

SECTION 19.2 - LIMITED USE OVERLAY (LU)

1. Purpose. To allow permitted uses in the underlying zone to only those that were justified in the Averill Mediation Agreement (4/24/95), subject to those findings and conditions detailed in that agreement.
2. Application.
 - A. Uses permitted in the underlying zone shall be limited to those uses specifically referenced in the comprehensive plan amendment/zone change and any accompanying conditions set forth.
 - B. The Limited Use Overlay shall not be used to authorize uses not expressly provided for in the underlying zone.
 - C. The Limited Use Overlay shall apply to the property until it is specifically removed as the result of the parties not maintaining a majority ownership in the subject property (as per Mediation Agreement).
 - D. The following limitations shall apply to application of the Limited Use Overlay:

Terms and Conditions

- 1) SOUND BARRIERS. Averill shall erect a sound barrier of evergreen trees of a type to be specified by the City along the north river bank of said property, immediately upon the appeal period to LUBA running and the Order becoming final. In the event that all or portions of the sound barrier do not thrive, they shall be replaced with new sound barrier vegetation until the vegetation, as needed, is well established.
- 2) NOISE REDUCTION. The operation of Averill's trucks as they travel over the means of ingress and egress from Highway 101 North shall be at a slow speed and in a manner so as not to cause unreasonable vibrations and/or noise which interferes with the reasonable enjoyment of the occupants of neighboring property.
- 3) GRAVEL. Averill shall maintain the gravel portion of Werner Road to his westerly property line in good passable condition by passenger cars.
- 4) SEWER. Averill, at his sole expense, will connect the subject property to City water and sewer within 45 days after the appeal period has expired from the Order described in Paragraph 1 of the Mediation Agreement.
- 5) ODOT. Within 45 days after the appeal period for the Board of County Commissioners' Order described in Paragraph 1 having run, Averill will apply for a temporary permit from the Oregon Department of Transportation subject to the following conditions:
 - a) Averill shall construct and/or install, at his sole expense, physical barriers at the Werner Road-Highway 101 junction to prevent left turns from Werner Road northbound onto Highway 101. The barrier system and appropriate signage shall be

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Oregon Department of Transportation approved. Said temporary permit shall remain in force only until such time as permanent access is constructed in conjunction with the highway improvement project for this portion of Highway 101.

- b) Any permit would be conditioned upon Averill's use of the subject parcel being substantially similar to the current use. So long as the truck trips are within 10 percent of the current use as described in Paragraph 6) herein, it shall be deemed a substantially similar use.
 - c) The provisions of Section 5 shall be added as a condition of the land use overlay described in Section 9) herein.
- 6) CURRENT USE.
- a) For purposes of this overlay zone, the following definitions shall be used:
 - SITE: The 6.5 acres described in Attachment "A".
 - VEHICLE MOVEMENT: Two vehicle axles passing over a vehicle counter so calibrated.
 - TRUCK TRIP: Equals not more than 4 vehicle movements.
 - b) Averill's current use is comprised of the average daily trips entering or exiting the site in any 24-hour period, the existing surfaced working maneuvering, parking and storage area, including trucking and access.
 - c) The parties have agreed that traffic on Werner Road averages 490 vehicular movements per day and that truck movements from Averill's trucking business account for 80 percent of those movements which was agreed to equal 100 truck trips per day.
 - d) Averill shall be deemed in compliance with the terms of this overlay zone so long as the truck trips from Averill's business do not exceed 110 truck trips per day averaged over any 30 consecutive day period.
- 7) USE. The use of the subject property shall be limited to the existing trucking facility. The use shall be those uses allowed by law and reviewed at each subsequent review of the City pursuant to OAR 660, Division 25.
- 8) IMPROVEMENTS. Averill shall not add any further site improvements or additional structures not set forth herein, or otherwise change the character or increase the intensity of use. Potential improvements/additions which are contemplated by Averill and which are specifically exempt from this provision are:

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- (1) the addition of a 1,000 gallon lubricating oil tank, and (2) a 35 by 100 foot washing structure with slab foundation and gutters for the purpose of containing potential hazardous waste runoff to the surrounding properties, said structure to be located and attached to the south end of the existing structure on the existing fill. In addition, nothing in this provision shall prohibit Averill from making any changes, improvements or additions which are required by state, federal or local laws or ordinances.
 - 9) LIMITED LAND USE OVERLAY. Within 6 months of the expiration of the appeal period from the Board of County Commissioners final action on the Order described in paragraph 1 of said mediation agreement, the City of Tillamook shall add a provision to its zoning ordinance allowing for a "limited land use overlay zone" and apply it to the 6.5 acre Averill site. The plan amendment and zone amendment and their application to the Averill site shall be subject to public review pursuant to the post acknowledgment review process for plan and zone amendments. The limited land use overlay zone shall not contain more restrictive conditions than exist in this settlement agreement. The conditions of this agreement shall be applied to the limited land use overlay zone specifically for the Averill property. Any change in ownership of the property which would result in Donald G. Averill and Jo L. Averill not having a majority ownership interest in the property is a basis for Tillamook City to review the continued application of a limited land use overlay zone. Specifically excluded from this provision is any incorporation of the trucking business in which Donald G. Averill and Jo L. Averill would retain a majority ownership interest.
 - 10) Averill will abide by all laws and regulations which may apply to this property, including but not limited to its flood plain designation or any wetlands designation.
3. Procedure.

The application of the Limited Use Overlay is consistent with policies of the Comprehensive Plan.
 4. Official Plan/Zoning Map.

The official plan/zoning map shall be amended to note the application of the limited Use Overlay to the applicable parcels.
 5. Site Plan Requirements.
 - A. In addition to limiting the uses permitted through the comprehensive plan amendment, the trucking facility was determined to be an outright use in the underlying C-H zone.
 - B. All other requirements of the underlying zone remain in effect. The trucking facility shall not add any further site improvements except those stated in subsection 8).

(Added by Ord. 1150, effective 1/17/97)