." To the west of the property is the North Yaquina Bay Road (Boulevard) and an existing Rural-Residential parcel of approximately 12.55 acres with an existing residence and a truck parking and dumpster storage area associated with the operation of a 'grandfathered' garbage business. Noise associated with the garbage business is momentary and limited to the start up and leaving of the trucks and the moving of dumpsters from the site to customers. Further to the west are properties zoned with a Timber-Conservation designation. To the east of Tax Lot 500 is the Yaquina River and low lying wetland area on the east side of the river. Further to the east is the industrial center of Toledo with the Georgia-Pacific pulp and paper mill, a saw mill, and other industrial operations. The close proximity of the existing Sturgeon Bend facility and the existing dock adjacent to Tax Lot 500 with the industrial center is illustrated in the Bartoldus/Lindsay 1/31/01 Letter exhibit 13 photograph. According to testimony by Fred Lindsay on January 24, 2001, the saw mill produces a great amount of noise 24 hours a day that impacts the livability of his residence. The existing Sturgeon Bend facility has not adversely affected livability according to Thomas Capri, an adjacent property owner residing at 710 N. Bay Boulevard and has owned property adjacent to the Wahl (Sturgeon Bend) Shipyard for 15 years, in a letter submitted on January 31, 2001: "Never at any time during the ownership and operation of the Sturgeon Bend Boatworks, have I experienced or heard of any disturbance due to excessive noise, bright lights or traffic going to and from the boatworks." According to FWM, the Sturgeon Bend facility has never received a noise complaint against the facility. The steep hillside and trees that are on Tax Lot 500 will continue to serve as a buffer between Tax Lot 500 and other uses including the rural

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residential/garbage business use to the west as illustrated in the Bartoldus/Lindsay 1/31/01 Letter exhibit 13 photograph. The proposed expansion of the UGB is in an area that will not have a negative impact on livability in the area.

FWM's ability to provide family wage jobs will help make Toledo more livable and will allow the offering of strong, employment opportunities. Hand in hand with a strong economy goes a strong, viable community. The expansion of the Sturgeon Bend facility will help strengthen the economy of 50 families. The ripple effect of those stronger families will serve the entire Toledo community.

- c. Factor # 3 of Statewide Planning Goal 14 is the orderly and economic provision of public facilities and services.

It is an orderly and economic provision of public facilities and services to allow Tax Lot 500, which is essentially at the cul-de-sac end of Altree Lane, to be served with the same urban services as the adjacent property already within the city limits. This provision of public facilities would be consistent with the existing provision of facilities and services to the adjoining parcel which is under the same ownership and in a water-dependent use. This extension of public facilities to an adjoining piece also appears to be supported by Objective 6 of Goal 14 of the 12-6-00 draft of the 2020 Vision for Toledo, Oregon. This objective encourages "land use patterns and development plans that take advantage of density and location to reduce the need for travel and the extension of public services" There will be no additional roads built for the water-dependent use on Tax Lot 500. Both the existing vehicle access and city water line will be extended through the FWM Sturgeon Bend facility to Tax Lot 500 which will be at the end of the line. The City of Toledo is prohibited by Resolution # 888 from extending utility service hookups outside the city limits. According to Tom Capri, based on his twenty years of experience in the fishing industry: "Accessibility to water is very necessary to their [shipyards] daily operations (steam cleaning, pressure washing, water accessibility to moored vessels, etc.)." (Capri Letter 1/31/01). Allowing the property to be included within the urban growth boundary is the first step in providing city water to a future use on Tax Lot 500 in an orderly and economic manner.

- d. Factor # 4 of Statewide Planning Goal 14 is the maximum efficiency of land uses within and on the fringe of the existing urban area. The proposed extension of the land use on the adjoining parcel would appear to be the most efficient land use of Tax Lot 500 which is located at the fringe of the existing urban area. This small extension of the urban growth boundary for an expanded, existing water-dependent use will allow a compact land use pattern and promote effective urban services to the land.

Additionally, the lack of suitable alternative properties within the Toledo UGB also support the use of Tax Lot 500 for expansion of the Sturgeon Bend facility as an efficient use of land. The proposed 1999 City of Toledo Buildable Lands Inventory, which is another part of the 2020 Vision for Toledo, Oregon, has Chart I which addresses vacant buildable land in the various comprehensive plan categories. After institutional, public agency, public utility and large timber company holdings are removed there is zero "vacant adjusted buildable water-dependent land" in the inventory for the city of Toledo and the urban growth boundary. This indicates that there is simply no other place within Toledo or the existing urban growth boundary for a company such as FWM to place their proposed in-water activity and yard expansion on private property.

When FWM first looked for land in the Yaquina River system, it looked in Newport. According to FWM, there was strong opposition from the local longshoremen. The company looked upriver for an appropriate site and Toledo has some environmental advantages for working on vessels. Newport tends to be colder, wetter, windier, foggier and have more salinity in the river than does Toledo. FWM looked at a number of sites in Toledo including those mentioned during the course of the public hearing as possible alternate sites for the expansion of the existing Sturgeon Bend facility. Based on a FWM evaluation of possible water-dependent sites, FWM found that the Sturgeon Bend property was the only property in the Yaquina River that had a combination of essential factors including adequate property depth and size, vehicle access, sufficient river depth, sufficient air draft (ships with tall masts could make it underneath an obstacle such as a bridge), proper soils, lack of detrimental environmental aspects, and availability to FWM.

Although the draft 1999 Buildable Lands Inventory has already determined that there is zero vacant adjusted buildable water-dependent land, a brief evaluation of other properties suggested during the course of the public hearing as alternate locations for FWM to expand their operations also demonstrates the lack of available vacant water-dependent land. The only analysis of the suitability of each site listed was conducted by FWM and the testimony and conclusions presented by FWM were uncontradicted. Additionally, no testimony was presented as to why the expansion of the FWM facility at a different location than adjacent to the existing facility was a more efficient use of land and resources. The following properties were evaluated by FWM and were determined not to be suitable for redevelopment for the proposed use:

1. Lincoln County Assessor's Map 11-10-20-AB Tax Lots 400 and 500 are two parcels that are actually in separate ownerships and are in existing residential uses. See Carstens/Wahl 1/31/01 letter Exhibit 3 (July 1997 Aerial Photograph # COOP-97 10-26-80). In

addition, there is not sufficient air draft beneath Butler Bridge for tall ships to pass through. There is also a residential subdivision very close by the Tax Lots. The existing rural residential land use is more compatible and appropriate with the nearby residential subdivision than would be a water-dependent use. (See aerial photo from July 1997 [Toledo Inventory COOP-97 10-26-80] Exhibit 3.)

2. Lincoln County Assessor's Map 11-10-20-B Tax Lots 100 and 200 were also suggested during the public hearing. This property is the St. Clair Boat Works site. This property shares the same air draft concern with Butler Bridge as noted above. It now holds two residences in separate ownerships. Both of these parcels, as well as the 11-10-20 Tax Lots 400 and 500 parcels described just above, are designated in the appendix of the draft 1999 Toledo Buildable Lands Inventory as already improved and are not available.
3. FWM also considered the former Yaquina Boat Works site which is outside the city limits but within the Toledo UGB and designated for water dependent use. This property did not have enough upland to support a modern water-dependent use as it is small and quite narrow.
4. The Port of Toledo's Tokyo Slough property (Lincoln County Assessor's Map # 11-10-18-A Tax Lot 601) is another property which was evaluated by FWM. The FWM evaluation of the Port's Tokyo Slough site determined that it would require very long marine rails to access deep water. In turn, this would cause environmental concerns regarding the necessary dredging and be cost prohibitive. FWM also had concerns regarding results from soil studies on the site. FWM concluded that it would have been too expensive environmentally and financially to develop the site for the proposed use.
5. The Toledo Industrial Park does not have any additional sites available for the water-dependent use proposed by FWM.

An analysis of the suitability of existing industrially designated lands within the urban growth boundary for water-dependent designation was requested during the public hearing. A review of Chart 10 in the draft 1999 Buildable Lands Inventory (Exhibit 4 of the Carstens/FWM 1/31/01 Letter) demonstrates that there is a net deficit of both Light-Industrial and Industrial land necessary to meet future growth. Because there is not enough industrial land for the next 20 years, the

inclusion of Tax Lot 500 for water-dependent use is appropriate as there is an identified lack of industrial land that could be rezoned for water-dependent uses.

- e. Factor # 5 of Statewide Planning Goal 14 has been met as the proposed expansion would have minimal environmental consequences and would have positive energy, economic and social consequences.

Environmental

The proposed expansion would have minimal environmental impacts because of the degraded nature of portions of the property because of the historical alterations resulting in low riparian habitat values on parts of the property, the description of the adjacent waterway Management Unit # 30 noting that many of the environmental qualities of the area are of minor significance, the proposed use of the flat areas of the property by FWM while leaving the steep hillside and trees as they are, and the need to comply with applicable laws such as the Endangered Species Act.

Tax Lot 500 was evaluated as part of the Division of State Lands approved 1995 Toledo Wetland Conservation Plan Inventory ("TWCPI"). The inclusion of the property in the 1995 TWCPI indicates a consideration of the property by the City as a potential property for inclusion into the urban growth boundary. The majority of the property was described in the 1995 TWCPI as "a steep hillside adjacent to the west bank of the Yaquina River at the outer perimeter of the bend in the Yaquina River between the Bay Road and the Yaquina River west of Toledo." The history of the property was also described in the 1995 TWCPI: "In the late 1800's, the Corvallis and Yaquina Bay Railroad constructed a railroad bed at the base of the hillside. In doing so, a railroad bed was carved out of the hillside, establishing a fill approximately 20 to 30 feet wide at the base of the hill along the Yaquina River." The 1995 TWCPI noted that the railbed has been eroding for years.

As discussed in the 1995 TWCPI, Tax Lot 500 has historically been altered from its natural estuarine state by the previous use as a railroad bed and that a substantial amount of fill was created along the base of the bank. An existing access road is already located on Tax Lot 500. Although the property was identified as containing significant riparian habitat on the Coastal Shoreland Inventory adopted in the 1982 Toledo Comprehensive Land Use Plan, a recent riparian habitat assessment conducted by Scott Craig (a professional wetland and environmental specialist of Wetland Enhancement Technologies (WET), Inc.) on August 22, 2000, concluded that most of the existing riparian habitat on Tax Lot 500 immediately adjacent to the existing facility is not significant. Craig concluded that in his "professional opinion, based on the Oregon Division of State

Lands (DSL), Urban Riparian Inventory and Assessment Guide that the riparian vegetation is not significant adjacent to M-30. The vegetation is low/significant in the south portion of the tax lot, but is not unique nor without significant past disturbance."

The 1982 LCEMP Management Unit # 30 description noted that "Some shellfish beds, fish spawning and nursery areas and wildlife habitat are found within the unit, though they are of minor significance." The 1982 LCEMP Resource Capability assessment for Management Unit # 30 noted that "Unit 30 is an area with a number of alterations, including docks, piers and maintenance dredging at Criteser's Moorage, and several extensive log storage areas." The 1982 LCEMP Resource Capability assessment concluded that "Minor structural alterations such as piers, piling and docks in conjunction with water dependent uses would not have significant adverse effects and would be similar to existing development in this area."

The 2020 Vision for Toledo, Oregon in Goal 7 (Natural Hazards) in Objective 2 encourages the use of lands exceeding 25 percent as vegetated open space. Objective 3 under Landslides and Slope Hazards is to: "Encourage the preservation of steep, forested hillsides by clustering development into the flatter portions of the community/site so that the forested hillsides of Toledo remain a characteristic feature of the community." Both these objectives are designed to preserve the environment while acknowledging that properties with these characteristics are found within the urbanizable area of Toledo. FWM, in the Carstens/FWM 1/31/01 letter, stated that: "FWM does not plan to cut into the hillside or in any way reduce lateral support to the adjacent property." (page 2). FWM proposes to use the clustering that is encouraged by Objective 3 as FWM stated in the Castens/FWM 1/31/01 Letter: "The proposed water dependent use is an ideal minimization of a water dependent area. The trees will still be maintained on the hillside. Only the lower level will be used for water dependent use." (page 3). The proposed expansion is therefore consistent with the 2020 Vision Goal 7 objectives.

Slope stability with the hillside along the Yaquina Bay Road has been identified as a potential environmental concern. Both Fred Lindsay as owner of Tax Lot 702 and FWM as owner of Tax Lot 500 share a portion of the steep hillside on the south part of Tax Lot 500. FWM has indicated that they plan to avoid aggravating the existing steep slopes. In the 1/31/01 letter, FWM stated that: "We believe that the reinforcement of the river bank with the water front development of FWM, and the avoidance of the hillside by using access over the existing FWM yard will benefit the property and be a better physical use than would residential." (Page 3 - 4). Part of the south section of Tax Lot 500 adjacent to Tax Lot 702 has been identified by Scott Craig (a professional wetland and environmental

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specialist of Wetland Enhancement Technologies (WET), Inc.) in his riparian assessment of Unit M-1S on Tax Lot 500 as "significant" but not "pristine or unique." There are trees overhanging this portion of the south part of Tax Lot 500 that have their origin on Tax Lot 702 according to the Bartoldus letter 1/31/01 letter and accompanying photographs # 2, 3, 4, 5, and 6 which are asserted to illustrate the overhanging riparian vegetation. As FWM has noted throughout their testimony, any development on Tax Lot 500 will have to comply with the provisions of the Endangered Species Act and other applicable laws. The area classified by Scott Craig as low quality riparian area is the portion closer to the existing Sturgeon Bend facility and across from the existing dock adjacent to Tax Lot 500. The fact that any proposed project will need to comply with applicable laws and that portions of a property may not be fully developed due to environmental constraints does not preclude the inclusion of the property within the urban growth boundary. The 2020 Vision for Toledo, Oregon, as noted above, acknowledged this reality by encouraging the clustering of development onto the more suitable portions of property. Furthermore, FWM, the slope toe owner, has a legal duty to see that the hillside is protected. Failure to do so could result in significant damages. Additionally, hillside instability can result from the actions of either the toe owner or the owner of the property at the top of the hillside.

FWM has recognized that compliance with the Endangered Species Act in the estuarine area is "critical" because of the listing of the Coho salmon and has stated in the Carstens/Wahl 1/16/01 Letter that they are "working closely with the regulatory agencies to ensure that the proposed project will not negatively affect salmon." No testimony has been submitted during the course of the public hearing identifying an alternate site to Tax Lot 500 that would not be impacted by the listing of the Coho salmon or would not need to comply with the requirements of the Endangered Species Act and other applicable regulations. Further review for compliance with applicable criteria would occur once an actual project permit is submitted.

Energy

The construction of expanded marine service use on adjacent property to the existing FWM Sturgeon Bend operation will allow energy resources to be used in a minimal way. In addition, there will be fewer vehicle trips and this will help conserve energy.

Economic

Economic consequences were fully addressed above in the discussion of Factor # 2 of Statewide Planning Goal # 14. FWM will bolster the local fishing economy, provide well-paying jobs for skilled workers and strengthen both the Toledo and

Lincoln County economy with the inclusion of Tax Lot 500 in the urban growth boundary thereby allowing the expansion of the existing facility.

Social

Hand in hand with a strong economy goes a strong, viable community. This request will help strengthen the economy of 50 families. The ripple effect of those stronger families will serve the entire Toledo community.

- f. Factor # 6 of Statewide Planning Goal 14 is the retention of agricultural land. Tax Lot 500 is not designated as agricultural land and the inclusion of Tax Lot 500 within the urban growth boundary would therefore not impact the supply of agricultural land.
- g. Factor # 7 of Statewide Planning Goal 14 is the compatibility of the proposed urban uses with nearby agricultural activities. Tax Lot 500, with its adjacent dock, is currently surrounded by non-agricultural uses and the inclusion into the urban growth boundary would not be in conflict with agricultural activities. The existing Sturgeon Bend facility is to the north of the property and additional industrial land is located further north. The Yaquina River along Tax Lot 500 and to the south is designated as Management Unit # 30 which is described by the 1982 LCEMP Resource Capability assessment for Management Unit # 30 as "an area with a number of alterations, including docks, piers and maintenance dredging at Critser's Moorage, and several extensive log storage areas." To the west of the property is the North Yaquina Bay Road (Boulevard) and an existing Rural-Residential parcel of approximately 12.55 acres with an existing residence and a truck parking and dumpster storage area associated with the operation of a 'grandfathered' garbage business. Further to the west are properties zoned as Timber-Conservation properties. To the east of the property is the Yaquina River and low lying wetland area on the east side of the river. Further to the east is the industrial center of Toledo with the Georgia-Pacific pulp and paper mill, a saw mill, and other industrial operations.
4. Tax Lot 500 is adjacent to 1982 LCEMP Management Unit # 30 while the Sturgeon Bend facility is adjacent to Management Unit # 31. The 1982 LCEMP was adopted by the City of Toledo in the 1982 Toledo Comprehensive Land Use Plan. As the property owner recognized in the Carstens/FWM 1/16/2000 Letter, the proposed haul out facility will require the adjustment of the boundary line between Management Unit # 30 (conservation classification) and Management Unit # 31 (development classification). Even if the Management Unit boundaries are not adjusted, Management Unit # 30 still allows the Commercial/Recreational development of Marinas and Boat Launching facilities as a conditional use. Both marinas and boat launches are allowed as uses in the current (Toledo Municipal Code section 17.32.020) and proposed zoning code (File # PR-9a-00

to be adopted as part of periodic review) water-dependent zone classification. The property owner would still have a viable option for water-dependent development even without the Management Unit boundary adjustment.

5. The inclusion of Tax Lot 500 would be consistent with the 1982 LCEMP overall management priorities which were adopted in compliance with statewide planning Goal # 16 (Estuaries) and are also proposed for adoption as part of Goal # 16 of the proposed 2020 Vision for Toledo, Oregon (the 2000 Toledo Comprehensive Land Use Plan) (file # PR-9a-00). The inclusion of Tax Lot 500 is also consistent with the directive of Oregon Statewide Planning Goal # 17 (Coastal Shorelands) and the proposed 2020 Vision for Toledo, Oregon (the 2000 Toledo Comprehensive Land Use Plan) Goal #17 (file # PR-9a-00) regarding the development and use of coastal shorelands in compatibility with the adjacent coastal waters. The determination of consistency with the applicable goals is based on the evaluation of the area in the 1982 LCEMP and the information provided by the 1995 TWCPi and Scott Craig (WET, Inc.). The 1982 LCEMP overall management policies on page 5 of the plan (adopted in compliance with statewide planning Goal # 15), note that the two highest general priorities are (from highest to lowest): "a) uses which maintain the integrity of the estuarine ecosystem," and "b) water dependent uses requiring an estuarine location." The 1982 LCEMP Management Unit # 30 description noted that "Some shellfish beds, fish spawning and nursery areas and wildlife habitat are found within the unit, though they are of minor significance." The 1982 LCEMP Resource Capability assessment for Management Unit # 30 noted that "Unit 30 is an area with a number of alterations, including docks, piers and maintenance dredging at Criteser's Moorage, and several extensive log storage areas." The 1982 LCEMP Resource Capability assessment concluded that "Minor structural alterations such as piers, piling and docks in conjunction with water dependent uses would not have significant adverse effects and would be similar to existing development in this area." As discussed in the 1995 TWCPi, Tax Lot 500 has historically been altered from its natural estuarine state by the previous use as a railroad bed and that a substantial amount of fill was created along the base of the bank. An existing access road is already located on Tax Lot 500. An existing dock is located adjacent to Tax Lot 500. Although the property was identified as containing significant riparian habitat on the Coastal Shoreland Inventory adopted in the 1982 Toledo Comprehensive Land Use Plan, a recent riparian habitat assessment conducted by Scott Craig, WET, Inc., on August 22, 2000, concluded that most of the existing riparian habitat on Tax Lot 500 immediately adjacent to the existing facility is not significant. Craig concludes that in his "professional opinion, based on the Oregon Division of State Lands (DSL), Urban Riparian Inventory and Assessment Guide that the riparian vegetation is not significant adjacent to M-30. The vegetation is low/significant in the south portion of the tax lot, but is not unique nor without significant past disturbance." Additionally, as noted in the 1995 TWCPi, the river bank has historically had erosion problems as the original railroad bed fill has been eroding into the river. The development proposed for the property is clearly a water-dependent development

requiring an estuarine location and meets the second highest priority of the overall management estuarine management policy. The property owner has recognized that compliance with the Endangered Species Act in the estuarine area is "critical" because of the listing of the Coho salmon and has stated in the Carstens/FWM 1/16/01 Letter that they are "working closely with the regulatory agencies to ensure that the proposed project will not negatively affect salmon." Further review for compliance with applicable criteria would occur once an actual project permit is submitted.

IT IS ORDERED that the legislative findings set forth above are adopted to support the inclusion of Lincoln County Assessor's Map # 11-10-18-C Tax Lot 500 within the Toledo Urban Growth Boundary with a water-dependent designation.

DATE: April 4, 2001

Sharon Brantner
MAYOR

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