



**Testimony by City of Wilsonville Mayor Tim Knapp Opposing HB 4031
Potential Amendment for ‘Red Barn’ Supersiting Land-Use Carve-Out:
*Legislature Should Avoid Preempting Local Land-Use Process for Metro-
Area Urban and Rural Reserves That Had Extensive Public Engagement***

Scheduled for public hearing on Feb. 23, 2018, before the
Senate Committee on Environment and Natural Resources

Chair Dembrow and Members of the Committee:

On behalf of the City of Wilsonville, I am testifying in opposition to a potential amendment to HB 4031 that would legislatively supersite a controversial land-use “carve-out” for special interests on high-value farmland designated as Rural Reserve in Clackamas County.

As recently decided by the Oregon Court of Appeals and the Land Use Board of Appeals in 2017, the Rural Reserve designation made in 2010 of the French Prairie area located immediately south of the City of Wilsonville is well supported by the Reserves “factors” criteria and public opinion. The City opposes legislative preemption to make changes to Reserves designations and seeks to allow the local land-use process to proceed unhindered.

Known as the “Red Barn” site, this Rural Reserve EFU-zoned property was purchased in 2013 by sophisticated investors who appear to have speculated that they could flip “cheap farmland” into an urbanized use. First the investors sought in 2015 to rezone the site from EFU to Rural Industrial to build an automotive storage, detailing and washing facility on the farmland site. The proposed land-use change was opposed by multiple parties—including 1000 Friends of Oregon, City of Wilsonville, DLCDC, Friends of French Prairie, Metro, ODA and ODOT—and the County correctly denied the zone change request.

The investors then hired lobbyists to pursue proposed SB 186 during the 2017 legislative session to supersite a land-use “carve-out” for this special interest. While that effort failed, we understand another try is being attempted in the 2018 “short session” with HB 4031.

Thousands of residents and businesses participated in an extensive, two-year-long public process 2008-10 to determine in 2010 appropriate lands for Urban and Rural Reserves. Again in the summer of 2016, when Clackamas County held open houses to reexamine the proposed Rural Reserves designation of lands in French Prairie, hundreds of citizens turned-out during 4th of July week to protest changes to the French Prairie Rural Reserve.

Substantial public input and government resources over many years have been invested into planning the Reserves, and this work should not be cavalierly undone by legislative fiat with little public process. Creating certainty for all stakeholders—urban developers as well as ag farmers—to invest was the positive goal of the Reserves process. The City of Wilsonville respectfully urges no “Red Barn” amendments to HB 4031. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Tim Knapp". The signature is written in a cursive, flowing style.

Tim Knapp, Mayor
City of Wilsonville

**Testimony by City of Wilsonville Mayor Tim Knapp
Opposing HB 4031 Potential Amendment for ‘Red Barn’
Supersiting Land-Use Carve-Out**



Scheduled for public hearing on February 23, 2018, before the
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Subaru dealership: What's the truth?

Wilsonville Spokesman

Wednesday, 25 January 2017

Opinion Editorial Written by [Tony Holt](#)

<http://pamplinmedia.com/wsp/135-opinion/341811-221459-subaru-dealership-whats-the-truth>

How did a farm property, classified for Exclusive Farm Use (EFU) and lying in the French Prairie Rural Reserve, end up being bought by multi car dealership owners Bob Lanphere and David Jachter? We're talking about the Red Barn former farm stand property at Charbonneau's Exit 282B, off I-5, south of Wilsonville.

We were told they purchased it in order to take their cars from the new Wilsonville Subaru dealership at the north end of the I-5 Boone Bridge to this property on the south end for storage, washing, prepping, etc. Were they unaware of the EFU classification? Surely these sophisticated big businessmen would not make that mistake. Was it ignorance or arrogance?

According to Claire Green's article in the Jan. 18 issue of the Wilsonville Spokesman, the dealership's manager said there are no plans "at this time" to pursue the development of the (EFU) parcel any further. That's very interesting, because just last week Senate Bill 186 was introduced by Sen. Betsy Johnson-Scappose, which, among other things, would require that the EFU designation of the parcel in question be reclassified as 'Rural Industrial' We wonder just who might have decided to go to the Legislature, which starts its session Feb. 1, to get help when this is clearly an issue that should be dealt with by Clackamas County.

If the dealership does not plan to use the land "at this time" are they simply waiting for passage of Senate Bill 186 to claim that as the right time? Or are they truly land speculators, hoping for a designation change so they can either develop another business or cash in on their investment and sell for a premium amount over what they paid for it?

That would be déjà vu. We've seen this type of attempted land speculation across the freeway at Langdon Farms and elsewhere. It's another example of the speculator's mantra 'we can get what we want if we have enough money behind us and find a few of our politician friends to support us'. This 'support' is now contained in Senate Bill 186, drafted for the upcoming legislative session.

Where is the truth about the Subaru dealership's plans? Will it get the re-designation, decide that IS the right time to develop the property for cars or some other business? Or has it decided to seek a significant return on its investment by using the re-designation to 'Rural Industrial', which would be more inviting for a business, to sell the property for a big profit? Where's the truth?

If the decision is to use the property for handling cars, how would they convince I-5 Boone Bridge daily commuters, suffering congestion at all hours of the day, not just at rush hour, that the Bridge can easily handle the additional flow of Subaru vehicles from the dealership to the property at the south end of the Bridge and back north to the dealership?

If the decision is to sell at a profit, why should a land speculator be rewarded by the Legislature agreeing the owner can circumvent Oregon's land use rules?

And then we noted a recent change of ownership of the property. Late last December ownership was transferred from BL & DJ LLC (Lanphere & Jachter) to Lanphere Construction & Development LLC. What is the significance of that transaction?

The Subaru dealership needs to be truthful and transparent with Wilsonville residents about their plans for our surrounding farmland if they want to be good citizens of this City.

Tony Holt is is president of the Charbonneau homeowners association.

The Wilsonville Subaru is here - mostly



Wilsonville Spokesman

Wednesday, 18 January 2017 | Written by Claire Green

<http://pamplinmedia.com/wsp/134-news/340709-214052-the-wilsonville-subaru-is-here-mostly>

More than a month after its soft opening and a series of delays, Wilsonville Subaru has set its grand opening for Jan. 24. As the largest Subaru dealership in the metro area, the opening has been surrounded by controversy due to the company's proposed expansion in the French Prairie Rural Reserve area, which would require the land zoning to be changed to a non-agricultural use.

According to Wilsonville Subaru's General Manager Ron Owens, the dealership is focusing on building customer and community relationships and making space for more cars at the dealership north of the Willamette River rather than pushing south.

Nestled onto a 5-acre commercial plot in Old Town next to the Fred Meyer on Boones Ferry Road, the new Wilsonville Subaru has all the bells and whistles that you'd expect: floor-to-ceiling glass walls, masculine gray slate and polished concrete floors, showrooms filled with new cars and the industrial scent of leather and rubber that accompany them. An airplane hanger-style storage garage stretches behind the main showroom, comfortably accommodating several hundred cars.

"We're very excited about our grand opening," Owens said. Designed to be the latest and greatest that Subaru has to offer, he said that the dealership's parent company, Subaru of America Inc., will be bringing in employees from facilities around the nation and the world to tour the new dealership. Despite opening for business Dec. 6, the facility is still running down its final punchlist of items and putting on the finishing touches, but Owens said that he's hopeful that everything will be done by Jan. 15.

Yet not everything has been smooth sailing for the franchise. When Lanphere Auto Group decided to build Wilsonville Subaru, planners acquired the plot of land in Old Town as well as a parcel of land across the river in the French Prairie Rural Reserve area for inventory expansion, detailing and other functions. But many, including the Friends of French Prairie (FoFP), were strongly against the Exclusive Farm Use (EFU) parcel being rezoned as Rural Industrial (RI) to allow for the buildout.

FoFP President Ben Williams has been on a mission to keep the land as an EFU parcel and encouraged Lanphere Auto Group to consider building a farm store instead of an automotive warehouse.

"Bob Lanphere and David Jachter should graciously recognize that the land-use gamble was a mistake from the outset," Williams wrote in an opinion letter to the Spokesman Dec. 14, "and instead acquire an appropriate property within the urban growth boundary or city to store/wash/detail cars."

But according to Owens, those against the expansion of the south side of the river may have gotten their way, saying that the dealership has no plans "at this time" to pursue the parcel

development any further. Instead, the dealership is using the space that it has in Old Town to the best of its ability.

"We're currently putting lifts on the inside of the building to be able to facilitate more storage," Owens said. "Long-term, certainly, we'll need more space, but right now we're packing things in here like sardines."

Williams said that if the dealership has actually decided to give up on expanding south of the river that he's willing to give "kudos to them" and wish them the best.

"But the devil is in the details," Williams said. "The \$64,000 question is: What happens now? What if they sell it to someone else that wants to use it for another non-ag use?"

Owens didn't give any more details as to the future of the acreage, instead expressing a general sense of disappointment that the dealership won't be able to use the French Prairie parcel. But he said that he and his team are excited to serve the buying and servicing needs of the community going forward, including donating more than \$10,000 to Wilsonville Community Sharing after the dealership's Subaru Share the Love event.

"It's all about the team here and great service," Owens said. "Obviously, without the community we wouldn't have a business."

Contact Wilsonville Spokesman reporter Claire Green at 503-636-1281 ext. 113 or ccolby@pamplinmedia.com.

What kind of 'Bull' is the community getting from the new Wilsonville Subaru dealership?

Wilsonville Spokesman

Wednesday, 14 December 2016

Opinion-Editorial Written by [Ben Williams](#)

<http://portlandtribune.com/wsp/135-opinion/336426-215773-what-kind-of-bull-is-the-community-getting-from-the-new-wilsonville-subaru-dealership>

The greater South Metro area finally gets a Subaru dealership that, according to the company's Facebook page, "Wilsonville Subaru embodies the same 'No Bull' attitude our other dealerships are known for. One Person, One Price, NO BULL."

The idea behind 'No Bull' seems to be that the customer doesn't have to deal with fake dealer mark-up prices and a harrowing bargaining experience to get the real price (and hopefully a good deal). In other words, the dealership is telling the community in no uncertain terms that we run our business in a customer friendly, ethically responsible and transparent manner.

While this marketing spin sounds good, the reality may be different. When the Lanphere Auto Group made the decision to build in Wilsonville, the company chose to purchase a small commercial plot with high I-5 visibility. However, the two-acre parcel was just too small for the dealership building and adequate land for auto parking, storage, etc.

So what did the investors do to remedy the Subaru dealership's need for more space? The business gambled on going south of the Willamette River to conduct non-farm commercial-retail activity on high-value ag land of the French Prairie Rural Reserve.

Doing business as BL & DJ LLC, principals Bob Lanphere and David Jachter bought an 18-acre farm property at the southwest corner of the I-5/Charbonneau interchange off of Butteville Road. Locally referred to by the site's former use as the "I-5 Farm Store," 15 acres is still open ag land. At the time of purchase the property was zoned Exclusive Farm Use (EFU), and like most of the surrounding area is in active agricultural use.

This parcel is part of the larger 800-acre French Prairie Rural Reserve area proposed to lose protection by members of the Clackamas County Board of Commissioners who themselves lost reelection in November. Local media reported that hundreds of residents came out in droves again this summer with over 90 percent opposing the proposal by Commissioners John Ludlow and Tootie Smith to remove the Rural Reserve designation of French Prairie.

Since acquiring the property BL & DJ LLC has actively sought to flip the farmland from EFU to non-ag use. First Bob Lanphere and David Jachter filed a comprehensive plan amendment with the County to change the zoning from EFU to Rural Industrial (RI) for parking, washing and detailing new vehicles that was rejected.

Multiple parties actively oppose this proposed land-use change, including the City of Wilsonville, Metro, Oregon Departments of Agriculture, Land Conservation and Development, and Transportation, as well as 1000 Friends of Oregon, Charbonneau and Friends of French Prairie. Opposing reasons ranged from poor public policy, unfavorable legal precedents and compounding I-5/Boone Bridge/interchange area traffic congestion to pending Rural Reserve protection, availability of sites in appropriate locations and loss of prime farm land.

As if they anticipated the likely response, Lanphere Auto Group was also having their lobbyist work the appropriate legislators in Salem for special-interest legislation to "super-site" and rezone the property as rural industrial. Local residents may again need to come out during the 2017 legislative session to combat Lanphere/Jachter's proposed scheme.

If the owners of Wilsonville Subaru want the buying public to buy their 'No Bull' approach to auto sales, then it is high past time that they give up on this speculative ag-land conversion ploy and become good corporate citizens in synch with their community. Bob Lanphere and David Jachter should graciously recognize that the land-use gamble was a mistake from the outset and instead acquire an appropriate property within the urban growth boundary or city to store/wash/detail cars. Failure to do so portends a rocky relationship by this new dealership with the greater Aurora-Wilsonville community that can easily hurt the business' brand and reputation over the long run. If they don't want to sell the property maybe they should comply with the last ag use and run it as a farm store—Wilsonville is growing and could use one!

Ben Williams serves as President of Friends of French Prairie, a land-use conservation organization affiliated with 1000 Friends of Oregon.

Clackamas County hears overwhelming support for protecting farmland



Wilsonville (foreground) is inside the Portland UGB; south of the Willamette River, Interstate 5 crosses the French Prairie (background) on the way to Salem.

By Nick Christensen

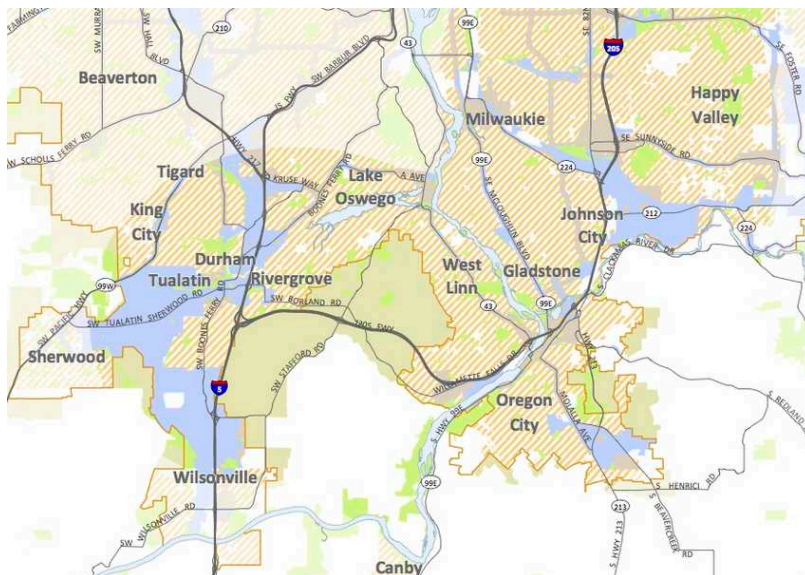
Aug. 5, 2016 10:30 a.m.

Bylined articles are written by Metro staff and do not necessarily represent the opinions of Metro or the Metro Council. [Learn more](#)

A proposal to remove rural reserve designation from parts of the French Prairie was opposed by more than 90% of respondents.

Clackamas County leaders have tabled discussion of changes to the county's 50-year growth map after a public outreach campaign revealed overwhelming opposition to a key part of the proposal.

Since 2014, some county commissioners, including Chair John Ludlow, have sought to change the agreement, in an effort to allow for the possibility of development on the French Prairie between Wilsonville and Woodburn.



There are more than 1,000 acres of industrial land (light blue) in the UGB in the Interstate 205 corridor.

Opponents have said doing so would cost taxpayers hundreds of millions of dollars and open the door to endless sprawl down the Willamette Valley. Proponents say Clackamas County should focus its job-creation efforts south of the Willamette River, rather than areas like North Milwaukie or the Interstate 205 corridor that are closer to where most county residents live.

More than 400 people attended open houses on the proposed changes to the growth map. In addition to the open houses, in late June in Canby, Wilsonville, and Carver, public comments were taken online.

Clackamas County and Metro agreed to the growth plan in 2010, establishing urban reserves that would be the first priority for urban growth boundary expansions through 2060, and rural reserves where urbanization would be prohibited during that period.

A survey distributed at the open houses revealed little support for the proposal to roll back the 2010 agreement.

The survey asked people whether they agree that the area around the Langdon Farms Golf Club should be left "undesigned," meaning it could be urbanized once 75 percent of the urban reserves are used.

Of the 550 people who responded to the question, 506 said they disagreed. Only 14 said they supported the proposal. The rest said they didn't know.

Questions about proposed changes to the reserves map near Carver and Canby were similarly unpopular.

The commission's decision to postpone the discussion until further notice puts another delay into a process that has dragged on for years.

A 2014 Oregon Court of Appeals ruling put all of Clackamas County's reserves plan on hold until a minor technical fix in the plan was adopted by the Metro Council and Clackamas County Commission. The county has refused to sign off on that fix unless Metro agrees to make wholesale changes to the 2010 agreement, including changing areas south of the Willamette River to "undesigned."

Until the reserves plan is adopted, the Metro Council can't use urban reserves in Clackamas County for potential urban growth boundary expansions. Instead, it must rely primarily on soil quality to decide where growth could happen in that county – meaning that the steepest, rockiest areas are the areas least suitable for farming would be the first subject to urbanization. Adopted urban reserves in Washington County would be targeted before any land in Clackamas County.

That leaves Wilsonville, which has sought a small UGB expansion on the city's northeast side for a new residential development, out of consideration.

Wilsonville opposes Clackamas County's proposal to go south of the Willamette. They say the Boone Bridge has reached its capacity, and it would be too expensive to extend pipes across the Willamette to serve future growth, citing a 2009 estimate from ODOT and other groups that it would cost more than half a billion dollars to add capacity to the Boone Bridge.

"Adding new traffic generators on a congested highway further harms the movement of freight and conduct of commerce in the metro region and to areas further south," says a letter from Wilsonville Mayor Tim Knapp.

The sentiment was shared by others who participated in the county's survey.

"Boone Bridge 'Pinch' is already cause of miles of bumper to bumper congestion – and no solution in sight?" wrote one anonymous respondent. "Why make it worse?"

Another commenter said they want to see farm land protected.

"There is plenty of land available in other parts of Clackamas County, closer to commercial areas," they said. "There is no reason to destroy prime agricultural land which already employs people."

This article has been updated to clarify that the Clackamas County Commission did not set a specific date to reconsider rural reserves and to reflect that the county did not conduct a scientific survey to obtain public comments.

Cities pan county's bid to change zoning of ag land

[Eric Mortenson](#)

Capital Press

Published on July 27, 2016 9:00AM

<http://www.capitalpress.com/Oregon/20160727/cities-pan-countys-bid-to-change-zoning-of-ag-land>



ERIC MORTENSON/CAPITAL PRESS

Producers south of Wilsonville, Ore., grow nursery crops, Christmas trees, berries, vegetables and grain. Clackamas County commissioners, seeking more industrial and commercial land, want to review land-use designations in the area.

WILSONVILLE, Ore. — Clackamas County's bid to review the status of three land parcels now set aside for agriculture is a concern to farm groups, and the cities that would have to service new development aren't hot for the idea either.

Charlotte Lehan, a former county commissioner, former Wilsonville mayor and now member of the city council, said it would be "very difficult and very expensive" for the city to provide water and sewer to new development south of the Willamette River.

She said development in the area Clackamas County seeks to review would increase congestion on the Boone Bridge, which carries north-south Interstate 5 traffic across the river. She said a clogged bridge would be "disastrous" for the city.

"I-5 is Wilsonville's lifeline," she said. "When the Boone Bridge isn't working, nothing works. We have to protect the functionality of Interstate 5."

The arguments back and forth are part of a long-running disconnect over Oregon's unusual statewide land-use planning system, which was designed to protect farm and forest land from urban sprawl. Under the system, cities are held in check by urban growth boundaries that can be amended in a controlled manner. But development pressure at the edges of cities remains a continuing issue all over the state.

In the Portland area, land-use planning for Clackamas, Multnomah and Washington counties is done by Metro, which has an elected board. Seeking to end ceaseless arguments, the counties and

Metro agreed to a system of urban and rural reserves that was intended to set growth patterns for 50 years.

Clackamas County's Board of Commissioners now wants to know whether three areas south and southeast of the Portland urban center, previously set aside as rural reserves and thus open to farming, would be more beneficial as "employment lands."

The county commissioners cite a study by a consulting firm, Johnson Economics and Mackenzie, that said the county is short between 329 and 934 acres of industrial land and up to 246 acres of commercial land, an overall shortage of up to 1,180 acres over the next 20 years.

A majority of the commissioners want to review the status of 800 acres south of the city of Wilsonville; 400 acres adjacent to the urban growth boundary of the city of Canby; and 425 acres south of the Clackamas River along Springwater Road, outside Estacada. County officials believe the land should revert to "undesignated" rather than rural reserves.

County officials have dismissed concerns as overwrought. They point out that any land-use change would take years to accomplish and would be subject to legal review or appeal.

Nonetheless, the proposal has reopened a can of worms. Friends of French Prairie, a farming advocacy group, maintains that allowing development to jump across the Willamette River south of Wilsonville would crack open the state's prime agricultural areas.

In a guest editorial written for the Capital Press, Friends of French Prairie President Ben Williams questioned the validity of the county's employment lands report and some of the land is owned by people who have contributed heavily to commissioners' election campaigns.

Board members of the Clackamas Soil and Water Conservation District took the unusual step of publicly warning against a land-use change. "The District believes the County's current initiative to create employment lands may not adequately consider the long-term value of high-value farmland," the district said in a letter to Clackamas commissioners. "A significant amount of the land proposed for reconsideration as employment land is high-value farmland, an irreplaceable natural resource."

Lehan, the Wilsonville council member critical of the land-use review, said her fast-growing city has planned for additional industrial growth in its Coffee Creek and Salt Creek areas, and for residential development in an area called Frog Pond. The city doesn't need more "employment land," she said.

"I know how development works and what it takes for a city to support it," Lehan said. "I'm not anti-growth by any means."

Lehan was Clackamas County board chair until defeated in 2012 by the current board chair, Commissioner John Ludlow, who is often critical of Metro and of Portland's influence on its suburban neighbors.

Canby City Administrator Rick Robinson made a point similar to Lehan's: the city has an existing industrial park that isn't full. The 400 acres Clackamas County wants to revert to undesignated status is outside the city limits and outside the city's urban growth boundary, he said. Some of it is farmed now, and much of it is Class 1 agricultural soil, he said. Robinson said the Canby City Council hasn't taken a position on the Clackamas review proposal.

The third area considered by Clackamas County is outside the city of Estacada. The mayor and city manager were unavailable to discuss the issue.

Hundreds attend open house on county land re-designation

Wilsonville Spokesman

Thursday, 07 July 2016 02:00 | Written by [Jake Bartman](#)

<http://www.pamplinmedia.com/wsp/134-news/313836-191642-hundreds-attend-open-house-on-county-land-re-designation>

Community members oppose development south of Wilsonville

“Disingenuous” was the word of the night at an open house convened last week to consider whether Clackamas County should remove the Rural Reserve designation from some or all of 1,600 acres of agricultural land.

More than 400 people attended the open house at Clackamas Community College’s Wilsonville campus June 28, and had pointed questions for County staff.

“It seems to me it’s a bit disingenuous, this presentation, because you haven’t mentioned that the area in Wilsonville is

foundation farmland,” said Tony Holt, president of the Charbonneau Country Club, after a presentation by County Senior Planner Martha Fritzie at the open house.

Both the 800 acres south of Wilsonville and 400 acres under consideration east of Canby are identified as Foundation Agricultural Lands. Foundation Agricultural Lands are identified by the Oregon Department of Agriculture as “agricultural lands that provide the core support to the region’s agricultural base. ... They incubate and support the larger agricultural industry and are vital to its long-term viability.”

The open house was held to solicit public input on those areas identified by county and regional governments in 2010 as land to be designated Rural Reserves. Rural Reserves lie outside the urban growth boundary, and — unlike Urban Reserves — urban development is not allowed to take place on them for 50 years following their designation.

A 2014 decision by the Oregon Court of Appeals regarding the designation of land in the Stafford area as Urban Reserve required regional government Metro and Washington, Multnomah and Clackamas counties to revisit their rural and urban reserve designations.

The Clackamas County Commission has declined to acknowledge its earlier designations, and has identified three possible areas previously marked for the Rural Reserve designation — 800



SPOKESMAN PHOTO: JAKE BARTMAN —

More than 400 people responded to announcements mailed by the City of Wilsonville and Friends of French Prairie that alerted community members to a June 28 open house soliciting feedback on whether the Rural Reserve designation should be removed from land in Clackamas County.

acres south of Wilsonville, 400 acres east of Canby and 425 acres around South Springwater Road south of the Clackamas River — as areas where land might be reclassified “undesigned,” making them candidates for development once 75 percent of Urban Reserve lands have been developed.

Fritzie said that changing conditions since 2010 have meant that the county needs more non-retail employment land.

“There’s an opportunity in light of some of the changes that have happened, including increased uncertainty about whether the County’s two largest urban reserves really can accommodate long-term developments,” Fritzie said, referring to the Stafford area and the Damascus/Boring area.

She also mentioned House Bill 4078, which passed through the Oregon Legislature in 2014 and reduced by 2,000 acres the amount of urban reserves across the region, and said that studies have found an insufficient 20-year supply of employment land in the county.

Attendees of the open house had concerns about the presentation and the issue at hand, and especially about the land south of Wilsonville.

“You’ve not mentioned the fact that there’s a lack of infrastructure down there. The City of Wilsonville has said they will not provide infrastructure in that area, and cannot,” Holt said.

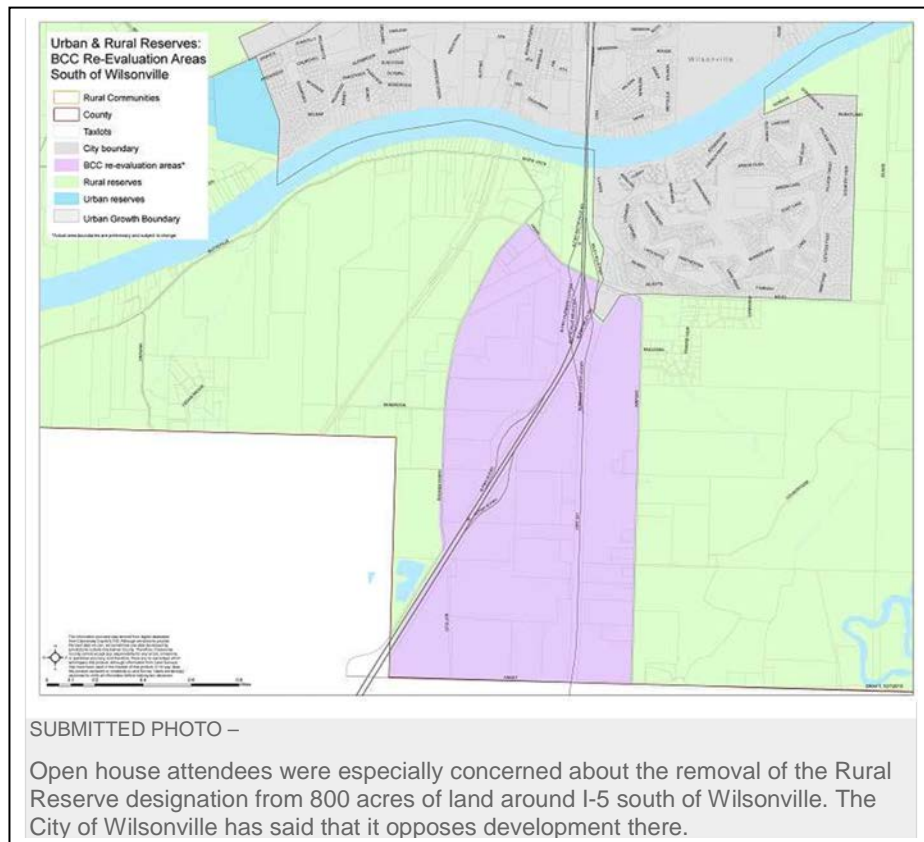
That point was reiterated at a forum in Charbonneau last month, where Wilsonville Mayor Tim Knapp expressed concern about development south of the Willamette and noted that the City would prefer to concentrate its resources on development in Frog Pond and elsewhere in Wilsonville. Two-thirds of Frog Pond — which lie outside the urban growth boundary — are designated Urban Reserve.

Holt also was concerned that most of the 800 acres south of Wilsonville are owned by members of the Maletis family.

“The Maletis brothers have contributed money to the commissioners to make sure that this happens. So this is a disingenuous presentation,” he said, to loud applause.

Chair John Ludlow, Commissioner Paul Savas, Commissioner Martha Schrader and Commissioner Tootie Smith have received campaign contributions from the Maletis family within the last five years.

Al Greenfield asked whether Marion County had given



feedback about development of the land south of Wilsonville. Fritzie said that the proposal was to have the Rural Reserve designation removed from the land, not to designate it for urban development.

“Keep in mind, this area is not being proposed for urbanization,” she said. Greenfield replied that her claim was “disingenuous.”

Some questioned whether the County was justified in revisiting the issue at all. Fritzie said that the County anticipated future legal appeals to a reaffirmation of the Stafford area as Urban Reserve, and that the County sought to review its reserves in order to resolve the Stafford conflict.

Bill Riggs, a former member of the Oregon Board of Appeals and a former member of the Oregon Supreme Court, said that a final judgment by the court of appeals had been entered some time prior.

“To blame it on the court of appeals for not getting a final judgment out is disingenuous. It is the county commissioners — I think three county commissioners — really holding the matter up. It has nothing to do with whether some parties may choose to appeal later,” Riggs said.

Clackamas County is accepting public feedback on removing the Rural Reserve designation from several areas in the county until July 15 at bit.ly/295yXfD.

Contact Jake Bartman at 503-636-1281 ext. 113 or jbartman@pamplinmedia.com.

Conservation district fights farmland development

Eric Mortenson; Capital Press

Published on July 6, 2016 10:29AM



The issue of development pressure on Oregon farmland is on display in Clackamas County southeast of Portland. A local Soil and Water Conservation District has asked county commissioners to consider impact on farmland as they pursue additional industrial and commercial land.

A renewed move by Oregon's Clackamas County to designate more land for future industrial and commercial development prompted an unusual response from the county's Soil and Water Conservation District.

Usually, the district's board isn't very political, General Manager Tom Salzer said. But the county's decision to review the status of 1,625 acres got the conservation district's attention. The county commissioners want to know if land in three areas south and southeast of the Portland urban center, now set aside as 50-year "rural reserves" and thus open to farming, would be more beneficial as "employment lands."

The commissioners want to review the status of 800 acres south of the city of Wilsonville; 400 acres adjacent to the urban growth boundary of the city of Canby; and 425 acres south of the Clackamas River along Springwater Road. County officials believe the land should revert to "undesignated" rather than rural reserves.

Board members of the Clackamas Soil and Water Conservation District decided they should speak up. On June 29, Salzer delivered a letter to the five-member county commission. The primary point was succinct: "The District believes the County's current initiative to create employment lands may not adequately consider the long-term value of high-value farmland. A significant amount of the land proposed for reconsideration as employment land is high-value farmland, an irreplaceable natural resource."

Salzer said the conservation district's board is concerned about the longterm future of farmland in Clackamas County, which despite being adjacent to Portland remains one of Oregon's top five agricultural counties. The county is particularly known for growing Christmas trees, nursery crops and berries.

But it's also known for political contention — some Portlanders derisively call it “Clackastan” — and for opposition to Metro, the land-use planning agency for the tri-county Portland area. The current county commission chair and vice chair, John Ludlow and Tootie Smith, are generally viewed as favoring job growth and development over land-use restrictions.

The commissioners point to an economic study by a consulting firm, Johnson Economics and Mackenzie, that said the county is short between 329 and 934 acres of industrial land and up to 246 acres of commercial land, an overall shortage of up to 1,180 acres over the next 20 years. The conservation district, however, has some concerns. The acreage south of Wilsonville involves land adjacent to the Aurora Airport and Langdon Farms golf course. It has long been proposed for development by its owners, while farm groups and land-use watchdogs oppose development spreading into prime Willamette Valley farmland.

The acreage next to the city of Canby is Class 1 agricultural soil, some of the best farmland in the valley, said Jim Johnson, the Oregon Department of Agriculture's land-use specialist.

The conservation district is alarmed at the prospect of losing more farmland, said Salzer, the general manager. “This is remarkable,” he said. “It's the first time this board has stood up as a unanimous body and said, ‘Wait a minute. Farmland is being threatened and we need to do something about it.’”

Jeff Becker, the conservation district's board chair, said the board doesn't want to antagonize the county commissioners but simply wants to promote discussion of the issue. “We don't want to fire darts,” Becker said. “We don't want to attack their policies. I know they get pressure (from all sides).”

But Becker said issues such as food supply need to be considered when development is discussed. “If you get rid of farmland, it's gone forever,” he said.

The county commissioners had questions and comments for Salzer when he delivered the conservation district's letter. Commissioner Ludlow said any development on the land in question would be years out. “We're 1,100 acres short of job-producing land,” he said. Commissioner Smith said farming requires a “whole host of behaviors” that young people don't want to engage in, and said much of the land under consideration is “fallow,” not actively farmed.

“It may be fallow at this time, but if you build on it, it's gone,” Salzer responded.

The current development proposal covers familiar ground about a lack of land for economic development. A bill introduced in the 2015 Oregon Legislature would have allowed Clackamas, Washington and Columbia counties to designate industrial reserves of up to 500 acres outside of established urban growth boundaries, but it died in committee.

This time, Clackamas County is going it alone and apparently will work through Metro.

Clackamas, Washington and Multnomah counties, which include the greater Portland area, agreed in 2010 to designate urban and rural reserves. Urban reserves will be considered first when the urban growth boundary is expanded for houses, stores and industries. More than 265,000 acres in the three counties were designated as rural reserves, meaning they would remain as farms, forests or natural areas until 2060.

“The facts on the ground have changed dramatically since the original reserves adoption,” the Clackamas commissioners said in a letter to Metro, “prompting the need for corresponding changes to reserve designations. We cannot pretend that those changes didn't happen, or allow the matter to be dismissed as simply a change in leadership.”

Permit Activity Report: 09/28/2017 to 10/04/2017

Permit No: Z0531-17 Parcel No: 44E19 01300 Applied: 9/28/2017
Type: Temporary Permit/Care Status Pending
Address: 27060 S LOOK RD
Description: TEMP PERMIT FOR CARE
Applicant: MCFARLAND ESTHER 27060 S LOOK RD COLTON, OR 97017
Owner: MCFARLAND JOHN E & ESTHER C 27060 S LOOK RD COLTON OR, 97017
CPO: COLTON CPO PO BOX 151 COLTON, OR 97017

Permit No: Z0532-17 Parcel No: 23E06AA01400 Applied: 9/28/2017
Type: Property Line Adjustment Status Pending
Address: 18031 SE VOGEL RD
Description: PROPERTY LINE ADJUSTMENT
Applicant: NORTH CLACKAMAS SD #12 12400 SE FREEMAN WAY MILWAUKIE, OR 97222
Owner: NORTH CLACKAMAS SD #12 12400 SE FREEMAN WAY MILWAUKIE OR, 97222
CPO: DAMASCUS (INACTIVE) , OR

Permit No: Z0533-17 Parcel No: 22E20AD03400 Applied: 10/2/2017
Type: Design Review Status Pending
Address: 735 E CLARENDON ST
Description: OFFICE BUILDING
Applicant: JOHNSON DUSTIN 15895 SW 72ND AVE, STE 200 PORTLAND, OR 97224
Owner: MEEK MARK 14937 SE 117TH AVE CLACKAMAS OR, 97015
CPO: CITY OF GLADSTONE , OR

Permit No: Z0534-17 Parcel No: 31W26 02700 Applied: 10/2/2017
Type: Marijuana Status Pending
Address: 26444 NE BUTTEVILLE RD
Description: MJ PRODUCTION
Applicant: WALES DAVID 13625 SW FARMINGTON RD BEAVERTON, OR 97005
Owner: LANPHERE CONSTRUCTION & DEVLP LLC 13625 SW FARMINGTON RD BEAVERTON OR, 97005
CPO: AURORA BUTTEVILLE BARLOW CPO 24780 NE PRAIRIE VIEW DR AURORA, OR 97002

Permit No: Z0535-17 Parcel No: 53E01 00600 Applied: 10/2/2017
Type: Marijuana Status Pending
Address: 23740 S SCHIEFFER RD
Description: MJ - PRODUCTION
Applicant: WALES DAVID PO BOX 505 COLTON, OR 97017
Owner: WALES DAVID C & AURORA D PO BOX 505 COLTON OR, 97017
CPO: COLTON CPO PO BOX 151 COLTON, OR 97017

Permit No: Z0536-17 Parcel No: 13E34A 01000 Applied: 10/2/2017
Type: Construction Management Plan Status Pending
Address:
Description: NEW SFR
Applicant: LUCIA DAVID 9232 SE MARKET ST PORTLAND, OR 97216
Owner: CASPELL RONALD M 11121 SE 240TH PL DAMASCUS OR, 97089
CPO: DAMASCUS (INACTIVE) , OR

Permit No: Z0537-17 Parcel No: 24E19 01600 Applied: 10/2/2017
Type: Nonconforming Use - Alteration/Verification Status Pending
Address: 27787 SE HWY 224

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02-21-2018

11:23

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
854307-92	DLLC	ACT	OREGON	05-04-2012	05-04-2018	
Entity Name	LANPHERE CONSTRUCTION AND DEVELOPMENT, LLC					
Foreign Name						

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Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	13625 SW FARMINGTON RD					
Addr 2						
CSZ	BEAVERTON	OR	97005	Country	UNITED STATES OF AMERICA	

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Type	AGT	REGISTERED AGENT	Start Date	05-04-2012	Resign Date
Name	ROBB	WALTHER			
Addr 1	13625 SW FARMINGTON RD				
Addr 2					
CSZ	BEAVERTON	OR	97005	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS
Addr 1	13625 SW FARMINGTON RD	
Addr 2		
CSZ	BEAVERTON	OR 97005 UNITED STATES OF AMERICA

Type	MGR	MANAGER	Resign Date
Name	ROBERT	D LANPHERE JR	
Addr 1	13625 SW FARMINGTON RD		
Addr 2			
CSZ	BEAVERTON	OR 97005	UNITED STATES OF AMERICA

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Name History

Business Entity Name	Name	Name	Start Date	End Date
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	Type	Status	
LANPHERE CONSTRUCTION AND DEVELOPMENT, LLC	EN	CUR	05-04-2012

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Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	ANNUAL REPORT PAYMENT	04-06-2017		SYS		
	ANNUAL REPORT PAYMENT	04-06-2016		SYS		
	ANNUAL REPORT PAYMENT	04-02-2015		SYS		
	ANNUAL REPORT PAYMENT	04-11-2014		SYS		
	AMENDED ANNUAL REPORT	05-02-2013		FI		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	12-20-2012		FI		
	ARTICLES OF ORGANIZATION	05-04-2012		FI	Agent	

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Business Entity Data

02-21-2018

10:49

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
387138-97	DLLC	ACT	OREGON	10-03-2006	10-03-2018	
Entity Name	BL & DJ, LLC					
Foreign Name						

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Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	12505 SW BROADWAY ST					
Addr 2						
CSZ	BEAVERTON	OR	97005	Country	UNITED STATES OF AMERICA	

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Type	AGT	REGISTERED AGENT	Start Date	10-29-2008	Resign Date
Name	ROBERT	A	WALTHER		
Addr 1	12505 SW BROADWAY				
Addr 2					
CSZ	BEAVERTON	OR	97005	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS
Addr 1	PO BOX 728	
Addr 2		
CSZ	BEAVERTON	OR 97075 Country UNITED STATES OF AMERICA

Type	MEM	MEMBER	Resign Date
Name	DAVID	L	JACHTER
Addr 1	12505 SW BROADWAY ST		
Addr 2			
CSZ	BEAVERTON	OR 97005	Country UNITED STATES OF AMERICA

Type	MEM	MEMBER	Resign Date
Name	ROBERT	D	LANPHERE JR
Addr 1	12505 SW BROADWAY ST		
Addr 2			

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CSZ	BEAVERTON	OR	97005		Country	UNITED STATES OF AMERICA
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Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
BL & DJ, LLC	EN	CUR	10-03-2006	

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Summary History

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	AMENDED ANNUAL REPORT	08-23-2017		FI		
	AMENDED ANNUAL REPORT	08-24-2016		FI		
	AMENDED ANNUAL REPORT	08-20-2015		FI		
	AMENDED ANNUAL REPORT	08-22-2014		FI		
	REINSTATEMENT AMENDED	12-19-2013		FI		
	ADMINISTRATIVE DISSOLUTION	11-29-2013		SYS		
	NOTICE LATE ANNUAL	10-04-2013		SYS		
	AMENDED ANNUAL REPORT	08-27-2012		FI		
	AMENDED ANNUAL REPORT	08-18-2011		FI		
	ANNUAL REPORT PAYMENT	08-24-2010	08-23-2010	SYS		
	ANNUAL REPORT PAYMENT	08-20-2009	08-19-2009	SYS		
	CHANGE OF REGISTERED AGENT/ADDRESS	10-29-2008		FI	Agent	
	ANNUAL REPORT PAYMENT	08-25-2008	08-22-2008	SYS		
	AMENDED ANNUAL REPORT	10-04-2007		FI		
	ARTICLES OF ORGANIZATION	10-03-2006		FI	Agent	

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Senate Bill 186

Sponsored by Senator JOHNSON (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Validates land use designations adopted by Metro and counties within Metro, with exceptions. Designates certain lands in Washington County as urban reserve land.

A BILL FOR AN ACT

Relating to land use designations; creating new provisions; and amending ORS 195.144.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 195.144 is amended to read:

195.144. (1) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as rural reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged rural reserve in Washington County, except that:

(a) The real property in Area 5C on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is more particularly described as tax lots 1500 and 1501, section 1 of township 2 south, range 2 west, Willamette Meridian, is not designated as a reserve area.

(b) The Legislative Assembly designates as acknowledged urban reserve the real property that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

(A) All of lots 1 through 18, inclusive;

(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of the right of way of Northwest West Union Road and the east boundary of the right of way of Northwest Cornelius Pass Road;

(C) The real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the west boundary of the right of way of Northwest Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of Northwest West Union Road; thence westerly along the right of way to its intersection with the west boundary of the right of way of Northwest Cornelius Pass Road; thence northerly along the right of way to the point of origin;

(D) The real property that is more particularly described as tax lot 4050 in section 14A of township 1 north, range 2 west, Willamette Meridian;

(E) The portion of Northwest West Union Road and its right of way from the intersection of the road with the west boundary of Area 8C to the intersection of the road with the west boundary of

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the right of way of Northwest Bendemeer Road on Metro's map denominated as the "Urban and
2 Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245
3 (03/17/11 DRAFT)"; and

4 (F) The real property that is more particularly described as tax lot 400 in section 14D of town-
5 ship 1 north, range 2 west, Willamette Meridian.

6 **(c) The Legislative Assembly designates as urban reserve the real property that is more**
7 **particularly described as tax lots 1000, 1100 and 1201 in section 13 of township 1 north, range**
8 **2 west, Willamette Meridian.**

9 (2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land
10 in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245,
11 adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

12 (a) The real property in Area 8A on Metro's map denominated as the "Urban and Rural Re-
13 serves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11
14 DRAFT)," east of the east boundary of the right of way of Northwest Jackson School Road and east
15 of the east bank of Storey Creek and the east bank of Waibel Creek is included within the ac-
16 knowledged urban growth boundary.

17 (b) The real property in Area 8A on Metro's map denominated as the "Urban and Rural Re-
18 serves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11
19 DRAFT)," that is south of the south boundary of the right of way of Highway 26 and west of the
20 real property described in paragraph (a) of this subsection is designated as acknowledged [*rural*]
21 **urban** reserve.

22 (c) The real property in Area 8B on Metro's map denominated as the "Urban and Rural Reserves
23 in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11
24 DRAFT)," that is more particularly described as tax lot 100 in section 21AA of township 1 north,
25 range 2 west, Willamette Meridian, and tax lots 900, 901, 1100, 1200, 1300 and 1400 in section 15 of
26 township 1 north, range 2 west, Willamette Meridian, is not designated as a reserve area.

27 (d) The real property in Area 8B on Metro's map denominated as the "Urban and Rural Reserves
28 in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11
29 DRAFT)," that is not described in paragraph (c) of this subsection is designated as acknowledged
30 rural reserve.

31 (e) The real property in Area 7B on Metro's map denominated as the "Urban and Rural Reserves
32 in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11
33 DRAFT)," that is north of the south bank of Council Creek is designated as acknowledged rural
34 reserve.

35 (f) The real property in Area 7B on Metro's map denominated as the "Urban and Rural Reserves
36 in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11
37 DRAFT)," that is south of the south bank of Council Creek is included within the acknowledged
38 urban growth boundary.

39 (3) For purposes of land use planning in Oregon, in relation to the following real property in
40 Washington County that is not reserved by designation in Metro Resolution No. 11-4245, adopted
41 on March 15, 2011, the Legislative Assembly designates:

42 (a) As acknowledged rural reserve the real property that is situated south of the City of North
43 Plains on Metro's map denominated as the "Urban and Rural Reserves in Washington County, At-
44 tachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," more particularly de-
45 scribed as tax lots 100, 101, 200 and 201 in section 11 of township 1 north, range 3 west, Willamette

1 Meridian, tax lots 1800 and 2000 and that portion of tax lot 3900 that is north of the south line of
 2 the Dobbins Donation Land Claim No. 47 in section 12 of township 1 north, range 3 west, Willamette
 3 Meridian, and the portion of Northwest Gordon Road and its right of way from the south boundary
 4 of the right of way of Northwest Beach Road to the south boundary of tax lot 200 in section 11 of
 5 township 1 north, range 3 west, Willamette Meridian.

6 (b) As acknowledged rural reserve the real property that is situated north of the City of
 7 Cornelius on Metro's map denominated as the "Urban and Rural Reserves in Washington County,
 8 Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," and that is north of the
 9 south bank of Council Creek, east of the east right of way of Northwest Cornelius-Schefflin Road
 10 and west of the west bank of Dairy Creek.

11 (c) As acknowledged rural reserve the real property that is north of the City of Forest Grove
 12 on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment
 13 A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," more particularly described as east
 14 of Area 7B, west of the east right of way of Highway 47 and south of the north right of way of
 15 Northwest Purdin Road.

16 (d) As acknowledged rural reserve the real property that is situated west of Area 8B on Metro's
 17 map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff
 18 Report for Resolution No. 11-4245 (03/17/11 DRAFT)."

19 (4) Land in a county in Metro that is planned and zoned for farm, forest or mixed farm and
 20 forest use and that is not designated as urban reserve may not be included within the urban growth
 21 boundary of Metro before at least 75 percent of the land in the county that was designated urban
 22 reserve in this section has been included within the urban growth boundary and planned and zoned
 23 for urban uses.

24 (5)(a) The real property described in subsection (2)(a) of this section:

25 (A) Is employment land of state significance; and

26 (B) Must be planned and zoned for employment use.

27 (b) In its first legislative review of the urban growth boundary on or after April 1, 2014, Metro
 28 shall not count the employment capacity of the real property described in subsection (2)(a) of this
 29 section in determining the employment capacity of the land within Metro.

30 (6) If the real property described in subsection (2)(f) of this section or section 4 (1) to (3), chapter
 31 92, Oregon Laws 2014, is planned and zoned for employment use, in its first legislative review of the
 32 urban growth boundary on or after April 1, 2014, Metro shall not count the employment capacity
 33 of the real property described in subsection (2)(f) of this section or in section 4 (1) to (3), chapter
 34 92, Oregon Laws 2014, in determining the employment capacity of the land within Metro.

35 **SECTION 2. For purposes of land use planning in Oregon, the Legislative Assembly:**

36 **(1) Designates the land in Clackamas County that was designated as rural reserve on**
 37 **Metro's map denominated as "Exhibit A of Metro Ordinance No. 16-1368," adopted on Feb-**
 38 **ruary 4, 2016, as acknowledged rural reserve in Clackamas County.**

39 **(2) Designates the land in Clackamas County that was designated as urban reserve on**
 40 **Metro's map denominated as "Exhibit A of Metro Ordinance No. 16-1368," adopted on Feb-**
 41 **ruary 4, 2016, as acknowledged urban reserve in Clackamas County.**

42 **(3) Designates as acknowledged rural industrial land under the acknowledged Clackamas**
 43 **County Comprehensive Plan, the land in Clackamas County that was designated rural reserve**
 44 **in a tract of land in the Jesse V. Boone Donation Land Claim in township 3 south, range 1**
 45 **west of the Willamette Meridian, said tract being also in section 26, said township and range,**

1 **described as follows: Beginning at a point on the east donation land claim line 22.83 chains**
 2 **north of the southeast corner of said claim, which point is the northeasterly corner of the**
 3 **tract described in the deed recorded February 2, 1960, in deed book 566, page 0716; thence**
 4 **north 70 degrees west 603.9 feet to the northwesterly corner of said tract and a point in the**
 5 **east line of the tract described in the deed recorded November 4, 1927, in deed book 190, page**
 6 **0495; thence north on the east line of said tract 1159.18 feet, more or less, to the southerly**
 7 **line of the tract conveyed to Harry A. Ross, et ux., by the deed recorded September 22, 1965,**
 8 **in deed book 663, page 0311; thence north 61 degrees 45 east on the southerly line of said Ross**
 9 **tract to the east line of said donation land claim; thence south along said donation land claim**
 10 **line to the point of beginning. Excepting therefrom that portion conveyed to the State of**
 11 **Oregon, by and through its State Highway Commission by the deed recorded July 30, 1969,**
 12 **as fee no. 69014321.**

13 **SECTION 3.** For purposes of land use planning in Oregon, the Legislative Assembly:

14 (1) Designates the land in Multnomah County that was designated as rural reserve in
 15 Multnomah County Ordinance No. 2010-1161, adopted on May 13, 2010, as acknowledged rural
 16 reserve in Multnomah County.

17 (2) Designates the land in Multnomah County that was designated as urban reserve in
 18 Metro Ordinance No. 11-1255, adopted on April 21, 2011, as acknowledged urban reserve in
 19 Multnomah County, except that the Legislative Assembly designates as rural reserve the
 20 land in Multnomah County known as the East Bethany Urban Reserve, located at the
 21 southwest and northwest one-quarters and a portion of the northeast and southeast one-
 22 quarter of section 16, township 1 north, range 1 west of the Willamette Meridian, more par-
 23 ticularly described as follows: Beginning at the northwest corner of said section 16, being
 24 the northwest corner of tax lot 500 in section 16B of township 1 north, range 1 west; thence
 25 along the north line of said section 16, being the northerly line of tax lots 500, 300, 200 and
 26 100 in section 16B of township 1 north, range 1 west, easterly, 2,632.82 feet, more or less, to
 27 the north one-quarter corner of said section 16; thence leaving said north section line, along
 28 the north/south center section line being the easterly line of said tax lot 100 in section 16B
 29 of township 1 north, range 1 west and the westerly line of tax lots 500 and 600 in section 16A
 30 of township 1 north, range 1 west, southerly, 1,323.84 feet, more or less, to the northwest
 31 corner of tax lot 700 in section 16A of township 1 north, range 1 west, being the southeast
 32 corner of tax lot 100 in section 16B of township 1 north, range 1 west and the southwest
 33 corner of tax lot 600 in section 16A of township 1 north, range 1 west; thence along the
 34 northerly line of said tax lot 700 being the southerly line of said tax lot 600 in section 16A
 35 of township 1 north, range 1 west and the southerly line of tax lots 400 and 300 in section
 36 16A of township 1 north, range 1 west, easterly, 1,306 feet, more or less, to the northeast
 37 corner of said tax lot 700 in section 16A of township 1 north, range 1 west, being the south-
 38 east corner of tax lot 300 in section 16A of township 1 north, range 1 west, the southwest
 39 corner of tax lot 100 in section 16A of township 1 north, range 1 west and the northwest
 40 corner of tax lot 900 in section 16A of township 1 north, range 1 west; thence leaving said
 41 northerly line along the easterly line of said tax lot 700 in section 16A of township 1 north,
 42 range 1 west and the easterly line of tax lot 800 in section 16A of township 1 north, range 1
 43 west, being the westerly line of tax lot 900 in section 16A of township 1 north, range 1 west,
 44 southerly, 1,318 feet, more or less, to the southeast corner of said tax lot 800 in section 16A
 45 of township 1 north, range 1 west, being the southwest corner of said tax lot 900 in section

26444 NE BUTTEVILLE RD
Clackamas County, Oregon

An Application For:

Zone Change
Comprehensive Plan Amendment

Submitted: September 30, 2015

Applicant:

LCD

13625 SW Farmington Road

Beaverton, OR 97005

Phone: (503) 718-7934

Fax: (503) 718-7935

Prepared by:

Cardno

5415 SW Westgate Drive, Suite 100

Portland, OR 97221

Phone: (503) 419-2500

Fax: (503) 419-2600

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EXHIBITS

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Exhibit F	Johnson Economics September 29, 2015 Memorandum
Exhibit G	Site Appraisal
Exhibit H	Surrounding Land Uses
Exhibit I	September 28, 2015 Kittelson and Associates Memorandum
Exhibit J	September 29, 2015 Bachrach.Law, P.C. Memorandum

INTRODUCTION

GENERAL INFORMATION

Applicant: LCD
c/o BL and DJ, LLC
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Phone: (503) 718-7934
Contact: Jerry Jones, Jr., President

Applicant's Representative Cardno
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Suite 100
Portland, OR 97221
Phone: 503-419-2500
Contact: Read Stapleton, AICP

Tax Lot Information: 31W26 02700

Location: 26444 NE Butteville Road
SW of Interstate – 5 and Wilsonville Road; south of
NE Butteville Road

Current Zoning Designation: Exclusive Farm Use (EFU)

Current Comprehensive Plan Designation: Agriculture

Project Site Area: +/- 18.25 acres

SUMMARY OF PROPOSAL

The applicant is proposing to change the comprehensive plan/zoning designation of an approximately 18.25-acre site located at 26444 NE Butteville Road from Agriculture/Exclusive Farm Use (EFU) to Rural Industrial (RI). The site is located on tax lot 31W26 02700 and is situated at the southwest quadrant of the I-5 interchange (Exit 282) and south of NE Butteville Road. (See Exhibit A, Site Map)

Access to the site is via an approximately 400-foot long driveway that extends from the site's northern property through Oregon Department of Transportation right of way and intersects with NE Butteville Road approximately 400 feet west of the I-5 ramp termini.

As described below, there are substantial improvements on the site, including four buildings and approximately 3.5 acres of asphalt paving. The extensive physical development of the site, which is not conducive to farm uses, and its unique location at the I-5 interchange are key factors that make the proposed Rural Industrial designation more appropriate than an EFU designation.

The proposed use of the property is to provide minor servicing of brand new cars. The new cars will be delivered to the site and parked temporarily. Generally, no more than 10 employees will be on site. Vehicle servicing activities will include removal of protective plastic wrap, dusting and vacuuming, and preparing for sale. The cars will then be driven to a local dealership in the City of Wilsonville for sale to the public. There will be no sales or any type of retail uses on the site.

The proposed comprehensive plan amendment and zone change has to comply with standards for an exception to Statewide Planning Goal 3 (Agriculture). In order to satisfy the exceptions criteria, the applicant proposes a condition of approval limiting uses on the site to the servicing of new vehicles as described above.

Land Use History

Site development approval and two conditional use permits (CUPs) have been obtained for the site in the past to allow the development of physical improvements on the property. As documented in the County staff report for Z0393-05-C, a CUP was approved by the county in the late 1990s to allow the construction of a cell tower in the southern portion of the site. Subsequent to this approval, on October 15, 2005 the County hearings officer approved a CUP (Z0393-05-C) allowing the expansion of a farm stand on the site to become an "agricultural marketing and service center" on the property. (See Exhibit B, Hearings Officer Final Order for Z0393-05-C) A business license was filed with the State of Oregon for an "I-5 Farm Store" in 2006 and the operation is referenced in this narrative as the "I-5 Farm Store." As described in this narrative, after obtaining CUP approval in 2005, the business operator struggled to maintain a viable business on the property due in large part to operational limitations imposed in the conditions of approval found in Z0393-05-C. Specifically, the CUP approval limited operations of the farm store in two key ways. First, it requires that the applicant "continuously record the *value and source* of all income derived from the farm stand." While the applicant at the time agreed and volunteered compliance with this provision for record keeping, it severely complicated the operations of the site and placed a substantial regulatory burden on the former property owner and business operator. The second key component of the approval was the requirement that the farm primarily sell goods from within the "local agricultural area." Due in part to these conditions of approval, the farm store was not successful.

At the time the filing of the 2005 CUP request, the previous owner had recently made investments into the property to construct and install facilities to support a "farm stand" operation. Structures on the site at the time of the 2005 CUP filing remain on the site today and include:

- A 9,600 square foot (SF) farm building (constructed in 2005).
- A 2,048 SF Equipment storage building
- An approximately 1,300 SF farm house, adjacent to the equipment building
- An approximately 3,000 SF storage structure
- Cell tower and maintenance shed at the southern limits of the property.

The CUP request approved by the County with Z0393-05-C, allowed the expansion of activities associated with the approved farm stand use and expansion of facilities as noted below and as illustrated in Exhibit C:

- Allow additional sales of added value food products and agricultural supplies from the 9,600 square building, to allow the building to be used for dual purposes: farm stand and commercial store.
- To support newly proposed commercial sales and a farmers market, additional buildings were proposed on the eastern property limits, adjacent to I-5. These facilities include the following:
 - 960 SF “meat prep” building
 - 4,000 SF “produce prep” building
 - 2,520 SF “shop” building
 - 2,520 SF “equipment” building
 - 10,000 SF “material storage” building

While Z0393-05-C allowed the construction of these additional structures, the former property owner did not construct additional structures and instead paved the entire site for the intended I-5 farm store and market use. The condition in 2006 after the CUP approval can be viewed in Exhibit D. While the basic elements of the applicant’s request noted above were approved with Z0393-05-C, some very prescriptive and specific conditions of approval were incorporated into the hearings officer final order that limited the allowed business operations on the site and the area from which farm owners could participate in and sell goods at the market. These conditions are listed below along with a short discussion of the impacts of these conditions on the business operation of the I-5 Farm Store. These conditions are also found in the hearings officer final order, which is included in Exhibit B of this application package.

Condition 3 ***The applicant shall continuously record the value and source of all income derived from the farm stand, the preparation facilities, the farmers’ market and the agricultural supplies, machinery and equipment facility. For purposes of this condition, “local agricultural area” means an area extending in a straight line 15 miles from the closest edge of the site.***

As noted above, Condition 3 restricted the operations of the farm store in two key ways. First, it requires that the applicant “continuously record the *value and source* of all income derived from the farm stand.” While the applicant at the time agreed and volunteered compliance with this provision for record keeping, it severely complicated the operations of the site and placed a substantial regulatory burden on the former property owner and business operator. The second key component of this condition was the requirement that the farm primarily sell goods from within the “local agricultural area,” which was defined as within 15-miles of the site (See Exhibit E, 15-mile Radius Map). As evidenced in the attached memorandum prepared by Johnson Economics included in Exhibit F, this limitation on the market area substantially limited the availability of site vendors necessary to sustain a viable market operation and restricted the ability to obtain agricultural products, which are seasonal by nature.

Condition 3a ***Regarding the farm stand, the preparation facilities and the farmers’ market, the records shall do the following:***

- i. Distinguish farm goods from non-farm goods; and***
- ii. Distinguish farm goods grown, raised or produced on the site and in the local agricultural area from farm goods grown, raised or produced outside the local agricultural area;***
- iii. For value-added products distinguish the value of the farm goods grown or raised on the site or in the local agricultural area that are used in those products from the value of other farm goods used in the those products.***

- iv. Identify clearly and in a manner that can be reproduced and verified readily where all farm products and byproducts originate and shall include a list of the relevant farms and their location on a scaled map or in other form in relation to the local agricultural area.**
- v. Identify each vendor who leases a tent site by name and address and the location of the farm in which the products originated. The applicant should be required to propose how vendors will be required to verify sales, such as by requiring duplicate receipts for all sales or pre- and post-market inventories and accountings, subject to review and approval by the planning director.**
- vi. Note more than 25% of the gross value of sales from the farm stand may be derived from the sale of non-farm goods and goods grown or raised (or created from those farm goods) on a farm outside the local agricultural area.**
- vii. Not more than 15% of the gross value of sales from the farm stand may be derived from the sale of non-farm goods.**
- viii. Not more than 15% of the gross value of sales from the farmers market and preparation facilities may be derived from the sale of non-farm goods and goods grown or raised (or created from those farm goods) on a farm outside the local agricultural area.**

It should be noted that the approved Conditional Use Permit permitted up to 100 vendor tent areas at the market. Conditions 3a (i) – (v) requires that the market owner maintain and manage the receipts of all of these vendors in order to report on compliance with use and product restrictions included in this condition. While the property owner agreed and volunteered with these reporting provisions, this condition requires an incredibly complex and difficult system to maintain records from these vendors. In addition, as noted in Condition 3a(vi), not more than 25% of the gross value of sales from the farm stand (i.e. the store building) can be derived from the sale of non-farm goods and goods grown or raised (or created from those farm goods) on a farm outside the local agricultural area. Further, per Condition 3a(vii), not more than 15% of the gross value of sales from the farm stand may be derived from the sale of non-farm goods and per Condition 3a(viii), not more than 15% of the gross value of sales from the farmers market and preparation facilities can be “derived from” the sale of non-farm goods and goods grown (or created from those farm goods) on a farm outside the local agricultural area. In combination, these operational requirements substantially burdened the operation of the farm store to a degree that significantly impacted the ability to maintain a viable business at the site. Further information regarding these restrictions and impact of the market area limitation is provided in an attached memorandum, dated September 29, 2015 from Johnson Economics included in Exhibit F. This memorandum discusses the impact of these market restrictions, among other key economic findings regarding the merits of this comprehensive plan amendment and zone change request.

Existing Conditions

As noted in the preceding section, existing facilities on the site include the following:

- A 9,600 square foot (SF) building (constructed in 2005).
- A 2,048 SF equipment storage building (constructed in 2005)
- An approximately 1,300 SF farm house, adjacent to the equipment building
- An approximately 3,000 SF storage structure
- Cell tower and maintenance shed at the southern limits of the property.
- Approximately 3.5-acres of asphalt paving and circulation areas, installed initially as gravel in 2004-2005 and then completed in 2006 after the CUP (Z0393-05-C) approval. (See Exhibit D, I-5 Farm Store 2006 Built Conditions)

As documented in a Powell Valuation, Inc. appraisal conducted for the property and dated October 3, 2012, "the audited cost of the improvements, including buildings and fixtures, asphalt, infrastructure and landscaping total \$3,664,860." This appraisal is included as Exhibit G of this application package.

Services Provided

The existing utilities include an on-site well for water and an on-site subsurface septic system. Stormwater is treated and detained onsite before eventual release into the I-5 Right-of-Way (ROW). Prior environmental analysis of the site contracted by the applicant has revealed that the site is serviced by one well that extracts water at a volume of 20 gallons per minute with a 3,000 gallon stainless steel holding tank. In addition, there are nine tanks and drain fields in addition to a separate 3,000 gallon gray water tank system to handle sanitary sewage generated on the site. These facilities have been found to be in good condition and, given the nature of the proposed use (preparation and temporary servicing of vehicles), it is anticipated that water and sanitary sewer demand will be significantly less than the farm store use as food and produce preparation would not be a component of the proposed use. Therefore, there are no known capacity constraints that would inhibit the ability to use the site for the proposed use.

Access

Access to the site is provided via a driveway entrance located approximately 400-feet west of the I-5/NE Butteville Road Interchange. Per the findings in the county Final Order under Z0393-05-C, the driveway is within a 20-foot access easement between the site and NE Butteville Road. This driveway allows entry from the northeastern corner of the lot and a paved area allows circulation around the three primary structures located on site. A narrow driveway leads from the primary vehicle circulation route to the cell tower, located at the southern portion of the lot.

Surrounding Uses

As identified in detail in Exhibit H, Surrounding Uses, uses surrounding the project area are as follows:

- **North:** The site is bordered immediately to the north by the ODOT right of way which includes NE Butteville Road. Property north of NE Butteville Road is heavily forested and is zoned RRFF5 (Rural Residential Farm Forest with a 5-acre minimum lot size). Farther to the north, approximately one half mile north of the subject site, is a marina located at the intersection of NE Butteville Road and NE River Vista Lane. West of the marina, located along the Willamette River, are a series of large single family residences.
- **South:** The site to the south is also zoned Agriculture and is in a heavily forested condition. A stream corridor traverses the southern limits of the site and approximately 4.5 acres of the southern limits of the site fall within the riparian corridor associated with this stream. T
- **East:** The site is bordered to the east by the I-5 right of way. East of I-5, land uses at the northeast quadrant of the I-5 interchange are within the Urban Growth Boundary (UGB), which is located approximately 900 feet east of the site. These land uses in the UGB include a professional office building and, farther to the east, small lot single family residences located within the Charbonneau community. Additionally, the St Francis of Assisi Episcopal Church is located at the southeast quadrant of the interchange, also within the UGB. The Langdon Farms Golf Course is located just south of the church and outside of the UGB. Small lot agricultural uses exist east of the golf course along with some rural residences.
- **West:** Adjoining properties to the west include a 17.46-acre parcel owned by Dwayne and Patricia Wamsher, which is currently used as a rural residence with pastureland. Additionally, an approximately 65-acre property composed of two tax lot parcels owned by Loretta and Duane Stroupe is located south of the Wamsher property and west of the site. The southeast portion of the Stroupe property is heavily forested and not currently in agricultural use. The northern and southwest portion of the property is currently in operation as a plant nursery.

Proposed Uses

The applicant proposes to use the existing facilities on site to park new vehicles and perform minor detail and preparation work on them to prepare them for sale to the public at dealerships in the City of Wilsonville. There will be no sales or any type of retail use at the site.

The proposed use is allowed in the RI zone under the category of "Repair of Motor Vehicles" as listed in Table 604-1 of the Clackamas County Zoning and Development Ordinance (ZDO).

Under the applicant's proposal, the vehicular trips and intensity of land use on the site would be substantially less than that allowed under the CUP (ZO393-05-C) approved by Clackamas County and no retail sales would occur on the site, a prohibition that the applicant would support as a condition of the approval of this comprehensive plan amendment and zone change request.

Deliveries and vehicular trips to and from the site would be minimal and the applicant is proposing that the use of the site will be limited to an intensity that will be substantially below the traffic generation that was permitted on the site with the 2005 I-5 Farm Store use, which was estimated to generate approximately 660 weekday average daily trips (ADT), with approximately 102 AM weekday peak hour trips and 40 PM weekday peak hour trips. As identified in a memorandum provided by Kittelson and Associates included in Exhibit I, the proposed use is estimated to generate 82 week day average daily trips with a total of 22 AM peak hour week day trips and 22 PM peak hour week day trips. As stated in the Kittelson memorandum, the applicant is supportive of a trip cap that would restrict traffic volumes to those permitted under the farm store use, which was projected to generate 660 week day ADT, with 103 week day AM peak hour trips and 41 week day PM peak hour trips.

In addition to the proposed use of the existing facilities for minor servicing of new cars, the RI designation will create the opportunity to locate a small fire and rescue station on the site. In preliminary discussions with the applicant, the Tualatin Valley Fire and Rescue District has stated the need to locate such a facility in the vicinity of Charbonneau at some point. The existing facilities on the site could easily accommodate a small station. No agreement of any kind has been reached regarding the potential use of the applicant's site and, if proposed in the future, the fire and rescue station request would be subject to a conditional use approval as it would be classified as a "Government and Special District Use", a conditional use in the RI zone per ZDO Table 604-1

Figure 1: NE Butteville Rd Tax Lot

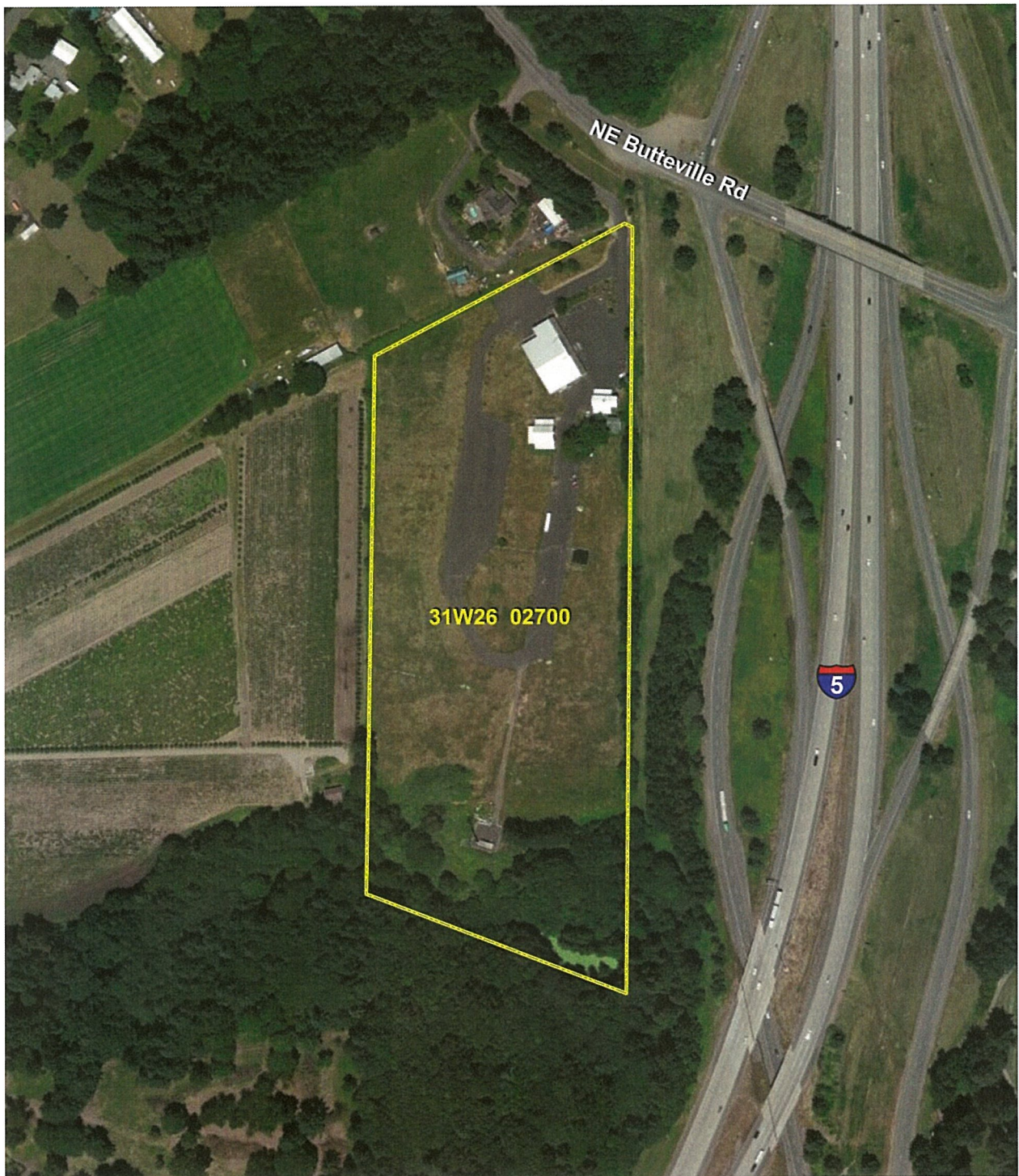


Figure 2: NE Butteville Rd Current Zoning

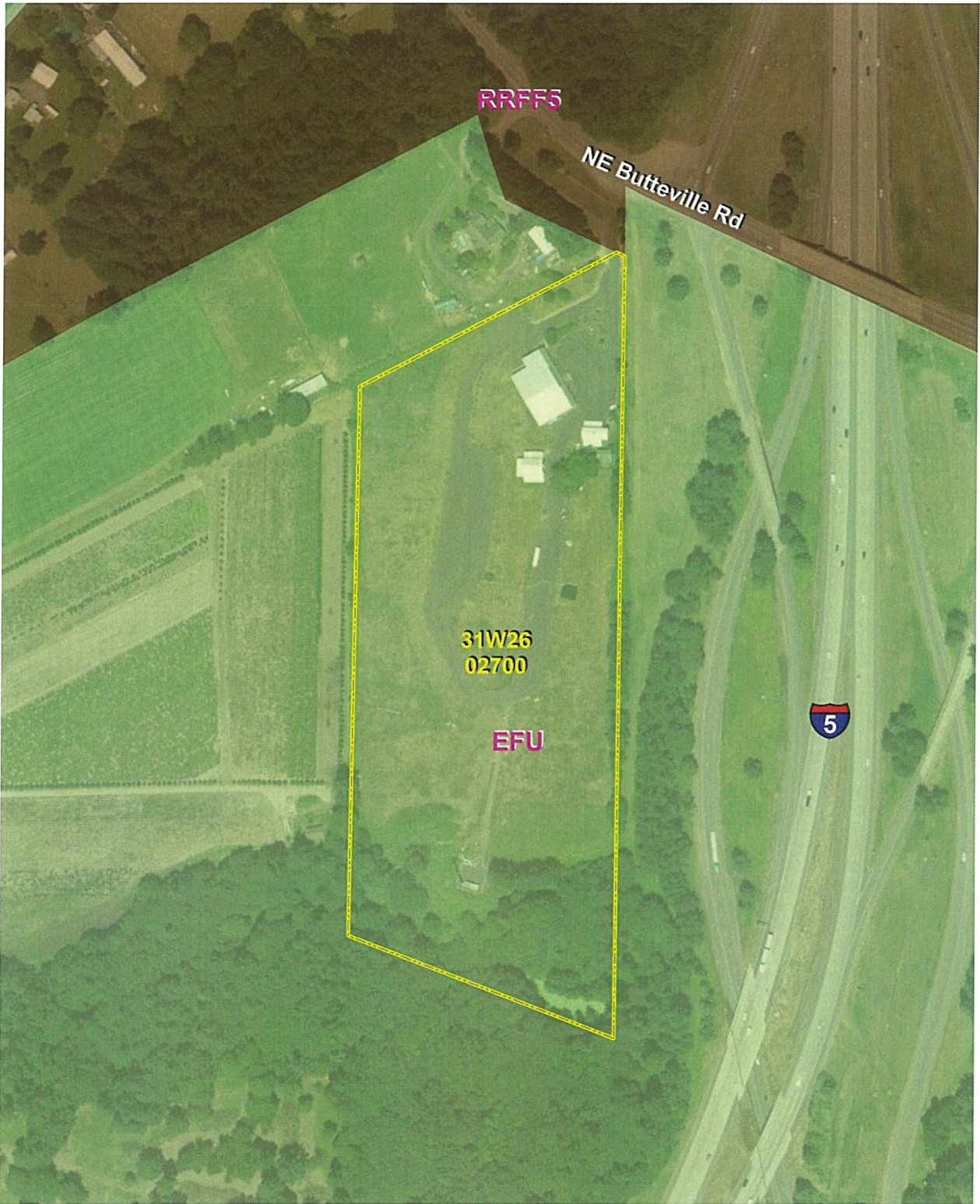
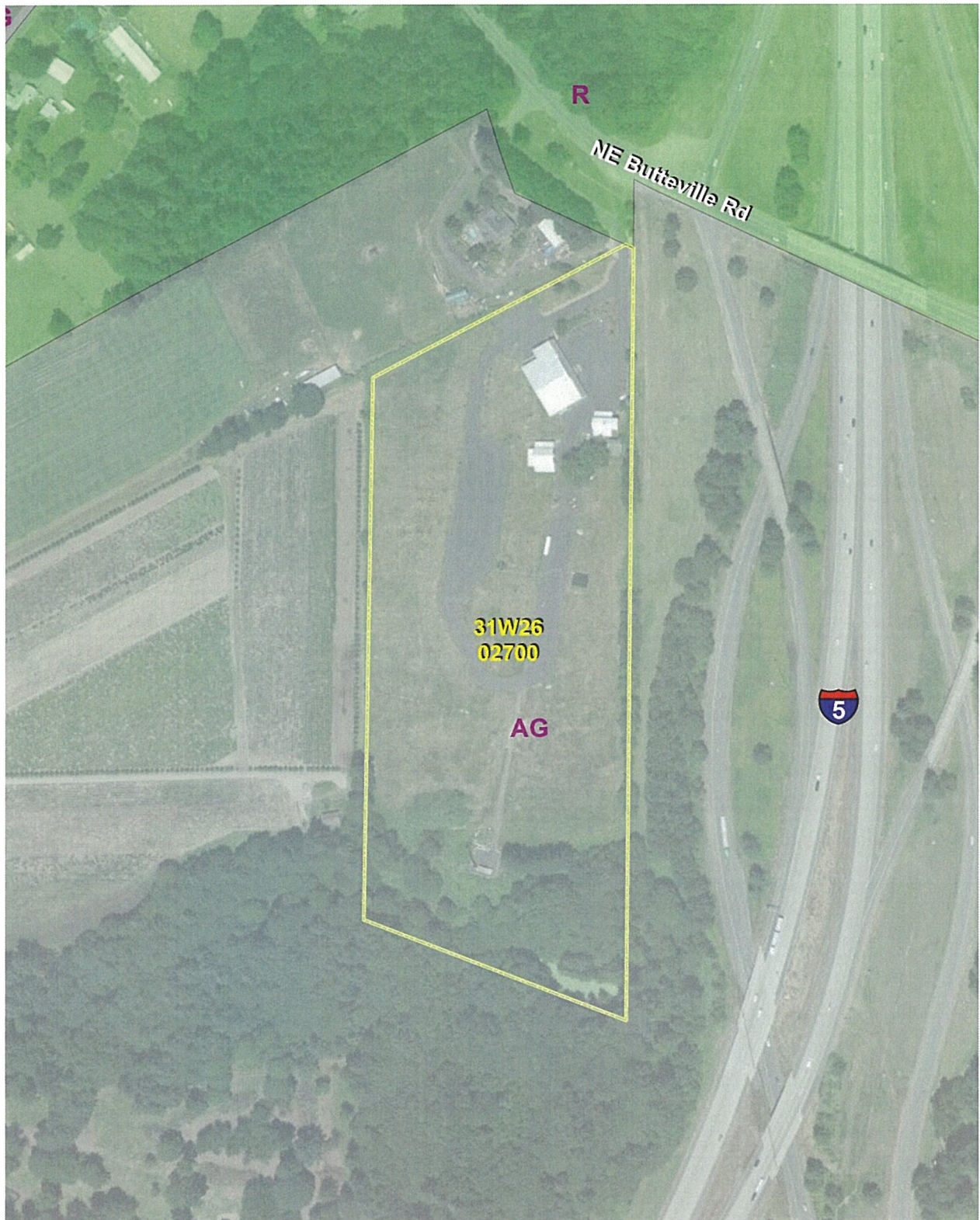


Figure 3: NE Butteville Rd Current Comprehensive Plan Designation



APPLICABLE REGULATIONS AND AUTHORITIES

In addition to satisfying the applicable standards and policies in the ZDO, approval of the requested comprehensive plan amendment and zone change must also address applicable Statewide Planning Goals and the state statute for the granting of an Exception, for which the applicable statute (ORS 197.732) is implemented through the administrative rule (“OAR”) provisions contained in OAR 660-004.

Based on the extensive development of the site, the applicant is requesting a “physically developed” exception to Statewide Planning Goal 3 (Agriculture), as allowed by OAR 660-004-0018 and -0025.

Although the property was included as a Rural Reserve area when Clackamas County and Metro adopted the urban-rural reserve designations (“URR”) for the region in 2011, that designation is not currently in effect due to the still-pending remand of the URR decision from the Oregon Court of Appeals and LCDC. Thus, standards for rural reserve areas are not applicable to the review of this application.

STATEWIDE PLANNING GOALS

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process

Response: Consistent with the County’s citizen involvement policies, two public hearings are conducted. One before the Planning Commission and one before the Board of County Commissioners are required as part of a Type IV review required for the request. Notice of the proposal will be provided to surrounding residents, cities, as prescribed in applicable urban growth management agreements, special districts, government agencies and community members. Through the notice and public hearing process all interested parties will be given the opportunity to review the application, comment on the proposal, and participate in the decision.

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.

Response: The proposed project will follow the Type IV review procedures established in the ZDO Section 1307 consistent with Goal 2 and the provisions in Chapter 4, Land Use Planning, of the Clackamas County Comprehensive Plan.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.

Response: The applicant is seeking an exception to Goal 3. See Exhibit J, a memorandum from Bachrach Law, P.C. that makes goal exception findings. As summarized in this memorandum, the extensive commercial uses currently allowed on the site were found to be in compliance with the county’s Agricultural Lands policy with the county’s decision on Z0393-05-C. The limited use of the property proposed by the applicant will have fewer impacts on the agricultural lands in the area than what is currently permitted. Thus, it is reasonable to conclude that the propose use is also consistent with the county’s goal 3 policy.

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.

Response: Exhibit F of this application package includes a memorandum prepared by Johnson Economics that discusses the important economic considerations associated with the applicant's proposal. The Johnson Economics memorandum demonstrates how the proposal is consistent with the intent of Goal 9 to ensure the "health, welfare, and prosperity of Oregon's citizens." Specifically, the following key findings are included in the memorandum:

- *Under the current CUP, the operation as restricted is highly unlikely to be successfully operated. In other words, the current entitlements will likely result in the existing improvements slowly depreciating without any productive use. The estimated cost of demolition of the improvements to allow for a return to agricultural uses on the site would be roughly \$750,000, reflecting a cost of \$0.95 per square foot. Unimproved farmland in the area is valued at less than \$0.35 per square foot, less than half the cost of demolition of the improvements. As a result, there is no reason to expect that the improvements will be removed to allow for active farming of the property.*
- *A rural industrial designation would allow for a viable use to occupy the structures and ensure their long term maintenance and repair. The proposed designation would provide economic and fiscal benefits to the County, as the property would accommodate employment as well as pay increased property taxes. The property currently generates negligible property tax revenues despite an estimated RMV by the assessor of \$945,246. If zoned as Rural Industrial, the property and improvements would be expected to have a real market value (RMV) of over \$2.5 million. Given the millage rate in the area, the differential in annual property taxes would be approximately \$33,000, providing an estimated \$880,000 in revenue to the County, schools and service districts over the next twenty years.*

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.

Response: Clackamas County has adopted a Transportation System Plan, which evaluates current access and roadway use and anticipates future demands to ensure the transportation needs of residents are met. Additionally, the County maintains building, electrical, engineering, wastewater and water design and construction plans to ensure that public facilities and services needs are met for areas outside of the Urban Growth Boundary (UGB) limits. The proposed development site will not require connections to public water or sanitary sewer lines and can be sustained under the existing well and septic systems in place. Because the proposed use would not require new utility extensions to the site or any other public services beyond what currently exist, it applicant's request is not anticipated to affect or inhibit the timely and orderly public facilities and services as required under Goal 11.

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system. In addition to addressing the needs of the transportation disadvantaged.

Response: Clackamas County has adopted a Transportation System Plan that evaluates current access and roadway use and anticipates future demands to ensure the transportation needs of residents are met. No changes in street classifications are necessary. A traffic assessment was conducted by Charbonneau Engineering in 2004 for the previous CUP approval (Z0393-05-C). The study projected that the proposed use would generate a total of 660 average weekday daily trips (ADT), with 103 AM peak hour week day trips and 41 PM week day peak hour trips. As described in Exhibit I, the September 28, 2015 memorandum from Kittelson and Associates, the proposed use is anticipated to generate

substantially fewer vehicular trips compared to the approved I-5 farm store use and, as a consequence, would ensure and encourage safe and effective vehicular mobility in the project vicinity and on the surrounding road network.

STATE STATUTES AND ADMINISTRATIVE RULES (OARS)

ORS 197.732—Goal Exception standards

GOAL EXCEPTIONS

- (2) A local government may adopt an exception to a goal if:
- (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

Response: Exhibit J includes a memorandum from Bachrach.Law, P.C. that analyzes the applicable legal requirements for a Goal 3 exception due to the “physically developed” condition of the property, and explains how this application satisfies them.

OAR 660-004-0015 Inclusion as Part of the Plan

- (1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.
- (2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

Response: As the reviewing and approval authority for this request, it is anticipated that Clackamas County will draft findings of fact and a statement of reasons, based on the application, to support the determination that the site has addressed and satisfied the standards for a physically developed to substantiate the exception to Statewide Goal 3, “Agricultural Lands.”

OAR Chapter 660, Division 12—Transportation Planning

OAR 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:

Response: The proposed vehicle storage and preparation use will generate substantially fewer vehicle trips than the previously approved I-5 Farm Store. Exhibit I of this application includes a memorandum from Kittelson and Associates that verifies that the proposed use would generate approximately 82 weekday ADT with approximately 22 weekday PM peak hour trips and approximately 22 weekday AM peak hour trips. This total is substantially less than the approved I-5 Farm Store use approved for the site, which was estimated to generate approximately 660 weekday average daily trips (ADT), with approximately 103 AM weekday peak hour trips and 41 PM weekday peak hour trips. Additionally, unlike the approved use for the site, the proposed use would not include weekend events associated with a farmer’s market. The applicant is proposing to limit the number of trips to those of the I-5 farm store use, which will ensure that threshold for the

request to “significantly affect an existing or planned transportation facility” will not be triggered. The significance threshold relates to a change in functional classification or the degradation of a facility so that it would not meet the standards identified in the TSP. No such change is anticipated as the trip levels associated with the proposed use would be less than currently allowed on the site.

CLACKAMAS COUNTY COMPREHENSIVE PLAN

Chapter 3: Natural Resources and Energy

Agriculture

Goals

- **Preserve agricultural lands.**
- **Maintain the agricultural economic base in Clackamas County and the State of Oregon.**
- **Increase agricultural markets, income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries.**
- **Maintain and improve the quality of air, water, and land resources.**
- **Conserve scenic areas, open space and wildlife habitats.**

Policies

1.0 Recognize agricultural areas through appropriate zoning. All agricultural areas shall continue unencumbered by activities/land uses unrelated to agriculture in order to insure productive farm land. Specific policies relating to land use in agricultural areas are found in the Land Use Chapter of this Plan.

Response: Per OAR 660-004-0025), the applicant is requesting a physically developed exception to Goal 3 – Agricultural Lands as described with supportive findings in the Bachrach.Law, P.C. memorandum included in Exhibit J.

3.0 Encourage cooperative agricultural projects in support of small agricultural businesses within the County, e.g., establishment of a receiving/shipping station for fresh produce and a farmers market for the direct exchange of local farm products between growers and the public to benefit the economic viability of agricultural businesses.

Response: In 2005, the subject project site was approved for a CUP to allow for a farmer’s market and commercial sales on the site, consistent with Policy 3. Based on the CUP, the prior property owner completed site improvements, including substantial paving to allow the approved I-5 Farm Store and market. However, the county determined that, in order to qualify as a farm-use consistent with the EFU designation, the farm-stand uses had to be restricted to the sale of farm and non-farm goods grown or raised on a farm within a local agricultural area, which was defined as within a 15-miles radius of the site. That restriction proved an insurmountable impediment to having a profitable farm stand on the site.

Chapter 4: Land Use

Rural Industrial

Goals

- **To provide for the continuation of industrial uses in non-urban areas having an historical commitment to such uses.**

Policies

4.MM.1 The Rural Industrial plan designation may be applied in non-urban areas to provide for industrial uses that are not labor-intensive and are consistent with rural character, rural development, and rural facilities and services.

Response: The proposed preparation of vehicles on the site will not be labor intensive. It is anticipated that approximately 10 employees would work on the site, with shifts that would occur between 7:00 AM and 5:00 PM, Monday through Friday. Inbound vehicles to the facility would be delivered by a truck hauler with approximately eight cars per load. Delivery of outbound vehicles will depend on inventory flow but would average between zero and four cars per day. Approximately 100 cars will be kept on-site on the average for inventory.

As documented in the September 28, 2015 Kittelson and Associates memorandum in Exhibit I, it anticipated that the proposed use would generate approximately 82 week day ADT with approximately 22 week day PM peak hour trips and approximately 22 week day AM peak hour trips. This total is substantially less than the approved I-5 Farm Store use approved for the site, which was estimated to generate approximately 660 weekday average daily trips (ADT), with approximately 102 AM weekday peak hour trips and 40 PM weekday peak hour trips. Additionally, unlike the approved use for the site, the proposed use would not include weekend events associated with a farmer's market. The applicant is proposing to limit the number of trips to those approved with the I-5 farm store to ensure that the applicant's proposal will not have the potential to increase trips from those currently permitted on the site.

The applicant's proposed use can be accommodated by the existing improvements and services. No additional buildings or any other type of improvement is being proposed. The county previously determined that that level of improvements is consistent with rural development and the rural character of the area.

In paragraph 7(a) on Page 27 of the final order issued for the I-5 Farm Store (Z0393-05-C), the hearings officer found that the farmers market was not likely to have a significant impact on farm or forest practices on lands devoted to that purpose and that the presence of an outdoor market with up to 100 vendor tents could compatibly operate with surrounding farm uses. Unlike the I-5 Farm Store operation, the proposed use would have very limited outdoor operations. Outdoor activities would be restricted to temporary storage of vehicles, delivery of materials and vehicles, employee parking and routine maintenance of the buildings and surrounding grounds. No retail sales would occur on the site and the property would not be open to the general public.

In addition, unlike the approved I-5 Farm Store, the proposed use would not require any food preparation and the need for water and sewer facilities would be limited to that needed for employee operations. Therefore, the existing well and septic facilities provide sufficient capacity for this limited use and the use is consistent with rural character, rural development and rural facilities and services.

In addition, the site's proximity to the I-5 interchange and the local rural road network isolate it from the rural uses to the north – mostly small lot residential – and the farm uses to the west. The subject property and the access driveway are located immediately after exiting I-5 onto Butteville Road. Thus, the proposed use is not anticipated to generate traffic that will pass any other properties or rural uses.

Moreover, because the site is well-screened and set back approximately 160-feet from Butteville road, the proposed use will not be visible from the road, which will help maintain the rural character of the area.

4.MM.2. The Rural Industrial (RI) zoning district implements the Rural Industrial plan designation.

Response: In conjunction with the proposed comprehensive plan designation of Rural Industrial, the applicant is also requesting a zone change to the Rural Industrial (RI) zoning district.

4.MM.3. Areas may be designated Rural Industrial when the first, the second, or both of the other criteria are met:

4.MM.3.1. Areas shall have an historical commitment to industrial uses;

Response: Because the property satisfies the state requirements for a physically developed exception (see, Exhibit J, legal memorandum from Bachrach.Law), the county has policy discretion to determine the most appropriate non-Agricultural plan designation.

As determined in the exception analysis, the subject property has been physically developed to an extent that farm-uses are no longer feasible. The existing improvements on the site, upon which the exception is based, could accommodate a number of different uses permitted in both the RI and RC zones. The specific vehicle service use proposed by the applicant is permitted in both the RI and the RC zones.

Both the RI and RC designations have identical “historical commitment” policy considerations, as set out in 4.MM.3 for the RI designation and 4.LL.3.1 for the RC designation. For this application, the historical commitment policy applies to the physical development of the site, as established by the exception, not to the uses.

The comprehensive plan does not define what is meant by “historical commitment.” Thus, the county has discretion in how it interprets and applies that policy when evaluating any particular comprehensive plan amendment. Moreover, LUBA and other reviewing agencies grant broad discretion to a county commission’s interpretation of a provision in its own comprehensive plan.

In the absence of any longevity standard for applying the historical commitment policy, the county can find that the site improvements that support the exception determination have been there long enough to satisfy 4.MM.3.1 or 4.LL.3.1.

While the uses allowed by the prior CUP approval generally could fit within the allowable uses listed for either the RI zone district or the RC zone district, it is not the uses that justified the exception, but rather the physical development of the site.

The question is which designation is more consistent with the site improvements and the proposed new use. On balance, the RI designation is more appropriate because it is more consistent with the limited car service use and the prohibition on retail uses. Moreover, the RC designation limits uses to those that are necessary for rural development, while uses in the RI district are not limited to supporting rural development.

Agricultural

Goals

- **Preserve agricultural use of agricultural land.**
- **Protect agricultural land from conflicting uses, high taxation and the cost of public facilities unnecessary for agriculture.**
- **Maintain the agricultural economic base of the County and increase the County’s share of the agricultural market.**
- **Increase agricultural income and employment by creating conditions that further the growth and expansion of agriculture and attract agriculturally related industries.**

Policies

4.OO.3. Land uses that conflict with agricultural uses shall not be allowed.

Response: Agricultural uses in the area are identified in Exhibit H. The site is bordered to the west by an active plant nursery and pastureland. However other surrounding uses consist primarily of vacant forest land, public rights of way and rural residences. The proposed vehicle storage and detail preparation work is a low intensity use and vehicle travel onto and off the site will be limited and infrequent. The primary services will occur within enclosed buildings.

The proposed preparation of vehicles on the site will not be labor intensive. It is anticipated that approximately 10 employees would work on the site, with shifts that would occur between 7:00 AM and 5:00 PM, Monday through Friday. Inbound vehicles to the facility would be delivered by a truck hauler with approximately eight cars per load. Delivery of outbound vehicles will depend on inventory flow but would average between zero and four cars per day. Approximately 100 cars will be kept on-site on the average for inventory.

As documented in the September 28, 2015 Kittelson and Associates memorandum in Exhibit I, it anticipated that the proposed use would generate approximately 82 week day ADT with approximately 22 week day PM peak hour trips and approximately 22 week day AM peak hour trips. This total is substantially less than the approved I-5 Farm Store use approved for the site, which was estimated to generate approximately 660 weekday average daily trips (ADT), with approximately 102 AM weekday peak hour trips and 40 PM weekday peak hour trips. Additionally, unlike the approved use for the site, the proposed use would not include weekend events associated with a farmer's market. Additionally, unlike the approved use for the site, the proposed use would not include weekend events associated with a farmer's market. The applicant is proposing to limit the number of trips to those approved with the I-5 farm store to ensure that the applicant's proposal will not have the potential to increase trips from those currently permitted on the site.

In paragraph 7(a) on Page 27 of the final order issued for the I-5 Farm Store (Z0393-05-C), the hearings officer found that the farmers market was not likely to have a significant impact on farm or forest practices on lands devoted to that purpose and that the presence of an outdoor market with up to 100 vendor tents could compatibly operate with surrounding farm uses. Unlike the I-5 Farm Store operation, the proposed use would have very limited outdoor operations. Outdoor activities would be restricted to delivery of materials and vehicles, employee parking and routine maintenance of the buildings and surrounding grounds. No retail sales would occur on the site and the property would not be open to the general public.

4.OO.4. New sewer facilities shall not be allowed in Agricultural areas

Response: The proposed use will not require the extension of sewer facilities and will utilize the existing septic system on the site. The on-site septic system includes nine tanks and drain fields in addition to a separate 3,000-gallon gray water tank system. As noted above, unlike the approved I-5 Farm Store, the proposed use would not require any food preparation and the need for water and sewer facilities would be limited to that needed for employee operations. Therefore, the existing well and septic facilities provide sufficient capacity for this limited use and the use is consistent with rural character, rural development and rural facilities and services.

Chapter 5: Transportation System Plan

Policies

5.O.10 Rural: Plan to support the existing development pattern and through traffic needs of the rural communities, and not to support or promote urbanization.

Response: The primarily roads in the project vicinity, as identified on the Surrounding Land Uses map in Exhibit H include NE Prah Road, NE Butteville Road, NE Boones Ferry Road and NE Miley Road. The I-5 right of way obstructs east-west travel in the immediate vicinity of the site. Due to the proximity of the to the I-5 interchange, it is anticipated that most traffic to and from the site will utilize I-5.

As documented in the September 28, 2015 Kittelson and Associates memorandum in Exhibit I, it anticipated that the proposed use would generate approximately 82 week day ADT with approximately 22 week day PM peak hour trips and approximately 22 week day AM peak hour trips. This total is substantially less than the approved I-5 Farm Store use approved for the site, which was estimated to generate approximately 660 weekday average daily trips (ADT), with approximately 102 AM weekday peak hour trips and 40 PM weekday peak hour trips. Additionally, unlike the approved use for the site, the proposed use would not include weekend events associated with a farmer's market. The applicant is proposing to limit the number of trips to those approved with the I-5 farm store to ensure that the applicant's proposal will not have the potential to increase trips from those currently permitted on the site. This will also ensure that the proposal will not impede the traffic needs of the surrounding rural community.

5.Q.5 **Access Standards shall be implemented through the Zoning and Development Ordinance and the County Roadway Standards. Where access management standards are adopted by the County in Special Transportation Plans, those standards shall apply.**

Response: Access to the site is provided via a driveway with a 20-foot access easement from NE Butteville Road. The existing access is adequate to support the limited uses and no changes are proposed.

5.R.1 **Require new development to be served by adequate transportation facilities and access points that are designed and constructed to safely accommodate all modes of travel.**

Response: No new development is being proposed with this application. The existing road network and access are adequate to serve the proposed uses. Access to the site is provided via a driveway with a 20-foot access easement from NE Butteville Road. The driveway and access easement were a part of the previous CUP approval (Z0393-05-C) and it is not anticipated to change with the proposed use.

Chapter 8: Economic

Goals

- **Establish a broad-based, stable, and growing economy to provide employment opportunities to meet the needs of the County's residents.**
- **Retain and support the expansion of existing industries and businesses.**
- **Attract new industrial and commercial development that is consistent with environmental quality, community livability, and the needs of County residents.**

Policies

- 8.A.2 Encourage maintenance of sufficient vacant lands to provide room for the future expansion or relocation of the County's industry and business.
- 8.B.7 Encourage the retention of vacant industrial and commercial lands in large parcels until committed for development, at which time overall development plans should be prepared for the site.
- 8.C.4 Cooperate with the private sector to achieve economic development in the County.
- 8.C.5 Coordinate with local jurisdictions to obtain compatible policies, ordinances, and land-use designations for economic development.

Response: The proposed vehicle repair use will ensure a productive use of the existing facilities on the site, which will allow for the employment of approximately 10 employees and the placement of an economically viable use on the site that will allow for the continued maintenance and preservation of the assessed value of structures on the property.

Exhibit F of this application package includes a memorandum prepared by Johnson Economics that discusses the important economic considerations associated with the applicant's proposal. The Johnson Economics memorandum demonstrates how the proposal is consistent with the intent of Statewide Planning Goal 9 and Chapter 8 of the county comprehensive plan. Specifically, the following key findings are included in the memorandum:

- *Under the current CUP, the operation as restricted is highly unlikely to be successfully operated. In other words, the current entitlements will likely result in the existing improvements slowly depreciating without any productive use. The estimated cost of demolition of the improvements to allow for a return to agricultural uses on the site would be roughly \$750,000, reflecting a cost of \$0.95 per square foot. Unimproved farmland in the area is valued at less than \$0.35 per square foot, less than half the cost of demolition of the improvements. As a result, there is no reason to expect that the improvements will be removed to allow for active farming of the property.*
- *A rural industrial designation would allow for a viable use to occupy the structures and ensure their long term maintenance and repair. The proposed designation would provide economic and fiscal benefits to the County, as the property would accommodate employment as well as pay increased property taxes. The property currently generates negligible property tax revenues despite an estimated RMV by the assessor of \$945,246. If zoned as Rural Industrial, the property and improvements would be expected to have a real market value (RMV) of over \$2.5 million. Given the millage rate in the area, the differential in annual property taxes would be approximately \$33,000, providing an estimated \$880,000 in revenue to the County, schools and service districts over the next twenty years.*

Chapter 11: The Planning Process

Amendments and Implementation

Clackamas County citizens need a Comprehensive Plan that will meet and guide changing needs and circumstances for the physical and economic growth within the County. . . . It must be kept current through . . . appropriate review.

Response: Amending the subject property's comprehensive plan designation from Agriculture to Rural Industrial is consistent with the County policy to keep the Plan current by taking appropriate actions to recognize and address changing needs and circumstances. As a general policy matter, the Board of Commissioners ("BCC") has recognized the property's unique circumstances as supporting the change to a Rural Industrial designation.

CLACKAMAS COUNTY ZONING & DEVELOPMENT ORDINANCE PROVISIONS

Section 1202—Zone Changes

1202.03 General Approval Criteria

A zone change requires review as a Type III or IV application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

A. The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.

Response: The goals and policies in the comprehensive plan applicable to this request are listed and addressed in responses in this narrative to demonstrate how the applicant's request is consistent with the Comprehensive Plan.

B. If development under the proposed zoning district designation has a need for any of the following public services, the need can be accommodated with the implementation of the applicable service provider's existing capital improvement plan: sanitary sewer, surface water management, and water. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

Response: The planned use of the site would not require public services. Planned operations on the site will continue to use the septic and well systems available on the site. Stormwater infrastructure, including stormwater detention basins, is already in place on the property.

C. The transportation system is adequate, as defined in Subsection 1007.09(D), and will remain adequate with approval of the proposed zone change. Transportation facilities that are under the jurisdiction of the State of Oregon are exempt from Subsection 1202.03(C). For the purpose of this criterion:

- 1. The evaluation of transportation system adequacy shall include both the impact of the proposed zone change and growth in background traffic for a 20-year period beginning with the year that a complete zone change application is submitted pursuant to Section 1307.**

Response: As documented in the September 28, 2015 Kittelson and Associates memorandum in Exhibit I, it anticipated that the proposed use would generate approximately 82 week day ADT with approximately 22 week day PM peak hour trips and approximately 22 week day AM peak hour trips. This total is substantially less than the approved I-5 Farm Store use approved for the site, which was estimated to generate approximately 660 weekday average daily trips (ADT), with approximately 102 AM weekday peak hour trips and 40 PM weekday peak hour trips. Additionally, unlike the approved use for the site, the proposed use would not include weekend events associated with a farmer's market. The applicant is proposing to limit the number of trips to those approved with the I-5 farm store. This proposal will limit the number of trips to ensure that the proposed use of the property will operate at a scale and intensity that is less than that will not exceed existing approved land uses permitted under the current comprehensive plan and zoning designation.

- 2. It shall be assumed that all improvements identified in Comprehensive Plan Table 5-3a, 20-Year Capital Projects; the Statewide Transportation Improvement Plan; and the capital improvement plans of other local jurisdictions are constructed.**

Response: A trip comparison memorandum has been prepared by Kittelson and Associates and is provided in Exhibit G of this application. Because the proposed use of the property would generate substantially fewer trips than the permitted I-5 Farm Store on the property, a full traffic impact analysis has not been prepared and is not necessary to demonstrate the adequacy of system capacity over the 20-year horizon.

- 3. It shall be assumed that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.**

Response: The applicant is proposing to limit the number of trips to the level identified in the Kittelson and Associates memorandum in Exhibit G, which will ensure that the proposed use of the property will operate at a scale and intensity that is less than that allowed under existing conditions, which will ensure that the proposal will not result in any greater

transportation impact than that permitted under the current comprehensive plan and zoning designation.

4. **Transportation facility capacity shall be calculated pursuant to Subsection 1007.09(E).**

Response: Because the proposed use of the property would generate substantially fewer trips than the approved I-5 Farm Store, a full traffic impact analysis with an evaluation of transportation facility capacity has not been prepared.

5. **A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.**

Response: A full assessment of the traffic impacts for the I-5 Farm Store was conducted in 2005 by Charbonneau Engineering and was submitted with Z0393-05-C. This study provides substantial analysis regarding the system adequacy for the I-5 Farm Store and county staff and the county hearings officer found that the transportation system could adequately serve the farm store use. The proposed use of the property for the preparation and temporary storage of vehicles, as described in the Kittelson and Associates memorandum in Exhibit G, would result in substantially fewer trips than the approved farm store use. Given the relatively recent traffic analysis conducted with the I-5 Farm Store and the substantial reduction in vehicular trips anticipated from the proposed use, a trip generation comparison memorandum has been provided rather than a transportation impact study.

D. **The proposed zone change, as it relates to transportation facilities under the jurisdiction of the State of Oregon, complies with the Oregon Highway Plan.**

Response: The applicant is proposing to limit the allowable trips on the site to those already permitted for the I-5 farm store operation, a use that has been approved by the County with Z0393-05-C. With this limitation, the applicant has ensured that there will be the zone change will not result in the degradation of the level of service of the surrounding local and state road facilities.

E. **Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.**

Response: Approval of the prior use of the site included a safety review as documented in the I-5 Farm Outlet Traffic Assessment and Sight Distance Certification dated January 22, 2004 by Charbonneau Engineering LLC. A trip cap is proposed in conjunction with the proposed zone change, ensuring that no additional vehicular trips are generated by the site as compared to the former approved site use.

CONCLUSION

As discussed in detail in this narrative and as evidenced in the attached supporting materials, the Applicant's request for a comprehensive plan amendment and zone change on the site is warranted given the physically developed condition of the property and due to numerous other supporting factors including:

- A substantial reduction in the number of vehicular trips that could occur with the use compared to the approved I-5 Farm Store.
- As described in the application, the uses will be limited to servicing new cars and no retail sales of any kind will be allowed. Furthermore, the traffic generated by approved use, and any additional uses proposed in the future, must meet the trip cap described in Exhibit I, a September 28, 2015 memorandum from Kittelson and Associates, Inc.

- The limited scale and nature of the proposed use will ensure that the proposed use is consistent with the active farm operations to the west of the site and the overall rural character of the area.
- Costs of demolition of existing structures exceed the value of the site as unimproved farmland serving as an economic impediment to committing the site to agricultural production.
- Allowance for the proposed use will ensure that existing facilities on the site will be maintained over time and will provide sustained property tax revenues on the site for Clackamas County.



January 11, 2016

Clackamas County Planning Commission
Department of Transportation and Development
Development Services Building
150 Beaver Creek Road
Oregon City, Oregon 97045

Re: Case File No. ZO419-15-CP & ZO420-15-ZAP
Comprehensive Plan Map Amendment from Agriculture to Rural Industrial and Zone
Change from EFU to Rural Industrial

Dear Members of the Planning Commission:

1000 Friends of Oregon is a statewide nonprofit organization with over 40 years of experience in Oregon's land use planning laws, including extensive experience in the planning and zoning of agricultural lands, forest lands, exception areas, and rural and urban reserves. We appreciate your taking into consideration our comments on this application.

The applicant proposes to change the comprehensive plan designation of 18.25 acres from Agriculture to Rural Industrial and the zoning designation from Exclusive Farm Use (EFU) to Rural Industrial (RI). The subject property is described as T3S, R1E, section 26, Tax Lot 2700 W.M., located next to the I-5 interchange at NE Butteville Road, Aurora (Exit 282). The proposed use is to accept delivery of new vehicles, prepare them for sale in various ways, store them, and then ship them to auto dealership(s) within the Metro urban growth boundary.

The application should be denied for several reasons, including that it fails to meet the legal requirements for an exception to the Agriculture and EFU plan and zone designation, and it is contrary to the rural reserve designation on the land. In addition, the proposed use does not fall into the county's allowed uses in a rural industrial zone. Each of these is addressed below.

I. Exception – Physically Developed

The applicant proposes an exception to Goal 3, Agriculture, on the grounds that the property is "physically developed to the extent that it is no longer available for the uses allowed by" Goal 3. OAR 660-004-0025. The applicant claims that the buildings and pavement on about 3.5 acres of the 18.25 acre site render the entire property developed to the point that it cannot be used for agriculture and other uses allowed under Goal 3. This is legally flawed for at least two reasons.

First, as described in the application, the structures and pavement on the property were approved as uses allowed outright or conditionally in the EFU zone, in Clackamas County Conditional Use Case No. Z0393-05-C. These uses include an “agricultural marketing and service center” in conjunction with farm use, and a dwelling, barn, farm stand, and storage building.¹ The law is clear - development allowed under Goal 3 cannot be later used to justify an exception to Goal 3: “Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.” OAR 660-004-0025(2). *See also Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995) and *DLCD v. Columbia County*, 32 Or LUBA 221 (1996).

Therefore, the uses allowed and developed on this property cannot be used to justify this application for a physically developed exception to Goal 3.

Second, the property is not physically developed to the extent it is no longer available for uses allowed by Goal 3. Approximately 20% of the property appears to have pavement or structures on it. Assuming for the sake of argument that this development renders that portion of the site unusable for farming (which it does not because it is farm-related development), the remainder of the property consists of agricultural soils, and the property is located in a thriving agricultural area.

II. Proposed Use Does Not Qualify as a Rural Industrial Use

The use proposed by the applicant – to accept delivery of new automobiles and vehicles; prepare them for retail sale including detailing work, dusting, vacuuming, and other preparation work; store up to 100 cars onsite; and ship them to a dealership(s) inside the Metro urban growth boundary (UGB) – does not appear to qualify as a rural industrial use under state or county law. Rather, it is an urban use connected with a retail sales car dealership.

As stated in the applicant’s materials:

“While the site is not within the Wilsonville UGB, the proposed use allows for an intensification of use on urbanizable property within Wilsonville’s UGB through the transfer of low intensity uses from within the UGB to the subject site.”²

The proposed use is an integral part of the operation of a business inside the urban growth boundary - the sale of new cars to urban residents. In addition, the intensity of 100 cars parked on the site is similar to the intensity of car dealerships located inside UGBs. The proposed use appears to be an urban use requiring an exception to Statewide Planning Goal 14, Urbanization.

¹ Cardno, Application, Sept. 30, 2015, pp. 0-1.

² Johnson Economics, Memorandum of 9.29.15, p. 3.

In addition, the proposed use does not seem to meet the Clackamas County Comprehensive Plan definition of “Rural Industrial.” The County’s Rural Industrial Policies provide that areas may be designated if the first, second, or both of the third and fourth criteria are met:

- 4.MM.3.1. Areas shall have a historical commitment to industrial uses; or
- 4.MM.3.2. The site shall be an abandoned or diminished mill site as defined in the Zoning and Development Ordinance, provided that only the portion of the site that was improved for the processing or manufacturing of wood products may be designated Rural Industrial; or
- 4.MM.3.3. Areas shall be located within an Unincorporated Community; and
- 4.MM.3.4. The site has direct access to a road or at least an arterial classification.

The property does not have an historical commitment to industrial uses; rather to agricultural uses. It is not an abandoned mill site. It is not inside an unincorporated urban community; rather it is zoned EFU.

Finally, even if the property could be designated as a physically developed exception area, the applicant has not demonstrated how its proposed uses meet the criteria of OAR 660-004-0018(2).³ In particular, while the aerial photos demonstrate extensive agricultural activities adjacent to and near the subject property, the application itself provides little description of these and the farm and forest activities associated with them, rendering statements that the proposed new vehicle preparation activities meet OAR 660-004-0018(2) without substantial evidence.

III. Rural Reserve Designation

The application is in an area designated as a rural reserve, and thus no exceptions to the Agriculture and EFU plan and zone designations are allowed.

The applicant claims that:

“Although the property was included as a Rural Reserve area when Clackamas County and Metro adopted the urban-rural reserve designations (URR) for the region in 2011, that designation is not currently in effect due to the still pending remand of the URR

³ The applicant describes the LUBA decision in *Ooten v. Clackamas County*, LUBA No. 2014-069 (November 20, 2014) and the applicability of the majority opinion. This is irrelevant because: (1) the current application does not meet the conclusions in either the majority or concurring opinion about how to apply OAR 660-004-0018(2), and (2) the applicant conflates the issue in *Ooten* – how to zone land that has **already** qualified for an exception – with whether the land meets the requirements for an exception in the first place. It is the latter that is at issue here. This land does not qualify for an exception.

decision from the Oregon Court of Appeals and LCDC. Thus, standards for rural reserve areas are not applicable to the review of this application.”⁴

We believe this is an incorrect analysis. Clackamas County adopted rural reserves. Ordinance ZDO-223. The reserves are adopted, but not yet acknowledged, due to the remand by the Court of Appeals. Therefore, the reserves are still in place. OAR 660-027-0070(3) provides:

“Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are redesignated, consistent with this division, as land other than rural reserves...”

Whether the reserves are acknowledged is irrelevant; the county has adopted rural reserves. And, regardless of the status of reserves, as described above the application does not even meet the legal requirements for a physically developed exception.

The Planning Commission should deny this application for a plan and zone change. The application does not meet the criteria for a physically developed exception and is contrary to the designation of rural reserves. Thank you for consideration of our comments.

Sincerely,



Mary Kyle McCurdy
Policy Director and Staff Attorney

⁴ Cardno, Application, Sept. 30, 2015, p. 8.



29799 SW Town Center Loop E
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January 12, 2016

VIA EMAIL: mfritzie@clackamas.us
AND FIRST CLASS MAIL

Martha Fritzie
Clackamas County Planning Commission Members
Clackamas County Dept. of Transportation and Development
150 Beaver Creek Rd
Oregon City OR 97045

**Re: Case File No. Z0419-15-CP & Z0420-15-ZAP
26444 NE Butteville Road, Aurora**

Dear Ms. Fritzie and Clackamas County Planning Commission:

The City of Wilsonville (“City”) submits this testimony, for the record, in opposition to the proposed comprehensive plan amendment from Agricultural to Rural Industrial, with a corresponding zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI) for an 18.25-acre parcel of land located immediately off of the I-5 interchange at NE Butteville Road - 26444 NE Butteville Road, Case File No. Z0419-15-CP & Z0420-15-ZAP.

Although there are numerous grounds upon which the City could base its objections, we will start with the primary ground, which is the recent on point Court of Appeals decision in *Ooten v. Clackamas County*, which is dispositive of the issue at hand and which decision the Applicant apparently overlooked in making critical arguments in support of its application to Clackamas County. *Ooten v. Clackamas County*, 270 Or. App. 214 (2015).

I. Ooten v. Clackamas County is Dispositive

In the Applicant’s memorandum in support of its application for a comprehensive plan amendment and zone change, the Applicant writes “In *Ooten* [sic] *v. Clackamas County*, LUBA No. 2014-069 (November 2014), each of the three members of LUBA provided different and conflicting interpretations of the rule and how it applies to physically developed or irrevocably committed exceptions.” The Applicant goes on to argue that the LUBA case does not contain a majority opinion as to the correct interpretation of whether OAR 660-004-0018(1) and (2) is conjunctive or whether less than all of the requirements – in fact, only one of the requirements – can suffice in order to avoid the need to take a reasons exception to Goals 3 and 4. Although the majority of the LUBA members clearly agreed that conjunctive requirements must be met to satisfy the law, the Applicant hangs its hat on the concurring opinion of only LUBA member Holstun that the interpretation of OAR 660-004-0018(1) and (2) that was established pre-*Ooten* should remain in effect until a new and binding interpretation is provided by a higher appellate court or until LCDC adopts a new rule to clarify the existing rule.



Based on the Applicant's assertion that the interpretation remains unresolved, we can only assume the Applicant is unaware that the higher appellate opinion has already been rendered. On April 1, 2015, on judicial review of the LUBA *Ooten* decision, the Oregon Court of Appeals held as follows: *"Although petitioner acknowledges that the word "and" at the end of OAR 660-004-0018(2)(c) ordinarily would be construed to mean that all four requirements under section (2) must be met in order to avoid the need to take a reasons exception, petitioner argues that we should construe that "and" to mean "or" and hold that the county need not take a reasons exception to Goals 3 and 4 if it finds that any one of the four requirements in OAR 660-004-0018(2) is met. We decline petitioner's request to read the "and" at the end of OAR 660-004-0018(2)(c) to mean "or"... we presume that LCDC intended that the provisions of OAR 660-004-0018(2) would apply conjunctively rather than disjunctively as a result of the amendment. It is not our role to repeal that amendment by interpreting the word "and" to mean "or." Affirmed.*" *Ooten v. Clackamas County*, 270 Or. App. 214, 223 (2015).

Although the City's position is that the Court of Appeals has clearly resolved what the County's decision on this application must be, and it is on this basis alone the application must be denied, in order to make the City of Wilsonville's position on these continuing efforts to turn valuable and scarce agricultural land into marginal industrial uses, and in order to preserve all arguments for the record, the City also raises the following additional objections, for the record, to this ill-conceived application:

II. Misleading Representations of Intended Uses and Co-Applicant

The Applicant has misrepresented Tualatin Valley Fire and Rescue District (TVFR) to be a party to the application for the purpose of building a fire station on the site when, in fact, TVFR informs the City that TVFR never agreed to be a party to the application and no agreement has been reached regarding a fire station being located on the property.

III. County Comprehensive Plan/Zoning Requirements Contrary to Application

The Clackamas County Comprehensive Plan (CCCP) 4.MM.3 sets forth the requirements for areas to be designated rural industrial. Areas may be designated if the first, second, or both the third and fourth requirements are met. The first requirement is that areas have a historical commitment to industrial uses. This area clearly has no history of industrial uses. The second requirement is that the site shall be an abandoned or diminished mill site. The property at issue is not a former mill site. Finally, requirements three and four state that the area must be located in an unincorporated community and that the site has direct access to a road of at least an arterial classification. The property at issue is located in an unincorporated community but Butteville Road is not a road of arterial classification, but rather a collector. See Clackamas County's Transportation System Plan Map 5-4b Road Functional Classification/Rural. Given that this property does not have a history of industrial use, was never a mill site, and has no access to a road that is at least of an arterial classification, the application fails to meet the minimum requirements of the CCCP.

Rezoning the property would turn prime agricultural land into an industrial car wash and auto detailing facility, which is a prohibited use under Clackamas County Zoning Ordinance (CCZO) Table 604-1. While CCZO permits repair of motor vehicles, the Applicant will not be using the land as a repair facility but rather to store, wash, and prep vehicles for sale at urban car dealerships. Urban commercial businesses should not be allowed to transform scarce prime farm land into support services.

The property at issue lies in a rural reserve designated 4J. (See Map of Clackamas County Urban and Rural Reserves, approved August 21, 2010, and Revised Findings for Clackamas County Urban and Rural Reserves, April 21, 2011.) Rural reserves were created to “provide long-term protection to the region’s most valuable and financially viable farms and commercial forests, as well as to protect significant natural features such as wetlands, rivers and floodplains, buttes and savannas from urban development.” The Revised Findings also state that the County’s Policy Advisory Committee found that the French Prairie area rated “high” under factors for long-term protection for agriculture industries.

Spot zoning is the application of zoning to a specific parcel of land within a larger zoned area when the rezoning is usually at odds with current zoning and plan designation restrictions, as is the case here. Spot zoning is a poor land use practice and could be ruled as an arbitrary, capricious, and unreasonable treatment of a limited parcel of land. While zoning regulates the land use in whole districts, spot zoning makes unjustified exceptions for a parcel or parcels within a district. The County should avoid spot zoning as it will create incompatible conditions between urban and rural uses.

IV. Proposed Commercial Use Belongs in an Urban, Not Rural Area

The Applicant maintains that only roughly 2 acres of the property will be used to conduct business, leaving more than 16 acres of prime agricultural land remaining. The need to rezone more property than necessary leads the City to believe that the application is misleading, either regarding the scale of the operation or in the ultimate actual planned use of the property. Could this be yet another attempt to begin rezoning prime farm land to rural industrial use, which efforts have been repeatedly opposed by Wilsonville and many others? Based on the protracted and continuing failed efforts of other land investors just south of this location, these businessmen should have been well aware of the current zoning and importance of this farm land before purchasing it and the hope of up-zoning it for profit.

The application fails to address any wastewater impacts on prime farm land that may result from the planned use. Nothing in the record seems to address this issue.

The property lacks urban services – particularly wastewater treatment processing – necessary for commercial/industrial operations, and none are available.

There are currently seven car dealerships in Wilsonville, indicating that the potential for an expansion of the proposed business on the site is high. The Applicant owns or is affiliated with at least two of the seven dealerships.

Wilsonville has both commercial and industrial sites readily available that would accommodate the Applicant's proposed business operation. While encouraged to contact the City regarding potential sites that could accommodate Applicant's proposed use, the Applicant, however, has never contacted the City to inquire about appropriate available sites. When urban commercial and industrial land and water is available, it makes no sense to grab valuable land and water resources from our remaining limited supply of prime Willamette Valley farm land in order to convert its use to a car wash and detail lot. While this land was no doubt far less expensive than the available commercial or industrial sites, there is no reason the community should suffer the permanent loss of valuable natural resources in order to subsidize an already highly profitable business enterprise and promote land speculation with an eye toward up-zoning prime farm land to a more commercially profitable industrial land use designation.

V. Land, Was, Is, and Should Remain Agricultural

The subject site is 18.25 acres in area. Contrary to what the application states, the subject site is not irrevocably committed to urbanization. The Applicant describes improvements on the site as "extensive" when, in fact, all are contained within a small concentrated radius of a much larger site, as is evidenced by the following statistics about the site development:

- The site contains a total of 3.6 acres (19.7% of the entire site) of impervious surfaces in the form of buildings and pavement.
- The building footprints total 0.5 acres (2.7% of the entire site), leaving 3.1 acres (17%) of asphalt pavement.

The use of the existing buildings to support agricultural operations is not only reasonable, but entirely feasible. Three of the site's four buildings directly support agricultural operations. The first is a home, the second is a tractor and equipment storage building, and the third is a barn, all of which are supportive of EFU/agricultural operations and an agricultural plan and zone designation. These buildings are not an impediment to agricultural operations but are directly supportive of such primary use.

The asphalt can easily be ground into crushed material that has a multitude of beneficial, value-added uses, including road subgrade, trench excavation backfill, or just fill. The actual value to return the site to agricultural use is only the cost of the removal of the asphalt, which may have other market values. This cost is not an impediment to returning the site to a beneficial agricultural use.

The Applicant asserts the estimated cost to return the land to agricultural use is excessive. This is false. The buildings on the property do not need to be removed to return the land to farm land, nor does the small area of pavement, but if there were a desire to do either, the cost is far from prohibitive.

The Applicant's assertion that there is not enough high value farm use within a 15 mile radius of the property is incredulous. The fact of the matter is that the vast majority of the land in that radius is zoned for agriculture and is in active agricultural use. Using the Applicant's own map, the City is in the processing of identifying all of the active farming operations in the area. Although the map will be done this week, it could not be completed in time to send with this testimony in order to meet the staff's deadline of today, but it will follow later this week as a supplemental submittal. Contrary to the Applicant's erroneous assertion, the map will demonstrate that the land is dominated by the agricultural uses it is properly zoned for.

Although a conditional use permit was granted for a farm store, which is a closely related agricultural use, and that conditional use came with significant restrictions, the grant of a farm related conditional use should in no way be construed to convert the land from agricultural use to rural industrial use, which the Applicant tries to argue. Conditional uses are only valid for four years, with the idea being that the granted use rights are temporary and the use is never to be construed as any kind of de facto zone change.

The City adamantly disagrees with the declaration that the land cannot be used in compliance with Statewide Planning Goal 3. The Applicant requests a "physically developed" exception to Statewide Planning Goal 3, which addresses agricultural lands. While an exception may be adopted if the land is physically developed to the extent that it is no longer available for uses allowed by Planning Goal 3, that is clearly not the case with this property. While there are minor physical improvements made to a small portion of the 18.25-acre site, all of those improvements are fully compatible with farm use. There are numerous uses that would maintain compliance with state planning goals, including another farm stand, full farming operation, storage of farming equipment, livestock operations, a winery, and a hops farm. The list could go on. In fact, given the close proximity to the freeway, the site is an ideal location for a farm stand, farm to table business, vineyard with tasting room, or an equestrian facility, just to name a few possibilities that are far better suited to the site than a large car wash and auto storage area. The Applicant's statements that the buildings are not suitable for farm uses and that their removal of those buildings is cost prohibitive are both false. The buildings are fully reusable but, if a farmer elected to have them removed, we know that TVFR is always seeking out structures that can be safely burned as part of their training.

The City disputes the argument that the proposed uses by the Applicant are more consistent with the site's rural status than the "extensive commercial 'farm-uses' approved by the county." This is perhaps the Applicant's most preposterous argument of all. The proposed uses for a car dealership's washing, detailing, and storage of vehicles, unlike the farm stand, has no nexus whatsoever to agriculture or farming. The property remains well suited to farm uses for all of the

reasons described above and for all of the reasons it has been classified as farm use since adoption of the CCCP. The farm stand was directly related to the local economy and community, which is primarily based on agriculture.

VI. Transportation Planning/Traffic Issues Are Not Addressed

The Applicant's proposal for a comprehensive plan map amendment and zone change triggers the requirements of the Transportation Planning Rule (OAR 660-012-0060). The Applicant has not prepared a sufficient analysis of the traffic likely to be generated from the project to determine if there will be a significant effect on the state highway system, particularly the I-5 ramps and the Boone Bridge. At a minimum, the Applicant needs to perform the detailed analysis to and provide findings that support the conclusion that there is no significant effect.

The traffic study cited in the Trip Generation Comparison was performed in 2004, prior to the issuance of the conditional use permit for the farm store. Thus, the prior conditional use permit is not even relevant for determining current traffic impacts and a new study should be conducted and is, in fact, legally required.

Baseline conditions have deteriorated significantly along the I-5 corridor in the vicinity of the proposal. The only way to determine if the current proposal meets standards is through the preparation of a detailed traffic study. Absent this, necessary mitigation measures to ensure adequate traffic flow cannot be determined.

The trip cap is too high and permits a creep toward urban uses in a rural area. The trip cap requires further analysis.

The limited analysis presented by the Applicant is flawed and misleading. The analysis fails to consider the impact of heavier semi-truck traffic on Butteville Road and only considers vehicle trips associated with the former conditional use operation, not a traditional farm use as the property was used for many years before. The analysis also lacks information regarding the increased traffic movement over Boone Bridge, which already has heavy traffic flow. Semi-truck traffic through a farming community will cause air pollution, noise, and road damage, which are further examples of a rezoning being inconsistent with the rural character of the area. Again, the property is 18.25 acres and, although the Applicant is proposing a limited operation to start, it is not hard to imagine creep that would increase profits by creating a regional washing and detailing location for all of the many dealerships located in and around Wilsonville.

VII. Miscellaneous Inappropriate Financial Justifications

The Applicant seems to argue that the County should grant this comprehensive plan and zone change as a means to increase County tax revenues. Based on the Applicant's calculations, the tax revenue the County would receive is only slightly above \$7,000 per year for selling out valuable

farm land. This equates to only a minor monetary incentive for the County but would be a major windfall for private land speculation at the expense of the region.

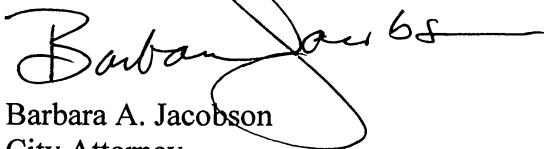
Finally, while the City is prepared to take whatever legal action is required to defeat this attempted degradation of prime farm land, at the same time, however, the City continues to support and encourage the success of local business. To that end, the City once again invites the Applicant to contact the City's Planning Director, Chris Neamtzu, who will be pleased to assist the Applicant in locating land that is already properly zoned for the intended use and is in as close or closer proximity to the Applicant's existing businesses.

The City of Wilsonville has been committed to the prevention of development south of the Willamette River, as is documented in *Issues Pertaining to Urban Development South of the Willamette River and Protection of French Prairie Foundation Agricultural Lands*, attached hereto and incorporated by reference herein. We would ask that the County take stock of the importance of this land and summarily deny this inappropriate application and illegal use of valuable farm land.

Please provide prompt written notice of the Board of County Commissioners' decision to my attention at the address shown above. Thank you for your consideration.

Sincerely,

CITY OF WILSONVILLE



Barbara A. Jacobson
City Attorney
as Attorney for the City of Wilsonville

baj:tec
encl.

cc: City Council
Bryan Cosgrove, City Manager



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Community Services Division

Portland Metro Regional Solutions Center

1600 SW Fourth Ave., Suite 109

Portland, Oregon 97201

503.725..2183

www.oregon.gov/LCD

January 8, 2016

sent via email



Martha Fritzie, Senior Planner
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045

RE: Zone Change/Comprehensive Plan Amendment
Local file ZO419-15-CP & ZO420-15-ZAP; DLCD file 007-15

Dear Ms. Fritzie,

The department received notice from the county of a Post Acknowledgement Plan Amendment application for a comprehensive plan amendment from Agriculture to Rural Industrial with a zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI) for an 18.25-acre parcel located on NE Butteville Road near I-5 Exit 282 and in designated rural reserves. To satisfy the criteria for this proposed comprehensive plan amendment and zone change, an exception to Statewide Planning Goal 3, Agriculture Lands, is required. As proposed, the department has a few comments on the application, specifically with meeting the exceptions criteria and with taking an exception in designated rural reserves.

Exceptions Criteria

The applicant is proposing an exception to Goal 3 pursuant to the provisions of OAR 660-004-0025.¹ This particular administrative rule allows an exception to an applicable goal in instances where the subject property has been “physically developed” to the point that it is no longer available for uses allowed under that goal. The material submitted for our review indicates that, in this case, about 3.5 acres of the subject property is occupied by pavement and four buildings,

¹ 660-004-0025 provides:

“(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).

“(2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.”

The application does not address section (2).

and that all of that development was approved under the county's existing EFU designation that implements Goal 3.

Our first and primary comment on the application is that it relies on uses and development that were approved under the applicable goal as "physical development" to justify an exception to that goal. Development established to conduct a farm stand in an exclusive farm use zone may not be relied on to justify an exception to Goal 3. The administrative rule language is clear on this point. Please see OAR 660-004-0025(2). See also *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995)² and *DLCD v. Columbia County*, 32 Or LUBA 221 (1996).³

However, even if development on the subject property was *not* allowed by Goal 3, the amount of development present on the subject property is insufficient to demonstrate that it is physically developed to the extent that it is no longer available for uses allowed by the goal. Specifically, only about 20 percent of the subject property is unavailable for cultivated agriculture. As an initial matter, the applicant has not demonstrated – and likely cannot demonstrate – that the developed area is unusable for farm-related or other uses allowed in the EFU zone (such as farm stands). Second, even if the 3.5-acre portion of the property were to be determined to be "physically developed to other uses" it does not necessarily follow that the remainder of the property is so committed.

For the reasons stated above, the proposal fails to satisfy the administrative rule criteria for a "physically developed" exception.

Rural Reserves

In regards to the rural reserves designation, the application states: "Although the property was included as a Rural Reserve area when Clackamas County and Metro adopted the urban-rural reserve designations (URR) for the region in 2011, that designation is not currently in effect due to the still pending remand of the URR decision from the Oregon Court of Appeals and LCDC. Thus, standards for rural reserve areas are not applicable to the review of this application."⁴

The department disagrees with this analysis. Rural reserves have been adopted by Clackamas County via Ordinance ZDO-223 but have not yet been acknowledged because of the remand. To our knowledge Clackamas County has not repealed the ordinance adopting rural reserves; therefore, the reserves are still in place. OAR 660-027-0070(3) provides: "Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or

² "The standards for approving a physically developed exception to Statewide Planning Goals 3 and 4 are demanding. The county must find that the property has been physically developed to such an extent that all Goal 3 or 4 resource uses are precluded. Uses established in accordance with the goals cannot be used to justify such an exception." *Sandgren v. Clackamas County*, 29 Or LUBA at 457.

³ "A local government decision approving a physically developed exception under OAR 660-004-0025 to Goals 3 and 4 will be remanded where the findings do not establish that the property is physically developed with non-resource uses." *DLCD v. Columbia County*, 32 Or LUBA at 226.

⁴ Page 8 of the application dated September 30, 2015.

land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves....” The rule goes on to list exceptions to this rule, but none of those exceptions apply in this case. Whether the reserves are acknowledged is immaterial as the county’s adopted reserve designation is still in place. The subject property is not eligible for a Goal 3 exception.

Transportation Facilities

The department has concerns regarding the proposed trip cap of 670 trips per day and whether this will satisfy the requirements of the Transportation Planning Rule (OAR chapter 660, division 12, or TPR). After discussing this issue with ODOT Region 1, the department has some reservations regarding the methodology used for the trip cap. We understand that ODOT has raised these concerns, and we agree that they would need to be addressed. Specifically, the department agrees with ODOT Region 1 that other transportation solutions may be more appropriate to address significant effects as required by OAR 660-012-0060. Should the applicant continue to use a trip cap to address the proposed traffic issue, a revised analysis and methodology to justify a reasonable trip cap number may need to be completed.

Please let me know if you have any questions about the department’s letter. Please submit this letter into the record for this case before the planning commission and any subsequent hearing on the matter.

Regards,

Jennifer Donnelly
Regional Representative/Regional Solutions

cc: DLCD staff
Steve Shipsey, Department of Justice
Gail Curtis, ODOT
Jim Johnson, Department of Agriculture
Roger Alfred, Metro Attorney
Mark Ottenad, City of Wilsonville

Friends of French Prairie

Friends of French Prairie
is an Oregon non-profit corporation

PO Box 403 | Donald, Oregon 97020 | www.friendsoffrenchprairie.org



January 15, 2016

Clackamas County Planning Commission
Department of Transportation and Development
150 Beaver Creek Road
Oregon City, Oregon 97045

Dear Commissioners:

Friends of French Prairie submits the following written testimony in the application for a proposed plan amendment and zone change Case File No. Z0419-15-CP & Z0420-15-ZAP. This proposal would change the comprehensive plan designation of 18.25 acres from Agriculture to Rural Industrial and zoning designation from Exclusive Farm Use (EFU) to Rural Industrial (RI). The subject property is described as T3S, R1E, section 26, Tax Lot 2700 W.M. and is located adjacent to the I-5 interchange at N.E. Butteville Road (Exit 282).

Friends of French Prairie is a land use advocacy organization focused on the preservation of agricultural land in French Prairie, and the promotion of local farming. While there are a number of areas of opposition to this application to rezone from agricultural to rural industrial, we will focus on the erroneous arguments made in the “Economic Analysis of a Zone Change Application for a Site at 26444 NE Butteville Road” prepared by Johnson Economics.

The principle overarching economic argument made is that the previous owner “attempted to operate under the current CUP limitations and was unsuccessful.” Those CUP limitations included sourcing no more than 25% of the gross value of sales from within 15 miles of the location, and limitations on the use of the facilities to “only repair of farm supplies, machinery or equipment used in accepted farming practices in the local agricultural area or sold from the site.” The applicant’s implication is clearly that the previous owner failed to successfully operate the site as a farm store because of the CUP limitations.

This assertion is confirmed in the letter submitted by Jeff Bachrach, on behalf of the applicant, BL & Di, LLC, wherein Mr. Bachrach references the Johnson Economics memorandum and states: “the Johnson Memorandum notes the limited farm activity that exists within the surrounding agricultural area, which the county has interpreted state law to mean a 15-mile radius around the site. The lack of an active farm community in the area

makes it highly unlikely the site could support any type of EFU-allowed commercial farm use that would have to make a profit primarily serving the surrounding agricultural community.”

Further, the applicants state that the previous owner had constructed:

- A 9,600 square foot (SF) farm building (constructed in 2005).
- A 2,048 SF Equipment storage building
- An approximately 1,300 SF farm house, adjacent to the equipment building
- An approximately 3,000 SF storage structure
- Cell tower and maintenance shed at the southern limits of the property.

And further, intended to construct:

- o 960 SF “meat prep” building
- o 4,000 SF “produce prep” building
- o 2,520 SF “shop” building
- o 2,520 SF “equipment” building
- o 10,000 SF “material storage” building

And, finally, the previous owner sought approval to allow additional sales of added value food products and agricultural supplies from the 9,600 square building, to allow the building to be used for dual purposes: farm stand and commercial store. They additionally go on to quote from the CUP that the owner shall “Identify each vendor who leases a tent site by name and address and the location of the farm in which the products originated.”

While they assert that the 15-mile area restriction was the cause of the previous owner’s failure to operate a successful business, they fail to point out some additional and important facts.

1. The applicant also wanted to be able to sell tractors, thus the restriction to repair of farming equipment.
2. The applicant not only wanted to operate a “farm store” but also wanted to operate a “commercial store,” i.e. a multi-use food store selling multiple products of all sorts—that is to say, a mini supermarket.
3. The applicant also intended to lease space for rent for local vendors to sell their products—that is to say, to also operate a “farmers market.”
4. Finally, they fail to point out that simple bad planning, poor investment decisions and bad management resulted in the business failure, not the 15 mile limit.

How can I make the last assertion? Simply consider the cost of the capital investment to construct a 9,600 square foot building with improvements to handle all of the desired functions: water, refrigeration, parking, retail case work, etc. This is the type of investment made for an urban “market” – i.e. specialty food store like Natures or Whole Foods – not a farm stand.

The fundamental assertion that business failure was due to the 15 mile limitation and that thus it would be impossible to either make a business success of a farm store on site or to profitably return the land to far usage ignores two significant facts.

First, the property is comprised of Class 2 soils according to the Department of Agriculture. They are among the best in the state and illustrate the reason that within fifteen miles there are numerous vegetable farms (such as Big B Farms, Montecucco Farms, Aurora Farms, the old Casale Farm, Mustard Seed Farms, Zorn Farm, Haener Farms, etc.) as well as blueberry farms and peach orchards. It would appear that Mr. Bachrach has never driven south of Metro Portland over the Willamette Bridge and into French Prairie, which contains over 45% of Marion County's EFU lands! To assert there is "no active farm community" displays willful ignorance!

Second, it is somewhat ironic that until he retired and recently sold his farm on Denbrook Road, less than two miles from the subject property, Joe Casale operated not only a fresh vegetable farm, but a farm stand for almost forty years!

Attached is an area map with a 15 mile radius from the property circle that shows six farm stands that are currently being successfully operated, and two more just outside the 15 mile radius. You will note that six of the eight are proximal to I-5 and are not located in "significant residential density" as asserted by the applicant, and apparently have enough draw to pull traffic off I-5 and from the larger local community. Two of these farm stands (Bauman Farms and French Prairie Gardens) are the largest in the state!

It is possible that the CUP under which the previous owner operated was unduly restrictive, but that was due to the grandiose plans he had and the scope of the operation he envisioned. The current owner purchased the property knowing the zoning and presumably the history. He should consider applying to modify the CUP restrictions and continue to operate the site as intended: agriculture with a farm stand.

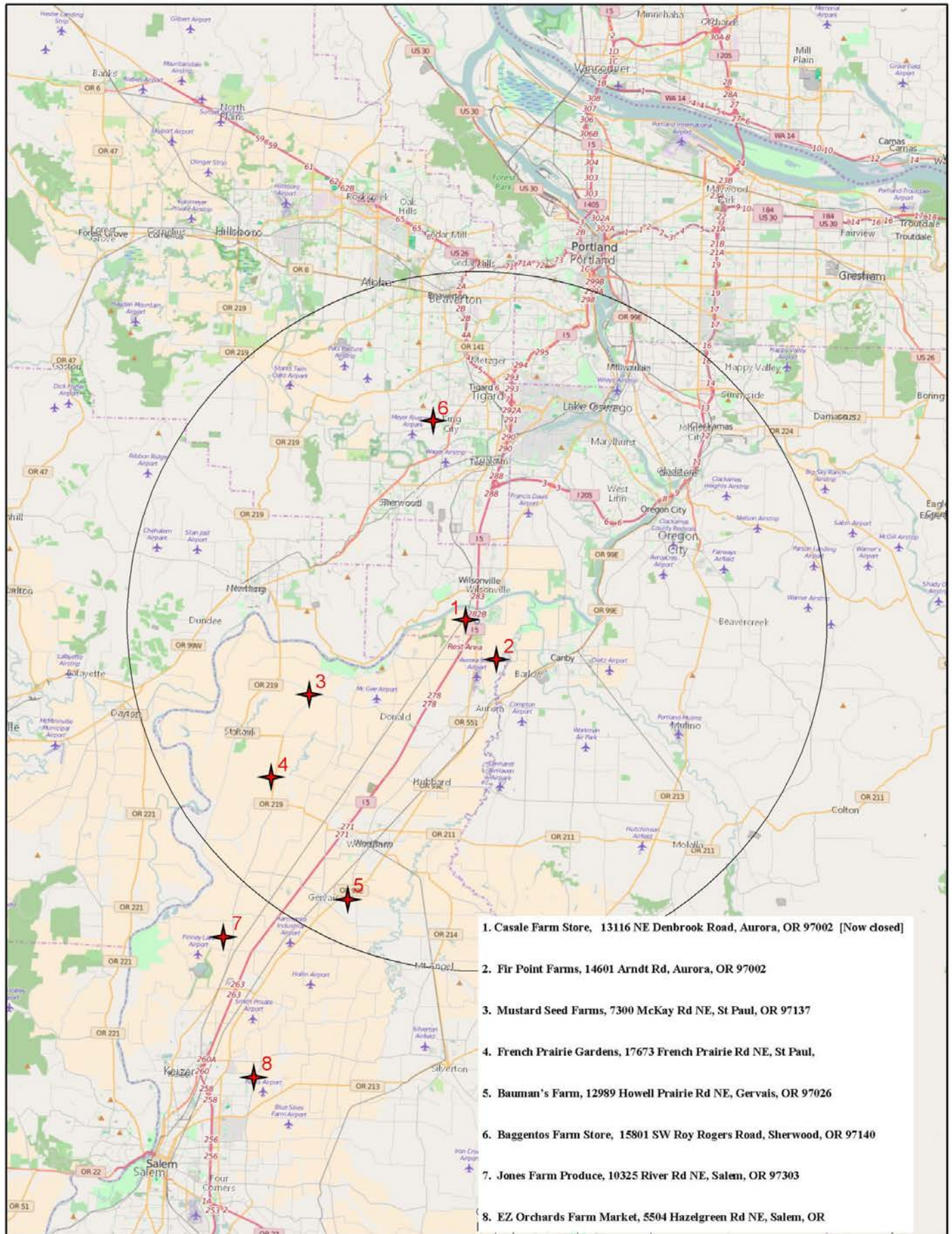
We urge you to deny this application for zone change to Rural Industrial.

Sincerely

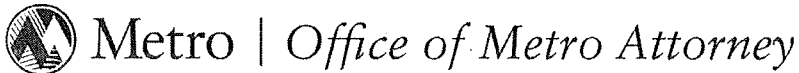


Benjamin D Williams

President, Friends of French Prairie



1. Casale Farm Store, 13116 NE Denbrook Road, Aurora, OR 97002 [Now closed]
2. Fir Point Farms, 14601 Arndt Rd, Aurora, OR 97002
3. Mustard Seed Farms, 7300 McKay Rd NE, St Paul, OR 97137
4. French Prairie Gardens, 17673 French Prairie Rd NE, St Paul,
5. Bauman's Farm, 12989 Howell Prairie Rd NE, Gervais, OR 97026
6. Baggentos Farm Store, 15801 SW Roy Rogers Road, Sherwood, OR 97140
7. Jones Farm Produce, 10325 River Rd NE, Salem, OR 97303
8. EZ Orchards Farm Market, 5504 Hazelgreen Rd NE, Salem, OR



Roger A. Alfred
Senior Attorney
503-797-1532

January 13, 2016

Ms. Martha Fritzie, Senior Planner
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045

Re: County File ZO419-15-CP & ZO420-15-ZAP
Zone Change/Comprehensive Plan Amendment on NE Butteville Road

Dear Ms. Fritzie:

Metro submits these comments on the above-referenced application in its role as a partner with Clackamas County regarding the designation of urban and rural reserves. On March 3, 2010, Metro and Clackamas County entered into an Intergovernmental Agreement to Adopt Urban and Rural Reserves (IGA) wherein Metro and the county agreed to the current map of urban and rural reserves in the county. As required under that IGA, the county subsequently adopted Ordinance ZDO-233, which designates 68,713 acres of rural reserves, including the property that is the subject of the application at issue.

As explained in the letter submitted by DLCD on January 8, 2016, the state rules governing rural reserve areas prohibit the amendment of the county's comprehensive plan or land use regulations to allow uses that were not allowed at the time rural reserves were designated. OAR 660-027-0070(3). Metro disagrees with the applicant's position that the decision of the Oregon Court of Appeals remanding LCDC's acknowledgment order on reserves had the effect of undesignating rural reserve areas in Clackamas County. The effect of the Court of Appeals' remand of LCDC's order is that the reserve areas are not acknowledged by LCDC. Metro agrees with DLCD's analysis that the court's decision did not impact the county's designation of rural reserves in Ordinance ZDO-233, and those reserve designations and the applicable state rules are therefore still effective and applicable to land use applications such as this one.

Thank you for the opportunity to comment on this application. Please include this letter in the official record and provide Metro with written notice of any final decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger A. Alfred', written over a horizontal line.

Roger A. Alfred, Senior Attorney
Office of Metro Attorney

cc: John Williams, Metro
Jennifer Donnelly, DLCD
Steve Shipsey, Oregon DOJ



January 11, 2016

VIA EMAIL

Clackamas County Planning Commission
Department of Transportation and Development
150 Beaver Creek Road
Oregon City, Oregon 97045

Dear Commissioners:

The Oregon Department of Agriculture (ODA) offers the following comments for your consideration in the matter related to the proposed plan amendment and zone change Case File No. Z0419-15-CP & Z0420-15-ZAP. This proposal would change the comprehensive plan designation of 18.25 acres from Agriculture to Rural Industrial and the zoning designation from Exclusive Farm Use (EFU) to Rural Industrial (RI). The subject property is described as T3S, R1E, section 26, Tax Lot 2700 W.M. and is located adjacent to the I-5 interchange at N.E. Butteville Road (Exit 282).

Rural Reserve Designation

The subject area is located within a rural reserve as designated by Clackamas County, Metro and acknowledged by the Oregon Land Conservation and Development Commission (LCDC). OAR 660-027-0070(3) states:

(3) Counties that designate rural reserves under this division **shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed**, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than



rural reserves, except as specified in sections (4) through (6) of this rule.

Emphasis supplied.

Because the subject area has been designated a rural reserve, the proposed plan amendment and zone change is inconsistent with the above stated law and should not be approved. It is important to note that the county ordinances that adopted the reserves maps were not remanded by the Court of Appeals.

Physically Developed Exception

We understand that the argued legal basis for the proposed amendments is an exception to the applicable goals on the basis that a "physically developed" exception is merited. **OAR 660-004-0025 establishes the following requirements for an exception based on lands physically developed to other uses:**

Exception Requirements for Land Physically Developed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it **is no longer available for uses allowed by the applicable goal**. Other rules may also apply, as described in OAR 660-004-0000(1).

(2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. **Uses allowed by the applicable goal(s) to which an exception is being taken**

shall not be used to justify a physically developed exception.

Emphasis supplied.

The current developed footprint at the subject site was mostly established pursuant to Clackamas County Conditional Use Case No. Z0393-05-C as an “agricultural marketing and service center in conjunction with farm use,” in effect, the development was approved as a commercial use in conjunction with farm use as authorized under state law. Other land uses on-site as indicated in the county permit included a dwelling, barn, farm stand, storage building, pavilion, cell tower storm water pond, crops and timber.

All land uses on-site are either permitted outright or as a “conditional use” under Goal 3 and the exclusive farm use statutes and rules. We suggest that the exception proposed to justify the subject plan amendment and zone change is not merited based on LCDC administrative rules discussed above because all the development referred to by the applicant involves land uses allowed by Statewide Planning Goal 3 and the statutes and rules that implement Goal 3.

Compatibility

The LCDC administrative rules state ‘(f)or "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

- (1) That are the same as the existing land uses on the exception site;
- (2) That meets the following requirements:
 - (a) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(3) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(4) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.

See OAR 660-004-0018(2).

There is little discussion that we found in the information provided in support of the plan amendment/zone change that discusses impacts to area farm and forest operations. Identification of agricultural uses in the area is limited to an aerial photo that generally identifies agricultural land uses such as nursery and cropland. There is no articulation of the type of agricultural operations in the surrounding area or any discussion of the associated agricultural practices associated with the ongoing farming operations. For example, area agricultural operations include a large blueberry operation, Christmas trees and a multi-livestock operation involving 160 beef cattle, 30 pigs and 250 chickens.

Criteria 3 and 4 expressed above are important considerations to the larger agricultural land base in the area. The conclusionary evaluation and provided by the applicant is nonresponsive to these criteria. Without a complete inventory of area agricultural operations and associated practices, the required demonstration and justification cannot be made.

Urban v. Rural Land Use

We also question if this proposal is consistent with criterion #2 listed previously, which requires the proposed land use be rural, and maintain the land as “rural land.” Materials provided by the applicant state:

While the site is not within the Wilsonville UGB, the proposed use allows for an intensification of use on urbanizable property

within Wilsonville's UGB through the transfer of low intensity uses from within the UGB to the subject site. (Johnson Economics memorandum dated September 29, 2015, page 3)

The proposed use, regardless of "intensity", would be accessory to the sale of new cars. This is not a land use generally considered to be a rural use. We also would suggest that the intensity of the use is urban. Whether the cars are on display or being stored and prepped, they would utilize the same footprint on the ground (number of cars).

The question is if the proposed use is urban. We believe that the proposed use is urban because it is directly related to urban car sales and it has no direct relationship to any rural land uses. Because it is an urban land use, it is inconsistent with the subject criterion and most likely would also require an exception to Statewide Planning Goal 14, Urbanization.

Clackamas County Comprehensive Plan

The proposed plan amendment would change the subject site plan designation from Agriculture to Rural Industrial. The Clackamas County Comprehensive Plan, Rural Industrial Policies require:

4.MM.3. Areas may be designated Rural Industrial when the first, the second, or both of the other criteria are met:

4.MM.3.1. Areas shall have a historical commitment to industrial uses; or

4.MM.3.2. The site shall be an abandoned or diminished mill site as defined in the Zoning and Development Ordinance, provided that only the portion of the site that was improved for the processing or manufacturing of wood products may be designated Rural Industrial; or

4.MM.3.3. Areas shall be located within an Unincorporated Community; and

4.MM.3.4. The site has direct access to a road or at least

an arterial classification.

The subject site historically has been used for agriculture, related land uses, a farm marketing facility and a cell tower. It has no history of commitment to industrial uses and is not an abandoned mill site. The subject property is zoned Exclusive Farm Use and is not located within a designated Unincorporated Community. The proposed plan amendment to Rural Industrial is inconsistent with county plan policy related to the siting of rural industrial zones.

In conclusion, the proposed plan amendment does not appear to be consistent with state or county requirements for justification of an exception and subsequent plan amendment and zone change.

Thank you for the opportunity to provide these comments for your consideration. Please enter our comments into the record of this case.

Respectfully,



James W. Johnson
Land Use and Water Planning Coordinator

CC: Martha Fritzie, Clackamas County
Jim Rue, DLCD
Katherine Daniels, DLCD
Jennifer Donnelly, DLCD
Roger Alfred, Metro
Katy Coba



Oregon

Kate Brown, Governor

Department of Transportation

Region 1 Headquarters
123 NW Flanders Street
Portland, Oregon 97209
(503) 731.8200
FAX (503) 731.8259

January 12, 2015

Martha Fritzie, Senior Planner
Clackamas County
150 Beaver Creek Road
Oregon City, Oregon 97045

RE: Request for 26444 NE Butteville Road Comprehensive Plan Amendment and Zone Change Request; Local File #ZO419-15-CP and #ZO420-15-ZAP

Dear Ms. Fritzie,

The Oregon Department of Transportation (ODOT) has reviewed the applicant's proposal for a comprehensive plan amendment and zone change for a site located at 26444 NE Butteville Road. The comprehensive plan amendment is from Agricultural to Rural Industrial and the zone change request is from Exclusive Farm Use (EFU) to Rural Industrial (RI). ODOT concurs and supports the Department of Land Conservation and Development's January 8, 2016 letter, especially as it pertains to Oregon's Statewide Planning Goals.

This 18.5 acre site is within the immediate vicinity of I-5/NE Butteville Road and Wilsonville-Hubbard Highway (OR-551) Interchanges. ODOT has jurisdiction for these facilities¹ and an interest in assuring that the proposed comprehensive plan amendment and zone change is consistent with the identified function, capacity and performance standard of this facility.

For comprehensive plan amendments and zone changes, local governments must make a finding that the proposed amendment complies with the Transportation Planning Rule (TPR), OAR 660-012-0060, and Clackamas County Zoning and Development Ordinance Section 1202.03. There must be substantial evidence in the record to either make a finding of "no significant effect" on the transportation system, or if there is a significant effect, require assurance that the land uses to be allowed are consistent with the identified function, capacity, and performance standard of the transportation facility. The applicant has not provided sufficient information to demonstrate compliance with the Transportation Planning Rule (TPR), OAR 660-012-0060.

The applicant provided a traffic memorandum prepared by Kittelson & Associates, Inc. dated September 28, 2015. The memo concludes "no significant effect" by establishing a trip cap based on a previous, I-5 Farm Store, use. The I-5 Farm Store was a conditional use within the Exclusive Farm Use (EFU) zone. The traffic memo is insufficient. It does not demonstrate a comparison between the land uses with the highest trip generation rate

¹ OAR 734-051 website: http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_051.html

allowed outright under the existing and proposed zoning/comprehensive plan designations (commonly referred to as the “reasonable worst case” traffic analysis). Conditional uses are not acceptable for “reasonable worst case” criteria during TPR analysis, as upheld by LUBA in *Ooten v. Clackamas County*.

The applicant’s finding does not satisfy the Transportation Planning Rule (TPR), OAR 660-012-0060 criteria; therefore, ODOT does not support with the applicant’s finding of “no significant effect.”

Thank you for providing ODOT the opportunity to participate in this land use review. If you have any questions regarding this matter, please contact me at 503.731.4753.

Sincerely,



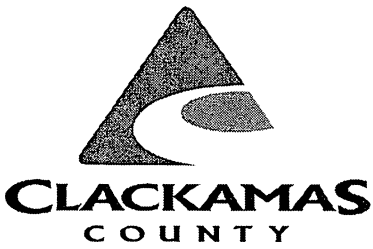
Jon Makler, AICP
Region 1 Planning Manager
Oregon Department of Transportation

cc: Avi Tayar, P.E., ODOT Region 1 Traffic
Gail Curtis, ODOT Senior Planner
Joshua Brooking, ODOT Assistant Planner
Jennifer Donnelly, DLCD Metro Regional Representative
Gary Fish, DLCD Transportation Planner

RECEIVED

JAN 21 2016

MIKE McCALLISTER
PLANNING AND ZONING DIRECTOR



City of Wilsonville

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

NOTICE OF PUBLIC HEARINGS BEFORE THE PLANNING COMMISSION AND THE BOARD OF COUNTY COMMISSIONERS ON A PROPOSAL IN YOUR AREA

*****PUBLIC HEARINGS POSTPONED*****

Both public hearings associated with files Z0419-15-CP & Z0420-15-ZAP have been postponed indefinitely. You will receive additional notice when and if these hearings are rescheduled.

Date of Mailing of this Notice: January 19, 2016

Notice Sent To: Agencies, Community Planning Organizations and property owners within 750 feet of the subject property.

PLANNING COMMISSION HEARING DATE & TIME: ~~Monday, January 25, 2015, Monday, January 25, 2016, 6:30 P.M.~~

HEARING LOCATION: Clackamas County Development Services Building Auditorium
150 Beaver Creek Road
Oregon City, OR 97045

BOARD OF COUNTY COMMISSIONERS HEARING DATE & TIME: ~~Wednesday, March 2, 2015, Wednesday, March 2, 2016, 9:30 A.M.~~

HEARING LOCATION: Clackamas County Public Services Building, BCC Hearing Room, 4th Floor
2051 Kaen Road
Oregon City, OR 97045

Case File Number: Z0419-15-CP & Z0420-15-ZAP

Applicant: BL & DJ LLC/ Jerry Jones Jr.

Property Owner: BL & DJ LLC

Proposal: Comprehensive Plan Amendment from Agriculture to Rural Industrial with a corresponding Zone Change from Exclusive Farm Use (EFU) to Rural Industrial (RI) for a 18.25-acre parcel located just off the I-5 interchange at NE Butteville Rd (Exit 282). The proposal includes a "Physically Developed" exception to Statewide Planning Goal 3, under ORS 197.732 and OAR 660, Division 4 to allow for the the storage and detailing of vehicles for eventual sale on a different site. Other uses allowed in the RI zone are listed in Section 604 of the County's Zoning & Development Ordinance (ZDO) and generally include manufacturing and warehousing uses, construction and maintenance-related uses, indoor recreation facilities and other similar uses.

Applicable Zoning and Development Ordinance and Comprehensive Plan Criteria: The Comprehensive Plan Map Amendment is subject to compliance with the applicable Statewide Planning Goals, Oregon Administrative Rules (including OAR 660, Division 4 and 12) and applicable policies in the Clackamas County Comprehensive Plan, including the Rural Industrial Policies in Chapter 4. The zone change application is subject to the criteria in Section 1202 of the Clackamas County Zoning and Development Ordinance. These criteria may be viewed online at <http://www.clackamas.us/planning/zdo.html> and <http://www.clackamas.us/planning/comprehensive.html>

Site Address and/or Location: 26444 NE Butteville Rd, Aurora

Assessor's Map: T3S, R1E, Section 26, Tax Lot 2700, W.M.

Property Size: 18.25 total acres

Zoning: Exclusive Farm Use (EFU)

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

HOW TO OBTAIN ADDITIONAL INFORMATION

Staff Contact: Martha Fritzie; 503-742-4529; mfritzie@clackamas.us.

A copy of the entire application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost at the Planning Division offices. In addition, a staff report on the application will be available for inspection at no cost at least **seven days prior to the hearing**. Hard copies of documents will be provided at reasonable cost. You may inspect or obtain these materials by:

1. Emailing or calling the staff contact;
2. Visiting the Planning & Zoning Division at the address shown at the top of this notice during regular business hours, which are Monday through Friday, 8 am to 3 pm; or
3. Going to the Clackamas County website page: <http://www.clackamas.us/planning/zdoproposed.html>

Community Planning Organization for Your Area: The following recognized Community Planning Organization (CPO) has been notified of this application and may develop a recommendation. You are welcome to contact the CPO and attend their meeting on this matter, if one is planned. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact the Citizen Involvement Office at 503-655-8552. **CPO: South Canby (inactive).**

HOW TO SUBMIT TESTIMONY ON THIS APPLICATION

- All interested citizens are invited to attend the hearings and will be provided with an opportunity to testify orally, if they so choose.
 - Written testimony received by ~~January 12, 2015~~ **January 12, 2016** will be considered by staff prior to the issuance of the staff report and recommendation on this application. However, written testimony will continue to be accepted until the record closes, which may occur as soon as the conclusion of the Board of County Commissioners' hearing.
 - Written testimony may be submitted by email, fax, regular mail, or hand delivery. Please include the case file number on all correspondence and address written testimony to the staff contact who is handling this matter.
 - Testimony, arguments, and evidence must be directed toward the criteria identified above, or other criteria in the Zoning and Development Ordinance or Comprehensive Plan that you believe apply to the decision. Failure to raise an issue in person at the hearing or by letter prior to the close of the record, or failure to provide statements or evidence sufficient to afford the Board of County Commissioners and the parties involved an opportunity to respond to the issue, precludes an appeal to the Oregon Land Use Board of Appeals based on that issue.
 - Written notice of the Board of County Commissioners' decision will be mailed to you if you submit a written request **and provide a valid mailing address.**
-

PROCEDURE FOR THE CONDUCT OF THE HEARING

The following procedural rules have been established to allow an orderly hearing:

1. The length of time given to individuals speaking for or against an item will be determined by the Chair presiding over the hearing prior to the item being considered.
2. A spokesperson representing each side of an issue is encouraged.
3. Prior to the conclusion of the evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The Planning Commission or the Board of County Commissioners may either continue the hearing or leave the record open for additional written evidence, arguments, or testimony.
4. The Planning Commission will make a recommendation to the Board of County Commissioners on the application. The Board of County Commissioners is the final decision maker for Clackamas County on this matter.